

Possible Federal Legislation Regarding H1N1 Flu Paid Sick Leave



On November 2nd, 2009, the House Education and Labor Committee and Workforce Protections Subcommittee introduced “emergency” legislation to the House of Representatives regarding guaranteed paid sick leave surrounding employees directed not to come to work due to a contagious illness. While this bill has not been passed, the Senate and the House of Representatives began review on November 17th of a proposed *Pandemic Protection for Workers, Families and Businesses Act* that would guarantee paid sick leave for those infected by the H1N1 virus.

The legislation is early in the process, but it is possible this bill may be fast-tracked through as emergency legislation to slow the spread of the H1N1 virus. The basic provisions of the newest proposed bill are as follows:

- Full time workers would receive up to seven paid sick days for leave due to flu-like symptoms, medical diagnosis, preventative care, to care for a sick child, or to care for a child whose school or child-care facility has been closed due to the spread of flu.
- Discretion on the need for sick leave is left to the employee, although medical certification may be required.

The November 2nd legislation requires five days of benefits rather than seven and includes coverage for part-time workers on a prorated basis. It also applies only if an employer directs or advises a sick employee away from the workplace. It is possible that either bill will be passed or even that the bills are combined; regardless, the signs are that Congress will continue to look at required paid sick leave for those possibly infected by H1N1.

There are a number of employer organizations opposing the measure, but it has a good amount of public and bipartisan political support. Additionally, the Centers for Disease Control and Prevention recommend that employers implement “flexible influenza pandemic plans” to help minimize the impact of H1N1 on overall public health. The CDC’s recommendations include allowing employees to stay home if they are ill, have to care for ill family members, or must watch their children if schools or child-care facilities close. See the CDC website for more detailed guidance - <http://www.cdc.gov/h1n1flu/business/guidance/>.

As an employer, Komisar Brady provided education to our employees and we strongly encourage employees with flu-like symptoms to refrain from coming to work or meeting with clients. We recommend all our business clients take similar steps as appropriate for individual situations. Similar to our recommendations when the City of Milwaukee Mandatory Paid Sick Leave Ordinance was introduced, we also recommend employers consider some sort of “Paid-Time Off (PTO)” policy that integrates sick pay into vacation benefits.

Because of the significant public health impact of a continuing flu outbreak, it is possible that some sort of emergency sick leave bill will be enacted in the coming weeks. While no legislation is definite at this point, we want to keep you informed and recommend you contact us if you have concerns on how the proposed legislation may affect your business.