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The Legal Dilemma Regarding H1N1 in the Workplace

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Hopefully you have not experienced it first hand, but one of the symptoms of the dreaded and much reported H1N1 Flu virus is extreme fatigue. Small business owners are feeling this fatigue, even if they haven't had the flu - our attorneys have been fielding calls from business clients who have questions and concerns about the balance of tension between effectively and efficiently running their business and the decisions they need to make when employees have flu- like symptoms or when the flu virus forces a significant number of employees out of commission.

An employer should look first to the guidelines set forth by the Centers for Disease Control. These guidelines can be found on-line at the CDC's website. The CDC wants employers to encourage employees to stay home when they are sick, and to keep their children home from school when they are sick. While this seems practical, business owners find this practical advice sometimes difficult to apply in an increasingly competitive market. Not only does a business owner have to worry about the competitive market aspect, but they also must be cognizant of not violating Federal and State laws when making decisions regarding employees and the flu virus. Such laws as the Family Medical Leave Act, Health Insurance Portability and Accountability Act and the Fair Labor Standards Act are a few of the laws that could come into play when employers make decisions regarding the flu virus. While employers may make decisions that they believe to be in the best interest of the company and the employee when the flu virus strikes, the employer could be unknowingly violating the law.

Employers should review their company Employee Handbook. The Employee Handbook should cover many of the issues that are of concern to the employer with regard to actions and inactions taken during a flu outbreak. Employers should make sure their employees have sufficient information to understand the H1N1 flu virus and to take necessary precautions within the workplace in order to minimize the risk of an outbreak. However, the biggest thing for employers is to not overreact; it's very easy to overreact when the media whips up a frenzy about the H1N1 flu virus.