

# PANDEMICS

## PREPARING BUSINESSES for a GLOBAL OUTBREAK

By Donald W. Benson and Alexander D. Paterra

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Should South Carolina employers prepare for possible pandemics of H1N1 (swine flu) influenza, Severe Acute Respiratory Syndrome (SARS) or other contagious illnesses? Is the risk of a pandemic illness significant enough to merit the devotion of time and resources necessary to secure the continuity of business operations? See Joey Holleman, *Swine Flu in S.C.? First outbreak might be at Newberry Academy*, The State, April 28, 2009, at A1; *Swine Flu: Schools tweak illness policies*, at [www.thestate.com/local/story/777475.html](http://www.thestate.com/local/story/777475.html); see also *China News*, March 23, 2009, at [www.chinanews.cn](http://www.chinanews.cn) (Egypt confirms 59th human case of H5N1 influenza (avian flu); *USA News and World Report Health Buzz*, Jan. 7, 2009 (“Bird flu kills 19 year old woman in northern China; Bird flu has killed 248 people worldwide since 2003”); *USA Today*, Jan. 16, 2008 (“Bird flu has resurfaced in parts of Asia, with human deaths reported in at least four Asian countries and fresh outbreaks plaguing other nations during the winter months when the virus typically flares”). What is the employer’s role in promoting quarantine effectiveness, social distancing or preventative hygiene? With the current outbreak of swine flu in Mexico and a number of reported cases in the United States, it is important that South Carolina employers devote significant resources to assessing the risks associated with a pandemic outbreak and the continuity of business operations and how the pandemic may effect their clients. See CDC, May 6, 2009. [www.cdc.gov](http://www.cdc.gov) (Mexico confirms 42 deaths in their country and identifies 11,932 suspected; U.S. confirms 896 cases in over 41 states. The following countries have reported laboratory confirmed cases with no deaths - Austria (1), Canada (201), China, Hong Kong Special Administrative Region (1), Colombia (1), Costa Rica (1), Denmark (1), El Salvador (2), France (5), Germany (9), Guatemala (1), Ireland (1), Israel (4), Italy (5), Netherlands (1), New Zealand (5), Portugal (1), Republic

of Korea (2), Spain (73), Sweden (1), Switzerland (1) and the United Kingdom (28); [www.cdc.gov/mmwr/preview/mmwrhtml/mm5817a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5817a1.htm); [www.who.int/csr/don/2009\\_05\\_07/en/print.html](http://www.who.int/csr/don/2009_05_07/en/print.html) (U.S. declares a public health emergency to deal with the emerging new swine flu).

This article examines the nature and threat of a pandemic, its possible effects on South Carolina employers, and discusses the relevance of federal and South Carolina regulations and guidelines, including South Carolina’s pandemic response plan. Finally, it highlights some of the major legal and logistical issues employers will grapple with in order to prepare for a possible pandemic.

#### **Pandemic: a global outbreak of disease**

The World Health Organization on June 11, 2009, upgraded its classification of the Novel H1N1 (swine flu) influenza outbreak as a stage 6 on the pandemic scale. The Centers for Disease Control (CDC) sets forth three conditions that must exist for a global outbreak of a disease to occur: (1) the emergence of a new type of virus to which humans have little or no immunity; (2) the capability of this new virus to infect and cause illness in humans; and (3) the capability of the virus to spread easily and without interruption among humans. *Questions and Answers about Avian Influenza (Bird Flu) and Avian Influenza A (H5N1) Virus* (2008), at [www.cdc.gov/flu/avian/gen-info/qa.htm](http://www.cdc.gov/flu/avian/gen-info/qa.htm). A pandemic results when these three factors converge with regard to a disease.

We have experienced three influenza pandemics in the previous century: “Spanish influenza” in 1918, “Asian influenza” in 1957 and “Hong Kong influenza” in 1968. *Ten Things You Need to Know About Pandemic Influenza*, World Health Organization, at [www.who.int/csr/disease/influenza/pandemic10things/en/index.html](http://www.who.int/csr/disease/influenza/pandemic10things/en/index.html). The 1918 pandemic killed an estimated 40 to 50 million people worldwide. *Id.* Although the 1918 “Spanish influenza” was

In the event of a pandemic outbreak, employers’ creativity and flexibility will be taxed as they try to maintain order and continue to serve their customers, assist their employees and maintain a stable workforce.

exceptionally deadly, the two subsequent pandemics respectively caused an estimated two million deaths in 1957 and one million deaths in 1968. *Id.*

An influenza pandemic occurs when a new virus subtype emerges that has not previously circulated in humans and “starts spreading as easily as normal influenza—by coughing and sneezing.” World Health Org., *Ten Things You Need to Know About Pandemic Influenza*, at [www.who.int/csr/disease/influenza/pandemic10things/en/](http://www.who.int/csr/disease/influenza/pandemic10things/en/). Public health experts are particularly concerned that H5N1 might ultimately mutate into a strain that is contagious among humans because of its genetic similarities to influenza strains that have spread among humans. U.S. Dept. of Health & Human Servs., Centers for Disease Control & Prevention, *supra* note 6. With such a genetic adaptation, H5N1 would no longer be a bird virus, but a new human influenza virus to which human immune systems would have no preexisting immunity. *Id.* This lack of immunity

makes it likely that people who contract such a type of influenza will experience more serious symptoms than those caused by normal influenza to which humans have already been exposed. *Id.*

In March of 2009, an isolated instance of illness in Mexico spread to become a global concern. The illness, Swine Influenza A (H1N1), has spread from Mexico and the United States to every region of the globe, and confirmed cases have been reported in Asia (Hong Kong S.A.R. and Korea), the Pacific region (New Zealand), the Middle East (Israel), Europe, and Central and South America (El Salvador, Costa Rica, Colombia and Guatemala). [www.cdc.gov](http://www.cdc.gov). Swine influenza, or "swine flu," is a highly contagious acute respiratory disease of pigs. Although swine influenza viruses are normally species specific and only infect pigs, they do sometimes cross the species barrier to cause diseases in humans. Historically, outbreaks and sporadic human infection with swine flu have been occasionally

reported. Generally, clinical symptoms are similar to seasonal influenza but reported clinical presentation range broadly from asymptomatic infection to severe pneumonia. Since typical clinical presentation of swine flu infection in humans resembles seasonal influenza and other acute upper respiratory tract infections, most of the cases have been detected by chance through seasonal influenza surveillance.

On April 29, 2009, the World Health Organization raised the alert level to phase 5—level six being a full pandemic—meaning there is significant human-to-human transmission of the virus causing outbreaks in multiple locations. [www.who.int/en](http://www.who.int/en). This is the first time this alert level was raised above phase 3. By June 11, 2009, the WHO upgraded to the highest level of pandemic alert, stage 6, signifying that the virus is spreading among communities on nearly every continent in multiple WHO geographic zones around the world. This is a measure of how widely and

easily the virus is spreading and not a comment that the Novel H1N1 virus is necessarily more severe or dangerous than previous influenza viruses. [www.who.int/csr/disease/swineflu/en/index.html](http://www.who.int/csr/disease/swineflu/en/index.html)

Additionally, public health officials are alarmed over the pandemic potential of the current strain of avian influenza, H5N1. Although the vast majority of avian influenza viruses do not infect humans, on rare occasions these bird viruses can infect other species, including pigs and humans. *Id.* H5N1 has spread by bird migration and commerce into the domestic and wild bird populations of 50 countries in Asia, parts of Europe, the Middle East and Africa. U.S. Dept. of Health & Human Servs., Centers for Disease Control & Prevention, *Avian Influenza: Current Situation* (2008), [www.cdc.gov/flu/avian/outbreaks/current.htm](http://www.cdc.gov/flu/avian/outbreaks/current.htm); World Health Org., *Epidemiology of WHO-Confirmed Human Cases of Avian Influenza A(H5N1) Infection*, 83 Weekly Epidemiological Record 46, 415-420 (2008), available at [www.who.int/](http://www.who.int/)

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wer/2008/wer8346/en/index.html. Transmission from birds to humans has been relatively rare, but 406 confirmed cases have resulted in 256 deaths in a wide geographic area, including Azerbaijan, Bangladesh, Nigeria, Cambodia, Lao People's Democratic Republic, Myanmar, Pakistan, China, Djibouti, Egypt, Indonesia, Iraq, Thailand, Turkey and Vietnam. World Health Org., *Cumulative Number of Confirmed Cases of Avian Influenza A/(H5N1) Reported to WHO* (2009), Week of March 2, 2009 at [www.who.int/csr/disease/avian\\_influenza/country/cases\\_table\\_2009\\_03\\_02/en/index.html](http://www.who.int/csr/disease/avian_influenza/country/cases_table_2009_03_02/en/index.html).

### **What is the threat of a pandemic and potential level of disruption?**

The World Health Organization (WHO) bases its current pandemic planning on three assumptions: a pandemic would spread to all continents in less than three months; significant portions of the world's population would require medical care; and medical supplies would be inadequate in all countries due to limited supplies of vaccines and antiviral drugs. Based on the comparatively mild 1957 influenza pandemic, the WHO projects approximately two million to 7.4 million deaths worldwide. *Id.* Past pandemics have generally occurred in two or three waves, so not all countries experienced the same level of disruption at the same time. Thus, employers may face various stages of disruption caused by a pandemic including: (1) overseas occurrence affecting travel and foreign suppliers and customers; (2) high absenteeism at home, but with the ability to maintain near-normal operations; and (3) near total absenteeism at home, making it difficult to keep operations open, along with possible disruption of utilities and quarantines of the facility area. *Id.*

Business disruption levels also will be significantly affected by the level of interdependence between a business's operations in the United States and businesses in other areas of the world in which the pandemic

is most likely to start. Many American businesses are now directly a part of, or directly affected by, the global economy. These companies sell to or buy from locations in other countries. If those countries experience a pandemic that significantly limits their ability to buy American products or to deliver the goods and services that United States companies have purchased, the ability of American plants and operations to stay open in the United States will be affected.

### **Pertinent federal government regulations and guidelines**

Existing federal regulations and guidelines issued by the Occupational Safety and Health Administration (OSHA), the U.S. Department of Agriculture (USDA) and the CDC may play a key role in shaping how businesses in the United States respond to a pandemic. Government agencies may be expected to build upon this existing framework to develop new regulations in response to an emerging disease threat. See 29 C.F.R. § 1910.1030 (a)-(i) (2009) (OSHA regulation dealing with bloodborne pathogens).

In a pandemic, OSHA's bloodborne pathogens standard and respiratory protection standard would come into play. *Id.* § 1910.134 (a)-(o) (2009). In addition, the "general duty" clause of the Occupational Safety and Health Act requires an employer to provide a safe and healthy work environment for employees, thus giving OSHA broad authority. *Id.* 29 C.F.R. § 654(a) (2009). In February 2007, the CDC issued community standards for mitigating an avian flu pandemic. U.S. Dept. of Health & Human Servs., Centers for Disease Control & Prevention, *Interim Pre-Pandemic Planning Guidance: Community Strategy for Pandemic Influenza Mitigation in the United States—Early Targeted Layered Use of Non-Pharmaceutical Interventions* (2007). These guidelines include social-distancing strategies to reduce contact between people during the outset of a pandemic when vaccines and medicines will not be readily avail-

able. These guidelines include closing schools and daycares for up to 12 weeks, canceling public gatherings, planning for liberal work-leave policies and telecommuting strategies and voluntary quarantine. These guidelines also include the new Pandemic Severity Index, which rates the severity of an influenza outbreak from levels 1 through 5.

### **Pertinent South Carolina guidelines**

In addition to, and in conjunction with, federal regulations and guidelines, South Carolina is working with the U.S. Department of Health and Human Services (HHS) to maintain its own regulations and guidelines to manage pandemic conditions within the state. On March 2, 2006, HHS Secretary Mike Leavitt and Gov. Mark Sanford signed a Planning Resolution detailing HHS' and South Carolina's shared and independent responsibilities for pandemic planning. See *Post Summit Action Plan between Secretary of Health and Human Services Mike Leavitt and Governor Mark Sanford of South Carolina* (Mar. 2, 2006) (setting forth HHS' and South Carolina's responsibilities in the event of a pandemic outbreak). Under the Action Plan, the HHS accepted responsibility for providing guidance, technical assistance and available funding for pandemic planning. *Id.* Likewise, South Carolina agreed to devote numerous resources to state and local planning and to develop an operational plan for responding to a pandemic influenza. *Id.*

In December 2006, South Carolina published its updated Pandemic Influenza Plan (PIP), estimating planners should anticipate a severe pandemic outbreak affecting between 15 to 40 percent of South Carolina's population, resulting in as many as 533,000 doctor visits, 12,000 hospitalizations and 3,600 deaths. See S.C. Mass Casualty Plan, *Pandemic Influenza Plan* (Dec. 2006) (providing the framework, methodology and recommendations for preparing for a pandemic outbreak). The PIP pro-

vides a framework, methodology and recommendations for pandemic preparedness at the federal, state and local levels. *Id.* The PIP sets forth the various roles and responsibilities for elected officials and multiple state agencies in activating a disaster response, determining and employing the most efficient and practical means for prevention and control of a pandemic, performing pandemic influenza surveillance and laboratory diagnostics, establishing emergency medical response programs tailored to a pandemic, and coordinating certain health services in the event of an emergency. *Id.* The PIP also provides the public with information pertaining to isolation and quarantine/community containment, travel management and the distribution of vaccines and antivirals. *Id.*

Based on guidance issued thus far, employers may be faced with very detailed workplace regulations in the face of a pandemic. Accordingly, preparation for a pandemic should include identifying the management team responsible for monitoring new government regulations and adopting procedures for communicating changes to affected employees for compliance with any new requirements.

### **Preparation in the workplace**

South Carolina employers preparing for a possible pandemic will need to think of a broad range of issues associated with disaster planning. Preparation should take into account both federal and South Carolina directives. When drafting a pandemic preparation plan, employers should include procedures for employees traveling outside of the United States, handling employees who are sick in the workplace and the implementation of health and hygiene measures, such as remote work strategies and crisis management procedures, to promote social distancing and cut down on transmission risks. Employers also should consider implementing health and medical initiatives such as disease screening and vaccination programs. Given

that large numbers of employees may be absent from the workplace in the event of a major avian influenza or other disease outbreak, employers should implement plans for new employee training, cross-training of existing employees and developing a pre-planned communications strategy for contacting large numbers of employees located outside of the work site. Each of these areas for planning and preparation raises its own set of legal issues and potentially far-reaching legal requirements.

### **Travel policies**

Employers may not restrict where employees travel on their personal time. However, an employer may require notification if an employee plans to travel to one of the infected countries, such as Mexico. Once the employee returns from the travel, an employer can instruct an "at-will" employee to stay home to see if symptoms appear. The CDC has suggested that it may take one to seven days for symptoms to appear after a person becomes infected. *Interim Guidance for Emergency Medical Services (EMS) Systems and 9-1-1 Public Safety Answering Points (PSAPs) for Management of Patients with Confirmed or Suspected Swine-Origin Influenza A (H1N1) Infection*, [www.cdc.gov/h1n1flu/guidance\\_ems.htm](http://www.cdc.gov/h1n1flu/guidance_ems.htm). If an employer decides to implement such a policy, the employer needs to be careful to apply the policy uniformly so that no such specific protected group appears to be singled out. Also, if an employer chooses not to implement a travel/reporting policy, an employer can request any of its employees to go home if they exhibit flu like symptoms and allow them to return to work with a doctor's note confirming that they are not suffering from the virus. This should be included as part of the employer's uniform policy requiring medical certification for sick leave. Additionally, if an employer decides to implement either such policy, the employer should consider liberally granting any unused sick or vacation pay or possibly creating a paid leave policy to pro-

mote honest reporting by employees of travel or symptoms.

### **Leave policies**

Employers initially may be concerned with ensuring employees remain at work as absenteeism grows in response to an outbreak of disease. As the pandemic progresses, however, the concerns may change. First, employees who have traveled to areas where outbreak has occurred may be subject to quarantine but can work from home. Second, there may be sick employees, or employees caring for sick family members, who the employer wants to remain at home to reduce the risk of infection to others. Third, sick employees may come to work and will need to be sent home to prevent spreading the infection. Fourth, under the new policies issued by the CDC, schools and daycares may be shut down for extended periods, and employees may be without childcare alternatives. Finally, some employees may fear contracting the illness and stop reporting for work.

In some or all of these situations, both the CDC's and South Carolina's response plans stress that all employers should consider how to use leave policies to: (1) maintain compliance with pandemic social-distancing directives; (2) maintain operations; and (3) sustain a functional and available workforce. Employers must recognize a pandemic presents a double-edged sword—either go to work and risk becoming ill, or stay home from work and risk losing your job and your ability to support your family. Therefore, an employer's pandemic response plan should ensure that leave policies address the needs of the employer as well as the employees. Leave should be handled in such a way as to limit unnecessary social interaction but minimize the more troubling effects of employee absenteeism on business operations and an employee's financial situation. Paid leave, or unpaid leave with health benefits, can mean the difference in maintaining the workforce or experiencing significant

employee turnover. Avoiding such turnover can be particularly significant as a business seeks to resume normal operating levels. Similarly, fighting every claim for unemployment benefits may not be in the employer's interest if the denial of benefits encourages the pool of available workers to shift to areas unaffected by the disease. Ensuring that there is a leave plan in place and that the plan has been communicated to employees will help to minimize the impact of workplace absenteeism on both employers and employees, whether the emergency is a pandemic or a natural disaster.

In considering leave issues, business clients should be counseled on the requirements of applicable federal and local leave laws that govern paid or unpaid leave for sick employees; employees caring for immediate family members; first-responder health care providers; and employees called to active military service to enforce a quarantine. Leave policies should clearly spell out the following: (1)

how the employee requests leave; (2) any requirements for regularly reporting his or her medical condition; (3) whether the leave is paid leave; (4) whether any benefits (such as health insurance, matching 401(k) contributions, vacation pay, etc.) are provided or continue to accrue during the leave period; and (5) when the leave is exhausted, whether the employee will be returned to work.

#### Pay and telecommuting rules

A pandemic may lead to many employees working remotely or from home. Those telecommuting employees who are non-exempt employees under the Fair Labor Standards Act can create off-the-clock and overtime issues for employers. See 29 U.S.C. §§ 201-219 (2009) (provisions for Fair Labor Standards Act). To avoid such problems, employers can require that employees check e-mails or perform work only during specified hours of each day, carefully record and submit documentation of the time worked, and require permission

prior to working more than 40 hours in a week.

#### Privacy concerns regarding employee information

The Privacy Rule regulations issued by the Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that an employer protect the privacy of its employees' medical information. See 45 CFR Pt. §§ 160, 164 (2009). When there is a need to inform other employees of a possible workplace exposure, employers should make every effort to maintain the privacy of the infected employee. The event of a swine flu pandemic or other illness outbreak means that employers need information about employees who have contracted the illness or who have been exposed to it. See *id.* § 164.512(b) (providing when an employer can disclose HIPAA protected information without obtaining authorization). There are a number of limitations on what exactly an

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employer can ask and the employee's obligations in responding to employer inquiries. First HIPAA does not apply to questions that an employer asks employees about their health. *Id.* In the workplace, HIPAA applies only to individually identifiable health information created or received by, or on behalf of, the employer in its capacity as the administrator of a HIPAA-covered plan, such as self-insured group health, dental or vision plans; a health care reimbursement flexible spending account; or an employee assistance program. Put more succinctly, HIPAA applies only to individually identifiable health information created or received to administer a HIPAA-covered plan.

There are further privacy concerns under the Americans with Disabilities Act (ADA). 42 U.S.C. §§ 12101-12117, 12201-12213 (2009) (codified as amended). Under the ADA, an employer who reasonably believes, based on an individualized assessment, that an employee has symptoms of swine flu or other contagious illness can require that the employee undergo medical testing to determine whether the employee, in fact, is infected. *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under The Americans With Disabilities Act (2005)*, at [www.eeoc.gov/policy/docs/guidance-inquiries.html#N\\_9](http://www.eeoc.gov/policy/docs/guidance-inquiries.html#N_9). (This and other ADA guidances are available through the Internet at [www.eeoc.gov](http://www.eeoc.gov).) Before requiring testing, the employer should be familiar with the symptoms of illness and have sufficient information to confirm that the employee has those symptoms. *Id.* Any required testing must be limited to a test for suspected illness. *Id.* In addition, the employer is required to pay any costs associated with the test. *Id.* The employer must treat the test results as confidential. *Id.* Businesses should consult with legal counsel to determine which diseases an employee or potential employee must disclose to the employer and who will have access to the information provided.

### **Impact of other laws on workplace preparedness**

Employers should ensure that their workers' compensation insurance premiums are paid in full. Without this exclusive remedy for workplace injuries, employers may be liable under all sorts of creative tort claims for negligence, wrongful death, etc. Under certain conditions, South Carolina includes communicable diseases contracted at the workplace within the list of work-related injuries covered by workers' compensation. See S.C. Code Ann. § 42-11-10 (the occupational disease must arise directly and naturally from exposure to the hazards peculiar to the particular employment at a rate greater than one would be exposed to outside of his/her employment).

FMLA may have a significant impact on firm leave policies. See 29 U.S.C. §§ 2601-2654 (2009); 29 C.F.R. Pt. §§ 825.100-800 (2009) (regulating the applicability, coverage and enforcement of the Family Medical Leave Act). Where employers or businesses employ 50 or more employees within a 75-mile radius, an employee who has worked for the business for a year and has worked at least 1,250 hours within the last 12 months is entitled to up to 12 weeks of unpaid leave due to a "serious health condition" under the FMLA. See 29 U.S.C. § 2611(11) (2009) (defining "serious health condition"). Influenza requiring continuing treatment by a physician and a three-day incapacity will likely be considered a protected "serious health condition" that triggers FMLA leave and the right to return to a substantially equivalent job when the leave ends. See 29 C.F.R. § 825.114(a)(2)(i) (defining what is a "serious health condition" entitling an employee to FMLA leave); see also DOL Opinion Letter, dated December 12, 1996 (providing additional information regarding the complexity of FMLA's definition of a "serious health condition"); *Miller v. AT&T Corp.*, 250 F.3d 820, 832-33 (4th Cir. 2001) (holding that flu symptoms and treatment constituted serious health condition requiring FMLA leave).

Similarly, those employees who

suffer permanent health problems affecting a major life activity may be entitled to protection under the Americans with Disabilities Act (ADA) and the South Carolina Human Affairs Act. See Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (2005); S.C. Code Ann. §§ 1-13-10 to 1-13-110 (2009) (protecting South Carolina individuals with disabilities). Employers will need to work with any disabled employees to determine whether they need a reasonable accommodation to enable them to perform the essential functions of their job. See 29 C.F.R. § 1630.9 (2009) (requiring employers to determine whether they need to provide reasonable accommodations to disabled employees).

In examining leave and benefit policies, employers must remember to comply with the Employee Retirement Income Security Act of 1974 (ERISA), the federal statute that governs certain types of employee benefit plans. See 29 U.S.C. §§ 1001-1461 (2009) (federal statute governing employee benefit plans). Prudent employers will confirm that the proper, updated Summary Plan Descriptions (SPD) of its benefit plan (plan) are distributed to plan participants and their covered dependents. Otherwise, plan provisions allowing the plan to be changed may not be enforceable. See, e.g., *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 75 (1995) (holding that an employer could eliminate retiree medical benefits based on reservation of right to amend plan provision set forth in summary plan description). Worse still, if the employer cannot prove that the participant or beneficiary received a revised SPD, then the employer may be required to provide higher benefits according to some previous, and more generous, version of the plan. *Id.*

### **Developing and communicating a pandemic response plan**

Before presenting a pandemic response plan to their employees, employers should ensure their plan covers the basic aspects of emergency planning in a way employees

can understand, including:

1. Designating the responsible pandemic contingency planner and emergency contact person;
2. Communicating the employer's policies and the required steps for requesting leave and benefits to promote both maintaining operations and not losing the workforce once the pandemic ends;
3. Developing protocol and thresholds for reduced operations staged at set absenteeism levels;
4. Developing and monitoring systems to keep track of employees who may want to return to work too quickly and for those ready to return without posing a risk to others; and
5. Developing social-distancing strategies appropriate to the workplace to limit transmission risks, including cough etiquette, sanitation practices, limiting group meetings and employee assembly opportunities at time clocks and cafeterias, etc.

These concerns, and many oth-

ers, should be addressed clearly and concisely. Once approved, the pandemic response plan should be distributed to all employees either via an employee handbook or special publication. Employers should also maintain a copy of the response plan on its premises for easy access.

#### **Conclusion**

In the event of a pandemic outbreak, employers' creativity and flexibility will be taxed as they try to maintain order and continue to serve their customers, assist their employees and maintain a stable workforce. Prudent planning for pandemic contingencies will become a normal part of an employer's emergency preparedness. Employers will need to have creative approaches to preparedness that can be developed using South Carolina's Pandemic Plan or the National Fire Protection Association (NFPA 1600) Standard on Disaster/Emergency Management & Business Continuity (2007), which is available at [www.nfpa.org/assets/files/PDF/NFPA1600.pdf](http://www.nfpa.org/assets/files/PDF/NFPA1600.pdf). The NFPA 1600 stan-

dard plan has been developed to help businesses continue to function during a disaster or emergency and has been endorsed by the U.S. Department of Homeland Security. This plan is a good reference point for any firm undertaking the creation of a pandemic and/or an emergency preparedness plan. Employers will need to consider expanding employee assistance, leave and attendance policies. Extra efforts to communicate benefits and provide arrangements for the continued payment of wages during office closures can be instrumental in maintaining not only a loyal workforce, but also loyal customers. As employers become more attuned to the significant risks of pandemics, prudent planning contingencies will become a normal part of their overall emergency preparedness planning.

*Donald W. Benson is a shareholder in the Atlanta office and Alexander D. Paterra is an associate with the Columbia office of Littler Mendelson, PC.*

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