

U.S. Chamber Pandemic Preparedness webpage: [click here](#)
*** * * Update as of April 30, 5:30 PM * * ***

Encourage your Employees to Plan

Now is the time to remind employees to take care of their household's needs: extra food, water, prescription medications, a full tank of gas in the car, and, if possible, cash in their wallets. For both logistical and psychological reasons, everybody should be asked to take action. An excellent checklist for individuals and families can be found at www.pandemicflu.gov/plan/individual/checklist.html

What You Can Do to Stay Healthy

- Stay informed!
- Influenza is thought to spread mainly person-to-person through coughing or sneezing of infected people.
- Take everyday actions to stay healthy.
 - Cover your nose and mouth with a tissue when you cough or sneeze. Throw the tissue in the trash after you use it.
 - Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hands cleaners are also effective.
 - Avoid touching your eyes, nose or mouth. Germs spread that way.
 - Stay home if you get sick. CDC recommends that you stay home from work or school and limit contact with others to keep from infecting them.
- Follow public health advice regarding school closures, avoiding crowds and other social distancing measures.
- Develop a family emergency plan as a precaution. This should include storing a supply of food, medicines, facemasks, alcohol-based hand rubs and other essential supplies.
- Call 1-800-CDC-INFO for more information.

Communities Should Plan Ahead for School Closures, Officials Say:

Antivirals to Be Distributed to the States by May 3rd; Seasonal Flu Vaccine Production Could Precede H1N1 Vaccine, CDC Suggests

Today, Department of Health and Human Services Secretary Kathleen Sebelius, Department of Homeland Security Secretary Janet Napolitano, and Acting Director of the Centers for Disease Control and Prevention (CDC) Dr. Rich Besser, took part in webcast regarding the H1N1 flu.

The three officials tamped down suggestions to close the borders, stating that mitigation is key. (Last evening, during his press conference, President Obama downplayed the possibility of closing the border with Mexico as a way to control the virus. "It would be akin to closing the barn door after the horses are out," he said.) Besser noted that closing the borders would do more to harm trade and people's jobs than the move would help. All three continued to discourage non-essential travel to Mexico.

Antivirals. Napolitano said the U.S. has sufficient antivirals should the outbreak worsen. All the states will have a certain number of antivirals by Sunday, May 3rd, she

said. Twenty-five percent of the Strategic National Stockpile of antivirals – roughly 11 million courses out of 50 million courses – is being distributed to the states, with priority going to states with the greatest need, and to the Southern border.

Community/household/business preparedness. Reportedly, schools have been closed in about 100 systems across the U.S. Besser urged households to think about preparedness in general terms, and not just because of the flu. Particularly, parents need to make plans for the care of their school-aged children (the CDC is recommending closing schools for up to a week if confirmed cases are discovered). By implication, employers need to plan ahead, too, for the absence of employees and to gauge their ability to possibly work from home.

U.S. (confirmed) infections. As of this morning, the CDC reported 109 confirmed cases of H1N1 in the U.S., with the bulk of the infections in California (14), New York (50), and Texas (26; 1 death).

Vaccines. The CDC is working on a vaccine tailored to this virus, which is composed of genetic materials from pigs, birds and humans. The earliest predicted date for release is in the fall. Besser suggested that officials are considering producing vaccines to battle the upcoming seasonal flu before shifting shared resources toward producing an anti-H1N1 vaccine.

WHO pandemic alert: Besser said he was pleased to see that the WHO recently raised its alert system to level 5, noting that it should spur unaffected countries to “wake up and pull out their plans because the [virus] is spreading.”

Helpful Pandemic Planning Information from Chamber Task Force member McKenna Long & Aldridge

SWINE FLU AND PANDEMIC PLANNING: ACTIVE PARTICIPATION IS CRITICAL

There is a growing concern that we are facing the first influenza pandemic in more than 40 years, as the outbreak of swine flu cases spread from Mexico to the United States, Canada, Spain, and other countries. As of April 28, the Centers for Disease Control and Prevention (CDC) has reported 64 cases of swine flu in the United States, and the Federal health officials have declared a public health emergency.

The National Strategy published by the White House calls on businesses to plan and to strive for business continuity. The Occupational Safety and Health Administration (OSHA) by issuing guidance on preparing the workplace for influenza, may have established a statutory obligation to plan to protect workers in the event of a pandemic. Indeed, the increasingly more vocal dialogue ongoing at a national and international level could be creating a standard of care that requires pandemic planning on a grand scale. Michael T. Osterholm, PhD, MPH, Director of the Center for Infectious Disease Research and Policy, stated more than a year before the current outbreak that "the business community can no longer afford to play a minor role in planning the response to a pandemic. For the world to have critical goods and services during a pandemic, industry heads must stockpile raw materials for production and preplan distribution and transportation support. Every company's senior managers need to be ready to respond rapidly to changes in the availability, production, distribution, and inventory management of their products. There is no model for how to revive the current global economy were it to be devastated."

Such pronouncements set a very high bar for businesses. The challenge faced by businesses is that pandemic planning is not like other disaster planning. Many businesses have prepared contingency plans for natural or manmade disasters such as fires, hurricanes, floods, earthquakes or terrorist attacks. These plans, however, are often restricted to one geographic area and address a relatively short period of business closure. Pandemic flu differs in that it has the potential to impact communities around the world at the same time and could come in waves that continue to impact significant numbers of people for 12 to 24 months. Every link in the chain that allows a business to operate may be catastrophically impacted. Another challenge faced by business is that there is no comprehensive, reliable planning template. The world has not seen a pandemic in the modern era of an interconnected global network of workers, products and services. Further, the universe of "checklists," guidance, and data that governments are publishing is both overwhelming and inadequate. These publications have the potential to set a standard of care for conduct that is so amorphous it is impossible to meet. In the litigious United States of America, the existing landscape in which pandemic planning must take place is a mine field that must be navigated carefully to avoid an explosion of post-pandemic lawsuits by employees, customers, suppliers, shareholders, and others.

Moving Forward

Unlike other emergency and business continuity planning, pandemic planning requires consideration of short- and long-term impacts on a variety of topics, including: employee safety and health, community support and coordination, communication strategies, critical task coverage and employee/management succession, supply chain continuity, business services continuity, and for when the pandemic subsides, rapid recovery policies and claims processes for claims that might arise.

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when the pandemic subsides, rapid recovery policies and claims processes for claims that might arise.

The breadth of topics to be covered requires a diverse group of representatives from different parts of the company to develop an adequate plan. Legal coordination of the people involved and the process of planning is critical for at least two principal reasons.

First, planning requires an assessment of potential legal liability. Human resources policies may need to be modified considering the potential length and severity of a pandemic, as well as the need to limit the spread of infection and to account for the unavailability of public services such as schools and public transportation. Disability and leave policies, therefore, should be reviewed. They may need to be amended to encourage contagious individuals to remain at home and to ensure compliance with statutory and regulatory requirements in the context of a pandemic. Employee and labor union agreements may need to be amended to permit, among other things, cross-training and succession planning. Contracts with customers and suppliers of both critical inputs and business services must be reviewed to ensure the company has adequately taken into account the potential financial impact of failure to perform. Insurance programs must be reviewed to determine the adequacy of coverage for health and death benefits, as well as the availability of coverage for business losses.

Second, because a pandemic has the potential to impact such a large number of people, even the most robust pandemic plan may not protect the company's employees and their families from illness and/or death and may not prevent breach of contractual obligations or economic losses. Any of these outcomes could result in claims by employees, by customers, or by investors. In any lawsuit, every choice the company made in the planning process will be compared to a "standard of care" drawn from publicly available checklists, guidelines, and government statements. Legal control over the planning process will ensure that proper documentation for choices is developed and preserved and that the legal risks associated with each choice, including the potential use of that choice in future litigation, have been adequately considered.

Develop policies with objective triggers

People DO NOT lose the will to litigate just because there is a disaster. The legal landscape is not going away just because there is a pandemic. Companies need to develop a plan that outlines policies and objective triggers that consider the impacts of the legal environment and include a review of: The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Health Insurance Portability and Accountability Act (HIPAA), Title-7 of the Civil Rights Act (Title 7), etc. Thus, if companies do not properly prepare and review the implications their plans have on their legal environments, major issues may arise during the pandemic involving employees, customers, suppliers, distribution systems and the company's duty to perform under existing contracts--all of which could impact the business continuity and recovery process. Therefore, as part of the preparedness planning, companies need to assess their critical contracts, policies, procedures, records and record-keeping systems that may be impacted should a pandemic strike. A Gap Analysis and Remediation Plan to highlight areas of potential vulnerability and liability along with an appropriate revision of policies and procedures should be prepared, and an effort should be made to fill in the gaps, with the goal of leaving the company with an ongoing system that will mitigate the legal risk stemming from a pandemic.

Sample Content of Preparedness Plan

| Stage | Elements |
|-------|---|
| | • Development of tailored pandemic plan checklists and templates that |

| | |
|---------------------|---|
| <p>Pre-Pandemic</p> | <ul style="list-style-type: none"> • Development of tailored pandemic plan checklists and templates that include processes for employee responsibility and assistance programs. • Emergency supplies checklist, business continuity checklist and outplacement assistance forms. • Policies in responding to a pandemic (including policies on when a previously ill person is no longer infectious and can return to work). • Guidance for protection of the safety of workers against swine and avian flu (including policies on flexible worksites and work hours). • Policies for continued payment of wages and benefits systems, and a death benefits process. • Policies for employee and community volunteer efforts (including indemnity agreement for volunteers). • Assistance agreements for first responders/essential employees. • Procedures for reporting of illnesses, travel and medical certification. • Procedures for general workplace/workforce preparation/safety information. • Information on government preparedness and response agenda. • Authorities and procedures for activating and terminating the company's Plan, altering business operations (e.g. shutting down operations in affected areas), transferring documents/products/equipment and activating the first response team. • Proper training directed to both relevant departments and employees with specific responsibilities during the pandemic and the general employee population. • Procedures for distribution of the Plan and related documents. • Procedures for communicating with employees, as well as suppliers and distributors, including prepared text, at the beginning of the pandemic |
| <p>Pandemic</p> | <ul style="list-style-type: none"> • Procedures for modifying or supplementing the Plan, policies and procedures in response to the pandemic conditions. • System for communication with essential personnel with authority to modify or supplement relevant procedures and policies (including, if necessary, recommendations on enhancing the communication and information technology infrastructure to properly support the first response team and essential personnel). • System for essential personnel to obtain current information for better-informed decisions, including local, state and federal governments and |

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|---------------|--|
| | <ul style="list-style-type: none"> • System for essential personnel to obtain current information for better-informed decisions, including local, state and federal governments and aid organizations who will maintain vital services to emergency staff and the community. • System for communication with the general employee population |
| Post-Pandemic | <ul style="list-style-type: none"> • Procedures for assessment of the effect on personnel and operations. • Procedures for modifying relevant procedures and policies |

Government Response

International and national public health organizations recognize that comprehensive planning is critical to managing a pandemic. The United States has launched an active campaign surrounding pandemic planning. The White House issued a National Strategy for Pandemic Influenza in November 2005. The strategy outlines the respective responsibilities held by individuals, industry, state and local governments, and the federal government for preparing and responding to a pandemic. Virtually every federal agency has a pandemic preparation implementation plan on its website.

The federal government has established its own pandemic flu website, www.pandemicflu.gov. Among the items on the website are various "checklists" to use for pandemic planning. They are available under the "Workplace Planning" tab.

The OSHA of the Department of Labor has published guidance relating to pandemic planning - "OSHA Guidance Update on Protecting Employees from Avian Flu (Avian Influenza) Viruses," OSHA 3323-10N 2006,³ which provided guidance on protecting employees in certain industries or with certain jobs. OSHA published "Guidance on Preparing Workplaces for an Influenza Pandemic," OSHA 3327-02N 2007,⁴ which could be applied more broadly and "Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers," OSHA 3328-05 2007.⁵ These guidance documents discuss steps businesses can take to protect employees. Many states also have websites that discuss both their planning activities and what businesses should do to prepare. However, the level of detail in the "checklists" varies from state to state and companies should not count on these lists to cover the legal requirements that impact their industries.

Conclusion

Pandemic planning is critical to businesses. Potential litigation risks are an important part of that planning. Legal oversight is important to ensure that, as part of the planning process, the company is not creating documents that will become "Exhibit A" in a post-pandemic lawsuit or a set of facts that can be twisted to make the company's good intentions look like callous disregard for the complete impact of the pandemic.