

OHSA Obligations and The Flu Virus



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As the warm weather becomes once again, so last season, employers and supervisors across Ontario are beginning to turn up the thermostats in their buildings. The unfortunate corollary of the decrease of temperature is the increase of illness; especially colds and worse influenza. Influenza, or the flu, as it is more typically known, is a serious disease that affects millions of people working in Canada each year ' and what affects Canadian workers affects employers.

Since an outbreak of influenza in a workplace affects work flow, causes a higher rate of absenteeism and accordingly, a loss in productivity, common sense suggests that all employers would want to provide a safe and healthy work environment. But, because common sense can be anything but common, employers have an imposed statutory obligation to protect workers under the Occupational Health and Safety Act (the 'OHSA').

The fundamental duty under section 25(2)(h) of the OHSA is the requirement that employers take every 'reasonable precaution' to protect the health and safety of the workers. Therefore, a broad interpretation of the section suggests that employers would be well advised to put in place measures that would be helpful in protecting workers from infectious diseases,

including the flu virus.

Section 25(2)(a) of the *OHSA* further imposes obligations on the employer. This section of the legislation states that an employer shall provide workers with 'information, instruction and supervision' to protect their health or safety. As a result, employers might rightfully ask themselves if it is sufficient to inform staff that flu vaccinations are offered at nearby clinics or if there exists an obligation to offer a flu vaccination at the workplace. These concerns will hopefully be abated by the suggested measures that we propose below.

Section 43(3) of the *OHSA* grants workers the right to refuse work if they believe their safety is at risk. During a flu or other communicable disease outbreak, workers may rightly perceive their workplace environment as unsafe. However, to establish a genuine work refusal, the perception that a workplace is unsafe is insufficient, rather there must be a rational basis for the refusal. An example of a rational basis in this context would be direct contact with an infected person.

We suggest that, as an employer or supervisor taking 'reasonable precautions' and additionally providing 'information, instruction and supervision' to protect workers, you consider encouraging basic prevention techniques. Prevention techniques include reminding staff that hand washing, the use of hand sanitizers, the sleeve or arm coughing (as opposed to hand over mouth) can decrease the spread of cold and flu germs/viruses throughout the workplace. Additionally, if visitors enter the workplace, informational and instructional notices or posters geared directly to informing them of the suggested prevention techniques could also fall within the reasonable precautions taken to protect workers. Alternatives to face-to-face or in-person meetings are advisable. This includes increasing communication through emailing and/or teleconferencing on an as-needed basis. With

regards to work refusals, we suggest that employers and supervisors reacquaint themselves with the proper process for dealing with work refusals, which can be found in the collective agreement and/or policies developed by the workplace.

Documenting the ebbs and flows of absences of a workforce you employ or supervise can also assist in protecting workers. However, concerns may arise with regards to worker privacy. Health information is confidential, and must therefore remain as such. Only the minimum amount of information necessary to properly communicate the message that influenza, or other communicable diseases are on the rise can be shared, as the privacy of the individual paramount.

Under *OHSA*, workers have a right to know about potential hazards, including the exposure risk to influenza. They also have a right to know how to protect themselves and the right to be involved in identifying and resolving health and safety concerns at their workplace. Therefore, it would be prudent for all parties to assist in developing appropriate workplace policies to address the likely impact of a flu pandemic.

For more information, please contact on *OHSA* Obligations and The Flu Virus and your workplace, please contact Deanah Shelly at deanah.shelly@gowlings.com or 1-866-862-5787, ext. 83558.

Other Resources

For more information on handling the flu and flu-related safety issues in your workplace, go to the [Pandemic and Flu Planning Compliance Centre](#). And for safety talks and other training materials on flu prevention, go to SafetySmart.com.