

H1N1 and the Restaurant Industry – Q&A's

Q. Could a sick restaurant worker transmit 2009 H1N1 flu virus to customers or co-worker in a restaurant or other food-service venue?

A. Yes, transmission of the virus in a restaurant could occur through the normal routes of infection that could happen in any public or private setting—inhalation of the virus expelled by infected individuals when coughing or sneezing, and, by touching any surface that is contaminated with the virus and then touching the mouth, nose or eyes.

Influenza is not known to be spread through consumption of a food item. However, in accordance with long-standing FDA recommendations, food workers experiencing symptoms of respiratory illness should not work with exposed food, clean equipment, utensils, linens or unwrapped single-service or single-use articles.

Q. Should individuals or restaurants alter cooking methods to decrease the risk of 2009 H1N1 flu virus?

A. No, it is not necessary to alter cooking times or temperatures for any food products in order to reduce chances of contracting 2009 H1N1 flu virus, because eating food is not a known method of transmission of influenza viruses.

Q. What are the FDA's requirements and recommendations for the food industry regarding workers who are sick?

A. Long-standing federal regulations require that any person who is shown to have, or appears to have, an illness by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated must be excluded from any operations that may be expected to result in such contamination until the health condition is corrected. The regulations also require that food facility managers instruct personnel to report illnesses to their supervisors.

Q. What are the regulatory requirements regarding the H1N1 virus?

A. Many federal, state and some local agencies have come out with recommendations and regulations regarding the H1N1 virus, including Cal OSHA, California State Department of Public Health, CDC and the FDA. All have jurisdiction over restaurants as employers and food establishments.

The FDA Food Code provides model regulations for reducing risk factors known to cause food borne illness at retail food facilities, restaurants and other food-service operations. Most state and local authorities have adopted Food Code provisions as regulatory requirements. In addition to several other restrictions applicable to food employees experiencing certain symptoms of illness, the Food Code stipulates that employees experiencing persistent sneezing, coughing or a runny nose that causes discharges from the eyes, nose or mouth may not work with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles.

Q. Can I require an employee to wear a mask when working?

A. Yes, however there many types of mask, each with a different purpose and some of certain testing requirements. Cal OSHA restrictions may apply.

Q. Can an employee ask to wear a mask when working?

A. Yes, an employee may ask to wear a mask to protect themselves from possible carriers of the various. If an employer refuses to allow the employee to wear the mask and the employee comes down with the H1N1, the employer may be found to be at fault.

Q. What questions can I ask in regards to an employee who may be suspected of having H1N1?

A. You are very limited on the questions you can ask, but you can ask questions that have been approved by the federal government to keep an employer in compliance with the Americans with Disabilities Act (ADA). Please call HRI at 925.556.4404 for more information or visit www.eeoc.gov/facts/h1n1_flu.htmlconsult.

Q. Can I send an employee home that is suspected of having H1N1?

A. Yes you can, but it is prudent to have a written policy in doing so. If you have a sick leave or PTO policy, you must comply with that policy. It may also be necessary, depending on employee headcount as to whether other mandated federal, state, or local sick leave plans are applicable. There may also be a mandated federal, state or local plan that allows an employee to take time off to care for a family, relative, domestic partner or significant other. Suffice to say, these leave plans can be complicated and violation of any of these plans can have significant ramifications including discrimination violations.

We also suggest you have a policy whereby you can require employees to have a doctor's note (release) to return to work without limitations if they were out sick, even if the employee said they only had a cold. Unless an employee is hospitalized or dies, H1N1 testing will not be done, so there is no way an employee for sure they had the H1N1 as H1N1 symptoms are typical of other known flu and viruses. CDC is recommending that an employee wait 24 hours after they've been without a fever before returning to work.

Q. What if an employee can articulate and prove they got the H1N1 while at work?

A. The jury is still out on this one and time will tell whether Workers Compensation will cover this. If an employee advises you they were exposed at work, you are required to submit the applicable forms to your WC Carrier. They in turn will decide whether they will cover it or not.

Q. What can I do today?

A. Review your employee handbook, job description and offer letter to comply with ADA requirements/limitations, address hygiene, personal protective equipment, leave of absence and medical releases. Develop a policy and procedure on dealing with airborne diseases and post signs on cough etiquette, washing hands and provide hand sanitizers throughout the restaurant.

In summary, good hygiene controls and proper planning will potentially save an employer serious problems dealing with the H1N1 virus. Need more help? Call us at 925.556.4404 or send us an e-mail at info@hrideas.com.