



We Should Not Be Dealing With Measles Concerns in 2015, But We Are.

Insights

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Crazy as it seems, highly publicized Pandemic, Ebola and now Measles concerns are good for the U.S. Each time our short attention span is directed to the latest disease concern, we briefly recognize the seriousness of such concerns and improve national and individual capacity to respond. As a result of the embarrassing first responses to Ebola, the government and our health care systems are far better prepared for future threats. Similarly, multiple influenza pandemics have raised our awareness of the importance of proper hand washing and the value of vaccines, even if this year's flu vaccine is not a perfect match. On the global front, some diseases should rightly be all but gone and completely gone from the U.S. So it's a rude awakening to hear about over 100 measles cases occurring in the last month, many of them apparently transmitted from one of my favorite escapes – Disney Land.

But don't blame Disney, and frankly, you should not blame the influx of people across our borders who have not been vaccinated (although that is a concern). Nope. One of the principal reasons that we're dealing with a measles outbreak is our short memories and an arguably wrongheaded view of vaccines. I remember getting my polio vaccine as a child and seeing people who bore the results of polio. Anyone with any memories of polio or of other now uncommon illnesses is not receptive to unverified claims against vaccines. At worst, we may view the decision as weighing the costs of not taking a vaccine against the costs and probability of a bad reaction.

We are not medical professionals, and just as this article is not "legal advice," it certainly does not offer medical guidance. However, I live in Atlanta, home of the CDC, and we are involved in representation of hospitals and healthcare providers in the community. I am a bit of a contrarian and I am absolutely committed to individual rights, but I see no basis not to trust the CDC's recent pronouncements about Ebola and about Measles vaccinations. My WW II and Korean War vet dad raised me to believe that we all have a responsibility to our society, and to me, that extends to taking steps to protect others from the harm of my personal decisions. I'd argue that we have a duty to get the proper vaccinations absent legitimate medical reasons.

Legal and Practical Concerns

Ok. That's my philosophical view and as they say, does not necessarily reflect the view of Fisher Phillips. My purpose in writing is to alert employers to this developing situation. Our Firm, especially our Southern Cal offices, are already receiving numerous calls with the following questions:

1. Should I tell coworkers if we learn that an employee or customer onsite develops the measles?
2. Can I identify the employee by name?
3. If I do, is this a violation of the ADA, HIPAA, state antidiscrimination laws or an invasion of privacy by publication?
4. Can I require employees to get the measles vaccine or the flu vaccine?
5. If an employee develops measles at work or performing their duties, is that a compensable work-related illness and also is it a recordable workplace illness for OSHA 300 Recordkeeping purposes, or Reportable to OSHA if it necessitates overnight hospitalization for treatment?

We cannot possibly address all of these questions in one post, and obviously, the answers to some of these questions depend on the state law, the work setting and other specific facts. This post will start with some basic suggestions about employee education. We'll deal with other issues in other posts or on an individual client basis.

What to do when an Employee develops measles?

In most cases, public health authorities do not recommend and state laws do not require an employer to notify coworkers if the employer learns that a coworker or other party developed measles.

Some employers believe that employees deserve to know of possible exposure and that such knowledge serves the company's goal of a healthy and productive workforce. Other employers are concerned about possibly creating a questionable workers comp claim or of focusing employees on a coworker with possible legal and morale consequences. All of these concerns are valid and should be considered in your decision.

1. Each time we have experienced an infectious disease concern (influenza, TB, MRSA, HIV, Hepatitis, Ebola, Herpes (remember that one?) and so forth) agencies enforcing employment laws and the courts have generally followed public health recommendations in evaluating the legality of the employer's actions. You do not want to get head of or deviate from this public guidance if possible. See LINKS later in this Post.
2. We do not yet have the amount of public health guidance and discussion about whether to share information about a coworker's measles that we do for influenza, TB and other infectious diseases.
3. One factor that public health authorities and legal bodies weigh is the extent to which employees can do anything to protect themselves once alerted versus the harm to the infected person's privacy and other rights.
4. As to measles, there are draconian requirements placed on medical providers but pronouncements give employers little guidance.
5. It is rarely advisable to identify an individual (different rules apply for TB and certain other

situations).

6. The healthcare setting has its own rules.

A Preemptive Approach

If you have locations in California or any area with measles outbreaks, as part of your wellness program, alert employees, address concerns, and provide useful tips BEFORE a coworker or customer arguably exposes employees. The following example is just that, an example. Do not make the mistake of just copying and using material or of NOT calling your lawyer. If you have specific questions, call your lawyer and spend a few bucks to avoid later costly claims.

TO OUR EMPLOYEES

We are following the measles outbreaks in Southern California and want to keep you advised of common sense precautions for all of us to follow.

As of today, public health authorities are aware of over 100 cases nationwide and over 90 of these are in California. Check this California public health information. The good news is that if you are a certain age or have received the proper vaccinations than you have little concern. The bad news is that measles, unlike the flu, is a hardy virus and can live in the air or on surfaces for up to two hours after a sneeze, which is the main method of transmission. Also, one can be infectious four days before showing symptoms and up to four days after symptoms go away. Here's what the California department of Public Health says:

California is currently experiencing a large outbreak of measles. The outbreak started in December 2014 when at least 40 people who visited or worked at Disneyland theme park in Orange County in mid-December contracted measles and has now spread to at least half a dozen other states. Measles is a highly contagious viral disease. It is widespread in many parts of the world, including Europe, Africa, and Asia. Measles begins with a fever that lasts for a couple of days, followed by a cough, runny nose, conjunctivitis (pink eye), and a rash. The rash typically appears first on the face, along the hairline, and behind the ears and then affects the rest of the body. Infected people are usually contagious from about 4 days before their rash starts to 4 days afterwards. Children routinely get their first dose of the MMR (measles, mumps, rubella) vaccine at 12 months old or later. The second dose of MMR is usually administered before the child begins kindergarten but may be given one month or more after the first dose. <http://www.cdph.ca.gov/HealthInfo/discond/Pages/Measles.aspx>
So what do public health authorities recommend?

1. **Wash your hands regularly and do not touch your face, mouth, nose and eyes during the day any more than necessary.** We know that this suggestion seems sort of silly but studies show that we do not wash our hands enough and touch our faces all day long without noticing the actions. YOU ARE MORE LIKELY TO GET THE FLU AND THIS HAND SANITATION PRACTICE WORKS GREAT AGAINST THE FLU, WHICH IS LESS EASILY TRANSMITTED THAN MEASLES.
2. Follow public health guidance about recommended and required vaccines. Our understanding is that most or all horror stories about vaccines have been debunked, and there are numerous articles this week describing the problems we're experiencing in

there are numerous articles this week describing the problems we're experiencing in the U.S. because there are pockets of people refusing to get vaccines, and Southern California is on that list.

3. Be aware of the symptoms and see a doctor. Symptoms are described at: <http://www.cdc.gov/measles/about/signs-symptoms.html>
4. Stay home as your doctor suggests. We appreciate hard workers who don't want to let down their coworkers but you're not helping them if you get them sick!
5. Get lots of sleep, eat well, and exercise.

If you want to read more, including about protecting your kids, here is a LINK to the Federal CDC's Frequently Asked Questions on Measles: <http://www.cdc.gov/vaccines/vpd-vac/measles/faqs-dis-vac-risks.htm>

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