

# Bracing for H1N1

Sarah Pottle

&

Tom Groves

1093340

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The difference is a great relationship.

# Outline

1. H1N1 in depth
2. Legislative Overview
3. Case Studies & Practical Considerations

# What is H1N1?

- What are the symptoms of H1N1?
- How contagious is this flu?
- How dangerous is this flu?
- Why is this relevant for managers?
  - i.e., what activities give rise to a reasonable fear of contracting H1N1?

# Legislative Overview

- Occupational Health and Safety Act
  - Duty to provide a safe workplace
  - Right of an employee to refuse unsafe work
- Labour Standards Code
- Human Rights Act
- Workers' Compensation

# Occupational Health and Safety Act

- S. 13 (1) (a):  
Every employer shall take every precaution that is reasonable in the circumstances to ensure the health and safety of persons at or near the workplace

# Occupational Health and Safety Act

- Section 43 (1):

Any employee may refuse to do any act at the employee's place of employment where the employee has reasonable grounds for believing that the act is likely to endanger the employee's health or the health or safety of any other person until. . .

# Occupational Health and Safety Act

- Section 43 (1): Employees may refuse work until
  - (a) the employer has taken remedial action to the satisfaction of the employee
  - (b) the committee, if any, has investigated the matter and unanimously advised the employee to return to work; or
  - (c) an [occupational health and safety] officer has investigated the matter and has advised the employee to return to work.

# Occupational Health and Safety Act

- Section 44:
  - One employee's refusal impacts every employee who may be asked to do that work or attend in that workplace

# Occupational Health and Safety Act

- Precedent Decisions:
  - *Kamyr Enterprises Inc. v. B.B.F., Local 73*, 84 L.A.C. (4<sup>th</sup>) 171 (1999)
  - *Cole v. Air Canada*, [2006] C.L.C.A.O.D. No. 4

# Labour Standards Code

- Sick Leave
- Compassionate-Care Leave

# Sick Leave

- Employees are entitled to 3 days of leave:  
60G (1) An employee is entitled to a maximum of three days of unpaid leave per year where the leave is required
  - (a) due to the sickness of a child, parent or family member; or
  - (b) for medical, dental or other similar appointments during working hours.

# Compassionate-Care Leave

- Section 60 E (2) of the Code:

An employee who has been employed by an employer for a period of at least three months is entitled to an unpaid leave of absence of up to eight weeks to provide care or support to a family member of the employee if a legally qualified medical practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within twenty-six weeks from

(a) the day the certificate is issued; or

(b) where the leave was begun before the certificate was issued, the day the leave was begun.

# Human Rights Act

- Prohibits discrimination on the grounds of physical disability
  - Is H1N1 a “disability” under the *Act*?

# Workers' Compensation

- **S. 10 (1)** Where, in an industry to which this Part applies, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation to the worker as provided by this Part.

# Legislative Review

- Occupational Health and Safety Act
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# Case Study

- You are the HR manager for a small business. Your business has a sick leave policy, which allows for 10 days of paid sick leave per year.
- Sue claimed 8 days of paid sick leave so far this year. She called this morning to say that she has H1N1 symptoms and will be staying home for a week.
- Can Sue take time off to recover? Would such leave be with pay?

# Case Study

- As above, you are HR for a business that offers 10 days of paid sick leave a year.
- Henry has already claimed 10 days of paid sick leave so far this year, and had to take 2 days unpaid leave last time he was sick.
- Henry comes in to work showing signs of fever and cough, unusual tiredness and headache. When you approach him about going home, he refuses, on the grounds that he can't afford to take the time off without pay. What are your rights and responsibilities?

# Case Study

- Further to the above case study:
  - How long can you insist that Henry stay home?

# Case Study

- As you are deciding how best to address Henry's situation, Marge leaves you a voicemail saying that she refuses to work in the same cubicle as Homer, on the grounds that doing so puts her health at risk.
  - What are the relevant facts to consider?
  - What steps should you take to address Marge's complaint?

# Questions?

The comments contained in this presentation provide general information only and should not be construed as legal advice or opinion. For more information or specific advice on matters of interest, please call our offices at (902) 421-6262

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# Resources

- [www.fightflu.ca](http://www.fightflu.ca)
  - The Public Health Agency of Canada's website
- <http://www.gov.ns.ca/hpp/cdpc/h1n1-influenza.asp>
  - The Nova Scotia Department of Health Promotion and Protection website