

"Pandemic Influenza: Companies Should Plan for the Worst and Assess Legal Exposure"

We are racing against time. For the past several years, conditions favoring an outbreak of pandemic influenza have been unfolding in Asia and Africa. To date, Avian Influenza (H5N1) has spread through 13 countries infecting 307 people, 186 fatally. Leading experts caution that another pandemic influenza outbreak may be just a matter of time and that the United States is not prepared.

McKenna Long & Aldridge Partner Peggy Binzer's article "Pandemic Influenza: Companies should Plan for the Worst and Assess Legal Exposure" was featured in the July/August 2007 Issue of *Update Magazine*, published bi-monthly by the Food and Drug Law Institute. The following is an excerpt:

Most food, drug and medical device companies have prepared contingency plans for hazards related to natural or man made disasters—including fire, hurricane, flood and anthrax attack—that are often restricted to one geographic area with fairly limited impact. Pandemic flu differs from any other threat to business continuity as it has the potential to impact communities around the world at the same time, disrupt trade and result in increased liability.

The human costs could also be tragic. The Congressional Budget Office (CBO) developed a model to estimate the economic impact of a severe outbreak of pandemic flu using data from the 1918 pandemic influenza outbreak. The model estimates that in a severe outbreak 90 million people would be infected, 2 million would die and up to 45 million would seek hospital care or other medical treatment, straining the healthcare system beyond the breaking point.

Every company doing business in the United States should carefully consider the impacts a pandemic could have on their ability to conduct business and the potential liability that could be created by both business interruption and any steps the company takes to ensure business continuity during a pandemic. It is not sufficient to consider only how the company will ensure an adequate workforce, critical inputs, transportation and other business services. In this litigious society, the potential for future litigation must be analyzed when doing pandemic planning. Questions that should be considered include the following:

- Has allocation of risk adequately been addressed in contracts with customers, suppliers of critical inputs, and suppliers of business services?
- Are insurance provisions adequate to protect employees and your company?
- Do provisions for cross-training and management succession to ensure adequate work force comply with employment law and labor agreements?
- What potential tort liability could be created by providing employee care, mandating rules for

CONTACTS

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UPCOMING EVENTS

A Roundtable Discussion: Preparing Business for Pandemic Influenza

Monday, September 17 2007
8:30am-4:30pm
Metro Atlanta Chamber of
Commerce
235 Andrew Young
International Blvd. NW
Atlanta, GA

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casual contact in the work place, or providing personal protective equipment?

- What measuring sticks, e.g., international standards or conduct of other companies, will be used in potential future lawsuits to determine whether your company did enough to protect employees?
- What level of planning is adequate to provide a defense against shareholder derivative suits if there is a drop in share price during or after a pandemic?
- How can you best encourage other companies in your supply chain to plan adequately without creating a greater likelihood that your company could become a defendant in any lawsuit challenging that planning?

These issues are critical to consider when planning for pandemic. Every step of your planning effort may be subjected to scrutiny in the future.

To view the entire article online please visit www.mckennalong.com or [click here](#).

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