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## EMPLOYERS: ARE YOU READY FOR THE SWINE FLU?

**A**fter years of concern over a possible avian flu pandemic, the United States now faces the Swine Flu outbreak that has caused the government to declare a public health emergency. It is yet to be determined whether the swine flu outbreak will become a widespread pandemic. However, many employers have expressed a desire to start preparing to prevent influenza spread at work and would prefer to consider, earlier rather than later, what to do if the illness reaches pandemic status. Properly implemented, planning for a possible pandemic can help limit the flu's impact on employee health, as well as the economic health of an organization. It is always challenging to navigate through a crisis, but any plan should be custom crafted to meet the unique workforce and business-continuation needs of an organization.

Nevertheless, several practical issues may affect almost *every* employer, including:

- **Attendance could decline.** Some employees may be unable to work because they are ill, whereas others may stay away from the workplace because of fear of contracting infection.
- **The workplace could become contagious.** Sick employees may insist on coming to work, due to financial demands, even if they should remain at home.
- **Alternative work arrangements may be needed.** Employers may need to consider having employees work remotely if quarantines are imposed or employees refuse to or cannot come to your facilities. Employers should consider cross-training employees to perform critical functions, if not already done.

- **Some employees may refuse to perform some of their normal responsibilities.** Employees may object to performance of certain duties out of fear to being exposed to the flu, especially those who travel frequently or attend large group settings.
- **Some employees may refrain from obtaining medical care.** Economic concerns, as well as fear of exposure at the doctor's office may cause employees to avoid seeking health care.
- **The need for personal assistance may arise.** Employees impacted by the flu may need help finding care for a sick relative, or help getting food and water if a quarantine is imposed.
- **Employees may be distracted.** Distractions may result in an inability to focus on work or work at all, if the situation rises to the level of a pandemic. Time off, coun-

seling or other assistance may be required.

Employers face competing and complicated legal issues. Employers are legally obligated to provide a safe workplace. In the face of a pandemic, you may be liable if your infected employees spread the disease. Any plan implemented should include:

- **A communicable disease policy.** Similar to a good sick policy, such policy should emphasize that employees with symptoms of illness must not come to work.
- **Employee education on good hygiene practices.** Remind employees to wash hands frequently, or use alcohol-based hand sanitizer. Employers can provide tissues and sanitizer in the workplace to promote the practice.
- **Other measures to prevent**

**the spread of disease at work.** Employers can reduce the risk of workplace infection by providing air ventilation and purifying systems, restricting work-related travel and implementing remote or other work arrangements to reduce personal contact.

Employers can obtain more information and guidance on how to address the concerns related to the Swine Flu outbreak by accessing the following on line employer resources:

<http://www.pandemicflu.gov/plan/workplaceplanning/index.html>

<http://www.osha.gov/Publications/OSHA3327pandemic.pdf>

<http://www.pandemicflu.gov/plan/workplaceplanning/businesschecklist.html>



## “INVOLUNTARY TERMINATION” DEFINED FOR COBRA SUBSIDY

**T**he federal stimulus package contains a COBRA premium subsidy for employees who are "involuntarily terminated" between September 1, 2008 and December 31, 2009. The Internal Revenue Service (IRS) has recently published guidance for employers on what an "involuntary termination" is for the purpose of determining which employees should be sent the required COBRA subsidy notices.

According to the IRS, an "involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment," if the employee is willing and able to continue working. This includes:

- Employees who are fired—even if fired for "good cause"—except that employees fired for gross misconduct are not eligible for the subsidy (gross misconduct is rare, and includes things like theft or

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acts of violence by the employee, but does not include routine misconduct such as insubordination, poor performance, or failure to follow company procedures);

- Employees who are laid off due to a reduction in force, cessation of work, relocation of work, or facilities closure, even if the employee is only temporarily furloughed or work is temporarily suspended, and even if the employee is on a recall list;
- Employees who are laid off while on leave, such as medical leave or a leave of absence, if the employee would have been ready and able to return to work at the end of the leave period;
- Where the employer elects not to renew or continue an employee's contract for services, if the employee was ready and able to continue under a new contract with similar terms (this means that employees who were hired on a project, seasonal, or temporary basis are considered to be involuntarily terminated for the purposes of the COBRA subsidy if the employer chooses not to retain them);
- Employees who choose to resign and take a severance package in lieu of being laid off or terminated; and
- Employees who choose to resign because actions of the employer have negatively affected the employment relationship, including:
  - Where the employee is given the choice to resign or be terminated/laid off;
  - Where the employee is given the choice to retire or be terminated/laid off;
  - Where the employee is subjected to a reduction of hours such that the employee is forced to seek other employment with greater hours or pay;

Employees who go choose to out on strike are not considered involuntarily terminated, unless the strike follows an employer lockout.

## **CALIFORNIA LEGISLATIVE UPDATE**

**AB 141 and SB 187: Individual Employee Flexible Work Schedule**—Recent changes to the state alternative work week law permit a "work unit" to elect to work four 10-hour days a week, without the employer having to pay daily overtime. These bills would provide the same option to employees on an individual basis; even if an employee's whole work unit didn't also elect the flexible schedule. Bills have been introduced into both the Assembly and the Senate, and are currently being reviewed by committees.

**AB 943: Employee Credit Reports**—Under current law, an employer can obtain an applicant or current employee's credit report if the employer obtains written authorization from the employee, and provides the employee with a copy of the report. This bill would make it unlawful for an employer to refuse to hire, to fire, or to in any way discriminate against an employee who refuses to provide written authorization to obtain the employee's credit report, unless the employee's credit history is essential to the employee's job duties.

**AB 1000: Paid Sick Leave**—Currently, only employees working in the city and county of San Fran-

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cisco are entitled to *mandatory* paid sick leave. This bill would require all California employers to provide every employee who works in the state for more than 7 days with paid sick leave benefits, accrued at one hour of paid leave for every 30 hours worked. This bill is set for committee hearings soon.

**AB 793: Equal Pay Discrimination**—The recently enacted federal Fair Pay Act (FPA) amended existing federal law to increase the amount of time an employee has to file a pay discrimination claim. The law also added penalties for equal pay violations. This bill would amend California anti-discrimination law to mirror the requirements of the FPA, and is currently being considered by Assembly committees.

**Assembly Bill 23: Cal-COBRA Subsidy**—This bill would require employers and health insurers to provide notice of the availability of health plan premium assistance under the federal stimulus package to individuals eligible for that assistance, and would make other changes to allow those individuals to receive Cal-COBRA coverage with that premium assistance. This bill has been marked urgent, and is expected to pass very soon.

## UPCOMING SEMINAR

### BEST PRACTICES FOR DISCIPLINE & LAYOFFS

Elizabeth Koumas regularly provides legal updates at the monthly luncheon meeting of the East County Personnel Association. Next month, Ms. Koumas will offer guidance on implementing proper discipline and layoffs, especially in the current economic situation leading many businesses to take such drastic measures to stay afloat.

**Date:** May 21, 2009 **Time:** 11:30 a.m. to 1:00 p.m.

**Location:** The Brigantine Restaurant, La Mesa

For more details about the agenda or registration information, contact Elizabeth J. Koumas at [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com) or . For more information about membership in East County Personnel Association, please check the Association's website at [www.ecopa.net](http://www.ecopa.net)



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