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Swine Flu – Issues for Employers

What is it?

The current pandemic has been caused by a version of the H1N1 flu virus. The pandemic started with an outbreak of swine fever in Mexico in April 2009, which swiftly spread worldwide, until the World Health Organisation declared a global flu pandemic on 11 June.

What are the symptoms?

Symptoms are similar to those of a standard seasonal flu. These include fever, cough, sore throat, body aches, chills and fatigue.

How worried should we be?

The majority of cases continue to be mild with a small number of severe cases. On 16th July the Government released a Planning Assumptions Paper outlining possible scenarios for how the pandemic might develop in the UK. It advises that if the current growth in cases is sustained, up to 30% of the population could experience symptoms, which could peak in early September 2009, although a smaller earlier peak is possible.

How should employers respond?

Cabinet Office guidance advises employers of small businesses to plan for absences of up to 30%. The pandemic could also lead to disruption to suppliers and customers and to shortages of fuel and basic commodities. There may also be disruption to public transport.

It is therefore recommended that you have a contingency plan in place that includes the following:

- Allow or increase home-working for key staff and the use of telephone & web conferencing to limit the amount of face-to face contact.
- Have plans in place to operate with a skeleton staff. This would involve identifying key roles that must be carried out and those individuals

with a wide range of skills who can fulfil more than one function.

- Ensure that procedures are developed to ensure that there is a smooth handover for employees filling in for colleagues, and additional training offered if necessary.

What precautions should be implemented?

As the pandemic flu is likely to be spread from person-to-person, the following prevention messages are:

- Always carry tissues
- Use clean tissues to cover your mouth and nose when sneezing
- Bin tissues after use
- Wash hands thoroughly with soap or sanitizer gel.

In summary 'Catch it, bin it, kill it'!

You should consider sending anyone home who starts to feel or exhibit flu like symptoms. They should contact the relevant helplines and not return to work until the symptoms have cleared and they feel well enough to return.

Extension of self-certification

The Government are also now considering extending the right to self-certify sick leave from the current 7 days to 14 to prevent the spread of the infection and reduce the workload of the health professionals. DWP advised that these measures would only be implemented 'if absolutely necessary.'

The Government advice on this issue is subject to change and we will keep you updated on the latest developments. You can also visit the website listed below.

<http://www.direct.gov.uk/en/Swineflu/>

Holiday pay and Sickness absence

A recent European Court of Justice case ruled that an employee on long term sick leave would accrue their statutory holiday if they were absent since the start of the leave year and had exhausted both their contractual and statutory sick pay.

What should employers do?

- Employers must provide all employees (including those on sick leave) with at least 4 weeks leave entitlement.
- They should review current holiday policies to decide how they wish to deal with untaken leave particularly for those staff on sick leave. (However, there is still some uncertainty regarding whether staff can carry leave from one year to another).
- Consider reviewing contracts to

ensure that workers are prevented from taking or accruing additional holiday (above the statutory 4 weeks) during periods of sickness absence.

- Manage sickness absence to ensure that those on long-term sickness leave return to work as soon as possible.
- Lastly, if the employment relationship ends, the employee will be entitled to payment in lieu in respect of the untaken leave during sickness (even if the worker is absent for all or part of the leave year in question).

Default retirement age?

The Government has announced plans to bring forward a planned review of forced retirements from 2011 to 2010..

Currently (despite age discrimination legislation) employers can retire employees against their wishes at 65 - the "default retirement age". However, this position is subject to legal challenge from the charity Age Concern (the Heyday case) arguing that the default retirement age contravenes European Law. The High Court is expected to rule on this case in the next few months. A ruling in favour of the Charity may pre-empt the

What should employers do?

Employers should review all age based rules or policies and consider whether they can be justified.

In terms of retirement, employers should continue to follow the statutory retirement procedures at the current time, and objectively consider any request to continue working beyond the age of 65. However, this area of law is likely to be subject to change, and greater justification required for each retirement.

Increase to the Minimum Wage

The Government has announced that from 1st October 2009:

The adult minimum wage will increase from £5.73 to £5.80 an hour
The minimum wage for 18-21 year

increase from £4.77 to £4.83 an hour.

The minimum wage for 16-17 year olds will increase from £3.53 to £3.57 per hour.