

H1N1 Pandemic Planning Advice for Retailers

The Association Advisors are receiving queries from members concerned about their obligations in the event of their business being affected by the H1N1 (“Swine Flu”) Virus.

We have developed some quick facts to be aware of, but of course the Association Advisors are available to talk to individual members about their own situations. You can call us on 0800 472 472.

Preparedness

With the numbers of flu victims now growing more quickly, we repeat our earlier recommendations to commence planning for the possibility that your business may not be able to trade normally if significant numbers of employees are absent with flu.

- What if you are instructed to close your business for quarantine reasons?
- What are your obligations to pay in this situation and can you afford a prolonged closure without overdraft problems?
- What is the difference between a forced closure by government instruction and a decision by the employer to cease trading because of staff shortages?
- What do you do if a key member of your staff is away with the flu? Do you have anyone trained to take their place?

To prepare your business, we recommend that you:

- Make plans for the possibility that your staff numbers will be reduced.
- Consider the cash flow difficulties if a large proportion of your staff is away on paid sick or annual leave and you have to pay for temporary workers.
- Consider the safety aspect of operating with fewer employees. (What if your safety officer, approved handler for dangerous goods, key holder etc is absent?)
- Consider what to do if your supplier cannot deliver, eg. because of staff shortages.
- Make a point of checking your employees for signs of flu. If you have concerns ask the employee to consult with a doctor. If you send them home you will have to pay (and it won't be sick leave).
- Communicate with your staff about the possible difficulties ahead and keep them aware of what is happening in their workplace.
- Consider where you may be able to find replacement employees to cover for any staff absences: ex-employees, friends or family etc.
- Look at your insurance policy and check if there is any coverage in the event of losses, or does that policy have a force majeure clause that denies you compensation for a pandemic.

- Talk with your bank if there is a risk that sickness or holiday payments and restricted income from trading will place you in overdraft, and if possible get agreement to increase that overdraft.

Employer Obligations

In the case of a Government instruction, the obligations on the employer to pay may depend on the employment agreement. If the agreement has a Force Majeure clause then the employer would probably be required to suspend that employee without pay but would retain the option to pay sick or annual leave for the period of the closure. If however there is no such clause, there is a possibility that payment will have to be made to those employees who present themselves for work. You should read your employment agreements to see if there are any clauses dealing with force majeure. Bear in mind, if you are instructed to close some of the employees would not be sick so they are unlikely to be entitled to sick leave; however annual leave would be appropriate in these circumstances.

Where you make the decision to cease trading because you cannot continue to operate safely or there is a shortage of staff, you may be faced with paying those employees who are otherwise able to work, at least for the period of notice. Clearly it is in the interest of employees and employers that the business survives so you may have to negotiate with employees to take some annual leave during this time rather than place a cost burden on the business that is not able to sustain.

Below is a simple guide to what your obligations are in paying staff in the event of sickness/business closure. To summarise the options:

Scenario	Employer Requirement
One or more employees is sick	Pay sick pay if they have any Otherwise unpaid (consider claims for annual leave)
Employer closes business because employees are not available	Employer must pay wages for those who are otherwise fit to work, for at least notice period. Annual leave an option
Business told to close	If your agreements have a force majeure clause, no sick or annual leave unless employer agrees. If no such clause you may have to pay some employees.

We suggest you discuss with your employees these possibilities and what plans you have made to deal with them.

Other Useful Resources

Members can call the NZRA Advisors – call 0800 472 472

Also, as reported in *The Notes* recently there are a number of websites that may help you with your planning:

- <http://www.moh.govt.nz/moh.nsf/indexmh/pandemicinfluenza-guidelines-forbusinesses>
- <http://www.dol.govt.nz/initiatives/workplace/pandemic/index.asp>