

Swine Flu Risk Management



Swine flu is a respiratory disease and is normally found in pigs and usually contracted by people in close contact with infected animals.

Human-to-human transmission is rare, but is the concern with the current strain found in Mexico and now spreading to other countries. This virus is described by the World Health Organization (WHO) as a new subtype of A/H1N1 not previously detected in pigs or humans; a mutation which may allow it to pass more easily among the human population.

To date, there have been 132 confirmed cases in 11 countries, the majority in the United States and Mexico. This includes seven deaths in Mexico and one in the United States.

WHO is currently at Phase Five of its Pandemic Alert, which means there is human-to-human spread of the virus in at least two countries in one WHO region. This signals that a pandemic is imminent, and that the time to finalize the organization, communication, and implementation of planned mitigation measures is short. With this increase in the threat level, the possibility of restrictions on travel and the passage of some goods is more likely.

Following reports concerning the confirmed cases of swine flu (A/H1N1) among the human population in Mexico, Canada, the United States, and several more countries, this Adviser outlines the risks and insurance implications for U.S. businesses arising from a subsequent human pandemic.

How Concerned Should Business Be?

- Workforce availability and employees' access to work locations could be severely impacted. If a pandemic arises, there will be peak outages as employees are forced to stay at home due to their own illness or in order to care for ill family members. Additionally, they will face restrictions on movement as governments seek to contain the pandemic.
- Supply chains will be affected as the virus spreads, particularly where suppliers are from countries with denser populations and face more restricted access to health care. Many organizations have already activated contingency plans to ensure a flow of goods and reduce the threat of a pandemic to their operations.
- The travel and tourism industries are being adversely affected by falling passenger numbers, as tourists choose to stay at home or change their travel. The United States, UK, France, and Germany, among others, are advising against all but essential travel to Mexico.
- The psychological impacts could be widespread as the outbreak worsens. In Mexico, 70% of restaurants and bars are closed, public events are cancelled, and many people are staying at home and away from work.

Business Continuity Management Implications

While many firms in the United States have business continuity plans to deal with a wide range of potential disruptions, they may not be adequately prepared for a pandemic.

A human pandemic could escalate quickly, last for many months, and infect 25% or more of the world's population, according to public health experts. Many organizations believe that at the peak of a severe pandemic, up to 75% of the workforce may be absent from work.

To address this risk, firms need to monitor the situation very closely, paying particular attention to government advice, and examine and possibly amend their existing business continuity plans accordingly.

Marsh recommends that management should review their firm's risk management controls, human resource policies, and communications capabilities, and update them based on the threat of a pandemic, as such an event could mean having fewer people, losing certain critical people, or having staff work from home or other remote locations.

In Marsh's opinion, the key points for businesses to immediately consider are:

- ensure business continuity management (BCM) plans include pandemic scenarios and exercise the plans where possible;
- review company travel policies, hygiene policies, and policies on anti-virals and health care support;
- in highly populated areas, make sure the BCM plans allow for staff to work at home where appropriate;
- consider if there are any vital processes that must be maintained in a pandemic e.g. call centers, health services, and services vital to the vulnerable; and
- decide what other core functions you want to make sure keep running if short staffed.

The main thrust of pandemic preparedness planning for businesses should be to reduce the peaks of absenteeism. In the event that WHO raises the threat to Phase Six (widespread human infection) firms need to have a plan covering:

- crisis management tailored to an epidemic;
- alternative workforce or work-at-home arrangements in the event that a large portion of the workforce is impacted by pandemic;
- special precautions to assess the health of the workforce and potentially turn back infected workers who report for work;
- the emotional impacts of such events as death on the individual's family and workforce in general;

- reduced service delivery based on reductions of customer demand, labor force, raw material supply, or energy resources; and
- working collaboratively with third party suppliers to maintain critical business services.

Insurance Implications

An outbreak of swine flu among the U.S. population will undoubtedly have an impact on businesses' insurance programs, regardless of size or sector.

Below is an outline of the main types of insurance and a view on potential applicability in light of a possible pandemic. This is an overview only and individual policies may vary.

General Liability

Insurers tend to take the position that a general liability policy extends only to actual injuries. They are likely to look closely at the nature of injuries alleged by third parties and may reject claims based on fear of exposure, exposure without actual symptoms, or other mental or emotional injuries. However, under the "bodily injury" and/or the "personal injury" language of some policies and the law of some jurisdictions, such emotional injuries may be covered.

The general liability policy also responds to third-party property damage, but requires physical injury or destruction of tangible property. Insurers may take the position that certain types of claimed damage are not covered or that the mere presence of the virus in or on property does not constitute physical injury.

The standard policy contains coverage for "personal injury"—a number of specified wrongs, including wrongful eviction. Policy language varies, as does applicable law; but it might be possible to argue that the actions of a landlord or other similar insured that result in closure of a building or evacuation of premises fall within this definition.

Most liability policies also contain a broadly worded pollution exclusion, which applies, among other things, to all "solid, liquid or gaseous...contaminants or irritants." It is possible some insurers will contend that viruses constitute a "contaminant" within the meaning of the exclusion and use that as a basis to deny claims.

Because of varied wording and legal interpretations of general liability policy language, cases potentially falling under the coverages need to be reported to the primary and excess insurers when there is knowledge

of a claim. Umbrella policies are generally broader than primary coverage, so it is important to make sure that the umbrella insurer is also on notice for employers' liability claims.

Workers' Compensation

As with any insurance coverage issue, the facts of individual workers' compensation cases will vary, as will the coverage afforded under various policies according to state and federal laws and the terms and conditions of policies that provide coverage beyond that which is mandated by law. Swine flu exposure will fall into three categories:

- potential exposure in the U.S. workplace;
- short-term or temporary assignments outside the United States and Canada; and
- long-term work assignments outside the United States and Canada.

Depending on the language in each state's statute relative to occupational disease, workers' compensation could cover medical bills and reimburse lost wages for pandemic flu-related disability as long as the exposure meets the jurisdictional compensability standard.

Exposure to swine flu will become less of a workers' compensation issue as the number of cases rises. Although health care employees and employees in other industries may face exposure risk arising out of and in the course of employment, the nexus between employment and illness will blur as the general public faces exposure from multiple sources outside employment.

No state specifically references swine flu in its workers' compensation law. However, claims for disability related to swine flu by employees on work assignments in geographic areas where the risk is identified should be filed under the appropriate policy. Many states extend benefits to those injured outside their borders (whether in another state or outside the country), provided that the contract of hire was made in the state or the principal location of employment is in the state. However, circumstances can arise under which such employees would not be entitled to state workers' compensation benefits.

Employers' liability might also be applicable. However, many employers prefer to address this exposure by arranging for a foreign voluntary compensation benefits endorsement or a separate, standalone

policy. While not standard and with much variation in terms and conditions, it provides voluntary coverage for the workers' compensation benefits of a given jurisdiction to employees not covered by state workers' compensation law. The endemic disease coverage language establishes that coverage applies to injury or death arising out of endemic disease even if the disease is not covered under the workers' compensation or occupational disease law of the designated state. Repatriation expense coverage provides for the cost of bringing the employee or his/her remains back to the United States. Policy forms and endorsements should be analyzed in detail to be sure that coverage will apply as expected. Additionally, there are coverage limitations with an endorsement (primarily time limits), so a foreign voluntary policy is preferable if employees are out of the country for extended periods.

Exposure within the United States to employees who may have been infected with swine flu outside of the United States and Canada present additional coverage questions. Most state workers' compensation statutes do not view illness contracted due to exposure to fellow employees as a compensable occurrence, as the exposure to illness is not usually limited to the workplace. The exposure to swine flu would have to be proven to be solely a result of a workplace exposure to be considered for coverage under a standard workers' compensation policy in any jurisdiction. If an employee alleges a workplace exposure to swine flu, the employer should report the incident to its claims administrator and cooperate in any investigation. Compensability of each case must be determined on the merits of the situation and the law of the jurisdiction.

Property Insurance

Generally speaking, each insured's policy should be reviewed individually. Unless the policy provides specific time element coverage for "infectious disease outbreaks/notifiable disease," coverage is unlikely to be triggered by a pandemic. Coverage would not be triggered simply by a fear that pandemic flu or any other communicable disease may be present in or near the insured's property, thereby leading to employee absences or diminished customer traffic.

Coverage may be provided—if the insured has an extended policy—in the notifiable disease, communicable disease, or outbreak provision/extension. Coverage may require a necessary suspension of the insured's business activities at an insured location if the suspension is caused by the order of an authorized governmental agency. The policy extension may also cover the reasonable and necessary

costs for the removal of an actual substance that is causing the spread of a communicable disease; this coverage may have a qualifying period.

The policies should also provide a definition of “notifiable disease,” and there are typically sublimits that will apply. Typical first-party property contracts generally require physical damage triggers by an insured peril either to the insured’s property or to property which precludes ingress/egress to the insured’s property. This includes civil authority extensions.

If an insured feels they may have a claim resulting from an occurrence of a notifiable disease, they should immediately begin the process of gathering documentation to support a potential claim. This should include details of the specific case to the extent information is available to the public, including:

- where the case was diagnosed;
- where in relation to the property was the individual(s);
- what authorities have been or are required to be notified; and
- the specific date of the occurrence.

There may be a wide variation in the terms and conditions of coverage in contracts of insurance from one insurer and from one jurisdiction to the next. The full terms of policies and endorsements need to be analyzed in detail to determine how coverage applies. Contact Marsh to discuss your specific requirements and for further information.

For More Information

For further information on how Marsh is advising clients on the risk implications arising from a possible swine flu pandemic, please contact your local Marsh representative.

Sources of additional information:

[World Health Organization
http://www.who.int/en/](http://www.who.int/en/)

[Centers for Disease Control and Prevention
http://www.cdc.gov/](http://www.cdc.gov/)

[Swine Flu Pandemic Preparedness Center
http://www.marsh.com](http://www.marsh.com)

You can also contact us by phone 866 9AtRisk (866 928-7475) or by e-mail to At.Risk@marsh.com.

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