

Risk Management Bulletin

A Bulletin for Members of the South Dakota Public Assurance Alliance

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- Sample Infectious Disease Policy
- Sample Policy Relating to Refusal of Government Services Based on Infectious Disease
- Sample for Refusal of Services Sign

Links:

Center for Disease Control and Prevention

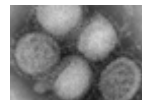
<http://www.cdc.gov>

Contact Us

South Dakota Public Assurance Alliance

<http://www.sdpaa.org>

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Update: Legal Issues Arising with Infectious Disease in the Workplace

With winter coming and the flu season rapidly approaching, we wanted to send out this bulletin to address some of the legal issues that arise with infectious diseases in the work place. The Center for Disease Control ("CDC") anticipates employers are likely to confront both the H1N1 virus and other influenza viruses in the workplace as well as other forms of infectious diseases. We recommend that employers develop a plan and applicable policies and procedures now in order to be properly prepared.

We asked **Lisa Marso from Boyce, Greenfield, Pashby & Welk, L.L.P.** of Sioux Falls to address some of these concerns for the SDPAA members. The following information, including the attached draft policy and procedure for Infectious Disease, has been prepared by Lisa. This policy is intended for non-health care workers. Health care providers and workers are subject to special concerns because of their close proximity with sick persons. Employers must consider adopting policies to protect both the health care workers from sick persons and to protect persons from sick health care workers. Those considerations are outside the scope of this letter, and employers of health care workers should consult legal counsel to address these specific issues.

Employers must decide how to handle a number of issues regarding infectious disease in the workplace. This letter outlines these issues and how the attached draft Infectious Disease Policy handles them.

1. Employers must decide how to handle sick employees at work. We recommend that employers require ill employees to go home, and the draft policy contains this requirement. Please note, however, that employers must address this issue in their sick leave policy. In other words, the sick leave policy must address what happens to an employee when the employee is sent home sick or required to remain at home due to an infectious disease.


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2. If employers require sick employees to go home, then it must be decided who has the authority to send an employee home and how this decision is made. Ideally one person should make this determination so the policy is applied equally. Also it is very important to make sure that whoever is selected to make these decisions understands the various confidentiality issues. The draft policy recommends that the *[Department Head, Elected Official, or Human Resource Manager]* has this authority and the decision shall be made based upon the *[Department Head's, Elected Official's or HR Manager's]* reasonable discretion. According to the policy, the *[Department Head, Elected Official or HR Manager]* shall make the determination based upon the appearance of the employee, any outward signs of illness, the employee's general demeanor, and any statements by the employee. CDC recommends that employers do not require a doctor's note for workers who are ill with influenza-like illness to validate their illness or to return to work, as doctor's offices and medical facilities may be extremely busy and may not be able to provide such documentation in a timely way. Employers **can** require an employee to go to a health care provider for evaluation, and if employers want to take this additional step, the attached draft policy should be amended.
3. Employers must then determine the standards for how long an employee with an infectious disease must stay out of the workplace. The draft policy bases its requirement on the recommendations of the CDC: that employees with influenza-like illness remain at home until at least 24 hours after they are free of fever (100° F [37.8° C] or greater), or signs of a fever, without the use of fever-reducing medications.
4. Employers must also decide upon enforcement of the policy. In other words, if an employee is ill, the employer may require confirmation from a physician that the employee does not have an infectious disease. If an employee does have an infectious disease, then the employer may want to require confirmation from a physician that the employee may return to work. The draft policy does not contain any of these enforcement provisions, and enforcement is left upon the individual conscious of the employer. The policy does reserve the right to impose disciplinary actions upon employees who violate these standards. If employers want additional enforcement, then the employers will need to amend this policy.



We also want to remind members that the SDPAA provides an ***“Employment Practices Hotline”*** that is available to those members who have their Public Officials Liability coverage through the Pool. Each member is entitled up to 1-hour of free legal advice, per situation, with an attorney that specializes in employment law. This service is designed to provide members with an expert second opinion any time you have to effect an employee’s terms of employment (suspension, demotion or termination) and is designed to reduce potential liability exposures for your entity. To access the hotline simply call us at (888) 313-0839.

Public entities offering services to the public should also consider how to handle situations wherein a member of the public is visibly ill. If employers want to protect their employees from these situations, the employer should approve a policy wherein the public entity has the right to refuse to provide service to a visibly ill person. This policy should be visibly posted. Attached are drafts of a posting and a policy pertaining to public services.

We hope this offers you some assistance in addressing these important questions.

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