

Implications of a Human Influenza Pandemic on Employment and Workplace Relations

Discussion paper

1 November 2007

Foreword

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

The Queensland 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.

A pandemic would arise rapidly, spread quickly and likely come in waves, each of which may last for months. Should this occur, many Australians could become seriously ill, and some may die.

The most significant impact on Queensland businesses would be on staffing levels. At the height of a pandemic staff absenteeism could be as high as 50% with an average seven to ten days lost to illness for each individual.

With these factors 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 discussion paper.

This discussion paper 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 of a human influenza pandemic for business

A pandemic will directly affect many people's health and well-being, and potentially all the roles performed in the ordinary course of employment.

A pandemic could occur over a prolonged period with several waves of eight to twelve weeks and involve significant disruption to normal business conditions. Likely impacts 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
- increased absence due to closure of schools, child care or public transport
- possible disruption to supply of goods and material
- possible disruption of essential service delivery.

Employers and employees are both likely to experience financial pressures. Business operations are also likely to be directly affected by increased absenteeism, and indirectly by disruptions to logistics and financial systems. 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. To consider the potential implications for their workplaces and their response should a pandemic occur, employers and employees are strongly encouraged to develop a Business Continuity Plan (BCP).

Unlike other disruptive contingencies which BCPs normally address, a pandemic will not directly affect physical infrastructure and assets.

In preparing for and in the event of an influenza pandemic:

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.
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 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.

2. What happens if the workplace is still operating and staff are not 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 may be sick, their family may be sick, 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 this 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 WHS 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 where their refusal is based on a reasonable concern about an imminent risk to their health or safety.

3. 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.
- Where an employee refuses to work based on a reasonable concern about an imminent risk to their health or safety, they must not unreasonably contravene a direction of their employer to perform other available work (whether at the same or another workplace) that is safe and appropriate for the employee to perform.

4. 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 instruct employees to stay away from the workplace.
- Employees can also be instructed to stay away from the workplace if they are sick and they pose a 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.

5. 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.

6. 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 no reasonable steps can be taken to minimise that risk.
- 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.

7. Do employers have to continue to pay wages if the workplace is closed?

- 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 resulting 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.
- An employer may stand-down an employee without pay, unless an industrial instrument provides otherwise, where the employee cannot be usefully employed because of something that happened for which the employer is not responsible or over which the employer has no control.

8. Who can close my workplace?

- An employer can close the workplace if they determine that there is no other way to manage the 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.

Further resources

State plans

The Queensland Government has developed an Action Plan for Pandemic Influenza, which outlines measures and mitigating strategies to protect the community and minimise the economic, social, and community impact of an influenza pandemic upon Queensland.

Queensland Government – Action Plan for Pandemic Influenza:

http://www.qld.gov.au/services_for_queenslanders/health_and_communities/avian/pdf/action_plan.pdf

National plans

The Australian, state, territory and the local government sectors have all contributed to a National Action Plan for Human Influenza Pandemic.

National Action Plan for Human Influenza Pandemic:

www.pmc.gov.au/publications/pandemic/index.htm

Australian Health Management Plan for Pandemic Influenza:

www.health.gov.au/internet/wcms/publishing.nsf/Content/ohp-pandemic-ahmppi.htm

Workplace health and safety related information

Queensland Government Workplace health and safety:

www.deir.qld.gov.au/workplace/index.htm

WorkCover Queensland:

www.workcover.qld.gov.au

Business continuity guides

Developing a business continuity plan will help you to act quickly when a pandemic hits and should assist you to recover quickly as well.

Queensland Government Business Continuity Planning Notes:

www.qld.gov.au/services_for_queenslanders/health_and_communities/avian/pdf/business_continuity_plan.pdf

Business Continuity Guide for Australian Businesses:

www.industry.gov.au/pandemicbusinesscontinuity

Influenza Pandemic – A Kit for Small Business:

www.industry.gov.au/pandemicbusinesscontinuity

State workplace related information

General information on agreement making, wages and conditions and other employment related issues for businesses.

Queensland Government Department of Employment and Industrial Relations:

www.deir.qld.gov.au

Commonwealth Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade's travel advisory website includes bulletins on travel health issues including avian influenza.

Department of Foreign Affairs and Trade travel advisory website:

www.smartraveller.gov.au