



The Zika Virus: FAQs For Employers

Insights

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On February 1, 2016, the World Health Organization (WHO) declared Zika a global public health emergency. This is only the fourth time that the WHO has declared the spread of a disease to be a “public health emergency of international concern,” following the H1N1 pandemic (2009), the spread of Polio (2014), and the Ebola outbreak (2014).

This article presents a background summary about the Zika virus, followed by a series of Frequently Asked Questions that employers will want to familiarize themselves with.

Zika Virus Background Information

History

Zika was first identified in Uganda in 1947 in rhesus monkeys. It was subsequently identified in humans in 1952.

Transmission

The Zika virus is transmitted by infected mosquitos of a specific genus, Aedes. According to the Centers for Disease Control (CDC), Zika is not transmitted by casual contact from person to person. Instead, it can be transmitted through exchange of blood or bodily fluids in childbirth or sexual activity.

The virus usually remains in the blood of an infected person for a few days, but it can be found longer in some people. Accordingly, a mother infected with the Zika virus can pass the virus to her newborn.

Incubation

It is unclear how long the incubation period is (time from exposure until symptoms appear). However, the WHO has stated that it is likely to be a few days.

Symptoms

The CDC states that about only one in five people infected with Zika will develop symptoms. Zika symptoms are generally mild and last for two to seven days. Symptoms include fever, skin rash, conjunctivitis (red eyes), muscle and joint pain, malaise, and headache.

Hazards

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According to the CDC, Zika poses little harm to most people. However, it may cause significant harm to unborn children, similar to the Rubella virus.

Testing

There are no over-the-counter diagnostic tests for Zika. Instead, health practitioners can only determine whether someone is infected with Zika by conducting blood tests analyzed in advanced CDC laboratories or state health departments.

Vaccinations

There are no vaccinations or medications available to prevent or treat Zika.

Treatment

People suffering from the Zika virus often try to alleviate symptoms by taking over-the-counter pain and fever medications, rest, and drinking plenty of water. Severe disease requiring hospitalization is uncommon.

Travel Restrictions

As of February 1, 2016, the CDC states that women who are pregnant should consider postponing travel to areas where Zika virus transmission is ongoing. It advises women who must travel to those areas to first talk to their doctor regarding mosquito bite prevention.

These areas include:

- Cape Verde;
- Caribbean Islands (Barbados, Curacao, Dominican Republic, Guadeloupe, Haiti, Martinique, Puerto Rico, Saint Martin, and the U.S. Virgin Islands);
- Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama);
- Mexico;
- Pacific Islands (American Samoa and Samoa); and
- South America (Bolivia, Brazil, Columbia, Ecuador, French Guiana, Guyana, Paraguay, Suriname, and Venezuela).

A full list of locations can be found [here](#).

United States Cases

Despite the recent appearance of Zika in several U.S. locations, including Texas, Georgia, and Florida, public health officials have stated that they expect several factors to keep the number of locally-transmitted cases low. This includes the fact that the U.S. has less dense areas than South and Central America, and that there is increased access to air conditioning and protective screens in the United States.

Prevention

Prevention and control of the virus relies on reducing contact with mosquitos which can be done by using insect repellent, wearing clothes covering the body, using screened doors and windows, and emptying containers and flower pots holding stagnant water.

Frequently Asked Questions

Q. Can employers prohibit employees from personal travel?

A. No, employers should not prohibit an employee from personal travel. Employers cannot prohibit an employee's otherwise lawful conduct.

Q. Can an employer prohibit pregnant employees from travel?

A. No. An employer cannot prohibit pregnant employees from traveling to countries where Zika has been found. This may result in a gender or pregnancy discrimination claim. The U. S. Supreme Court has stated that Title VII prohibits employers from taking adverse actions against women from jobs that might pose reproductive health risks.

In *Johnson Controls*, the U.S. Supreme Court struck down a fetal protection policy that excluded all fertile women from working in a battery manufacturing plant based on the employer's concerns regarding harm to unborn children of its female employees. The Supreme Court stated that "decisions about the welfare of future children must be left to the parents who conceive, bear, support, and raise them rather than to the employers who hire those parents."

Employers are recommended to advise all employees traveling to locations where the Zika virus has been found about the preventive measures that can be taken to try to avoid mosquito bites.

Q. Can an employer require a medical examination for an employee who has traveled to an area with a Zika outbreak before they return to work?

A. Generally, no. Pursuant to the Americans with Disabilities Act (ADA), employers can require a medical evaluation only if it is job related and consistent with business necessity. The ADA allows employers to request medical information or order a medical examination when an employer has a reasonable belief (based on objective evidence) that an employee poses a "direct threat" because of a medical condition.

The Equal Employment Opportunity Commission's Pandemic Guidance directs employers to take direction from the CDC or state/local public health authorities in determining whether an illness is a direct threat. However, because the Zika virus is not transmitted from person-to-person in casual contact, the ADA standard would not be satisfied in most job settings.

Q. Can employers prohibit employees from coming to work when they return from travel to a location where the Zika virus has been found?

A. So far, public health agencies have imposed no quarantine on persons returning from areas in which the Zika virus has been found. Employers who deviate from public health guidance create

exposure to a variety of legal claims including privacy, disability, wage and hour, and contract claims, as well as potential race and national origin discrimination charges.

Q. Can an employer be held responsible for harming an employee's unborn child?

A. It is possible for an employer's actions or inactions to give rise to a potential tort claim, but only if the employer has acted negligently and its negligence causes harm to an employee's unborn child. The Supreme Court in *Johnson Controls* noted that "if the employer fully informs the woman of the risk, and the employer has not acted negligently, the basis for holding an employer liable seems remote at best."

Q. Can an employee refuse to perform his or her job or travel based on concerns about Zika?

A. Under the Occupational Safety and Health Administration (OSHA) standards, employees can refuse to work only where there is an objectively "reasonable belief that there is imminent death or serious injury." Refusing to work without such an objective belief may result in disciplinary action by the employer. Given that Zika is spread by mosquito bites, which can be prevented with appropriate precautions, this standard is unlikely to be satisfied absent particular factual circumstances. If possible, the best approach is to defuse the situation and to focus on prevention.

Q. Are there applicable OSHA standards? What are they?

A. Yes. OSHA's Bloodborne Pathogens standard requires employers to have a program, protections, and training for employees who are occupationally exposed to blood or specific bodily fluids. Accordingly, it requires employers to clean up blood found in the workplace.

Q. What should employers do with coworkers who are nervous because of travel?

A. As in the case of any potentially infectious disease, you should educate your employees. Explain to your employees how Zika is transmitted and assure them that the situation is being monitored by public health agencies. Focus on emphasizing good mosquito bite prevention practices. You can reference posters the CDC has published on its website regarding the Zika virus and how travelers can exercise good mosquito bite prevention practices, which can be found [here](#).

If you have any questions about this situation, or how it may affect your business, please contact your Fisher Phillips attorney or any member of our Workplace Safety and Catastrophe Management Practice Group at 404.231.1400.

This Legal Alert provides an overview of a developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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