



Indiana Department of Labor

Influenza in the Work Place Sample Questions with Responses

August 18, 2009

- 1. I work in a day care with sick kids. I don't think it's safe, but my employer says she will fire me if I don't come to work. Can she do that? Does she have to provide me with any kind of masks, gloves, or gowns?**

Response: Your employer can fire you if you don't report to work as you are directed. Indiana generally follows the employment at will doctrine, which permits both the employer and the employee to terminate the employment at any time for a "good reason, bad reason, or no reason at all", with some exceptions such as for race, religion, age, gender, etc.

IOSHA can only enforce the use of Personal Protective Equipment (PPE) if it is necessary to protect employees from job-related injuries, illnesses and fatalities. If there is likelihood that you will be exposed to bloodborne pathogens, your employer will be required to provide appropriate PPE. There are no such provisions currently required for the flu.

- 2. I own and operate an insurance company. Two of my employees are out sick. When should I close my operation for the safety of my employees?**

There are no directives from IOSHA regarding the number of employees who are required in a facility or the number or percent of employees to be absent before the facility should close. You should use your judgment based upon the knowledge of a general duty owed to employees to provide them with a reasonably safe and healthful work place. You should follow CDC and ISDH guidelines.

- 3. I work in a hospital/ambulance company/nursing home. The nature of my job requires me to be around individuals diagnosed with the H1N1 virus. Am I free to decline a particular work or assignment? Does my employer have to provide me with any kind of PPE? Can I lose my job if I refuse to perform my work?**

You are free to decline a particular assignment, but since your job requires you to be around sick individuals, your employer has the right to impose discipline, including the right to terminate your employment if you refuse to perform your job.

There is no specific standard for North American H1N1 influenza. H1N1 is a type of virus that seems to respond well to some antiviral medications.

Indiana Code **22-8-1.1 Section 2** of the IOSH Act, the General Duty Clause, requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. Employers can be cited for violating the General Duty Clause if there is a recognized hazard and they do not take specific steps to prevent or abate the hazard. However, failure to

implement any recommendations in this response is not, in itself, a violation of the General Duty Clause. Citations can only be based on standards, regulations, or the General Duty Clause. While there is no standard for the H1N1 virus, as part of a comprehensive Safety and Health Management System, your employer can take steps to decrease or minimize the spread of H1N1 at the workplace. Some steps are:

- Place importance on worker safety and health protection in the workplace.
- Ensure the availability of adequate facilities and supplies that encourage workers to practice good hygiene.
- Ensure that routine housekeeping in the workplace is followed.
- Ensure that contaminated equipment and surfaces are cleaned with detergent-based cleaners or Environmental Protection Agency (EPA)-registered disinfectants.

Also compliance with specific OSHA Standards will assist with improving the protection of employees who may be exposed to H1N1 in the workplace. OSHA's Safety and Health Topics pages provide additional guidance to comply with standards. Below are some of the relevant provisions of OSHA standards of special importance.

Bloodborne Pathogens

- Employees who have occupational exposure to blood or other potentially infectious materials are covered under this standard. This includes those required to provide first aid services to other employees.
- Universal precautions to help protect against infection shall be followed by those who must comply with this standard.

Hazard Communication

Disinfectants and other cleaning products used to decontaminate surfaces may be considered hazardous chemicals under this standard.

Personal Protective Equipment (PPE)

Depending on the specific workplace situation, some personal protective equipment (PPE) may be needed as a barrier against the transmission of H1N1 from an infected person to a non-infected employee. This may include, but is not limited to, the use of gloves, eye protection and facemasks (e.g., surgical masks).

- Some products used for decontamination may necessitate the need for PPE.
- Consult the appropriate OSHA PPE standard:
 - [General Requirements](#)
 - [Eye and Face Protection](#)

- [Hand Protection](#)

Recordkeeping

- An employer is required to report and keep records of fatalities, injuries, and illnesses which are determined to be work-related.
- An injury or illness is considered to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.

Sanitation

This standard requires an employer to provide:

- Hot and cold running water or tepid running water in each lavatory.
- Hand soap or similar cleansing agents.
- Individual hand towels or sections thereof of cloth or paper, warm air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories.
- Individual clean towels to employees who use showers.

This and other information concerning this subject can be found at the following websites: www.in.gov/flu , www.ready.gov (family section), www.cdc.gov, or www.osha.gov.

4. When should first responders, such as police and fire personnel don protective equipment such as a facemask, respirator or gloves?

Since there are no IOSHA requirements for Personal Protective Equipment (“PPE”) in regard to the H1N1, first responders should don PPE per the directives of their supervisors, or whenever they feel the need, unless it violates some directive from supervision. If the use of respirators is mandatory by the employer, then fit testing must be performed, and employers may be responsible for the establishment and maintenance of a respiratory program in accordance with 29 CFR 1910.134(c). If the use is voluntary and simply encouraged by the employer, no fit testing is required prior to use. Employers shall provide respirators to employees when it is necessary to protect the health of the employee in accordance with 29 CFR 1910.134, Respiratory Protection. A facemask refers to a disposable mask cleared by the U.S. Food and Drug Administration for use as a medical device. More detailed information on the use of facemasks and respirators is available at:

- <http://www.cdc.gov/Features/MasksRespirators/>
- <http://osha.gov/dsg/topics/pandemicflu/index.html>

- 5. Can I catch the flu from drinking from someone else's glass, touching property that someone has touched with the virus, breathing the same air as them, touching their clothes?**

Since the flu is transmitted by bodily fluids, it is conceivable that the virus could be transmitted by any of the suggested methods, if the drink/container, skin, air, or clothes have been contaminated.

Additional guidance can be found at www.in.gov/flu, www.ready.gov (family section), or www.cdc.gov.

- 6. My employer closed our office, even though no one has been diagnosed with the flu or even seems remotely sick. I am paid hourly, and my boss has advised that she will not be paying anyone for these hours we couldn't work. I need this money. Can she do that?**

Employers have wide discretion over establishing work hours and schedules for employees over the age of 18. In this case, the employer has the discretion to shut down her business, restrict open hours or restrict work hours. She is not obligated to pay hourly employees for hours not worked. If you are governed by a collective bargaining agreement as a member of a labor union, a public employee governed by state merit rules or local rules, or party to an employment contract, you may be subject to different rules, protections or restrictions.

- 7. My employer closed our office, even though no one has been diagnosed with the flu or even seems remotely sick. I am a salaried employee. My employer says that even salaried people will not be paid their salary. Our salary will be prorated until we return to work, and I will not be paid anything during the week that I don't work. Can she do this?**

Employers have wide discretion over establishing work hours and schedules for employees over the age of 18. In this case, while employer may choose to close the business temporarily, or even restrict work hours for salaried employees, she may be in violation of the federal Fair Labor Standards Act. Contact the USDOL for more detailed information on your rights under FLSA.

- 8. I do not feel well. My employer will not permit me to leave, stating that I am a critical part of the operation. Can my boss make me stay? If I leave anyway, am I subject to losing my job?**

Indiana law does not permit your employer to physically confine you to the workplace. However, if you are directed by your employer to remain at work and

you leave work in violation of your employer's orders, you run the risk of being subject to discipline, up to and including dismissal. Work refusal protections under IOSHA Whistleblower protections would probably not apply in this circumstance.

Under Indiana Law, 410 IAC7-24, Retail Food Establishments, Employees who do not feel well, or who have family member(s) who are sick are legally required to notify their Supervisors if the type of illness suspected can be transmitted via food. Those employees would then be excluded from work or reassigned duties where there is no potential for transmission of the infectious disease.

For more information on this topic, please call Scott Gilliam, Food Protection Program Director at 317.233.7467

9. My employer has only a fixed number of sick days provided to us. I have children home from school because the schools have been closed. Do I have a right to stay home with them and not lose my job?

No, Indiana law does not provide for mandatory sick or other leave time. In this case, the employee should use any/all available leave time in accordance with the employer's policy. Unauthorized leave may result in discipline, up to and including termination of employment. You should develop contingency plans in the event of such closure that keeps kids at home even while you may not be excused from work. Schools are closed only after certain triggers by the CDC, and it is always for the protection of your child and to stem the tide of a contagious illness.

10. My employer says that he is going to require those of us that have contact with the public to wear latex gloves and a respirator. I don't want to wear either. What is the rule? Can I refuse?

Employers have wide discretion over establishing work rules and conditions of employment. In this case, the employer is permitted to establish mandatory requirements for employees' use of personal protective equipment. Non-compliance with established work rules, such as required use of PPE, can result in employee discipline up to and including termination of employment.

11. My employer is encouraging us to use Kleenex, hand sanitizer and latex or non-latex gloves if we feel the need. Shouldn't our employer provide us with these things and pay for them? Why should I pay for them if I need them to work?

Your employer's encouragement of the use of tissues, hand sanitizers and gloves is both informative and proactive in dealing with this socially communicable virus. An employer has the responsibility to provide, at no cost, any required Personal Protective Equipment (PPE). An employer is not required to provide or pay for items that are not considered to be PPE or are not required by OSHA standards. Since no specific standard governs H1N1 other than the General Duty Clause, there is no requirement to provide any particular PPE. First responders and health care workers may be subject to more rigorous requirements under specific standards.

12. I am an administrator of a large hospital. At what point should I require additional protective measures for my nurses and doctors? What additional protective measures or personal protective equipment should I undertake?

Each hospital is required to have an infection control program, in writing, that addresses how to contain and minimize contagions and communicable diseases. Failure to have such a written program may expose the medical facility to liability under the General Duty Clause as well as other standards. Indiana Code **22-8-1.1 Section 2** of the IOSH Act, the General Duty Clause, requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. Employers can be cited for violating the General Duty Clause if there is a recognized hazard and they do not take specific steps to prevent or abate the hazard.

IOSHA and the USDOL provide the following websites as additional guidance to answer your questions:

"Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers ": <http://www.osha.gov/Publications/3328-05-2007-English.html#PandemicInfluenzaPreparedness>. Also see www.osha.gov homepage for other current publications, www.in.gov/flu, www.cdc.gov or www.pandemicflu.gov.

13. I take public transportation to work. The city has closed down the bus system. I can't get to work, and my employer says that he will fire me I don't show up tomorrow. What are my options?

Your employer is free to dismiss you in the event you fail to show up to work. You must find alternate means of transportation or risk losing your job.

14. I work on the floor of a big manufacturing plant. There are a lot of people here and at any given time, a number of people are coming down with something, out sick, or returning to work before they are really well. I don't want to be around them. What should I do?

IOSHA can only offer you advisement in your situation. Ultimately the decision is one that you will have to make for yourself. Your failure to report to work will potentially subject you to discipline or dismissal if you do not have your employer's permission. If you have to be around coworkers that are ill, we recommend that you take the following precautions.

Standard precautions include:

- Washing hands often with warm water and soap and using a single-use towel for drying hands or using alcohol based hand cleaners can greatly reduce your chance of infection.
- The voluntary use of gloves and facial protection, such as a surgical mask or an N-95 respirator may reduce your exposure.
- Practice social distancing by maintaining at least 6 feet between you and your co-workers where practicable.
- Use Kleenexes rather than handkerchiefs, and throw all Kleenexes in the trash after one use.
- Resist the urge to shake hands or greet each other with other personal contact.

15. I have a plan at work to complete my payroll in the event my payroll clerk is out. However, I didn't anticipate that all ten of my employees would be out with the flu at the same time. There is no way I can pay my employees in a timely manner. What should I do?

Notify your employees of the problem immediately and pay the employees as soon as possible. You may still be exposed to liability for claims for late payment of wages. Failure to pay employees their wages within a timely manner (10 days after the end of their regularly scheduled pay period), whether during employment or thereafter, can expose the employer to a lawsuit for lost wages, punitive damages, costs and attorney fees. Pursuant to Indiana Code 22-2-5-2, employers may be subject to a penalty of 10 percent of the amount due per day until the penalty reaches double the amount of damages. Combining the damages for actual lost wages with the punitive damages, the statute can result in an award of treble damages.

The forgoing materials were developed by the Department of Labor with the assistance of the United States Department of Labor, the Indiana State Board of Health, Indiana Department of Homeland Security, and the Centers for Disease Control in August of 2009. Because the H1N1 Influenza situation remains fluid, we suggest you check appropriate sources for new or changing information.

