

Bird Flu Pandemic - Crisis in the Air

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There has been a significant amount of attention on the possible affect of the bird flu if it reaches pandemic level. According to the Ministry of Health web site, it is not a case of if another flu pandemic occurs, but when.

The bird flu itself according to the Ministry of Health web site is like any other flu virus, however its symptoms "can cause severe flu-like symptoms in people and may result in death". Generally symptoms appear 3 to 7 days after infection and last up to 7 days.

What does it mean for employer's raises a number of questions - health and safety, sick leave and absenteeism of potentially large numbers of the workforce - with no easy answers.

Health & Safety

The Health and Safety in Employment Act 1992 provides that every employer must take all practicable steps to provide a safe work place. Where the virus has been identified as a potential hazard, employers will be required to take steps to manage that hazard. This will include examining such options as requiring infected employees to stay at home, where practical allowing employees who may not be infected to work from home and whether the risk of infection is such that the business should close.

Whether or not a business should close will need to be examined on a case-by-case basis. The Ministry of Health notes that primary industries may be able to carry on relatively unaffected.

Under the Act an employee also has the right to refuse to perform work that exposes them to cause serious harm. If the virus is present in a work place an employee may be in a position to exercise this right.

Health Act 1956

Under this Act a Medical Officer of Health may quarantine people infected and close buildings thought to contain infection.

Payment for Absence

The next issue arising is what are an employers obligations to pay an employee (or employees) if the business closes, employee(s) are required to stay home, employees are absent due to orders under the Health Act or an employee chooses to stay at home.

Where a sick employee is required to stay at home they will be entitled to use any sick leave they may have. What occurs when that leave runs out is not certain, generally if an employer requires an employee to stay at home the employer is required to continue to pay that person. However in exceptional circumstances, such as a pandemic, where large number of the work force are off an employer may be able to say enough and not pay.

Where the employer closes down the business depending on how the close down occurs, an employer may be able to rely on the closedown provisions of the Holidays Act 2003 and require employees to take annual leave.

Where an employee refuses to work because of the risk exposure to serious harm, an employer may be required to continue to pay that employee until the employee can safely return.

Where a building is closed or persons are quarantined under the Health Act, employees may use sick and annual leave as applicable, however again once exhausted there is no clear answer as to what an employers obligations may be.

Another scenario is where an employee chooses to stay home because of illness. In this case the employee is entitled to use any sick leave they have and once that is exhausted use annual leave. However as the choice not to work is the employee's, the employer is not obliged to pay beyond those entitlements.

Conclusion

As can be seen from the above there is no simple answer of how to address the possible effects of a pandemic. The Ministry of Health has published a guide for the continuity of business which is available from their website - www.med.govt.nz/upload/27552/planning-guide.pdf.

Ultimately however, unless there is legislative intervention, employers will need to examine circumstances on a case-by-case basis to establish what their rights and obligations are. If the pandemic reaches the potential estimated by the Ministry of Health, there will undoubtedly be instances while an employer will be fully aware of its obligations and want to meet those obligations it will simply not be in a position to do so.