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The Law: Limiting Exposure—of the Legal Kind

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If an avian flu pandemic strikes, businesses with inadequate communicable-illness policies and response plans could face a laundry list of HR-related legal concerns. Most developed countries have laws designed to protect employees from physical harm at work. In the United States, employees are protected under the Occupational Safety and Health Act, so if an employee becomes infected at work, the employer may face penalties. Meanwhile, labor unions have petitioned the government to issue an emergency workplace standard dealing with pandemic influenza. This call for action, along with the potential for various types of lawsuits (workers' compensation, invasion of privacy, discrimination, unfair labor practice, negligence), underscores the need for health communication, hygiene, privacy, and leave policies that specifically relate to infectious diseases. The value of such legal preparedness, of course, is relevant to any life-threatening infectious disease, not just avian flu.

Education and communication. Companies need to educate employees, in advance, about modes of transmission and symptoms and tell people to inform management if

they have been exposed to the virus. Although disability discrimination law protects employees with covered health conditions, limitations can generally be imposed if there's a direct threat to the health or safety of others. The manager can judge, ideally with input from consulting physician, whether the employee should come to work. By the same token, policies need to be explicit about when employees with transmissible conditions will be allowed back. By discouraging potentially infected employees from coming into the office and ensuring that those who are infected stay away, companies protect staff from harm and protect themselves from certain types of legal liability. In either case, it is important to document the relevant communications.

Hygiene. Companies also need to be able to show that they have given employees accurate information about ways to prevent the spread of infection—and that they have provided people with the means to act on the information. For example, public health guidelines are specific about the importance of hand washing and how to do it effectively. Be sure to provide disinfectant soaps, and step up disinfectant cleaning of hot spots such as door-

knobs, light switches, and elevator buttons. Consider stocking up on disinfectant wipes, disposable gloves, and masks (which could later become hard to obtain), and plan staffing, shift work, and even physical layout changes to minimize contact among employees. All of these measures will help protect workers from infection and help protect you from liability. (Some states, for example, allow additional awards—beyond normal workers' compensation awards—when injury results from an employer's "willful" or "intentional" act, which might include failure to provide appropriate protections.)

Privacy. In discussions with employees, managers must be mindful of privacy restrictions related to personal health information. Employers should understand what information an employee might be obligated to disclose—likely, anything that could interfere with his or her ability to perform the job's essential functions or that could increase the risk to coworkers or third parties through workplace contact. Failure to understand such boundaries could expose the company to privacy invasion or discrimination claims. Fortunately, even rigorous privacy rules allow employers to

disclose employees' protect health information to authorities for public health purposes.

Leave. Companies should analyze, in advance, their legal obligations to provide employees with leave in the event of sickness or disability. U.S. laws are articulated in the Family and Medical Leave Act, the Americans with Disabilities Act, and state workers' compensation laws, for example, as well as in individual businesses' contract and policy language. Companies should also consider under what circumstances they would want to extend or expand benefits and protections, and they should evaluate their level of income protection for employees on leave, perhaps adjusting benefits plans for employees who exceed their sick-day allotment. One important goal is to have policies that encourage exposed or ill employees to remain at home rather than come to work and expose coworkers—and the company—to potential harm.