

Avian Flu and the Workplace

Avian influenza an infectious disease of birds was first identified in Italy more than 100 years ago. It has now appeared in at least a dozen countries.

The World Health Organization (WHO) recently confirmed that the avian flu continues to move west amid fears of economic and business disturbances that could result from a possible epidemic. Certainly the spread of such a dangerous virus would bring unique and challenging health issues to many workplaces. As a result, employers should become familiar with the nature of avian flu and the issues it may pose.

Although avian flu has not spread to the United States, and while we do not want to raise undue alarm or fear, the spread of avian flu to other regions serves as a reminder that employers should have procedures in place to deal with infectious diseases in the workplace — especially those employers who have workers traveling to foreign countries.

What employment issues are involved?

Even though there have not been any confirmed cases of avian flu anywhere in North America, as of the date of this publication, employers should be prepared to respond to safety and operational challenges. At present, business travel to avian flu-affected areas creates the greatest health risk to U.S. workers. According to the WHO, cases of avian flu have already appeared in more than a dozen countries.

Some observers say that employers may have a legal obligation under the *Occupational Safety and Health Act* (OSHA) to take steps to protect the health of employees traveling to avian flu-affected areas on business. Although OSHA regulations do not specifically address the risks associated with avian flu, a “general duty clause” requires employers to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” Although some employers will be hard pressed to provide a workplace free from recognized hazards, employers should seek to proactively train employees about travel safety.

When travel to avian flu-affected areas cannot be postponed, employees should be trained about the risks of exposure and protocols for reducing the incidence of infection. In addition to recommending that shots be up-to-date before departing, travelers should be advised to assemble a health kit containing basic first-aid and

medical supplies. Travelers should also review their health plans for medical evacuation coverage and identify in-country health care resources before leaving the United States.

After returning, travelers should monitor their health for ten days. If they become ill with fever or respiratory symptoms during that period, they should immediately consult with a health care provider and report their recent travel. Employers should also emphasize common sense policies that encourage workers to stay home if they are sick so that they will not infect others.

What are the legal implications?

Employers should also use common sense to respond to the individualized conditions created by their unique operations, work environment, and geographic locations. Applying this approach, most employers will avoid running afoul of OSHA guidelines relating to avian flu or any other workplace health threat. Employers familiar with the *Americans with Disabilities Act* (ADA) and other federal nondiscrimination laws may feel that such laws run counter to OSHA rules. However, the ADA, in particular, contains special exceptions that govern situations where someone poses a “direct threat” to workplace safety.

Still, employers must use caution to avoid violating federal and state employment laws; particularly those governing the use of employee medical information and prohibiting

discrimination on the basis of a perceived disability.

An employer may require workers who are at a higher risk for avian flu, or who exhibit avian flu symptoms, to obtain a medical certification before returning to work in order to ensure the safety of other employees in the workplace. Wage and hour laws may present challenges for employers who prohibit employees from returning to work after traveling to avian flu-affected areas — particularly in cases where workers are being asked to stay home. When affected employees are represented by a union, an employer may have a duty to consult with the union before implementing avian flu-related measures.

Should you encounter a situation that demands immediate action, workers should be given time off with pay if they are required to stay home due to avian flu concerns. Above all, you should use reasonable care to ensure that workers are treated fairly, that their privacy rights are respected, and you should carefully document the basis for your decisions.

Helpful Information

The WHO and the Centers for Disease Control and Prevention (CDC) have a variety of information available on their web sites that can be used to educate human resources professional and employees about avian flu (WHO: <http://www.who.int/en/> CDC: <http://www.cdc.gov/flu/avian/>).

Other Useful Sources Include:

- <http://www.pandemicflu.gov/health/whatyoucando.html>
- <http://www.disaster-resource.com/>
- <http://www.worldhealth.net/p/avian-influenza-are-you-prepared-2005-10-11.html>

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