



Measles Outbreak Raises Compliance Questions

News

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Howard Mavity was quoted on *SHRM Online* on February 9, 2015. The article “Measles Outbreak Raises Compliance Questions” discussed how the measles outbreak has raised concerns for employers, regarding employees in the workplace.

The measles outbreak may stay confined primarily to southern California, but employers still aren’t prepared to deal with infectious diseases, Howard told *SHRM Online*.

Southern California has a higher rate than elsewhere in the country of people who have not been vaccinated, making the area more vulnerable to the virus, Howard said.

There have been about 110 reported cases of measles, Howard said. According to the California Department of Public Health, 42 of the confirmed cases have been linked to an initial exposure in December 2014 at Disneyland or Disney California Adventure Park in Anaheim, Calif. Five Disney employees were among the confirmed cases. Howard called measles, “the Arnold Schwarzenegger of viruses.” It is hardy, capable of surviving in the air or on a surface up to two hours, he remarked. The virus can be contagious four days before and four days after symptoms appear, he noted.

Employers in southern California have been calling Howard and asking questions such as:

Should I tell co-workers if we learn that an employee or customer onsite develops the measles? Can I identify the employee by name?

If I do, is this a violation of the Americans with Disabilities Act (ADA), the Health Insurance Portability and Accountability Act (HIPAA), or state anti-discrimination laws?

Is it an invasion of privacy? If an employee develops measles at work or performing his or her duties, is that a compensable work-related illness? Is it a recordable workplace illness for Occupational Safety and Health Administration (OSHA) Form 300 record-keeping purposes?

Can I require employees to get vaccinations?

There’s no reason to tell employees the name of an individual who has measles, Howard said.

Measles probably is a protected disability under the ADA and may be covered by state anti-discrimination laws or invasion of privacy common law actions as well as all the more reason not to

discrimination laws or invasion of privacy common-law actions as well, so all the more reason not to name names, Howard noted.

What about telling employees that an unnamed worker has the measles? Howard said most employers he's talked to want to provide a general notice that someone in the workplace has the virus, reasoning that employees would want to know. The employers contend that employees who receive a general notification are more likely to stay alert to symptoms, get treated if they have symptoms and stay home if they are sick.

When telling co-workers that someone in the workplace has measles, Howard recommends following what the California Public Department of Health says in its school measles exposure letter. The department recommends that individuals should immediately go to the doctor if they have symptoms and then stay home until the doctor has cleared them for return. "As a rule of thumb, the more you track what public health officials do, the less likely you are to be sued," Howard remarked.

But getting measles at work probably is not a recordable workplace illness for Occupational Safety and Health Act purposes, unless the outbreak becomes more widespread and OSHA decides otherwise, Howard added.

Howard is a proponent of employers "aggressively educating employees" about vaccinations, "debunking myths and encouraging people to get their shots." Howard noted that, in addition to opting out of the measles vaccination, some people aren't getting the polio vaccination, even though he called the prospects of getting polio "terrifying." But he said employers can't require employees to get vaccinations.

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