

Employers must take action to keep H1N1 flu at bay

Businesses could take a big hit with this flu season's double-whammy

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Dr. Troy Manchester, MD – Regional Medical Director for U.S. HealthWorks

Swine flu is already here, though the first wave of vaccines didn't arrive until this week.

Twelve people in the Sacramento area have died from the H1N1 virus since the first cases hit the region in April; 190 have been hospitalized, according to the latest figures from the state **Department of Public Health**.

How this compares in severity with seasonal flu is unclear because that data is not generally tracked, but the spectre of a new strain of pandemic flu that affects different groups of people — including the young and healthy — makes it a scary issue in the workplace, where people congregate closely for hours at time.

“We can't see it. We don't know if we've got it and authorities say there is something to fear,” said Thomas Beamish, a sociology professor at the **University of California Davis**. “It's not necessarily more dangerous, but it's spreading more quickly.”

There have been 199 deaths and 2,510 hospitalizations in California this year from H1N1 influenza, and state public health officials advise that as many as one in four Californians could contract the virus.

Others suggest anywhere from 20 percent to 40 percent of the population will be infected. Most are expected to recover without treatment.

“So far, H1N1 looks no worse (than seasonal flu), except the groups that are affected are different,” said Dr. Glennah Trochet, public health officer for Sacramento County. “But it's hard to know.”

The notion that up to 40 percent of the work force could get sick enough to stay home from work already has sent chills through the business community.

“Unless you are living in a bubble, you can get it,” said Dr. Richard Stack, medical director for infectious disease at **Mercy San Juan Medical Center** in Carmichael. “The message should be immunize, immunize, immunize. That’s the only weapon we really have.”

This raises a multitude of questions for employers about how far their duty goes to protect workers while respecting individual rights.

Seasonal or swine?

Concern about the rapid spread of a new virus — initially dubbed “swine flu” because laboratory testing showed many of the genes in the new strain were similar to influenza viruses found in pigs — prompted Gov. Arnold Schwarzenegger to proclaim a state of emergency in April to cut red tape and speed up attempts to respond.

The governor issued an executive order Monday urging Californians to take the virus seriously. The announcement coincided with arrival of the first statewide shipment of the H1N1 vaccine.

Symptoms include fever, cough, sore throat, runny or stuffy nose, body aches, headache, chills and fatigue. Some people have diarrhea and vomiting.

The big question is how to differentiate this strain from the regular one and what to do about it.

“Our goal, as medical providers, is to treat the condition, whether seasonal or swine,” said Dr. Troy Manchester, Northern California regional director for **U.S. HealthWorks**, an occupational health care company with five clinics in the region. He doesn’t consider swine flu a workers’ compensation issue, but a community-based illness that will also show up at work.

“The first issue is taking care of yourself and staying home; people forget that’s an important aspect,” Manchester said. “The second is if you are at work, how do you protect yourself? That’s all about hygiene.”

Cough into a tissue or your sleeve. Sanitize your hands during the day — and don’t touch your eyes, nose or mouth; that’s how germs spread, he said.

One problem with H1N1 is it’s a new virus. While older people might have built up some immunity through other strains of flu, younger folks haven’t.

Rights and responsibilities

The job of employers is to react before and when it hits the workplace.

Questions run the gamut from whether employers can — or should — force sick workers to stay home, get the vaccine or wear a surgical mask. Local labor lawyers haven’t been inundated by calls, but have received some. Response is mixed.

“It’s usually, ‘We have somebody we believe has it — or has flu-like symptoms — what should we do?’ ” said Dan Coyle, an employment lawyer at **Downey Brand LLP**. Workers should go to the doctor and take care of themselves, while employers should follow **Centers for Disease Control and Prevention** guidelines, he said. (See chart.)

“You can’t require people to get the vaccination,” said Susan Kemp, an employment law consultant with **CalChamber** and its subsidiary, **CalBiz Central**. “What an employer can do is put out as much information as possible, look at the sick leave policy and allow telecommuting, if possible.”

No question, vaccination is an effective way to mitigate the spread of flu and should be encouraged, but required immunization “tramples individual autonomy,” said Tania Simoncelli, science advisor for the **American Civil Liberties Union**, which has fielded hundreds of complaints about the issue.

The fundamental goal for employers is to not have anybody in the workplace who is infected, said Beth West, an employment lawyer with **Weintraub Genshlea & Chediak**.

“Absolutely, an employer can stop someone from coming to work,” West said. “An employer can take the hard line on sending employees home and taking action to prevent them from coming back, whether leave is paid or unpaid.”

Swine flu doesn't appear to be protected under the Family Medical Leave Act, unless the condition gets serious, she said.

West tells clients to review leave policies and the company injury and illness prevention plan to make sure it addresses airborne illness.

Limiting the spread

The California Occupational Safety and Health Administration (Cal/OSHA) adopted a new airborne transmission disease standard Aug. 5 that applies to high-risk environments such as health care centers or certain other settings where there's congregate living, including corrections facilities, some drug treatment programs and homeless shelters.

“This regulation doesn't apply to non-medical office, retail or many other environments, but we are encouraging employers to do pandemic flu planning,” said Deborah Gold, senior safety engineer at Cal/OSHA. Inspectors don't check every illness and injury prevention plan for efforts to control the spread of airborne disease, but they do look at it if there is a complaint, she said.

One of the problems with the new flu pandemic is trying to keep abreast of the latest information, said Gail Blanchard-Saiger, vice president for human resources, labor and employment at the **California Hospital Association**. The new standard adds another layer, she said.

“Everybody, including the enforcement agency, is trying to figure out how they apply,” she said.

Some directives are clear, however.

Enough state workers have asked if they can take leave to stay home because they are afraid of catching the flu at work that the **Department of Personnel Administration** responded in an online fact sheet with a resounding “no.”

The CDC doesn't recommend “swine flu parties” — touted as an opportunity to come in close contact with a person who has H1N1 flu as a way to protect against catching a bad case of the flu in the future.

“While the 2009 H1N1 flu outbreak has been mild for many people, it has been severe and even fatal for others,” the CDC's Web site cautions.

High-risk occupations

Health care businesses and other high-risk employers face a different set of questions — and mixed messages about what to do.

A nurse at Mercy San Juan Medical Center who died from H1N1 flu July 17 was the first reported health care worker to die from the virus in California. The death of Karen Ann Hays, 51, also increased fears among the public at large because she was a relatively young, apparently healthy triathlete.

Stack, the medical director that diagnosed Hay's condition, ordered her to be isolated and told health care workers to use gloves and full masks when treating her. "Then, the state said that was overboard — too cautious," Stack said. "Then the state came back and said 'do more.' "

One problem with doing more is that Cal/OSHA recommends N95 disposable respirators for health care workers that hospitals say are in short supply and must be fitted to each person's face. The numbers are mind-boggling.

"If the numbers are as bad as predicted — 40 percent of the population — one hospital told us they could easily go through 70,000 masks in a week," said Jan Emerson, spokeswoman for the California Hospital Association. At less than \$1 a mask, the cost is low, but mounts with quantity.

The union that represents nurses questions the shortage.

"It's difficult to sift through all the research and hyperbole," said Deborah Burger, co-president of the **California Nurses Association/National Nurses Organizing Committee**.

The vaccine should be offered to health care workers as part of a comprehensive program to deal with the epidemic, but any immunization program should include information about the risks of vaccination and respect the right of nurses to decline it for personal reasons, Burger said.

"We need to give people information and let them decide," Burger said. "I'd rather see a nurse gowning and gloving — and a mask protecting her — if it's me in the bed."

Tips for employer response to current flu conditions

- Workers with flu-like symptoms should be separated from others and sent home
- Sick workers should stay home until at least 24 hours after their fever is gone
- Encourage workers to wash their hands often with soap and water or alcohol-based hand sanitizer
- Encourage workers to cover their coughs and sneezes
- Clean surfaces and items that are most likely to have frequent hand contact
- Encourage workers to get vaccinated for seasonal flu, and employees at higher risk for flu complications to get vaccinated for H1N1
- Prepare for increased absences and plan for ways to continue essential business functions
- Advise workers to take certain steps before traveling
- Prepare for the possibility of school dismissals or temporary child-care closures.

If the flu epidemic gets worse

- Consider active screening of employees when they report to work
- Consider alternative work arrangements for employees at higher risk for flu complications
- Increase social distancing by spacing employees farther apart and canceling large face-to-face meetings