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NEW YORK STATE ASSEMBLY
SUBCOMMITTEE ON WORKPLACE SAFETY
& COMMITTEE ON LABOR

ON THE FRONT LINES

Protecting New Yorkers in High Risk Occupations from Exposure to H1N1

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INTRODUCTION

Novel H1N1, initially known as "swine flu," is a new influenza virus causing illness in people. This virus spreads person to person, most likely in the same way as the seasonal flu. As of August 15, 2009, the New York State Department of Health counted 1,212 cases of confirmed H1N1 in New York State, excluding New York City, since the virus appeared in the United States in April 2009.[1] On July 29, 2009 Commissioner Thomas A. Farley of the New York City Department of Health and Mental Hygiene testified before the Committee of Homeland Security of the United States House of Representatives:

> The Health Department conducted two population-based telephone surveys, asking about influenza-like illness from early May through mid June. These surveys were designed to be representative of all New Yorkers, and from these data we estimate that at least several hundred thousand and perhaps as many as one million people in the city became ill from H1N1. With 47 recorded deaths from H1N1, the case-fatality ratio is approximately one per 10,000 cases, which is roughly the same as or lower than the case-fatality ratio for seasonal influenza.[2]

This fall, spread of H1N1 is expected to increase, perhaps as an even more dangerous strain than that which was present this past spring.

Workplaces are the most likely places for adults to be exposed to H1N1, and some workplaces and occupations expose employees to more risk than others. This report analyzes the risks to workers of exposure to H1N1 in a variety of workplace settings and occupations; details the protective steps which government health and safety agencies identify as being essential to limiting the risk of exposure in such workplaces; evaluates the extent to which employers are adopting these protective actions; and recommends what additional actions employers must take to ensure the health and safety of their employees during the upcoming flu season.

PROTECTIVE ADMINISTRATIVE ORGANIZATIONS

Workplace safety in general, and protection from H1N1 in particular, is the province of numerous global, federal, state and local agencies and administrative organizations. Unfortunately, these agencies sometimes offer conflicting guidance. For example, New York

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[1] *Novel H1N1 Influenza,* New York State Department of Health, Aug. 2009. http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/

[2] *Beyond Readiness: An Examination of the Current Status and Future Outlook of the National Response to Pandemic Influenza*, testimony of New York City Department of Health and Mental Hygiene Thomas A. Farley to the United States House of Representatives, Committee on Homeland Security, July 29, 2009.

State and New York City agencies have enforced mandates and made recommendations that conflict with national recommendations.

Globally, the World Health Organization (WHO) has offered guidance to individuals, communities and national authorities on how to prevent the spread of H1N1. On June 11, 2009, WHO indicated that a pandemic of novel H1N1 flu was in progress.[3]

At the federal level, President Obama's Council of Advisers on Science and Technology issued an 86-page report to the President and to the Center for Disease Control and Prevention containing many recommendations for preventing the spread of H1N1.[4] The report anticipates that the H1N1 vaccine will be ready in mid-October, and recommends that people with underlying conditions such as pregnancy, chronic illness or a weakened immune system should be first to receive the vaccine. The report also predicts that between 30,000 and 90,000 people could die from an H1N1 outbreak this fall (approximately 30,000 to 40,000 people die each year from seasonal influenza). The report also stresses the importance of increased communication between health care facilities, local, state and federal agencies, and the general public in preventing the spread of the infection. The report notes that federal funds have already been set aside to put toward the H1N1 prevention campaign.

The Occupational Safety and Health Administration (OSHA) enforces the Occupational Safety and Health Act in an attempt to minimize job related injury and disease. In New York, OSHA regulates the private sector workplace, but its guidelines and recommendations essentially set the baseline for health and safety in the public sector workplace. In 2007, OSHA updated its "Guidance on Preparing Workplaces for an Influenza Pandemic." In that paper, OSHA offers guidance on the proper procedures to follow in order to prevent the spread of influenza pandemic and how to react to an outbreak.[5]

The U.S. Department of Health and Human Services (US-DoH) created "flu.gov" to offer advice on how to prevent the spread of the flu.[6] US-DoH also oversees the Center for Disease Control and Prevention (CDC). CDC is a national agency that investigates health hazards and recommends prevention strategies and reactionary tools. CDC has also offered advice to

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[3] *Global Alert and Response (GAR), Pandemic H1N1,* World Health Organization, 2009. http://www.who.int/csr/disease/swineflu/en/

[4] *Report to the President on U.S. Preparations for 2009-H1N1 Influenza*, President's Council of Advisors on Science and Technology, Aug. 7, 2009. http://www.whitehouse.gov/assets/documents/PCAST_H1N1_Report.pdf

[5] *Guidance on Preparing Workplaces for an Influenza Pandemic*, OSHA 3327-05R 2009. http://www.osha.gov/Publications/OSHA3327pandemic.pdf

[6] http://www.flu.gov/general/index.html#prepare

employers on how to control H1N1 in the workplace.[7]

The New York State Department of Health (NYS-DoH) oversees hospitals, nursing homes and diagnostic treatment centers. NYS-DoH makes recommendations to these organizations on how to prevent the spread of H1N1.[8] Recently, NYS-DoH mandated seasonal flu vaccines (and H1N1 vaccines once they are available) for healthcare workers who treat patients directly in healthcare facilities.[9] In 2008, NYS-DoH, like OSHA, produced a Pandemic Influenza Plan to prepare the state in case of a pandemic influenza outbreak.[10] On August 31, 2009, NYS-DoH along with the New York State Education Department released guidance regarding H1N1 in schools.[11]

The New York State Department of Labor Division of Safety and Health (NYS-DoL) is in charge of enforcing safety and health standards for public employees in New York State. NYS-DoL encourages all employers to follow CDC guidelines to protect employees from the spread of H1N1.[12] On August 24, 2009, NYS-DoL under the Public Employee Safety and Health Act (New York's public employee version of OSHA) released a "Staff Directive" that public employers must follow to protect employees from H1N1.[13] If public employers fail to meet these guidelines then employees can file a report with NYS-DoL and inspectors may examine the workplace for unsafe working conditions related to H1N1.

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[7] *CDC Guidance for Businesses and Employers To Plan and Respond to the 2009–2010 Influenza Season,* Center for Disease Control and Prevention, Aug. 19, 2009. http://www.cdc.gov/h1n1flu/guidance/workplace.htm.

[8] *Health Advisory: Guidance for Management of Exposure to Influenza-Like Illness in Hospital* Settings, NYS-DoH Bureau of Healthcare Associated Infections, July 17, 2009. http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/docs/2009-07-17_health_advisory_guidance_for_exposure_in_hospitals.pdf

[9] *Novel H1N1 Influenza,*New York State Department of Health. http://www.nyhealth.gov/diseases/communicable/influenza/h1n1/

[10] *Pandemic Influenza Plan*, New York State Department of Health, 2008. http://www.health.state.ny.us/diseases/communicable/influenza/pandemic/plan/docs/pandemic_influenza_plan.pdf

[11] *2009-2010 School (K12) Guidance: NOVEL H1N1 INFLUENZA FLU VIRUS*, New York State Department of Health, Division of Epidemiology. http://usny.nysed.gov/flu/H1N1SchoolGuidance08-28-09V4FINAL.pdf

[12] Division of Safety and Health, New York State Department of Labor. http://www.labor.state.ny.us/workerprotection/safetyhealth/DOSH_PESH.shtm

[13] *Staff Directive-Enforcement Procedures and Scheduling for Occupational Exposure to H1N1 Influenza,* PESH, Aug. 24, 2009.

The New York City Department of Health and Mental Hygiene (NYC-DoH) also offers guidance to employers on how to prevent the spread of H1N1 in the workplace.[14] In 2006, New York City created a pandemic influenza plan as well.[15]

The New York City Office of Emergency Management (NYC-OEM) offers guidance to help businesses create a reactionary plan in case of an emergency pandemic.[16] Businesses are recommended to have these plans in place at all times. NYC-OEM uses CDC guidelines to direct employers to create plans in case of an outbreak of H1N1.[17] NYC-DoH and NYC-OEM composed a pamphlet offered in many different languages guiding New York City residents on how to prepare for the flu. The guide notes that due to the density in New York CityH1N1 is more easily transferred person to person in the City.[18]

The New York City Department of Education (NYC-DoE) is also involved in the effort to prevent the spread of H1N1 in teaching facilities. NYC-DoE offers information to the school community and the public about H1N1 and now also reports attendance records to the public.[19]

THE FOUR PROCESSES OF PREVENTION

Essentially, the risk of H1N1 exposure in every workplace setting is managed through the following four control processes: engineering controls; administrative controls; education and work practices; and personal protective equipment.

The most important way to help employees protect themselves from contracting H1N1 influenza in any workplace is by physically ordering and arranging workplaces in such a way to

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[14] *H1N1 (Swine Flu) Information,*New York City Department of Health and Mental Hygiene. http://www.nyc.gov/html/doh/html/cd/cd-h1n1flu.shtml

[15] *Pandemic Influenza Preparedness and Response Plan*, New York City Department of Health and Mental Hygiene, July 2006. www.nyc.gov/html/doh/downloads/pdf/cd/cd-panflu-plan.pdf

[16] *Ready New York: Emergency Planning; A Guide for Small and Medium Sized Businesses*, New York City Office of Emergency Management and the New York City Department of Health and Mental Hygiene, 2005. http://www.nyc.gov/html/doh/downloads/pdf/bt/bt-emergencyguide-employers.pdf?b=12

[17] *Prepare Your Business For The Flu*, New York City Office of Emergency Management, 2009. http://nyc.gov/html/oem/downloads/pdf/h1n1_biz_recommendations_june.pdf

[18] *Ready New York: Pandemic Flu,* New York City Office of Emergency Management and New York City Department of Health and Mental Hygiene. http://www.nyc.gov/html/oem/downloads/pdf/flu_guide.pdf

[19] Testimony of Randi Weingarten, president of the United Federation of Teachers, before the New York City Council Committees on Government Operations, Health, and Public Safety Regarding New York City's Response to H1N1 and Assessing Influenza Preparedness, June 11, 2009.

protect workers from H1N1 exposure through engineering controls. These might include installing partitions between employee work stations or between employees and the public, or designating separate rooms for infected individuals to receive treatment or services.

The next most important way to protect workers from H1N1 exposure is through administrative controls such as emergency response plans addressing notification, leave of absence and reassignment policies that will allow the organization to continue functioning in case of an H1N1 outbreak.

Education about proper work practices, and ensuring that those work practices are followed is essential to protecting workers from H1N1 exposure. For each particular workplace, employees need to know how they can prevent the spread of the virus (including information on vaccines), what to do if they are infected, and what categories of people are at greatest risk of complications from the virus. Workers also need to know that they have the right to report unsafe working conditions (including unsafe exposure to H1N1) without fear of employer retaliation.[20]

Finally, where appropriate and effective, workers need to be provided with and trained to use personal protective equipment to safeguard them from infection, such as masks and respirators.

Taken together, these four prevention processes, when applied appropriately to a particular workplace, are the best way employers can protect their employees and ensure the continuation of their operations in the event of a widespread H1N1 outbreak.

GENERAL H1N1 PREVENTION IN THE WORKPLACE

Both CDC and OSHA offer similar, basic guidance for every employer to follow in order to prevent the spread of H1N1 in the workplace.

OSHA recommends that employers avoid creating crowded scenarios as much as possible. If crowds are an unavoidable feature of the workplace, then time spent in the crowded setting should be kept brief. Meetings should be replaced by communicating over the phone or by using email. If employers must hold a meeting, then attendees should be separated by at least six feet, and the meeting facility should be properly ventilated. Unnecessary social gatherings in the workplace should be discouraged.

Employees should be encouraged and reminded to wash their hands frequently and not touch their eyes, noses or mouths. If the workplace does not have access to soap and water, then employers should provide employees with alcohol based hand-sanitizer with 60-95% alcohol content. Employees should also be reminded to cough and sneeze into their hands or shirt

[20] 29 U.S.C. § 660

sleeves if they do not have a tissue handy; then they should wash their hands.

Employees should try to stay six feet away from co-workers and avoid shaking hands. If employees do shake hands, they should wash their hands after they have done so. Even if employees wear gloves, they should wash their hands after removing the gloves to kill all possible germs.

Employers need to stock workplaces with tissues and waste baskets. Hand washing areas should be well equipped with soap and paper towels. Bathrooms should be kept clean and functioning. Work surfaces need to be frequently disinfected, including doorknobs, keyboards, handrails and telephones. Only disinfectants approved by the Environmental Protection Agency should be used and employees should read all directions before using. Employees should not share equipment.

Employees should be encouraged to stay home if they have flu symptoms. An ill employee should not return to work until 24 hours after the fever resolves without the help of fever reducing medication. Employers should review sick leave policies to accommodate absenteeism that may occur in case of H1N1 outbreak in the workplace. Serious consideration should be given to enacting legislation permitting employees to take a leave of absence due to H1N1 virus symptoms or diagnosis on the advice of a physician, in order to impede the virus' transmission from co-worker to co-worker.

Employers should establish plans for limiting (and perhaps prohibiting) visitors to enter the workplace during an influenza outbreak. Workplaces that offer daycare within the facility should consider closing the center depending on the determined threat of H1N1 outbreak.

INFLUENZA-LIKE ILLNESS REPORTING AND RECORDING

Influenza-like illness (ILI) reporting is essential in tracking and mitigating H1N1. However, H1N1 is difficult to track because the public is advised to stay home if experiencing ILI and not go to a hospital unless a person has an underlying medical condition, such as pregnancy, chronic illness or a weakened immune system.[21] If government agencies can track where H1N1 or ILI is spreading then they can communicate with those populations and make decisions about canceling programs and advising the public. According to the NYS-DoH directive for hospital settings,[22] individual cases of ILI should be reported to the regional

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[21] A full list of underlying medical conditions can be found on the Center for Disease Control and Prevention website, *Information About the Flu for People with Certain Medical Conditions,* http://www.cdc.gov/flu/professionals/flugallery/2009-10/pdf/certain_medical.pdf

[22] *New York State Department of Health Advisory: Guidance for Management of Exposure to Influenza-Like Illness in Hospital Settings,* New York State Department of Health, July 17, 2009 http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/docs/2009-07-17_health_advisory_guidance_for_exposure_in_hospitals.pdf

epidemiologist. Healthcare workers are responsible for reporting to their employers if experiencing signs of ILIs so that employers can appropriately release them, reassign them or return them to duty. The New York State Education Department advises schools to work with local health departments to report ILI activity and school absenteeism and dismissal rates.[23] In New York City, for example, school health officials are required to report to NYC-DoH absenteeism rates and school dismissals based on ILIs throughout the day. In homeless shelters, management is required to report ILI to local health officials if multiple staff or residents are ill.[24] In correctional facilities, inmates and staff are advised by NYS-DoH to report to facility medical providers if they are experiencing ILI so that the medical personnel may consult with local health officials to determine whether or not to test for H1N1.[25]

Both public sector and private sector employers may be required to record cases of H1N1 if an employee catches the infection in the workplace while performing work-related duties, depending on the severity of the employee's reaction.[26] Employers should keep track of employees reporting ILI so that they can alert other employees, especially if these other employees have underlying conditions that would make them susceptible to H1N1 complications, such as pregnancy, chronic illness or a weakened immune system.

H1N1 PREVENTION IN PARTICULARLY SUSCEPTIBLE WORKPLACES

OSHA has developed an "occupational risk pyramid" that categorizes occupations based on the risk to employees of exposure to H1N1, with each risk level requiring a different level of workplace protections. The "exposure risk level" for such occupations are categorized as either "very high," "high," "medium" or "low" as follows:

> Very high exposure risk occupations are those with high potential exposure to high concentrations of known or suspected sources of pandemic influenza during specific medical or laboratory procedures.

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[23] *2009-2010 School (K-12) Guidance: Novel H1N1 Influenza (Flu) Virus*, New York State Education Department, Aug. 31, 2009. http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/docs/2009-2010_k-12_school_guidance.pdf.

[24] *New York State Department of Health Guidance for Shelters on Novel H1N1 Flu*, June 18, 2009 http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/docs/guidance_for_shelters.pdf

[25] *New York State Department of Health Guidance for Correctional and Detention Facilities for Prevention and Assessment of Novel Influenza A (H1N1) Virus Infections*, June 8, 2009. http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/docs/guidance_for_correctional_and_detention_facilities.pdf

[26] 29 U.S.C. § 657(c); NYS Labor Law § 27-A(9)(b).

> High exposure risk occupations are those with high potential for exposure to known or suspected sources of pandemic influenza virus.
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> Medium exposure risk occupations include jobs that require frequent, close contact (within 6 feet) exposures to other people such as coworkers, the general public, outpatients, school children, or other such individuals or groups.
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> Lower exposure risk occupations are those that do not require contact with people known to be infected with the pandemic virus, nor frequent close contact (within 6 feet) with the public. Even at lower risk levels, however, employers should be cautious and develop preparedness plans to minimize employee infections.[27]

I. Very High Risk Workplaces

Very high risk occupations include healthcare employees who perform aerosol generating procedures, e.g., cough induction procedures and bronchoscopies on known or suspected H1N1 patients, and healthcare personnel who collect or handle specimens from known or suspected H1N1 patients.[28]

In New York State, healthcare employers have taken positive steps to protect workers from H1N1 exposure, but employee organizations and advocates are calling for additional measures.

A. Healthcare Workers in Healthcare Settings

Healthcare workers are at greater risk of contracting H1N1 because they work directly with the public and may have to specifically treat patients with the infection.

CDC recommends that healthcare providers follow certain protocols to protect patients and employees from H1N1 exposure.[29] CDC advises healthcare facilities to update and create "facility contingency plans" in case of an H1N1 outbreak. Patients who are suspected of H1N1 virus infection are to be isolated in a room with a closed door. Healthcare providers should wear

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[27] *Guidance on Preparing Workplaces for an Influenza Pandemic*, OSHA 3327-05R 2009. http://www.osha.gov/Publications/OSHA3327pandemic.pdf

[28] These lists are not meant to be exhaustive, and occupations with similar characteristics should look to adopt similar workplace protections.

[29] *Interim Guidance for Infection Control for Care of Patients with Confirmed or Suspected Swine Influenza A (H1N1) Virus Infection in a Healthcare Setting*, Center for Disease Control and Prevention, May 3, 2009. http://www.cdc.gov/h1n1flu/guidelines_infection_control.htm

a surgical mask when outside the isolation room. All healthcare personnel who enter the rooms of patients in isolation for H1N1 virus should wear a fit-tested disposable N95 respirator or equivalent. Healthcare workers should be instructed to not report to work if they show signs of H1N1 infection.

NYS-DoH has not completely followed CDC guidelines in its recommendations and regulations. Unlike CDC, NYS-DoH does not recommend that healthcare providers use the N95 mask when in a room with an infected patient,[30] only when performing certain aerosol-generating procedures (e.g., nebulized treatments, bronchoscopy, intubation and extubation, and deep open tracheal suctioning),"[31] because NYS-DoH contends that H1N1 is "transmitted through large respiratory droplets generated by coughing and sneezing, and not through small particles that remain airborne for prolonged periods."[32] Separately, NYS-DoH has mandated that all healthcare professionals in healthcare settings be vaccinated for the seasonal flu unless such vaccination is physically dangerous for the person.

NYS-DoL disagrees with NYS-DoH on proper personal protective equipment to use when working with people with H1N1. NYS-DoL advises that workers should be provided with a face shield with at least the strength of an N95 respirator when entering a room with an infected person, which is consistent with federal recommendations.[33] If public hospitals follow NYS-DoH guidelines and only provide workers with N95 respirators for certain procedures and not when employees are in a room with infected people, then healthcare workers may file a complaint with NYS-DoL.[34] Employees in private hospitals may cite the General Duty Clause of the Occupational Safety and Health Act if they feel they are not protected from H1N1 in their workplace.[35]

According to Local 436 of District Council 37 (DC37), the United Federation of Nurses and Epidemiologists, healthcare workers want NYS-DoH to align mandates with CDC

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[30] *New York State Department of Health Advisory: Guidance for Management of Exposure to Influenza-Like Illness in Hospital Settings*, pg.3, New York State Department of Health, July 17, 2009. http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/docs/2009-07-17_health_advisory_guidance_for_exposure_in_hospitals.pdf

[31] Id., pg. 4.

[32] Id.

[33] *Guidance on Preparing Workplaces for an Influenza Pandemic*, OSHA 3327-05R 2009. http://www.osha.gov/Publications/OSHA3327pandemic.pdf; *Hospital Pandemic Influenza Planning Checklist*. http://www.pandemicflu.gov/professional/hospital/hospitalchecklist.html

[34] *Staff Directive-Enforcement Procedures and Scheduling for Occupational Exposure to H1N1 Influenza*, PESH, Aug. 24, 2009.

[35] 29 U.S.C. § 654.

guidelines and provide workers with N95 masks if they are exposed to patients that are confirmed to have or are suspected to have H1N1. DC37 also wants NYS-DoH to check to make sure that healthcare facilities have proper plans in place to protect workers and patients in case of an emergency pandemic. DC37 asks that hospitals follow CDC guidelines which recommend that workers stay home if they are experiencing influenza like symptoms.[36]

The New York State Nurses Association (NYSNA), a union representing nurses in New York State, is concerned that NYS-DoH is focusing too much on vaccines as the only way to combat H1N1 and flu pandemic. If the vaccine does not work, then a real emergency could arise. NYSNA wants NYS-DoH to promote a three-pronged approach to combating H1N1. First, NYSNA suggests that NYS-DoH educate healthcare workers on preventative methods and evaluate education methods for accuracy. Second, NYSNA suggests that NYS-DoH provide N95 respirators and mandate proper engineering controls such as designating negative pressure rooms in hospitals. Third, NYSNA suggests that NYS-DoH educate healthcare personnel about the benefits of receiving the seasonal flu vaccine and the H1N1 vaccine once it is available. Though NYSNA does not agree with making the vaccine mandatory, NYSNA believes that if healthcare workers understand why it is so important to be vaccinated and if the vaccine is accessible and free, then healthcare workers will be more inclined to seek vaccination.[37]

B. Long-Term Care Employees

If hospitals overflow with patients contracting H1N1, long-term care facilities may be filled with infected patients. This is because many acute care facilities have agreements with long-term facilities to transfer patients to long-term care facilities if the acute care facility is over capacity. This emergency situation would potentially expose long-term care providers to the same risks as employees in hospitals.

In April, NYS-DoH wrote a letter to workers in long-term care facilities on addressing the needs of patients and staff during the H1N1 outbreak.[38] NYS-DoH did not include healthcare workers in long-term care facilities for the mandated flu vaccine. Concerns have been raised that long term care facilities are receiving less guidance from NYS-DoH than acute care facilities.

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[36] Judith Arroyo, president Local 436 DC 37, United Federation of Nurses and Epidemiologists, personal interview, Aug. 20, 2009.

[37] Tom Lowe, Director of Safety and Health, New York State Nurses Association, personal interview, Aug. 18, 2009.

[38] *Health Advisory: Update #3 (Corrected) Swine-Origin Influenza A H1N1 Virus (SOIV) Infection*, New York State Department of Health and Bureau of Communicable Disease Control and Wadsworth Laboratory. Apr. 30, 2009. http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/docs/2009-04-30_longterm_care_advisory_letter.pdf

II. High Risk Workplaces

High risk occupations include healthcare delivery and support employees, including medical transport and mortuary employees, who are exposed to known or suspected H1N1 patients. High risk occupations also include officers in correction and detention facilities as well as other governmental agencies that deal directly with the public who are prone to exposure including homeless shelters and mental health facilities.

A. Emergency Medical Services

First responders are at significant risk of contracting H1N1 because people who believe they may be infected often call for emergency assistance.

NYS-DoH issued recommendations on April 28, 2009 advising Emergency Medical Services (EMS) employees to follow certain guidelines to protect themselves from the spread of H1N1, including using respirators when treating a patient suspected of having H1N1.[39] On May 8, 2009 NYS-DoH changed its recommendation and advised EMS employees to use a respirator only when performing aerosol-generating procedures, such as suctioning, nebulizing treatment or intubation, and to use a surgical mask when treating a potential H1N1 patient in all other circumstances.[40] EMS employees were also advised to don gloves and goggles/faceshield whenever providing any kind of direct care to H1N1 patients, and if the patient can tolerate it, they should be offered surgical masks in order to protect the responders treating them.

NYS-DoH also recommends that EMS employees frequently clean and disinfect all equipment used during influenza outbreaks. Although 911 calls are screened to determine whether callers may be infected in order to both prepare workers before they arrive on the scene and to alert hospitals before EMS brings a potential H1N1 patient in, NYS-DoH recommends that EMS employees promptly report any possible cases of influenza to the hospitals they are entering of so the hospital can take precautionary steps as soon as possible.

The Emergency Medical Technicians and Paramedics, Local 2507 in New York City is generally content with the personal protective equipment they are provided with. However, clarification is needed regarding whether EMTs will be receiving the H1N1 vaccine once it is available and they also have not been informed whether or not to sanitize vehicles after a patient with H1N1 has been inside. EMTs are concerned that the upcoming strain of H1N1 will be more severe than it was last spring. EMTs also believe that EMS is understaffed in case of a pandemic

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[39] *Swine Influenza A (H1N1) Advisory*, New York State Department of Health, Apr. 28, 2009. http://www.health.state.ny.us/diseases/communicable/influenza/h1n1/docs/2009-04-28_ems_advisory_letter.pdf

[40] http://www.health.state.ny.us/nysdoh/ems/communicable_disease/h1n1_swine/docs/2009-05-08_update_swine_flu_ems.pdf

outbreak. During the H1N1 outbreak last spring, call volume increased by 20% and EMS and the New York City Fire Department declared a state of emergency for one week so they could call in help from outside New York City.[41]

B. Officers in Correction and Detention Facilities

Correction Officers face several challenges in protecting themselves in the event of an H1N1 outbreak. Correction officers are exposed to the public in settings with little ventilation, and in dealing with prisoners, security of the prison is a greater priority than employee health. For example, even something as basic as distributing hand sanitizer to prisoners can be problematic due to safety concerns.

On May 21, 2009 NYC-DoC wrote a letter to COBA-NYC detailing NYC-DoC's plan in reaction to H1N1. According to the plan, NYC-DoC staff would assign medical staff to jails to provide consultation to staff and screen for symptoms. NYC-DoC planned on creating a labor-management task force, including an infection control physician, to monitor and make adjustments to the plan. NYC-DoC would screen all inmates going to court for flu symptoms and would also work with the New York City Criminal Justice Coordinator to minimize court visits. NYC-DoC would provide workers with masks and latex gloves upon request. NYC-DoC also plans on placing inmates who have not shown any flu like symptoms for seventy-two hours in sanitized rooms.

COBA-NYC is generally satisfied with NYC-DoC's response plan, except that correctional facilities do not have the authority to keep inmates from visiting courts.[42] NYC-DoC may screen inmates for flu-like symptoms but will most likely allow inmates to go to court even if they are coughing and sneezing. COBA-NYC also worries about visitors entering correctional facilities. While inmates have the right to visitors, it is dangerous for people at risk of flu complications, such as pregnant women and infants, to visit during a flu outbreak. According to DC 37, which represents correction officers in juvenile detention centers, juveniles awaiting court proceedings may not be medically screened for seventy-two hours. During this period, facility staff might be infected by an H1N1 infected juvenile prior to the juvenile having been identified as carrying the H1N1 virus.[43]

On April 30, 2009, the New York State Correctional Officers and Police Benevolent Association (NYSCOPBA) wrote a letter to the New York State Department of Corrections

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[41]Patrick Bahnken, president of the Uniformed EMTs, Paramedics & Fire Inspectors, Local 2507, personal interview, Aug. 20, 2009.

[42] Norman Seabrook, president of the New York City Correction Officers Benevolent Association, personal interview, Aug. 20, 2009.

[43] Guille Mejia, Principal Program Coordinator of the District Council 37 Health and Safety Department, personal interview, Sept. 2, 2009.

(NYS-DoC) asking for three remedial actions to help protect NYSCOPBA members.[44] First, it was suggested that the public cease all visits to correctional facilities until the pandemic alert was lowered to phase three. NYSCOPBA wants the focus to be on stopping H1N1 from entering facilities through infected visitors, rather than dealing with H1N1 after it has infected inmates and correctional officers. Second, NYS-DoC should provide hand sanitizer to employees in high contact areas of the general public and inmate contact areas. Third, it was requested that NYSCOPBA members be provided with personal protective equipment, including N95 respirators to use at their discretion.

NYSCOPBA has reported that two of its three requests were fulfilled. NYS-DoC distributed hand sanitizer to officers throughout each correctional facility and provided N95 respirators to use in case of emergency. However, while NYS-DoC asked visitors of inmates to stay home if they felt ill, NYS-DoC did not screen or prohibit anyone from entering the facility due to exhibiting flu like symptoms.[45]

NYSCOPBA would also like to see better and more frequently updated reporting on the H1N1 status at each facility, so employees can be guided accordingly.[46]

III. Medium Risk Workplaces

Medium risk occupations include employees who come in frequent contact with the general population, such as school nurses, teachers, retail workers, and transportation workers.

A. School Nurses

School Nurses are at risk of contracting H1N1 because they are often the first healthcare provider to respond to students and school staff who may be infected. As a result of dense school populations and poorly ventilated school buildings, a large percentage of those who contracted H1N1 in the spring were from school settings. Fifty-six schools in New York City were closed in response to H1N1.[47] Jointly, NYC-DoH and NYC-DoE released a pandemic influenza plan for schools on September 1, 2009.

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[44] *Letter to NYS Department of Corrections on H1N1 in Correctional Facilities from New York State Correctional Officers and Police Benevolent Association,* Apr. 30, 2009.

[45] Chris Hickey, president of the New York State Correctional Officers and Police Benevolent Association, personal interview, Aug. 20, 2009.

[46] Id.

[47] New York City Department of Education Daily Attendance Rates. http://text.nycenet.edu/Common/Templates/PostingTemplate/CommonPostingTemplate.aspx?NRMODE=Published&NRNODEGUID={EDA1A781-446A-4E55-9B2D-24CB18A20BFC}&NRORIGINALURL=%2fHome%2fSpotlight%2fclosures.htm&NRCACHEHINT=Guest

The New York State Education Department (NYSED) released recommendations to schools on May 12, 2009 on how to respond to occurrences of H1N1.[48] These recommendations focus on protecting students rather than protecting employees. NYSED established an absentee reporting system for New York State schools but received inadequate feedback.[49] Out of 6,869 schools (2211 private and 4658 public) only 457 schools responded (21 private and 433 public). NYSED discovered in this process that schools have different definitions of what constitutes a school absence. For example, some schools only consider absences when students are ill. NYSED is working with other government agencies, following CDC guidelines, to come out with more sophisticated guidance to schools on how to handle a flu pandemic. NYSED is also working to improve the data collection system so that all schools can and will enter accurate and useful data.

CDC recommends that in public and private schools, students with influenza-like illness be separated from the general student population into a well ventilated designated room and if they can tolerate it, wear a surgical mask.[50] CDC recommends further that school nurses and other school personnel that enter the room should wear appropriate personal protective equipment. Elsewhere, CDC recommends the N95 respirator as appropriate in protecting against H1N1. Here in the school guideline however, CDC does not specifically recommend nurses to wear the N95 respirator, but rather just "appropriate personal protective equipment."[51] A clearer directive from CDC would give workers greater protection. Absent such directive, NYS-DoL should consider working with NYSED and NYS-DoH to develop safety equipment guidelines that balance the need to protect staff against current budget constraints.

NYS-DoL allows public school nurses the opportunity to file a complaint if they feel their work environment does not provide enough protections from H1N1 infection. NYS-DoL also plans on randomly inspecting workplaces with medium to very high risk of H1N1 exposure to make sure employers have proper plans in place, correct personal protective equipment available, and to ensure that employees have received proper training to protect themselves and

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[48] *Educational and Childcare Facilities: Update #2 H1N1 (Swine Flu) Infections*, New York State Department of Health, Division of Epidemiology, May 12, 2009. http://usny.nysed.gov/flu/DOHSEDSchoolAdvisoryUpdate2051209.pdf

[49] Bryon Backenson, personal interview, New York State Department of Health, Bureau of Communicable Disease.

[50] *Technical Report for State and Local Public Health Officials and School Administrators on CDC Guidance for School (K-12) Responses to Influenza during the 2009-2010 School Year,* United States Department of Health & Human Services. http://pandemicflu.gov/professional/school/k12techreport.html

[51] Id.

the school community.[52] Nurses in private schools may cite the General Duty Clause of the Occupational Safety and Health Act if they feel they are not protected from H1N1 in their workplace.[53]

School nurses in New York State are represented mostly by New York State United Teachers (NYSUT) and the Civil Service Employee Association (CSEA). School nurses in New York City are represented by DC37 and the United Federation of Teachers (UFT).

School nurses from District Council 37 in New York City believe that they need access to N95 respirators, and that they also need efficient plans to follow in case of pandemic emergency. NYC-DoH formulated a reporting system that meets the needs of school nurses, but does not recommend the use of N95 respirators.

Local 436 of District Council 37, the United Federation of Nurses and Epidemiologists, reports that in the spring schools did not provide enough soap to nurses and that the soap the schools did provide was not always effective. Students also lacked soap in the school restrooms. School nurses are also concerned about the influenza reporting system because they believe it does not represent the total number of students and school personnel who were actually ill. The statistics only report people as ill if their temperature is "at or above 100.4 degrees with respiratory symptoms."[54] Nurses report that students and staff with 100.0 degree fevers and respiratory symptoms were sent home and not included in the statistics which influenced school closings. Some of those students with temperatures below 100.4 degrees who were not included in the statistics were diagnosed with H1N1.

School nurses in New York City covered by District Council 37, Local 436 believe additional public health assistants are needed to address an H1N1 outbreak.[55] Public health assistants are represented by District Council 37 in New York City and by CSEA in the rest of New York State. CSEA agrees with Local 436 that in case of an influenza pandemic, more public health assistants should be available to send to schools.[56]

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[52] *Staff Directive-Enforcement Procedures and Scheduling for Occupational Exposure to H1N1 Influenza*, PESH Instruction, Aug. 24, 2009.

[53] 29 U.S.C. § 654.

[54] Testimony of Judith Arroyo, president of Local 436 DC 37, United Federation of Nurses and Epidemiologists, before the New York City Council Committees on Government Operations, Health, and Public Safety Regarding New York City's Response to H1N1 and Assessing Influenza Preparedness, June 11, 2009.

[55] Id.

[56] Janet Foley, Director of Safety and Health, Civil Service Employee Association, personal interview, Aug. 27, 2009.

Local 436 suggests three specific improvements in protecting school nurses. First, city agencies need to assess each workplace's potential for H1N1 exposure and implement sufficient ways to protect workers based on these assessments. Second, school nurses need to be provided with appropriate respiratory equipment that is "fit tested," and workers must be both medically cleared and trained to use the equipment. Third, workers should be guaranteed time off if they are ill with H1N1, without penalty.[57]

NYS-DoH and NYSED released a report on August 31, 2009 addressing some of these concerns.[58] The guidance is based on the assumption that an outbreak this fall is as severe or less than the H1N1 outbreak in schools this past spring. NYS-DoH thinks the most important way to prevent the spread of H1N1 in schools is through early identification and dismissal or isolation of infected people as well as good hand hygiene and cough etiquette. Students and staff with underlying conditions should be advised to seek treatment early. The guidance asks students and school employees to stay out of school if they have a temperature at or above 100.00 Fahrenheit. Students and employees are asked not to return to school for 24 hours after their fever has been reduced (previously, NYS-DoH recommended that people stay out of school for at least seven days after they showed symptoms). NYS-DoH delegates responsibility to the local school district to close schools and it recommends that absences and visits to the nurse's office be closely monitored. The report mentions that NYS-DoH, NYSED, CDC and local health officials have worked to create a school dismissal monitoring system to report national statistics on school absenteeism rates. School nurses are advised to wear surgical masks when in close contact with infected persons. This conflicts with PESH's guidance that employees wear N95 respirators whenever interacting with a potential H1N1 patient and will likely pose conflict this fall.

Predicting that H1N1 will be as severe or less severe as this spring, NYC-DoH agrees with NYS-DoH that early identification of H1N1 infected persons is extremely important in stopping the spread of H1N1. Uniquely, New York City plans on offering school aged children free vaccines distributed in primary school facilities and easily accessible to students in secondary education facilities. Each day, school health officials must report influenza like illness related visits to the school nurse's office, and H1N1-related absentee rates will be publically available. Any school that reports more than fifteen students or four percent of the student body (whichever is less) will be checked by a representative of NYC-DoH. Closing schools will be a final option and determined by NYC-DoH. Private schools are asked to follow NYC-DoH guidelines for public schools. NYC-DoH, like NYS-DoH, recommends surgical

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[57] Testimony of Judith Arroyo, president of Local 436 DC 37, United Federation of Nurses and Epidemiologists, before the New York City Council Committees on Government Operations, Health, and Public Safety Regarding New York City's Response to H1N1 and Assessing Influenza Preparedness, June 11, 2009

[58] *2009 2010 School (K12) Guidance: NOVEL H1N1 INFLUENZA FLU VIRUS,* New York State Department of Health, Division of Epidemiology. http://usny.nysed.gov/flu/H1N1SchoolGuidance08-28-09V4FINAL.pdf

masks for school nurses when assisting patients with ILI, which conflicts with PESH's guidance that employees wear N95 respirators whenever interacting with a potential H1N1 patient and will likely pose a conflict this fall.

B. Teachers

Teachers are at risk of exposure to H1N1 because they work in close contact with a population (students) who are themselves at risk for H1N1. Indeed, as noted before, H1N1 was highly prevalent in school settings in the spring compared to in other work settings.

In spring 2009, the reaction to H1N1 outbreak in schools was criticized by teachers as being disorganized and lacking in information. The United Federation of Teachers joined with NYC-OEM and NYC-DoH to formulate a fact sheet regarding the H1N1 virus to distribute to each school.[59] The protocol included keeping areas clean, covering one's mouth when coughing or sneezing, stocking bathrooms with soap and paper towels, and maximizing ventilation. The protocol also advised students suspected of having H1N1 to be isolated in a room away from others until they are dismissed.

The UFT suggested that several steps be taken to combat the spread of H1N1 in schools, most of which were addressed in NYC-DoE's September 1, 2009 plan.[60] First, the UFT suggested that NYC-DoH and NYC-DoE create an "Influenza Preparedness-Action Plan for Schools (and other workplaces)," including an "Emergency Preparedness Plan" outlining contacts from local, state and federal agencies, preventative methods to stop the spread of the flu, acquiring personal protective equipment and supplies, and an isolation protocol for people at risk of complications from the flu. NYC-DoE plans an "influenza-prevention campaign that includes signs, posters and classroom instruction on covering coughs and washing hands," sending home students who show signs of influenza-like illness, and properly stocking supplies of soap and washing supplies.[61] (However, NYC-DoE is not providing nursing staff with N95 respirators, as stated above.)

Second, the UFT asked for greater transparency and disclosure of information, including letting school communities know about the dangers of the flu, how to stop the spread of it, and information on how NYS-DoH is handling the presence of the flu in public places. NYC-DoE addresses these concerns as stated above.

Third, the UFT had suggested that school communities, including parents, should be

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[59] Testimony of Randi Weingarten, president of the United Federation of Teachers, before the New York City Council Committees on Government Operations, Health, and Public Safety Regarding New York City's Response to H1N1 and Assessing Influenza Preparedness, June 11, 2009.

[60] http://www.nyc.gov/html/doh/html/pr2009/prj60-09.shtml

[61] Id.

notified immediately if any confirmed cases of influenza arise in a school, with a letter being sent home to parents if a student is reported ill with H1N1 or a different strain of the flu so that students and teachers with underlying medical conditions can take appropriate precautions. NYC-DoE's plan is to send a letter home to parents when five or more influenza-like illness cases appear in one day, and for H1N1-related absentee rates to be publically available for any school that reports more than fifteen students or four percent of the student body (whichever is less) with influenza-like illness.[62]

Fourth, the UFT recommends that there be a school nurse in every school. Currently, for example, approximately one hundred schools do not have an assigned school nurse in New York City.[63] According to the New York State United Teachers, which represents teachers and school health personnel throughout the state, some schools only have a Licensed Practical Nurse, who is not even permitted to take a student's temperature.[64] This was not addressed in NYC-DoE's plan.

C. Transit Workers

Transit workers, whether bus or train operators, station agents or platform cleaners, are at risk of H1N1 exposure because of their direct contact with the public, often in confined spaces. Transport Workers Union, Local 100, which represents such employees of the New York City bus and subway system, has made a number of recommendations to limit H1N1 exposure in the mass transit workplace.

For example, Local 100 suggests that the Metropolitan Transit Authority (MTA) assess the particular risk of H1N1 exposure by individual job titles, and establish a safety plan for each title, including appropriate personal protective equipment where necessary and adequate training and medical screening, and a plan to measure influenza-like illnesses on a weekly basis and compare the illness rates in such titles with those of previous years. There is also a concern about access to cleaning facilities and sanitizing materials, given the unusual nature of transit job sites, such as platforms, trains and buses, where workers need portable sanitizing materials to protect themselves. Given the importance of access to cleaning and sanitizing materials, Local 100 also suggests that cleansers be placed at locations other than bathrooms, such as elevators, doorways and escalators that are frequently touched by the public, and that there be more

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[62] Id.

[63] Christine Proctor, Safety and Health Department Coordinator, United Federation of Teachers, personal interview, Aug. 27, 2009.

[64] Wendy Hord, Director of Safety and Health, New York State United Teachers, personal interview, Aug. 20, 2009.

frequent cleaning of these areas by the MTA.[65]

Consideration should be given to strategic engineering controls to limit the risk of H1N1 exposure by both the public that uses and the employees of the Metropolitan Transportation Authority.

Finally, education about vaccination and proper H1N1 prevention techniques for the particular, unique workplaces in our transit system, is essential, as is an absentee policy that doesn't penalize workers for missing work because of H1N1 related illness.

D. Retail Workers

Retail workers interact with the public in confined spaces and often in areas that lack proper ventilation.

OSHA and the NYC Office of Emergency Management recommend that businesses develop emergency response plans in case of a pandemic.

The Retail, Wholesale, and Department Store Union International (RWDSU) encourages employers to promote good hand washing and respiratory etiquette in the workplace. Employers should also develop a "written flu emergency action plan which specifically outlines who will be responsible for responding to the emergency, how decisions about disinfecting, use of personal protective equipment, adoption of changed hours of operation communication and staffing etc., will be handled." For instance, if in a pandemic emergency workers need to stay home to care for sick family members, then stores should be prepared to change store hours to accommodate the needs of their employees. RWSDU also recommends that employers purchase N95 respirators, fit tested and medically approved for employees in case of emergency.[66]

IV. Low Risk Workplaces

Low risk workplaces include general office workers and workers in factories. According to CDC, low risk occupations and workplaces should follow the "general H1N1 prevention guidelines" described above.

SUMMARY AND CONCLUSIONS

I. Agency Actions To Date

[65] *Summary of Recommendations on Pandemic Flu Preparedness in Transit*, Transportation Workers Union, Local 100.

[66] *H1N1 Influenza (Swine Flu): Protecting Ourselves in the Workplace*, Retail, Wholesale, and Department Store Union/UFCW, May 5, 2009.

Global, national, state, and local agencies are all working to improve policies and procedures when dealing with H1N1 in the workplace. CDC has issued guidance to workers in different occupations on how to protect workers from the spread of H1N1 in the workplace. OSHA is working to add specific protections dealing with H1N1 in workplaces for private sector employees. NYS-DoL has issued a "Staff Directive" reminding public employees that they may report unsafe working conditions (including exposure to H1N1 without proper workplace protections and training). NYS-DoH has put forth recommendations to employers in the healthcare industry to instruct them on how to prepare and react to pandemic influenza. NYS-DoH and NYSED has released advice for schools on how to react to a possible H1N1 outbreak. NYS-DoC and NYC-DoC are communicating with unions representing correction officers to stay updated on the H1N1 situation in correctional facilities throughout the state. NYC-DoH and the NYC-OEM have released recommendations for how businesses can protect workers and cope with employee absence in case of an emergency pandemic. NYC-DoE and NYC-DoH establish specific surveillance guidelines for school health personnel and procedures regarding when to close schools. The MTA has promised to have an H1N1 plan ready by the middle of September 2009.

II. Employee Representative Requests

Healthcare workers are most concerned about personal protective equipment and proper plans being in place in each facility in case of a pandemic influenza outbreak. Unions representing healthcare workers ask that NYS-DoH recommend to health care facilities that N95 respirators be provided for all employees who work within six feet of patients infected or suspected to be infected with H1N1.

EMTs ask that the FDNY consider emergency responders to be first in line to receive the H1N1 vaccine as they are highly likely to expose themselves to H1N1 in an outbreak. EMTs also ask that FDNY provide them with a plan of what sanitation steps to take if infected individuals have been transported in ambulances.

Correction officers ask that infected inmates be isolated in rooms designated for them, and that after infected inmates leave those rooms, the rooms need to be disinfected. However, for security purposes, correction officers agree that NYS-DoC and NYC-DoC not distribute hand sanitizer to inmates. They ask that inmates be screened for flu like symptoms before they leave facilities to enter courts and they ask that visitors are screened for flu like symptoms before they are permitted to enter correctional facilities. They also ask that people at risk of complications from H1N1 do not visit correctional facilities during an outbreak. Most importantly, correction officers ask for improved communication between both NYS-DoC and NYC-DoC and correctional facilities to cope with H1N1 outbreaks.

School nurses ask that schools have proper plans in place to protect students and staff from H1N1 exposure. Nurses want access to N95 respirators and they want to be considered a priority group of workers to receive the H1N1 vaccine once it is available because of their direct exposure to young people who, based on the outbreak this spring, are a group highly susceptible

to contracting H1N1. School nurses want there to be enough support personnel to meet the demand in case of an H1N1 outbreak. School nurses also ask that schools be closed based on specific, overarching criteria to eliminate confusion.

Like nurses, teachers ask that schools have good plans in place to deal with H1N1 outbreaks, including policies to isolate students until they are sent home, to keep facilities clean, and to have soap and paper towels in each restroom. State and New York City teachers also ask that NYS-DoH works with NYSED to provide guidelines to local school districts and NYC-DoE for specific guidelines for closing schools.

Transit workers ask that H1N1 policies, procedures and equipment be tailored to their unique workplaces, including proper cleaning and ventilation systems, appropriate personal protective equipment that doesn't interfere with workers' ability to perform critical tasks safely, and sick-time policies that allow employees to get treatment instead of coming to work and infecting their colleagues or the public.

Retail workers in the private sector, who live under different regulatory authorities and have different rights than public sector employees, ask that employers follow CDC guidelines in case of an H1N1 outbreak. Employees need to be educated about their right to complain to their employer about an unsafe workplaces, and report such unsafe conditions to OSHA if necessary.

III. Possible Legislative Action

The picture which emerges from our research is of public sector workplaces – employees and their government employers – fully engaged in combating H1N1 in the workplace, even if there is not complete agreement on the policies of H1N1 prevention and the success in executing those policies, and private sector workplaces that are more fragmented and unevenly committed to H1N1 prevention, particularly in occupations less heavily regulated by government (i.e., in fields other than healthcare).

There are several legislative approaches to preventing workplace transmission of H1N1, focusing on (1) ensuring adequate staffing of key personnel to manage an H1N1 outbreak safely, (2) educating employees about preventing H1N1 transmission in particular workplace settings, (3) strengthening the rights of employees to complain about unsafe workplaces, and (4) preventing H1N1 transmission in the workplace by enabling employees to take medically necessary leaves of absence when experiencing an H1N1 related illness.

For example, A.2137 John/S.1200 Robach, would provide that each school building in the "big five" school districts (New York City, Buffalo, Rochester, Syracuse and Yonkers) employ at least one school nurse.

The proposed "H1N1 in the Workplace Prevention Act" (Lancman, bill number pending) mandates that NYS-DoH promulgate workplace-specific information for employers to post advising employees about how to protect themselves from H1N1 in their particular workplace

setting (e.g., healthcare, corrections, retail, etc.).

A.7144 Benedetto/S.5737 Klein, would allow workers to seek legal action against employers who discipline them for reporting workplace safety hazards, and passed both houses of the legislature this session. The bill would give employees greater control over their own safety in the workplace, and signal to employers that they face real consequences if they retaliate against employees for reporting unsafe working conditions. This bill passed both houses of the legislature but was vetoed by the governor on September 16, 2009. Hopefully, a meaningful compromise can be reached shortly in order to strengthen protections for workers who report dangerous safety conditions in the workplace.

Finally, the "Paid Sick Leave Act,"A.3467 Camara/S.2666 Parker, would guarantee sick employees paid leave (up to five days for employers of less than ten employees, and up to ten days for employers of ten or more employees). Employees lacking paid sick time have a strong disincentive to take necessary time off to treat H1N1 illness. Indeed, they may even lose their jobs for taking *unpaid* sick leave. Employment policies that encourage employees to come to work sick greatly increase the likelihood of H1N1 spreading in the workplace, and should be strongly disfavored.[67]

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[67] Similar "paid sick leave" legislation (Intro. 1059) is currently pending in the New York City Council.