



PANDEMIC PREPAREDNESS

The Ontario Ministry of Health and Long-Term Care in its Guide to *Developing a Workplace Health Plan for an Influenza Pandemic* predicts that 20% to 60% of the working population may become ill (or be absent from work due to care-giving obligations) for approximately two to four weeks at the height of a pandemic wave (about eight weeks).

Employers have a duty of care to their employees and are responsible for the health and safety of employees. Occupational health and safety rules require employers to take every reasonable precaution for the protection of employees and in some circumstances, require employers to develop, implement and monitor a program for the prevention of hazards in the workplace- which includes potential hazards such as an H1N1 pandemic.

Both the federal and provincial governments have begun ad campaigns reminding the public of preventative measures that ought to be taken, and also recommending that those who are ill stay home from work.

Employers have a duty to warn employees about workplace hazards and to take preventative measures such as circulating prevention information and providing protective equipment (such as masks and hand sanitizer). Employers should provide information on frequent hand cleaning; proper hand-washing techniques (wash for as long as it takes you to sing Happy Birthday); practising cough and sneeze etiquette; the availability and location of vaccination clinics; recognizing the symptoms of H1N1; facilitating work from home or modified duties to minimize spread of infection; and eliminating the need for face-to-face meetings and business travel.

We are frequently asked whether employees are required to be paid salary if they are absent due to illness, or if they are sent home because of influenza. Payment of salary during illness is a matter of the specific contract between each employer and its employees. Employees who are ill with influenza or who are sent home because they are exhibiting symptoms, should be treated in the same manner as any other employee absent due to sick leave, consistent with company practices and procedures. As an exceptional measure, employers that do not have a practice of paying salary during sick leave, should consider doing so during a pandemic, in order to minimize the possibility that an employee will break

quarantine due to financial hardship, potentially infecting other employees.

Employers are also reminded of the *Ontario Employment Standards Act 2000* regulation which requires three hours minimum wage or three hours regular rate of pay (whichever is higher) if an employee reports to work but is sent home due to illness. Note that this requirement does not apply if the employer is unable to provide work due to complete business shutdown due to forces it cannot control (such as fire, power failure or storm).

If an ill employee reports for work, the employer must assess the illness according to public health criteria, and if the symptoms are consistent with H1N1 then the employee should be sent home. Employers are cautioned that all health information gathered from employees must be retained in confidential, restricted access locations, and only those individuals at the company with a need to know, should be privy to that health information.

If an employee exhibits symptoms while on the job, employers ought to:

- Note the condition on an assessment form;
- Advise the employee to leave work (without taking public transportation);
- Clean and disinfect the employee's work area and any public areas with which he or she came into contact;
- Advise all the employee's contacts within the company that they have been in contact with a person exhibiting symptoms, and ask them to take precautionary measures and if warranted go home and await further instructions.

If you require assistance with any pandemic planning, or the preparation of policies and procedures, please contact your Willson Lewis counsel who will be happy to assist you.

This article contains general information only based on the laws of Ontario and is not intended to provide a legal opinion or advice. Readers should consult Willson Lewis LLP with respect to the application of the information contained above to their particular circumstances.