

Safe and Sound

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Swine flu: how do you protect your business?

The World Health Organisation has now declared swine flu (otherwise known as influenza A or H1N1) a pandemic and the New Zealand Government has increased the powers of health officials to order people into quarantine in an effort to control its spread. What do these new powers mean for your business, and what proactive steps can you take to plan for an outbreak and protect your business?

What are these new powers?

The Government has added swine flu to its list of notifiable diseases. This means that Medical Officers of Health are now authorised to:

- enter your premises
- take all necessary steps to prevent the spread of infection
- ensure that infected people are isolated
- remove infected people to hospital
- restrict travel
- close your business
- ban meetings (if the Prime Minister issues an epidemic notice, the Minister of Health gives authority, or a state of emergency is declared).

These measures reflect the serious nature of the swine flu pandemic. Anyone with swine flu who leaves their specified place of isolation is liable to pay a fine and/or to be arrested and taken back to a place of isolation.

If you have an employee who is sick or exhibiting flu-like symptoms what should you do?

The simple answer is to send them home. In deciding whether to send potentially infected

employees home, if they don't have symptoms, you need to consider whether there is a significant hazard in allowing the employee to stay at work.

Under the Health and Safety in Employment Act 1992 ('HASIE Act'), employers have a mandatory duty to take all practicable steps to ensure the safety of employees, including eliminating any significant hazards.

Swine flu is now a significant hazard you need to control.

If an employee refuses to go home, you can consider locking the employee out of the workplace on the grounds of health and safety in reliance on section 84 of the Employment Relations Act 2000. Talk to us before doing this!

Practical issues

You need to take practicable steps to ensure your business meets its health and safety obligations during the pandemic. Steps to consider will include the following:

- Nominating someone within your business to keep management and employees informed. Establishing a 'communications tree' for this purpose is a useful practice.

- Ensuring that adequate supplies of cleaning products for work stations and public areas are available for employees. These products will be in high demand and in short supply in the case of an outbreak. Giving employees information in advance about hygiene practices and social distancing is recommended.
- Consider shift separation arrangements such as:
 - putting groups of employees on rosters so that they work at different times to avoid physical contact
 - splitting work areas so that different teams are located in different areas and have no physical contact with each other
 - 'ghost shift' changes where possible, meaning that one shift goes off duty and leave the workplace before the new shift enters, without any physical interaction
 - if practicable, allow an interval before the new shift enters and ensure the workplace is ventilated.
- Check to make sure you have the legal right to take appropriate action when, and if, the need arises. Depending on the current state of your employment arrangements, you might consider introducing the following measures in order to take action when needed:
 - requesting employees to have medical assessments at any time, to ensure that they are fit for work and not a health risk to other employees
 - suspending employees from duties until they are given medical clearance that they are not suffering from swine flu
 - considering alternative ways of paying staff during a pandemic (e.g. development of a policy for advance payments of a portion of salary or wages for staff absenting themselves from work and who have no leave entitlement, or for those employees who have been directed not to attend work)
 - asking employees to do alternative duties and/or reduced hours for a period of time.

Work-from-home arrangements

Some employees may want to work from home over the next few weeks, either to avoid potential exposure to swine flu from other employees or to care for dependants. Schools and child-care centres are already starting to close, which means that children are already being sent home.

It is timely for you to review work-from-home arrangements, particularly for those key employees whose services are required to keep the business 'ticking over' during an outbreak. As a part of this review, don't only consider the technological viability of employees working from home, but also consider responsibility for workplace safety when an employee works from home.

If you employ someone who works from home you have exactly the same duty as any other employer. However, when the circumstances are different, some things that would be practicable in a working environment directly under the employer's control may not be practicable when employees work from home.

You need to make enquiries to satisfy yourself that the workplace set-up is well managed. This doesn't necessarily mean you need to inspect each employee's home. You should be able to trust your employees to answer any enquiries honestly.

The lack of direct control over people's homes means that more emphasis needs to be placed on training to ensure that employees are aware of what they should and should not be doing. For example, you could arrange for employees to do a hazard assessment on your behalf. This can come in the form of a health and safety checklist for the home.

What happens if your business is unable to operate due to extreme staff shortages or by orders of Medical Officers of Health?

It is important for your business to have an emergency plan in place to deal with the chance that it is unable to operate because of staff shortages or because it is closed by health authorities.

For businesses that provide essential services (such as doctors, hospitals, schools, etc) it will

be prudent to make provision in your emergency plan for outside staff hire to ensure the continued provision of services.

For others, you will need to consider the needs of your clients or customers, and what will happen to your relationship with them if you suddenly shut down without making arrangements to ensure the continued supply of goods or services to them.

Who pays if you send an employee home?

The principle of 'no work, no pay' may apply in this situation. If there is simply no work, due to the level of absenteeism, then you might not be obliged to pay employees anything while any stand-down continues. Each case needs to be considered on its facts and you should obtain legal advice.

Want to know more?

If you would like advice on your emergency response planning to the swine flu pandemic, or your employment arrangements during the pandemic, or your health and safety obligations generally, please contact one of our health and safety experts.

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If you want more information about swine flu there is a wealth of information available on the World Health Organisation website www.who.int/en/ and the Ministry of Health website www.moh.govt.nz