

# Labour, Employment and Human Rights Law Bulletin

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Fasken Martineau DuMoulin LLP

## H1N1 Update Bulletin

Lorene Novakowski and Nicola Sutton, Vancouver

Following on our National Bulletin sent out in May 2009 (click [here](#) to read the National Bulletin), we provide this update for employers on the H1N1 flu virus.

### Status of the pandemic

Public health officials in B.C. continue to work closely with all levels of government and partner agencies to monitor and respond to the spread of the H1N1 virus. Cases in B.C. continue to be associated with relatively mild symptoms typical of the common seasonal flu.

### Symptoms

The symptoms of the H1N1 flu virus are similar to those of the common flu. They include headache, chills, cough, fever, muscle aches, fatigue, runny nose, sneezing, watery eyes and a loss of appetite. Some patients also report nausea, vomiting and diarrhoea.

### Transmission

The H1N1 flu virus is easily transmitted through casual community interaction. It may spread person-to-person through coughing or sneezing. People may also become infected by touching a contaminated surface, such as a counter or doorknob and then touching their eyes, nose or mouth.

The H1N1 flu virus has been declared a pandemic influenza. The pandemic will come in waves, with the first wave estimated to hit B.C. in 5 to 10 weeks, although we note that there is currently an outbreak in Washington State, and the first Canadian outbreak of the fall flu season has just been reported in a group of remote communities near Tofino, B.C.

Healthy adults who become infected with the virus will typically be ill for approximately 10 days. Employees over 55 may be resistant. Pregnant women and infants seem to suffer from more severe symptoms.

The first wave is expected to last for 6 to 8 weeks. Current estimates are that employers can expect 25% absenteeism (6-8% is normal) during this first wave.

### Planning for H1N1

According to WorkSafeBC, employers have a responsibility to protect their workers from work-related hazards including exposure to infectious diseases and, specifically, to H1N1. WorkSafeBC recommends employers take steps to protect workers: limit exposure in the workplace by having sick workers stay at home and encourage proper hygiene. Visit [www.worksafebc.ca](http://www.worksafebc.ca).

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We recommend the following steps to plan for H1N1:

1. Educate your employees about the H1N1 flu virus and how to protect themselves. "Social distancing," frequent hand washing, cough and sneeze etiquette and cleaning of surfaces remain recommended measures that help limit transmission.
2. Encourage employees to stay at home if they are sick. Direct them to call HealthLink B.C. at 8-1-1 or visit [www.healthlinkbc.ca](http://www.healthlinkbc.ca) for advice regarding their symptoms.
3. Prepare for potentially high levels of absenteeism. Guided by the requirements of the B.C. *Employment Standards Act* and any applicable collective agreement provisions, responses to consider include the following:
  - Increase your use of overtime hours
  - Use casual or part-time employees to cover absences
  - Consider cancelling leaves
  - Reassign employees to different departments or locations as needed
  - Reassign tasks amongst well employees
  - Recruit temporary employees

### Questions and answers about absences from work due to H1N1

1. Can I send an employee for testing if they have been exposed to someone confirmed to have the H1N1 flu virus?

No. Widespread testing is currently considered to have little value. The current, accepted practice is testing of hospitalized patients, and where there are suspected

outbreaks in closed environments as determined by public health officials.

2. Can I ask an employee who has been exposed to stay at home?

If the employee does not have symptoms, and you have reasonable grounds to feel concerned about the employee's exposure and the safety of the workforce, the best approach would be to ask the employee to not attend the workplace, but treat the absence as a paid leave of absence. Different considerations may apply in a unionized workplace. Depending on the size and nature of the workforce, asking employees without symptoms to stay at home on paid leave, may establish an unsatisfactory precedent. If the employee does have symptoms, you should ask the employee to remain at home.

3. What are the leave entitlements for an employee who is symptomatic or ill with H1N1?

Generally, if symptoms are present or the employee is ill, the employee should be entitled to exercise any sick leave or short-term disability benefits your company provides. However, employers should also consider permitting employees to use vacation days, or to take a leave of absence without pay. Under the *Employment Insurance Act*, eligible employees are entitled to up to 15 weeks of benefit when unable to work because of illness, where the employee is not otherwise covered by a disability plan or has run out of sick leave benefits. During the SARS outbreak, HRSDC extended the employment insurance benefits to those unable to work because of quarantine due to SARS. Accordingly, employers should monitor the HRSDC website for developments: [www.hrsdc.gc.ca](http://www.hrsdc.gc.ca).

Note that under the *BC Employment Standards Act*, employees are entitled to unpaid family responsibility leave to care for family members, which presumably would include family members who have contracted H1N1, or are suspected of having H1N1. In the unionized setting, different rights may arise depending on the collective agreement entitlements.

### Additional Resources

- [www.healthlinkbc.ca](http://www.healthlinkbc.ca)
- [www.gov.bc.ca/h1n1](http://www.gov.bc.ca/h1n1)
- [http://www.vch.ca/about\\_us/news/h1n1\\_flu\\_viruses\\_human\\_swine\\_flu\\_information](http://www.vch.ca/about_us/news/h1n1_flu_viruses_human_swine_flu_information)
- [http://www.hse.ubc.ca/\\_shared/assets/communique66951.pdf](http://www.hse.ubc.ca/_shared/assets/communique66951.pdf)

Contact us for more information or assistance with H1N1 pandemic planning and response.

For more information on the subject of this bulletin, please contact the authors or your lawyer:

**Lorene Novakowski**

604 631 3216

[lnovakowski@fasken.com](mailto:lnovakowski@fasken.com)

**Nicola Sutton**

604 631 4867

[nsutton@fasken.com](mailto:nsutton@fasken.com)

## For More Information About Our Labour Employment & Human Rights Law Practice Group

**Vancouver****Kevin O'Neill**

604.631.3147

[koneill@fasken.com](mailto:koneill@fasken.com)**Gary Catherwood**

604 631 3119

[gcatherwood@fasken.com](mailto:gcatherwood@fasken.com)**Trish Janzen**

604.631.3144

[pjanzen@fasken.com](mailto:pjanzen@fasken.com)**Calgary****Katie Clayton**

403.261.5376

[kclayton@fasken.com](mailto:kclayton@fasken.com)**Toronto****Brian O'Byrne**

416.868.3347

[bobyrne@fasken.com](mailto:bobyrne@fasken.com)**Ralph Nero**

416.868.3356

[rnero@fasken.com](mailto:rnero@fasken.com)**Peggy A. McCallum**

416.865.4372

[pmccallum@fasken.com](mailto:pmccallum@fasken.com)**Montréal****Dominique Monet**

514.397.7425

[dmonet@fasken.com](mailto:dmonet@fasken.com)**Louise Béchamp**

514.397.7573

[lbechamp@fasken.com](mailto:lbechamp@fasken.com)**Benoit Turmel**

514.397.7596

[bturmel@fasken.com](mailto:bturmel@fasken.com)**Quebec City:****Jasmin Marcotte**

418.640.2040

[jmarcotte@fasken.com](mailto:jmarcotte@fasken.com)

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**Vancouver**

604 631 3131

[vancouver@fasken.com](mailto:vancouver@fasken.com)**Montréal**

514 397 7400

[montreal@fasken.com](mailto:montreal@fasken.com)**Calgary**

403 261 5350

[calgary@fasken.com](mailto:calgary@fasken.com)**Québec City**

418 640 2000

[quebec@fasken.com](mailto:quebec@fasken.com)**Toronto**

416 366 8381

[toronto@fasken.com](mailto:toronto@fasken.com)**London**

44 207 917 8500

[london@fasken.co.uk](mailto:london@fasken.co.uk)**Ottawa**

613 236 3882

[ottawa@fasken.com](mailto:ottawa@fasken.com)**Johannesburg**

27 11 685 0800

[johannesburg@fasken.com](mailto:johannesburg@fasken.com)