

**Q&A Session for “Avian Flu: Planning for a Pandemic”**

Webcast Presentation

June 20, 2006

**1: Does anyone have plans in place that they would share with other companies?**

**We are a global chemical company.**

Nina Stillman:

Because all Avian Flu Preparedness Plans are largely customized to fit an individual employer’s needs and culture, we are not aware of anyone sharing their plans. However, having worked on many such plans for clients, we have developed a bank of different policies that can be readily customized for a particular client’s needs in a cost-effective manner.

**2: What is the Stop Loss Feature?**

Tom Marrinson:

Some companies that would otherwise be completely self-insured purchase what is known as a “stop loss” policy. The stop loss policy protects them against claims over a certain dollar amount. For example, a company may be self-insured for the first \$1,000,000 in claims. That is, they pay those claims out of their own pocket. For any claims over \$1,000,000, however, they have an insurance policy that “kicks in” to pay any additional claims.

**3: Is it lawful to identify contacts once an employee is suspected to be infected and to advise contacts of the employees' suspected or actual infection? Can you then direct the contacts to stay home?**

Nina Stillman:

Contact tracing is normally the function of a government public health entity and an employer has to be very careful not to breach a sick employee’s privacy by notifying his/her coworkers either directly or indirectly about the exposure. The best approach is to have the local public health entity handle this. Another possible approach, albeit one that is more risky for the employer, is to advise coworkers about the exposure generally and request they stay home if this can be done in a manner that would in no way lead to the identification of the sick employee.

**4: What is the source of your absentee projections? They don't seem to reconcile to the National Strategy Implementation Plan, which mentions a peak two week period of 40% absenteeism, with lesser percents before and after the peak lasting 6 to 8 weeks.**

Nina Stillman:

The numbers you refer to are in accord with those mentioned in the webcast. The models suggest 40% absenteeism during an outbreak wave due to illness and the possibility of another 10-15% absent for avian flu related reasons such as school closures, care-giving obligations and transportation disruptions.

It is also suggested that there could be up to 3 outbreak waves a year and that they would last 6-8 weeks. That is largely a worst case scenario prediction.

**5: When you say travel insurance, meaning that the employer would be the beneficiary so if the employee did not survive the employer would receive funds to assist them in re-filling the position?**

Tom Marrinson:

The typical form of “travel insurance” is a policy that pays for medical benefits while an employee is traveling away from his or her home country. Many health insurance policies contain territorial limitations, such that they will not pay benefits if an American employee becomes ill, for example, on a business trip to Germany. An additional feature often included in such coverage is evacuation and repatriation costs (i.e., the costs of moving a sick employee back home).

**6: Are there any stats on the ability of internet service providers and infrastructure to hold up given they may have 50% absenteeism?**

Barbara Melby:

I have not seen statistics specific to ISPs or infrastructure service providers. However, many service providers have been assessing procedures that can be implemented to deal with potential absenteeism in the event of a pandemic, including remote provision of services (e.g., from an alternative site or from home).

**7: Is it lawful in the US and outside of US to notify contacts in the case where an employee is infected or suspected to be infected?**

Nina Stillman:

An employer who breaches the privacy of an employee by revealing his/her medical information to coworkers can have liability from several sources, depending on how the information was obtained by the employer and how it was disclosed to others. It is preferable to leave the notifying of exposed contacts to a public health authority. However, if the employer can disclose the exposure to employees without in any way identifying the sick coworker, that is probably low risk.

Walter Ahrens:

The situation in Europe is essentially the same.

**8: Can we ask contact to stay home?**

Nina Stillman:

Without the protection of a government directive, it may be problematic for an employer to direct a healthy employee who may have been exposed to avian flu to stay at home unless the employer is prepared to pay a healthy employee to stay at home and does not otherwise penalize the employee for the time off from work. In addition to ensuring that there is no pay or benefits penalty, the employer will need to have valid procedures in place to determine how the determination of exposure was made, by whom and why only certain employees are considered exposed contacts and asked to stay home.

**9: Do we need to pay employees that we ask to stay home if they are not ill?**

Nina Stillman:

Yes, under the current state of the law.

**10: Will the ADA allow EHS to ask questions related to employee's illness in order to determine if they need to go home?**

Nina Stillman:

Because of its hopefully temporary nature, avian flu will likely not be an ADA-covered disability. In any event, ADA does allow employers to send an employee to a qualified healthcare provider if the employer has a reasonable belief that the employee is a direct threat to him/herself or others in the workplace. However, a non-healthcare professional should not be asking medical questions of the employee.

**11: Would the ADA and FMLA allow us to force employees to stay home and if yes, what would the limits be?**

Nina Stillman:

See response to Question No. 10 above for the ADA. There is also a recent case that allows employers to put an employee on a mandatory FMLA leave and require that the employee then provide the physician certification within the required time period.

**12: What are issues / risks under US laws re businesses providing medicines (aspirin / flu medications) to their employees?**

Nina Stillman:

There are significant legal risks for employers in the US who provide even over-the-counter medications to employees. The risks are that the employee may have a bad health outcome from the medication because the employer has dispensed it without taking the necessary medical history information to ensure that the medication will not result in an allergic reaction or improper interaction with another medication the employee may be taking. Also, some medications, such as flu vaccines, need to be dispensed only by licensed professionals.

Tom Marrinson:

Although this question is more directed at the types of liabilities a company could face as a result of providing medicine to employees, an important corollary issue is the extent to which such liabilities would be insured. Policies should be reviewed to determine whether any exclusions would apply to such liabilities.

**13: Could we check employees as they enter a building/facility - i.e. by taking their temperatures?**

Nina Stillman:

This is likely to be viewed as a breach of privacy as well as a possible or an improper medical examination under the ADA.

**14: What if anything can an employer do to monitor employees entering their building - can they conduct any screening for illness?**

Nina Stillman:

See response to Question No. 13 above.

**15: Can we require employees to not come in if they have ill family members - how do we ask for that information?**

Nina Stillman:

An employer can not ask about ill family members without running into privacy problems. However, through education of the workforce and providing positive incentives such as pay for time off, the employer may be able to encourage employees to self-identify.

**16: If people come in would we need to pay hazard pay if a pandemic is declared?**

Nina Stillman:

Probably not. If an employee is not sick and in the absence of a government directive to stay home, the employee is obligated to come to work.

**17: As far as the 6 designated stages of a pandemic, is there a stage (4, 5, 6?) where the county or state would implement the mandated closing of all businesses, schools, etc.?**

Nina Stillman:

It will be up to the particular locality as to how it intends to handle closures. However, it is not likely that this will occur before Phase 6, unless there is an outbreak in a particular location which could occur in Phases 4 and 5.

**18: Can we require certain employees to come to work, even if they refuse due to fear? If they do refuse could we terminate employment?**

Nina Stillman:

If there is no government directive that employees stay home and the employee is healthy and is not otherwise required to stay home, then the employer can expect the employee to come to work. If the employee refuses to do so based solely on fear, the employer may take appropriate disciplinary action.

**19: Some think a human to human outbreak will never occur. Is there a timeframe within which a pandemic will need to occur (e.g. 12 or 24 months) if it is going to occur?**

Nina Stillman:

There is no timeline as to when or if the avian flu would mutate to human-to-human transmission.

**20: Is there an incubation period established for H5N1 strain? For example, a person is contagious 1 day before symptoms arise in normal influenza and up to 5 days after symptoms begin.**

Nina Stillman:

Current thinking for the latency period between exposure and symptoms is between 5 to 10 days. However, this is based on the current strain of the avian flu virus and not on what may be the case if it mutates to a human-to-human transmission form.

**21: Have you developed, or are you aware of, a check list of issues to address at the six different phases?**

Nina Stillman:

The WHO website has a checklist for preparedness.

**22: How do you suggest employers obtain anti-viral medications for purposes of stockpiling, when these medications are only available through prescription, or through the distribution accompanied with the Strategic National Stockpile?**

Nina Stillman:

See response to Question No. 12 above.

Walter Ahrens:

Other countries, e.g. Germany, permit employers to stockpile antiviral medications, subject to approval by the local health authorities.

**23: Are there any concerns with asking an employee to work from home, when they may be exposed to the virus?**

Nina Stillman:

See response to Question No. 8 above.

**24: Are there any resources that are available to be able to see sample plans, say for a manufacturing company?**

Nina Stillman:

See response to Question No. 1 above.

**25: Where is the preparedness checklist located?**

Nina Stillman:

See responses to Question Nos. 1 and 21 above.

**26: You mentioned WHO as a good place for information. Could you provide list of websites that provide Pandemic information?**

Nina Stillman:

[www.who.int/csr/disease/avian\\_influenza/en](http://www.who.int/csr/disease/avian_influenza/en)

[www.pandemicflu.gov](http://www.pandemicflu.gov)

[www.cdc.gov](http://www.cdc.gov)

**27: Can an employer force quarantine for employees who insist on going to other countries for pleasure when those countries are high incidence areas?**

Nina Stillman:

If either CDC or WHO has a travel advisory against a particular location and an employee chooses to visit that outbreak location despite the advisory, it is probably a relatively low risk proposition for the employer to require a quarantine period before the employee is allowed to return to work. However, there are issues as to how the employer learns of that visit without a breach of privacy and as to whether the employer will pay the employee for the time off from work. Again, education of employees is important to encourage self-identification.

**28: Do you recommend acquiring masks for employees? If so, N95 or surgical masks?**

Nina Stillman:

Facilitating good hygiene techniques by making available over-the-counter masks and hand sanitizers is a good idea.

**29: More a medical question, but as the virus mutates, can persons succumb to the virus repeatedly?**

Nina Stillman:

We probably don't know that with any certainty because we don't know how the virus will react in a mutated form.

**30: What about an employee who would like to self-quarantine from their own family as well as from the business?**

Nina Stillman:

If an employee has been exposed because of mandatory business travel, the employer may wish to accommodate the employee in these circumstances as a quid pro quo for the employee assuming the risk of traveling to an exposure zone.

**31: Can you restrict an employee's vacation plans, i.e. require clearance of destination location?**

Nina Stillman:

Probably not.

**32: What are some best practices or recommendations around compensation and time off for employees during a pandemic?**

Nina Stillman:

This is highly individualized. However, as a general proposition, the employer wants to have policies in place that will encourage the sick or exposed employee to self-identify and stay home without fear of an adverse employment action.

**33: Are you aware of any public guidance from any reliable source about likely/possible travel restrictions that correspond with the WHO phases?**

Nina Stillman:

See Response to Question No. 26 above.

**34: Keeping possibly exposed employees out of the office for 10 days seems long. Is there some reference that cites this period of time?**

Nina Stillman:

See articles and references found at websites cited in Response to Question No. 26 above.

**35: What is contact tracing?**

Nina Stillman:

Contact tracing is the process whereby public health entities attempt to locate all persons with whom a contagious person has had an exposure contact.

**36: How best to do absence tracking without violating employees' privacy and data security? Legally, can we ask an employee the reason for his/her absence?**

Nina Stillman:

An employee who is absent from work has to provide some acceptable explanation. However, if the employee states that he/she is sick, the employer cannot breach the employee's privacy by requesting further details beyond what is required by the applicable policy, benefit plan or statute.

**37: If an employee contracts this flu are you saying that it makes them eligible for workers comp?**

Nina Stillman:

In the normal case, avian flu is not going to be considered a work-related illness. However, in some cases it may be: For example, if an employee is sent to an outbreak zone for a mandatory business trip or if the employee works in health care.

Tom Marrinson:

In most cases, US workers would have difficulty obtaining workers compensation benefits as a result of having contracted avian flu. Unless their jobs entail a special risk of contracting the flu (health care workers, poultry workers, for example), they will have a difficult time establishing that they contracted the flu "in the course of employment" – which is the legal standard in most US jurisdictions. Foreign compensation standards differ widely, however, so those standards should be reviewed by any company with international operations. Also, for companies with unionized employees, keep an eye on what unions are saying about whether their members should seek workers compensation benefits for avian flu. Unions were very active in staking out positions on this issue on behalf of their members during the SARS crisis.

**38: Do you recommend making specific reference to pandemic flu in force majeure clauses in contracts?**

Barbara Melby:

The answer to this question will depend on whether your company is the service provider or the recipient of services or supplies. It will also require a review of the specific contracts in question. For example, if your company is the "customer" and the contract expressly lists force majeure events (but leaves out "epidemics" or "pandemics") then you may want to be silent. However, if your contract lists force majeure events generally as events beyond a party's control, then you may wish to detail what the service

provider's obligations are with respect to an epidemic or pandemic.

**39: If an employer learns that one of its CA employees may have been exposed to the avian flu virus, what obligations does the employer have to preserve the confidentiality of that information?**

Karen Peteros (Center for California Employment Counseling):

As with any information regarding the medical condition of a CA employee, the employer must maintain the confidentiality of that information (e.g., only inform those others who have an absolute need to know for the employer to take prudent business action). At the same time, the employer is required to provide its CA employees with a safe and healthful work environment and, if recommended by a local health department, may generally provide information to employees necessary to enable them to protect their own health and to alleviate unfounded fears.

From a practical perspective, it is unlikely that an employer would ever need to provide other employees with the name of the employee who may have been exposed, or any other information that would allow employees to identify which employee was exposed. HIPPA does not apply to employers in their role as an employer, but only the employer in its role as a health care provider or a health plan.

**40: What is the estimated time period before an avian flu pandemic may commence?**

Nina Stillman:

See response to Question No. 19 above.

**41: Do you have any advice for handling employee communications in cases of global companies who may need to have differing plans in place country by country to meet national needs (such as variances in sick time offerings or vaccine/medication stockpiling)?**

Nina Stillman:

It is very important to consider the needs, requirements and available resources in the various locales around the world in which you operate. It is also essential to be sure that your employee communications are linguistically and culturally appropriate for the particular locale.

Walter Ahrens:

One of the challenges in communication is to avoid the impression that, notwithstanding any need for differing plans on a country by country basis, employees in some countries are less valuable to the business than in others.

**42: We were planning on doing Contact Tracing within the company. Is your advice against Contact Tracing related to providing this service externally or also internal to the company?**

Nina Stillman:

See responses to Question Nos. 3 and 7 above.

**43: If Worker's Comp does not apply generally, then would disability insurance cover the loss to the employees and/or to the company?**

Tom Marrinson:

Check your long-term and short-term disability policies. Keep in mind that most avian flu cases will result only in short-term disability, which a great many companies do not insure against. In the event of a long-term disability, most policies should provide coverage, but you need to review your policy for any exclusions, especially those relating to epidemic or contagious disease. Also, such policies generally pay directly to the employee, not to the company.

**44: Is someone with avian flu covered by the ADA?**

Nina Stillman:

We would argue that avian flu is not an ADA-covered disability for the reason that it is a temporary medical condition.

**45: We are considering purchasing kits with gloves, wipes, masks, etc. Concerns: impossible to continually replenish and false sense of protection?**

Nina Stillman:

That's a possibility. It will depend on how you disseminate the information to employees.