

MEDIA RELEASE

Current global health crisis should prompt employers to consider legal rights and obligations relating to employee health

4 May 2009 –The increased focus on health risks due to the recent global outbreak of Swine Flu has heightened the need for employers to better manage their workplace health practices, paying particular attention to their legal rights and obligations to care for their employees, according to Harmers Workplace Lawyers.

Joydeep Hor, Managing Partner at Harmers Workplace Lawyers, said that the most important concern for employers was to understand their risk profile. By gaining a better understanding of the threats to their business, whether from chronic contagious viruses such as the H1N1 Virus (commonly referred to as “Swine Flu”), traditional influenza or other illnesses, including mental illnesses such as depression, an employer will be in a better position to best implement appropriate health and safety practices with a considered level of diligence.

Employer Legal Obligations

“Traditionally employers have been somewhat reticent when it comes to managing the health of their employees because of privacy and discrimination concerns. However, while these issues are there, employers have an absolute duty of care to ensure the health of all staff and visitors to their place of work,” said Mr Hor.

Mr Hor also noted that employers have an obligation to consciously manage the health and safety practices implemented in their workplace.

“Employers’ general response to workplace hygiene and health issues shouldn’t merely be limited to the perceived threat from potentially deadly viruses such as Swine Flu. Rather, best practice standards on health and safety should always be in place,” he said.

Employer Rights

Mr Hor said that employers need to understand the specific details of significant health issues they become aware of, so that measures can be implemented to ensure the health of affected employees as well as the rest of the workforce. And they have a right to take certain steps to ensure the wellbeing of their entire workforce.

“Employers need to consider questions such as: could being at work exacerbate an employee’s illness?; Is an employee returning to work after an illness or injury really fit to work?. If an employer fails to understand the dangers presented to their employees, then the employer could in turn be liable,” he said.

Mr Hor also spoke of an employer's rights to implement other health and safety measures such as influenza inoculations. "Employers often ask me if they can force their staff to have flu shots. The answer is essentially no, however, they can be strongly encouraged by educating their staff on the benefits and offering to cover the costs of the injection.

"There is a broad challenge for employers on the issue of employee health, but avoidance isn't the answer. Employers need to be sensitive to employees' needs and tailor their management processes appropriately. There isn't a 'one-size-fits-all' solution. Rather, employers should carefully explain the benefits of taking a hands-on approach to employee health and implement specific measures that will manage these issues over the long term," said Mr Hor.

Employee Rights

While there are significant rights and obligations for employers regarding health management, Mr Hor also noted that employees have certain rights and obligations too that need to be addressed.

"An employee has an obligation to their employer that they will not adversely affect the capacity of an employer to do business, so if an employee comes into work when they are sick, and exposes other workers to illness, they are in breach of their own obligations," he said.

In conclusion, Mr Hor urged employers to take practical steps to deal with any health issues or risks of which they are aware. "If an employer remembers to be sensitive in their dealings with staff, and always take the health, safety and wellbeing of all their staff seriously, then they will go a long way to addressing their legal obligations," he said. "A big part of this is addressing cultures within workplaces."

Ends

Note to editors:

About Harmers Workplace Lawyers

Harmers Workplace Lawyers was established in 1996 as a boutique employment law firm. Since then it has become one of Australia's leading employment and industrial law firms, with offices in Sydney, Melbourne and Brisbane. The firm has been awarded Australasian Legal Business's 'employment specialist firm of the year' for the past three years running.

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