

How to Handle Communicable Diseases in the Workplace

Employers are legally liable for both employees and nonemployees infected in the workplace. Additionally, chronic disease carriers such as persons with tuberculosis are protected against employment discrimination by the Americans with Disabilities Act (ADA). It is imperative to have a policy and actionable plan in place that considers legally protected employees under the ADA, privacy issues of infected employees, recognition of risk, and the reduction of employer liability and continuing operations.

Employers have five basic actions to take when there is a potential communicable disease risk in the workplace:

- 1) Notification and verification of disease risk.
- 2) Understanding the disease and culling resources.
- 3) Identifying the scope of the risk.
- 4) Determining employer response.
- 5) Handling internal and HR compliance matters.

Step 1: Notification and Verification

HR must be notified immediately that a communicable disease risk may exist to limit additional exposure and to reduce risk and liability for the employer. Policies should be in place to require immediate notification from supervisors, the infected employee and other employees who are made aware. For example, the Occupational Safety and Health Administration (OSHA) requires an exposure control plan to meet its bloodborne pathogens standard for employers that can reasonably expect a risk of exposure. Bloodborne pathogens are infectious microorganisms in human blood that can cause disease. These pathogens include hepatitis B, hepatitis C and human immunodeficiency virus (HIV).

HR acting on behalf of the employer should:

- Confirm the source and verify the information.
- Obtain sufficient facts about the particular employee and his or her particular condition.

A. Employee self-notifies and protection under the ADA

When an employee informs the employer that he or she has a communicable disease that will affect his or her performance on the job, the employer can require a medical exam or health certification to confirm the illness, just as it can with any other ADA disability. After the examination, if the employer determines that the disease poses "a significant risk" to the health of others, the employer must consider every reasonable accommodation to eliminate that significant risk. If no such accommodation can be made, then the employer should take steps necessary to eliminate the significant risk. Employees have a reasonable expectation for privacy with all medical information. Throughout this process, the employer must keep the employee's medical information, as well as information on any accommodations or leaves, confidential.

B. Only suspicion of infection

If an employee does not tell his or her employer that he or she has a communicable disease, the employer's options are much more limited. Suspicion of a communicable disease is not enough to justify inquiry or a medical exam. However, the employer need not, and should not, make any decision that places its employees at significant risk of contracting a serious communicable disease. An employer must make sure that in its efforts to reduce the risks of contagion in its workplace, it does not violate the laws applicable. If there is due suspicion, employers should seek legal counsel immediately for the best response given the particular case.

Step 2. Understanding the Disease and Resources

Employers must understand the illness to respond appropriately. The particular facts regarding the contagion include how the disease is transmitted, probability of transmission and complications, level of severity, and duration of risk. To obtain information and medical expertise, employers can contact the Centers for Disease Control and Prevention (CDC), OSHA, state and local health departments, and employer resources such as in-house

or contracted medical care facilities and the American Public Health Association Publication *Control of Communicable Diseases Manual*.

Step 3. Identifying Scope of Risk

Employers must determine who is at risk for contracting the illness and consider any possible contacts, including those outside of the office, plant or any facility that is within employer control. Possible contacts include clients, the public or vendors that may have been exposed or infected. Employers must answer questions such as the following: *How many people may be affected? What is the severity of the disease? How is the disease contracted?*

Step 4. Determining Employer Response

Based on comprehensive disease research, management will have information to determine the severity in which to justify decisions such as an emergency shutdown, or if a limited threat, only a review of a department or single area. If employers have developed emergency preparedness plans (EPP) or disease management preparedness plans (DMPP), many decisions will already be prepared and mapped out for quick and thorough processes. These business continuity plans help employers keep the business running during periods of high absenteeism.

Step 5. Internal Matters and HR Compliance

Employers have employee and company relations matters as well as legal requirements to consider. Employers should seek legal counsel to identify legal risks, develop a plan to minimize liability and discuss any actions to include communications, employee response and privacy issues.

A. Company relations

Communications include all internal or external contact and notification to employees, the public, vendors and clients as well as any communications with family members of anyone hurt on the job or hospitalized as a result of a communicable disease. Careful consideration in these areas as well as review of all communications by an employer's attorney or the assistance of the public relations department or public relations consultant will eliminate any misunderstandings that could result and will properly guide employee and public perception of the employer and its actions.

B. Employee relations

Employees have a reasonable expectation to privacy of all medical information and any leaves of absence or accommodations they receive. Employers must not provide names of those infected or whether anyone is on Family and Medical Leave Act (FMLA) leave or is receiving any ADA accommodations unless there is a business need to provide this information, such as to a specific manager of an employee who is infected. Concern and compassion for those infected or in fear of being infected is the best course of action. Employees will be concerned for their own health as well as for the health of their own families, which they do not want to also infect. Employers must determine what disease management benefits they can provide and inform employees quickly. General notice is appropriate so employees can monitor themselves for symptoms and seek treatment if needed. Employers may want to consider providing free employee screening for the disease, time off to see their own doctors, the option to telecommute or other options until the disease is contained and the threat eliminated. Constant communication to employees both in the office and at home will help alleviate concern, keep information truthful and eliminate rumors.

C. Other HR requirements

1. Legal

HR has regulatory requirements as well. Some diseases may be reportable under federal, state or local regulations such as OSHA or to the local health department. However, it is not required in some instances that the employer report the name of the individuals infected. Before providing this medical information, employers should consult with legal counsel to determine if the name must be provided and consult with the employee for permission to release his or her name to the agency. There may also be OSHA standards the employer must follow to reopen the facility or remain open, such as cleaning the site or a release from the agency to continue operations. An employer's attorney will need to advise the organization as to any specific requirements to reopen if applicable.

HR has the duty to notify the workers' compensation carrier of anyone wishing to file a claim related to the communicable disease and exposure. Some jurisdictions consider exposure of a communicable disease, such as measles, to be covered under workers' compensation, whereas others may not.

2. Duty

HR has the duty to plan or assist departments in workforce planning, operations and other areas. HR should consider the loss of workforce, any functions closed and the ability to temporarily fill positions to keep the company from financial losses. Employers can reduce the effect of widespread absenteeism by cross-training employees to take over essential functions, bringing back retirees as temporary workers and partnering with employers in other industries that might not require much labor during a pandemic (such as leisure, entertainment or recreation industries).

HR must also provide leadership to the organization by communicating internally with the management team and externally such as with the attorney, consultants and any agencies that stipulate a requirement to contact or follow up.

In times of an emergency, decisions and actions must be taken quickly; however, careful consideration must be made at every step. Employers are encouraged to develop a disease management preparedness plan to reduce their level of risk and liability and to provide a step-by-step action plan to handle the situation most efficiently and effectively.