

Ebola Outbreak is a Reminder for All Employers to Review Crisis Management Plans

Article By:

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Employers should be reviewing their respective crisis management plans and prepare for Ebola related concerns that have the potential to significantly affect business operations. While the vast majority of deaths linked to the 2014 Ebola Outbreak have occurred on the African continent, recent infections in the United States and Europe indicate that no country can remain on the sidelines. Even if one believes infections in the United States will be limited, the fear of disease may demand employer attention. The average American seems to be taking a wait and see approach, but if an individual or group of individuals are found to have the Ebola virus in a specific community, employers will be faced with a decision as to how to respond to fear among their employees. It is best to prepare for that in advance.

Implementing a Strategy Will Reduce the Risk of Panic

The Ebola outbreak is only the latest in a string of infectious disease scares. In this decade alone, employers have witnessed the emergence of various other contagious diseases, including Severe Acute Respiratory Syndrome (SARS), H1N1 Swine Influenza, and H5N1 Avian Influenza. In each case there have been initial alarms, but no pandemic. So it is important to prepare, but not alarm employees unless there is a real need to do so. Certainly health care workers need to prepare. But, at the present time, the average non-health care employee need not be alerted to any special actions. However, management should be prepared to respond to employee concerns if they arise. One of the best ways an employer can respond to employee concerns about the latest Ebola outbreak is to develop an effective crisis plan, and some of the wisdom developed during these earlier threats will be helpful in that effort. The Centers for Disease Control and Prevention (CDC) has not yet issued guidance on Ebola for employers, but it did issue guidance for other diseases in the past.

An effective infectious disease crisis plan will tackle at least four separate concerns:

- 1) Addressing employee concerns regarding workplace health and safety;
- 2) Coordinating the employer's public relations, human resources, and corporate security efforts in the event an outbreak affects the employer's personnel or business operations;

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- 3) Preventing and mitigating transmission risks among employees; and
 - 4) Maintaining sustainable business operations in the event of an outbreak or mass fear of an outbreak.

Even if an employer has a crisis plan in place, the plan will not be complete without a coordinating entity. Employers should ensure that they have an active crisis response team that includes the employer's Human Resources Manager. Since Human Resources Managers are often the first to know when an employee is sick, absent due to personal or family illness, or is just afraid of contracting a disease at work, Human Resources Managers are the proverbial canaries in the mine that know when a matter becomes one of concern to many employees, rather than as an individual personnel issue.

Besides creating a crisis response team, a potent crisis plan will also clearly state what specific procedures apply in outbreak scenarios. For example, a crisis plan should include information relating to cordon zones, isolation rooms, disease monitoring, and indicate the employer's designated crisis management coordinators. In addition, employers should consider consulting the Occupational Safety & Health Administration (OSHA) interim general guidance for additional advice on protecting at-risk workers. The CDC also recommended the following advice related to H1N1 and is likely to issue some of the same recommendations related to Ebola:

- Work with State and Local Public Health Partners.
- Be Prepared if Schools Dismiss Students or Early Childhood Programs Close.
- Advise the Sick to Stay Home.
- Separate Sick Employees.
- Consider Active Screening of Employees who Report to Work.
- Emphasize Respiratory Etiquette and General Hygiene.
- Perform Routine Environmental Cleaning.
- Consider Alternative Work Environments for Employees at Higher Risk of Infection.
- Prepare for Increased Numbers of Employee Absences due to Illness in Employees and their Family Members, and Plan Ways for Essential Business Functions to Continue.
- Advise Employees Before Traveling to Take Certain Precautionary Steps.
- Consider Canceling Non-Essential Business Travel and Advising Employees about Possible Disruptions while Traveling.

Communication Between Employer and Employee is Key to Mitigating the Ebola Outbreak's Associated Fears

In times of public unease and uncertainty, employers will be more effective in enacting their crisis

plans by establishing and maintaining clear lines of communication between management and company employees. An open communication channel (text, email, webpage, or mobile phone messages) will encourage timely and accurate dissemination of information. Perhaps more importantly, effective communication between management and employees will mitigate the probability of uncertainty and misinformation developing among workers.

Once employers have launched clear lines of communication with employees, employers should proactively address foreseeable issues and questions upfront. For example, an employer may consider addressing employee questions of what they should do if they or their family members are feeling ill. The ability to respond to employee inquiries by pointing to existing crisis plans indicates to employees that the company is prepared and is in control. Even the mere existence of a crisis plan places an employer on a better footing than having no plan at all. As General George Patton once said, “a good plan violently executed now, is better than a perfect plan next week.”

Consider that one or more employees may refuse to come to the employer’s workplace out of fear of contracting the disease. Depending on the factual circumstances surrounding the employee’s refusal, this refusal may be protected by law. In *Whirlpool Corp. v. Marshall*, 445 U.S. 1 (1980), the United States Supreme Court ruled that in some circumstances employees may refuse to work in conditions that a reasonable person would conclude presents a danger of death or serious injury. Moreover, the National Labor Relations Act (NLRA) may protect groups of employees that refuse to work because those employees may be considered on strike. Thus, employers should continue to be aware of employee rights as they implement their response to employee actions. The better the employer communication plan, the less likely the employees’ refusal to work will be considered reasonable.

Imagine the difference between an employee discipline or discharge where the employer explains the CDC guidelines and the employer’s response plan, and instructs an employee that in accordance with those guidelines, the employee’s refusal to attend work is not excused. Now imagine a scenario in which an employer simply states that the employee’s fear is unreasonable and terminates the absent employee. The latter approach will open the door to a lawsuit against the employer, whereas the former approach will strengthen the employer-employee relationship, while lowering the likelihood of a lawsuit against the employer.

Addressing the Ebola outbreak will require employers to consider a wide range of applicable laws, including the NLRA, Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and the Health Information Privacy and Accountability Act (HIPAA). Employers should consult with legal counsel to discuss the appropriate actions and to tailor their response plans now in case an individual in the employer’s community or workplace contracts the disease, at which point the time for planning will have passed.

Conclusion

Many experts predict the Ebola outbreak will not be widespread in the United States. However, employers should review their crisis management plans to ensure they address disease outbreaks and how to respond to employee fears about contagion. While it is everyone’s hope that responding to an Ebola outbreak will be unnecessary, such disease threats are not uncommon; the work done now may become necessary at some time in the future. By having a crisis response plan, employers will be prepared to explain to employees that a plan is in place. This will assist the employer’s efforts in responding to employee fears and potential refusals to work based upon fear of contagion. In the unlikely event of a larger outbreak, a crisis plan will enable the employer to respond in an orderly and

predictable fashion, which in turn will maintain business continuity.

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