



'Tis the Season: Employers and the Flu

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The current flu season is one of the worst in years, and the Centers for Disease Control and Prevention (CDC) warns that the flu epidemic currently shows no sign of abating.

So far this season, 42 states reported widespread levels of the illness, and Boston declared a public health emergency on January 10 because of the expanding flu outbreak. Massachusetts reported 18 flu-related deaths by mid-January.

Needless to say, employers continue to be hit hard by absences related to the flu. They are also being hit with the worst whooping cough outbreak in 60 years and a particularly virulent strain of the norovirus (cruise ship illness) this season. Consequently, flu-related legal challenges have come to the fore for employers, including the controversial issue of mandating flu vaccinations, as well as some of the measures employers take to prevent the plague-like spread of the virus at work.

Employers also face practical challenges as they respond to sick employees, mandate flu vaccinations, and seek to maintain a safe workplace. How then should employers respond to the flu outbreak?

Practical considerations

- Continually remind employees to wash hands, for at least 20 seconds, and provide frequent hand-washing opportunities; medical professionals also advise keeping hand sanitizer nearby, and to avoid touching one's eyes, nose, and mouth
- Educate employees about the severity of this year's flu strain and the few risks associated with vaccinations; provide CDC guidance as explanation. This year's flu vaccine is reportedly effective against the current flu strain
- Encourage vaccinations and if necessary, mandate them; employees who object to vaccinations should be considered on an individual basis
- Encourage sick employees to stay home if they are feeling poorly! Employers do not need dutiful, but sick employees infecting an entire department

Legal Considerations

- Conduct a Risk Assessment to justify vaccination demands, especially if you are in healthcare, air

travel, hospitality, or food service

- Where necessary, conduct an individualized analysis of employee refusals to take vaccinations due to religious or ADA (Americans with Disabilities Act) concerns

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