

## Employers brace for flu season

By Correy E. Stephenson

Flu season is here – and employers need to prepare.

The EEOC recently issued guidance, “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act,” to remind employers of employees’ rights and help them plan for dealing with the H1N1 virus.

The most important advice for employers: planning ahead.

Nina Massen, an associate in the disability, leave and health management practice group at Jackson Lewis in White Plains, N.Y., is helping her clients with various action items, from communicating with employees to reviewing detailed contingency plans that escalate depending on how severely the flu affects a local area or workplace.

“Some of the planning involves identifying key employees and what happens if those individuals are sick, or modifying HR policies about ... employees [being] sent home and ... returning to work,” she explained.

“Our advice is that every employer should have a policy on H1N1 in keeping with their organizational needs.”

Patrick Lail, of counsel to the labor and employment firm Elarbee, Thompson, Sapp & Wilson in Atlanta, Ga., is advising employers to take a two-tiered approach to H1N1 preparedness.

Companies should plan for the status of the virus as it is now, but they should also plan for the possibility that H1N1 could become much more severe or widespread, he said.

Lail, who recently gave a webinar on H1N1 implications for the workplace, said he has had clients call about a number of issues, from whether employees should be notified if a co-worker is diagnosed with H1N1 to whether employees who are told to stay home should still be paid.



William E. Hannum III

### Before the flu hits

Here are some simple precautions management attorneys are advising employers to take against the virus:

- **Hand washing and disinfectant**

Because the flu virus can live up to 8 hours on surfaces like door-knobs and computer keyboards, employers can offer hand wipes or sanitizer for employees to use, Lail suggested.

He suggested taking a lesson from kindergarten.

“Employers can set up a wash station or a wall-mounted dispenser of hand sanitizer by the most common entrances and establish a policy that employees should use it,” said Lail.

Will Hannum, an employment lawyer and managing partner at Schwartz Hannum, Andover, Mass., said that his firm has supplied every employee with a bottle of Purell and sanitizing wipes for their desks.

- **‘Social distancing’**

The Center for Disease Control suggests leaving six feet of space between people to keep them from exchanging the virus.

But “this could be pretty hard to do at work,” Lail noted.

One solution might be letting employees work from home. But

that raises a number of issues, said Massen, from negligence considerations to wage and hour law implications and OSHA safety issues.

“Employers should also be careful not to discriminate and allow one worker to work from home and not others,” she cautioned. “Make sure that employees who are working from home are doing so for non-discriminatory, business reasons.”

- **Vaccines**

While employers can legally institute a policy requiring employees get vaccinated, “we strongly advise our clients to have employees sign a release form,” Massen said.

“From what we know from the CDC, the vaccine is safe, but nonetheless, there are always some individuals in a demographic group who get ill,” she noted.

Lail also suggested that employers who mandate the vaccine include exceptions for religious or medical reasons.

And it may work better to offer inducements to employees to encourage them to get the shot, he noted.

“Offer the vaccine on-site to employees at low or no cost to them,” Lail suggested.

- **Plan ahead**

Most importantly, employers should plan ahead and communicate with their employees, Massen said.

“Communicating a plan alleviates employees’ fears and will make them more willing to cooperate if and when they are asked to do



things not in their typical job description,” she said.

Many companies are understaffed because of the economy, Lail noted, and have eliminated business redundancies. But all employers should determine what their “mission critical” functions are and consider doing some cross-training to create some redundancy in case of absences.

Hannum said that his firm has considered hiring an extra staff person who could cover if multiple employees are out sick.

“Employers should think through the logistics: how do we cover if people are out sick and how do we continue to operate?”

Planning ahead should also consider what to do if a company’s supply chain is disrupted. For example, said Lail, “if you run a restaurant, your linen service might not have enough staff to make deliveries.”

“Consider what items can be economically and practically stockpiled or advance order to account for a possible disruption in the supply chain,” he advised.