



Summary Of Government Advice For Businesses Regarding Swine Flu 9th September 2009

Advice available for employers

Details of current guidance that is available on the Business Link website at:
http://www.businesslink.gov.uk/bdotg/action/detail?type=ONEOFFPAGE&itemId=1082470688&r.li=1082470975&atom_id=0.PR270942&r.lc=en&r.pp=11&r.pt=global&furlname=swineflu&furlparam=swineflu&ref=&domain=www.businesslink.gov.uk

Planning assumptions include details on:

Infection rates, absence rates, death rates, timing and duration.

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Government policy effecting businesses:

- The Government does not intend introducing any restrictions on internal or international travel.
- The Government does not intend to advise closure of businesses or cancellation of mass gatherings, although clearly, staff / attendees should be encouraged to stay at home if they are symptomatic.
- Schools will remain open, it is up to headteachers, governing bodies, etc. to decide whether they actually close or not (e.g. for lack of staff).
- Swine flu is not currently a notifiable disease because it is not necessary to receive a notification of every case of swine flu for public health purposes.

Government/Health guidance:

Cabinet Office Pandemic Influenza Checklist for Businesses provides a checklist of important and specific activities organisations can do to prepare for a pandemic as well as more general guidance.

<http://www.cabinetoffice.gov.uk/media/132464/060516flubcpchecklist.pdf>

Cabinet Office Business Continuity Tool kit is designed to assist organisations to put in place business continuity arrangements.

http://www.direct.gov.uk/en/Governmentcitizensandrights/Dealingwithemergencies/Preparingforemergencies/DG_175927

Generic advice on death and bereavement is available on:

<http://www.direct.gov.uk/en/Governmentcitizensandrights/Death/index.htm>.

There is advice specifically aimed at young people at

http://www.direct.gov.uk/en/YoungPeople/HealthAndRelationships/FamilyAndRelationships/DG_10031389.



Effect of Swine Flu on the pig industry;

http://www.businesslink.gov.uk/bdotg/action/detail?type=ONEOFFPAGE&itemId=1082470688&r.li=1082470975&atom_id=0.PR270942&r.lc=en&r.pp=11&r.pt=global&furlname=swineflu&furlparam=swineflu&ref=&domain=www.businesslink.gov.uk

Some Human Resources Issues

Employees at risk

Consult the DoH or HPA websites for advice on people at enhanced risk of Swine Flu. There is advice on how to control the risk associated with Swine Flu, e.g. for pregnant women. In particular be aware that these people should not be put in contact with other people who are known to have the virus.

Working Time Regulations

While workers cannot be forced to work more than 48 hours a week on average, workers can agree to work beyond this limit. The agreement must be in writing and signed by the worker under terms of Regulations 4 and 5 of the WTRs. It can be for a specified period or for an indefinite period (a proforma is available on:

<http://www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1073793563>). Without any further special measures (as below) coming into play, this would allow a 78 hour maximum (allowing for 11 hours rest per day x 6 days and a weekly rest of 24 hours per week – 168 hours – 90 = 78 hours).

Moving to more serious disruption, the WTR (in particular Regulation 21 and Regulation 24) have been drafted in such a way so as to give an amount of flexibility where the worker's activities are affected by special circumstances. Regulation 18 (2) allows for certain provisions under the WTR including the 48 hour maximum and the various rest periods (eg daily, weekly and breaks at work) to be excluded where the armed forces, the police and certain civil protection activities (i.e. ambulance service, fire service) are engaged in a manner that will "inevitably conflict with the provisions" of the WTR.

Regulation 21 makes various special provisions, generally for less serious situations, allowing the non-application of:

- rights to restrictions on length of and protections connected with night work
- rights to daily rest (normally 11 hours per day)
- rights to weekly rest periods (24 hours per week or 48 hours per fortnight)
- rights to rest breaks (at least 20 minutes per six hours)

Circumstances which these provisions might be brought into play during a pandemic include:

- where a worker's activities are located distantly from his place of residence (for example, specialist teams might be deployed at locations in the UK far from their home addresses - see regulation 21(a))



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- where a worker is engaged in security activities requiring a permanent presence to protect persons or properties (for example, where security requirements arise because of an emergency, eg. security around quarantine sites or around sensitive or vital public buildings or locations – see regulation 21(b))
- where there is a need for continuity of service or production due to the emergency, eg. in one or more of the following activities:
 - Hospitals
 - Civil protection services (eg. police, fire service, ambulance service)
 - Research and development (eg. Vaccines, etc)
 - Transport
 - Electricity / gas / water production
- where a workers activities are affected by:
 - an occurrence due to unusual and unforeseeable circumstances beyond the control of the worker's employer;
 - exceptional events, the consequences of which could not have been avoided; or
 - an accident or the imminent risk of an accident.

However, following the sorts of events and working scenarios set out above where normal rest entitlements have been abridged or lost, the worker should be allowed to take compensatory rest. Compensatory rest is normally a period of rest the same length as the period of rest, or part of a rest period, that a worker has missed. This means that the worker gets their rest entitlement later than normal. Regulation 24 WTR makes provision in this regard.

Regulation 24(b) provides that there may be exceptional circumstances where it is not possible to grant such rest periods. In these circumstances, the employer should still take steps to safeguard the worker's health and safety.

Driver Hour Restrictions

The Department for Transport (DfT) do not expect there to be any special measures needed for relaxing the drivers' hours for mobile workers. We would expect all sectors to have contingency plans in place to manage unforeseen events (such as a flu pandemic). If a relaxation is still required after the contingency measures have been implemented, then each case would be considered on its merits.

DfT has circulated guidance to OGD/DAs which provides an indication of the type of the information that would need to be provided – a clear demonstration of essential need and measures that have been taken to cover staff shortages being two key ones – along with an indication of how any part relaxation would help cover the shortage and the measures taken to ensure drivers continue to operate safely.



Relaxation of delivery curfews

It is for LAs to decide whether or not to enforce planning restrictions in the light of local circumstances. The operators of individual sites should contact the relevant LA to discuss.

This is not an issue that would be decided nationally.

Infection Control and Hygiene

DH/HPA/CCS recently published a risk assessment document for employers (see below) which can be used to assess the potential risk that individuals will face in the event of a pandemic and provides information on appropriate infection control mechanisms, including facemasks. Only on very rare occasions would a facemask be deemed an appropriate precaution. No further advice will be issued by Government on PPE.

http://www.cabinetoffice.gov.uk/media/187638/flu_businesses_risk_guidance.pdf

Useful information on facemasks can also be found on the HPA website at http://www.hpa.org.uk/webw/HPAweb&HPAwebStandard/HPAweb_C/1195733839643?p=1191942170467

and on the HSE website at <http://www.hse.gov.uk/news/2009/swineflu.htm>

This advice also covers:

- People working in public buildings.
- How long the virus can remain active on a variety of materials.
- Transmission of the virus via contact.
- Which people should be excluded from schools and workplaces.
- Need to avoid contact with people who are suspected of having flu

Advice for employees

There is no need to stay away from work unless you experience symptoms. You should remain vigilant for any flu like symptoms in staff members and should ensure they are informed to stay at home should they become unwell. If you have an existing medical condition and begin to suffer flu like symptoms, you should contact your GP for advice and treatment as soon as possible.

In the context of pregnant staff members, the emphasis should be on ensuring that symptomatic people are identified, isolated and sent home. Good personal hygiene is an essential part of reducing the numbers of cases of infection throughout the community. A pregnant woman should always see her GP if she gets 'flu like symptoms; this may not be readily apparent to many as a higher risk category.



General hygiene:

General hygiene can help to reduce transmission of all viruses, including the swine flu virus. This includes:

- Maintaining good basic hygiene, for example, washing hands frequently with soap and water to reduce the spread of virus from your hands to your face or to other people
- Covering your nose and mouth when coughing or sneezing, using a tissue when possible
- Disposing of dirty tissues promptly and carefully
- Cleaning hard surfaces (such as door handles) frequently using a normal cleaning product.
- Cleaning policy should use neutral detergent and warm water. i.e. normal cleaning products.

Sickness absence and certification

Employees who are incapable for work can be required by their employer to provide their employer with adequate evidence of incapacity in order to receive Statutory Sick Pay (SSP). It is up to employers to decide what evidence they require. However, during the first 7 days of illness, legislation prevents an employer from requiring their employee to provide a medical statement or 'sick note'.

Regulation 2(2) of the Statutory Sick Pay (Medical Evidence) Regulations 1985 prescribes the days for which an employee is not required to provide a medical statement for entitlement to SSP.

There has been no decision to extend self-certification to 14 days (see below).

As such, GPs should (as usual) be providing a medical certificate for people off sick for more than 7 days. DH are ensuring that GPs are reminded that the current self-certification rules have not changed. Employers are free to extend the period of self-certification if they choose to do so.

The normal rules for payment of Statutory Sick Pay (SSP) will continue to apply during the outbreak of swine flu and you should deal with situations in line with your normal sick pay procedures.

Employers have a statutory liability to pay SSP for up to 28 weeks to any employee incapable of work under their contract of service for four or more days in a row and who satisfy the qualifying conditions.

Neither SSP or benefits are payable for the first three days of illness - these are called waiting days as it is generally felt that a person's own resources or earnings (or Tax Credit if in payment) will be sufficient to cover them over the first three days of sickness. From day 4, employees who do not qualify for SSP can claim employment and support allowance.

Many employers run their own occupational sick pay (OSP) schemes in addition to, or instead of, SSP. Where an employer runs his or her own scheme, they are entitled to set their own rules and conditions of entitlement for OSP purposes. Such rules and conditions are entirely a matter between employers and their employee and Government has no power to intervene or advise in these arrangements.



If an employee is not due any payment of SSP but they get swine flu. The employer should follow the normal procedures and issue form SSP 1. The employee may be entitled to Employment and Support Allowance from Jobcentre Plus during their period of illness.

Agency workers, like other employees, are entitled to SSP from the first day of their contract provided they satisfy all the other conditions for entitlement.

However, they must have undertaken some work under that contract to become entitled. Agency workers may be treated as employees for PAYE tax and Class 1 NICs. Income Support is available to top-up SSP for those with the lowest incomes. Neither SSP or benefits are payable for the first three days of illness - these are called waiting days as it is generally felt that a person's own resources or earnings will be sufficient to cover them over the first three days of sickness. From day 4, employees who do not qualify for SSP can claim Employment and support allowance.

Financial cost to employers for paying Statutory Sick Pay

Employers have a statutory liability to pay SSP for up to 28 weeks to any employee incapable of work under their contract of service for four or more days in a row and who satisfy the qualifying conditions.

SSP is not intended completely to replace an employee's earnings when sick. It is designed to provide a guaranteed minimum level of payment for short-term sickness and replaces entitlement to Employment and Support Allowance for most employees. The levels of SSP are reviewed each year by the Secretary of State. In many cases, company sick pay brings the total payment received up to full pay. This means that, for many employees, the rates of SSP payable bear little or no relation to the amounts actually received when they fall sick.

The widespread growth of occupational sick pay (OSP) reflects the acceptance by employers of a greater responsibility to cover short-term sickness among their employees. It is, of course, for employers to decide for themselves what resources they are able to devote to OSP.

The Government already help employers with their costs of SSP through a Government rebate known as the Percentage Threshold Scheme (PTS). This scheme helps employers get back some of the SSP they pay out if they experience high levels of sickness absence in any given month. More information about recovery under the PTS scheme is available from <http://www.hmrc.gov.uk/manuals/spmmanual/spm10910.htm>.

The Employer Helpbook for Statutory Sick Pay may also be of interest (http://www.hmrc.gov.uk/employers/employee_sick.htm).

Reclaiming SSP for employees with no medical certificate (fmed3)

Employers are responsible for paying Statutory Sick Pay (SSP) to sick employees. It is up to an employer to decide whether he/she accepts an employee is incapable of work under the terms of their contract.

For SSP purposes, an employer is entitled (but not required) to ask his/her employee for reasonable medical evidence of incapacity after the first seven days of sickness. This means employers cannot require an employee to



provide a medical certificate (or fmed3) for the first 7 days in any spell of sickness. During this period, an employee can self-certify their sickness.

There is no requirement on employers to produce medical certificates to support a claim for reimbursement of Statutory Sick Pay under the Percentage Threshold Scheme. Employers are however required to maintain records of the dates of sickness absence lasting 4 or more days in a row in relation to a claim for Statutory Sick Pay.

If an employer pays occupational sick pay (OSP) under a private scheme in addition to, or instead of, SSP, he is entitled to set his own rules and conditions of entitlement for OSP purposes. Such rules and conditions are entirely a matter between employers and their employees. Underlying SSP entitlement will remain for those employees who would otherwise qualify for SSP.

Insurance against a Pandemic

The Association of British Insurers (ABI) has provided the following line:

“Disruption caused by a pandemic is unlikely to be covered under most business interruption policies. It is therefore essential that businesses put appropriate business continuity planning in place to minimise the impact of a pandemic on their business.

Basic business interruption (BI) cover and most BI policies are offered as an extension of a property insurance policy, and will only be activated when the insured’s own premises suffer physical damage. There may also be some policies that will cover other causes of disruption such as denial of access. However, these are generally offered as specific extensions to standard property insurance, and will be tied to business interruption resulting from property damage.

BI policies do not cover disruption caused by large amounts of staff, absence where there is no damage to property. Insurance policies provide the customer with protection against disruption due to damage resulting from a specific insurable event, such as a fire or a flood. These policies are designed to minimise the financial impact of an event while damage is repaired and full capacity is restored to the business. Pandemic flu is an anticipated risk and insurers will expect appropriate continuity plans to be in place. Organisations should discuss their own circumstances with their insurers directly.”

Some Business Interruption policies can be extended (for additional premium) to cover loss of revenue, etc. if the building has to be closed because of the presence of a "notifiable disease".

Not all policies are worded the same way. Some will cover the statutory list of notifiable diseases (which do not include swine flu), whereas others will provide a list of diseases which are covered under the policy (this list does not include swine flu).



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You are therefore unlikely to be covered if you have to close your business because of swine flu, but if in doubt, you should speak to your insurer or insurance adviser.

There is unlikely to be cover under Employers' Liability policies.

Employers' Liability insurance covers all injuries and diseases caused by or at work. There are no exclusions.

An Employers' Liability policy will only be triggered if the employer is liable for the illness. Employers can only be held liable if they have been negligent or if they have breached a statutory duty. Employers should be including swine flu in their risk assessments and have policies in place to manage this risk, for example, by sending people home if they have symptoms. However, even if they fail to do this, it is difficult to see an employer being liable because it would be very difficult to show, for example, that the illness was caused at or by work.

If there were to be a successful claim, the Employers' Liability policy would cover it. However, the chances are remote and insurers report that they do not come across claims brought for everyday bugs/viruses or for seasonal flu.

Communication and engagement

Unions

Although there are no formal communications aimed specifically at Trade Unions, DWP has a close working relationship with them and are keeping them up to date with the key issues through the HR representatives on the Business Disruption Forum. This forum was set up to support the business continuity management process in relation to the Departmental response to Swine Flu.

Infrastructure owners/operators

Many operators of Critical National Infrastructure are members of the wider resilience community as Category 2 responders under the Civil Contingencies Act 2004, and are therefore engaged at various levels of response within the UK. Those organisations with links with Local and Regional Resilience Forums will be working in partnership with other organisations in response to the outbreak of Swine Flu. In addition, Government Departments are keeping contacts in the Critical National infrastructure community apprised of the situation with bespoke briefings and the Top Lines Brief prepared by the National News Co-ordination Centre.

The Business Advisory Network for Flu (BANF)

The Business Advisory Network for Flu provides a formal network that:

- Ensures the delivery of advice and guidance needed by business groups and individual firms to allow them to undertake their own planning.



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- Passes back feedback from firms and business groups on the questions they have and the issues they would wish to see addressed.

In short, BANF has been developed to assist in the delivery of co-ordinated advice to employers and a speedy conduit for two-way communication as the situation develops.

The dissemination of an initial introductory letter to business groups and firms began on 18 May. This letter provided an overview of the purpose of BANF and made a recommendation to those organisations without a business continuity plan to consider acting now to prepare themselves for possible disruption. In light of the move to Phase 6, the Business Advisory Network for Flu came together for a meeting on 30 June 09 to provide an opportunity for business groups and individual firms to receive a briefing on the current situation, where we might go over the next few months, and the chance to make comments and raise questions. Sector representative bodies and individual businesses were invited directly by the relevant Lead Government Departments. The Regional Development Agencies were also invited to send representatives. A written note of the event can be found at <http://www.businesslink.gov.uk/swineflu>.

A further BANF meeting was held on 25 August 09 to provide a further briefing on swine flu to business groups and individual firms. Invitations have been issued via sector sponsor departments and direct to BANF members. An additional BANF workshop was held on 12 August 09. This was a smaller, more focussed workshop to specifically discuss sickness certification processes.