



WORKPLACE GUIDE TO MANAGING INFLUENZA PANDEMIC

NSW edition



This Guide has been prepared with the cooperation of the States and Territories

April 2009

FOREWORD

The World Health Organisation (WHO) has reported that the world is moving closer to an influenza pandemic, and recommends all countries prepare.

A pandemic is a serious threat to the health and wellbeing of Australians, and should it occur many could become seriously ill, and some may die.

The most significant impact on business may be on staffing levels. Experts suggest that businesses should plan for staff absences of 25-40% during the peak of the pandemic.

With this in mind, businesses need to develop strategies to cope with such an event or reassess their existing business continuity plans.

Detailed planning has been undertaken by Australia's Commonwealth, State, Territory and local governments. A list of key resources to assist employers and employees can be found at the back of this Guide.

The NSW Government is committed to working cooperatively with all other Australian governments, the community and the private sector to manage the impact of a human influenza pandemic across the State.

This Guide provides advice to employers and employees to manage the employment and workplace implications of a human influenza pandemic and, where possible, continue business operations during a pandemic. It is not intended to be prescriptive legal advice.

Implications for Business

A pandemic will directly affect many people's health and well-being and potentially all the roles performed in the workplace.

A pandemic could occur over a prolonged period with several waves of eight to twelve weeks and involve significant disruption to normal business conditions. Potential impacts to the community include:

- increased sickness and death;
- increased absence due to illness;
- increased absence to provide care and support to family members who are ill;
- increased absence due to social distancing/quarantine; and
- increased absence due to closure of schools, child care or public transport.

Wider impacts to business could also include disruption to:

- supply of goods and services;
- essential service delivery;
- logistics and transport services; and
- financial systems.

In the event of a pandemic, employers and employees are both likely to experience financial pressures. The financial viability of some businesses may be impacted by a downturn in sales and revenue.

PRINCIPLES

A pandemic will challenge the ability of employers and employees to deal with a wide range of unprecedented difficulties. Employers should seek to develop a Business Contingency Plan (BCP) to address potential implications should a pandemic occur. For assistance to develop a BCP, please refer to the resources at the end of this Guide.

In preparing for a pandemic, it is strongly suggested that:

1. It is important for employers to have developed a plan with their employees' involvement, before a pandemic occurs. This plan should allow the business and staff to respond quickly and in a flexible manner.
2. Employers and employees should ensure occupational health and safety arrangements support the key pandemic response aims of containing the spread of the virus and minimising social and economic disruption.
3. Employers and employees should recognise their shared interest in the business surviving and recovering rapidly, whilst allowing people to manage their important and legitimate personal, family and community responsibilities.
4. Current workplace arrangements may need to be changed. Any changes should be made co-operatively and within the relevant workplace relations laws and applied fairly at the workplace level. Employers and employees should carefully consider the consequences of any formal changes to existing workplace agreements.

5. When considering proposed changes to workplace arrangements in preparation for an influenza pandemic, employers and employees may need to seek advice from their respective representatives.
6. The process of determining arrangements for an influenza pandemic should not be used to pursue changes in pay and conditions that are not related to a pandemic.
7. All employees should be made aware of the contents of a BCP, and regularly updated on BCP developments and initiatives through a planned system of workplace communication.
8. BCPs should be reviewed regularly to ensure they remain relevant.

KEY WORKPLACE QUESTIONS AND ANSWERS

In the event of an influenza pandemic:

1) What are the OHS responsibilities employer?

The employer must take reasonable and practicable steps to ensure the safety and health of employees and other persons deemed under the employer's duty of care in relation to eliminating or controlling the risks associated with the influenza pandemic. More information about key risk control measures that employers could use is contained in Appendix A to this Guide.

2) What happens if staff are concerned that the work place is unsafe?

People will be concerned about contracting influenza during a pandemic – it is only natural.

Planning and information provided prior to a pandemic will greatly reduce the concerns of staff in the event of a pandemic.

Good health and safety practices provide the best framework to help respond to the risk of infection and will assure people that all practicable steps have been taken.

Employers should discuss with their staff how the risk of potential infection might be eliminated, isolated or minimised. Participation by staff will help maintain trust and confidence.

3) What if the workplace is still operating and staff aren't reporting for work?

During a pandemic, employers should ensure they have an up-to-date employee contact list, to maintain contact with employees. Find out why employees have not reported to work – they or their family may be sick, they may have been placed in quarantine by health authorities, they could be concerned about getting sick or there may be no public transport. People will have important and legitimate personal, family and community responsibilities, so planning will need to take these into account.

It is reasonable to expect employees to attend work where they are able and all practicable steps have been taken to protect them. [All practicable steps means everything a reasonable person would do, given the severity of the risks, what's known about them, and the availability and cost of safeguards.]

If employees are still concerned, they need to raise it with their employer (or their OHS representative) and explain why they are concerned. If, after discussion, they are still concerned that the measures taken are insufficient to respond to an elevated risk of infection, they may refuse to do a job they believe is likely to cause serious harm.

However, they are obliged to work with their employer to resolve the matter and can only continue to refuse to do the job if they have reasonable grounds to believe that it would expose them to imminent and serious harm.

4) Can employees be required to work in different ways?

In a pandemic, life won't be normal. Both employers and employees need to be able to respond flexibly to the different scenarios a pandemic may create.

Any proposals for change should be made in good faith and considered and responded to accordingly. Employees cannot be forced into any unilateral changes to their employment conditions.

Employees should also have the opportunity to seek independent advice on any proposed changes. Any changes to employment agreements must include the relevant minimum conditions governing their employment conditions.

If there are people doing work they don't normally do or working in ways they don't normally work, the employer must ensure they are sufficiently trained to perform that work safely.

5) Can an employer require employees to stay away from the workplace?

If the employer is unable to make the workplace safe for employees, then they can require employees to stay away from the workplace.

Employees can also be required to stay away from the workplace if they are sick and they pose a health and safety risk to the workplace.

In any situation where staff are directed to stay away, the employer will need to be clear on what basis they are doing so and ensure this is provided for within the employment arrangements.

6) Can employees take annual leave if they want to? Can employees be required to take annual leave?

In general, employers can agree to let staff take their accrued leave and in some cases, after giving notice, can require staff to use their accrued annual leave.

The existing legislation and relevant industrial awards and agreements set out the conditions under which an employee can choose or be required to take annual leave.

7) Can employees take sick leave if they want to? Can employers require employees to take sick leave?

Employees can take sick leave if they or their dependents are sick and they have accrued sick leave. However, they must inform their employer of their intention to take sick leave.

An employer can require an employee to leave the workplace if they pose an unacceptable risk to the workplace and if the workplace cannot be made safe.

Generally, an employer is unable to force employees to take sick leave. However, if an employee is a health and safety risk but chooses not to take sick leave, or their sick leave has run out, they must make alternative leave arrangements with their employer.

8) Do employers have to continue to pay wages if the workplace is closed?

Wages are normally payable if employees are ready, willing and able to perform work. However, a pandemic scenario may test how long businesses can financially sustain wage payments if they close for an extended period.

It is, therefore, important for employers to have developed a plan with employees' involvement that allows a flexible response. Together you may be able to think of ways that some work can be done differently and still carried out safely. Any agreed changes to employment provisions that result from workplace discussions should be formally incorporated into existing employment arrangements.

In a serious pandemic scenario, there will eventually be limits for all organisations on how long they can continue to afford to pay staff if the business is closed for an extended period.

9) Who can close my workplace?

An employer can close the workplace if they determine that there is no other way to manage the health and safety risks of the workplace.

Employers can also be forced to close workplaces under the authority of state and federal health and emergency legislation and provisions.

10) What happens if I lose my job?

An employer may terminate your employment for a number of reasons. If you believe your termination was harsh, unreasonable or unjust, you may be able to lodge a claim for unfair dismissal.

If you are employed by a sole trader or partnership you may be eligible to lodge a claim in the state jurisdiction. Contact the NSW Office of Industrial Relations for further information and assistance.

If you are employed by a constitutional corporation, you may be eligible to lodge an unfair dismissal claim in the federal jurisdiction. Contact the federal Workplace Ombudsman for further information and assistance.

11) What if I am not paid my wages?

If you are owed outstanding monies from your employment, contact your employer in the first instance and try to resolve the underpayment.

If you are unable to resolve your dispute, contact the relevant state or federal industrial relations office for further information and assistance.

FURTHER RESOURCES

NSW Office of Industrial Relations (OIR)

For assistance on NSW employment laws and awards contact OIR on 131 628.

www.industrialrelations.nsw.gov.au

[*Managing an Influenza Pandemic Fact Sheet*](#)

WorkCover NSW

For assistance on workplace health and safety contact WorkCover NSW on 13 10 50.

www.workcover.nsw.gov.au

[*Working from home - a guide to OHS, rehabilitation and workers compensation requirements*](#)

NSW Health

For information on risk control measures contact NSW Health on 02 9031 9000.

www.health.nsw.gov.au

State plans

[*The NSW Human Influenza Pandemic Plan*](#)

[*The New South Wales Health Management Plan for Pandemic Influenza*](#)

National plans

National Action Plan for Human Influenza Pandemic

Australian Health Management Plan for Pandemic Influenza

Pandemic Planning in the Workplace

Federal workplace related information

For information for employees and employers on federal employment laws contact the Workplace Ombudsman on 1300 363 264.

www.wo.gov.au

Commonwealth Department of Foreign Affairs and Trade

The travel advisory website includes bulletins on travel health issues including avian influenza.

www.smarttraveller.gov.au

For more information on risk control measures contact

NSW Health on 9391 9000 or

WorkCover NSW on 13 10 50.

Disclaimer

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