

IT'S NOT TOO SOON TO BEGIN PLANNING FOR THE FLU

Insights

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Almost 4.1 million workers missed work last January because of illness. The peak flu season generally lasts through March, and in some years over 15 million workers have missed work due to illness during that time. These absences place a tremendous economic burden on employers and employees and their families. As a result, many states and municipalities have passed or are considering the passage of laws requiring paid sick time.

For all our society's sophistication, there are only a limited number of things which we can do to lessen the effect of the flu. Most of the actions involve educating workers to understand ways in which to limit the transmission. However, every year more individuals recognize that they should utilize the flu vaccination. Unfortunately, some groups oppose vaccinations; often based upon questionable science. The biggest legal issues arise when employers mandate flu vaccinations, rather than encouraging them. Even in the healthcare sector, the CDC stridently encourages vaccinations, but will refrain from expressly mandating them. The most common legal challenges are by unions representing healthcare workers.

We are also increasingly seeing employees refuse to take vaccinations based upon "religious concerns." While an employer has a less robust duty to "accommodate" religious obligations than it does for disability conditions under the ADA, the employer must still engage in an individualized analysis and consider accommodations.

The CDC has put together a number of ***"toolkits for businesses and employers,"*** which set out ways that employers can encourage employee and community vaccination. Please take time to redouble your efforts to protect workers from the coming flu season, and pause before you take adverse action.

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