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## Articles & Analyses

### Business Planning For Pandemic Flu: How Will Your Company Survive the Pandemic?

By Thomas William Baker, Esq. and Katherine H. Forseth, Esq., Troutman Sanders LLP.

**Be Forewarned: The Next Pandemic Flu Outbreak Is Imminent.** Every year, seasonal influenza sweeps the nation. In the United States, approximately 200,000 people are hospitalized and 36,000 die as a result of influenza each year. Less often, a more serious strain of flu causes a pandemic. An influenza pandemic is a global outbreak that occurs when a new virus emerges in the human population. People have little or no immunity to the virus, which spreads easily from person to person and causes serious illness. In the last 100 years, we have seen at least three influenza pandemics, the most severe occurring in 1918 (often called the "Spanish Flu"), and the most recent in 1968.

Estimates of infection and death rates for the Spanish Flu vary from expert to expert. Current estimates of deaths in the United States range from 500,000 to 660,000 with estimates typically ranging from 20 to 40 million deaths worldwide (though worldwide estimates are as high as 100 million). If a pandemic of the same severity as the Spanish Flu occurred today, approximately 90 million Americans would become sick, 9.9 million would require inpatient hospital care, and over 1.9 million would be expected to die.

No one can predict with certainty when the next influenza pandemic will occur. However, every day there is some additional piece of news about the "Avian Flu" or the "Bird Flu," and experts are carefully observing the virus for any changes that may allow the virus to begin to transmit more easily from person to person. Already the virus has spread to bird populations throughout Asia, the Middle East, and into Europe. The virus has infected migratory birds, chickens, and ducks, and has moved on to some mammals such as pigs, cats, and even humans when the mammals are exposed to waste from infected birds. Although, in theory, the virus may never mutate sufficiently to be a pandemic threat, many experts believe that it is not a question of *if* the Avian Flu virus will mutate to permit human to human transmission but *when*.

**Pandemic Flu Preparation Is Unique.** A pandemic is different than other public health emergencies or natural disasters. Pandemics rapidly surge and increase exponentially over a brief period of time, usually a few weeks. However, a pandemic may come in several waves, with successive waves being more severe. Each wave can last several weeks and may be separated by a few months or even a year.

So, what does this mean for your business? While it is understood that healthcare providers need to be prepared to deal with the onslaught of the sick and have adequate supplies of equipment and medication in preparation for a pandemic, how would such an outbreak affect other businesses?

After September 11, 2001, many businesses realized the importance of developing a business continuity plan in case of a natural disaster or terrorist attack. A pandemic, however, has several unique characteristics that make preparation and planning very different than preparing for a terrorist attack or disaster such as a fire or hurricane. In a pandemic, the impact will be widespread. By definition, a pandemic will be international and not specific to a particular location. Thus, little outside assistance will be available. For example, reliance on the Savannah, New York, or even London office to handle the overflow of work will not be possible. In addition, all businesses

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need to develop a plan to prepare for a pandemic and its effect on their business.

As businesses begin to plan for a pandemic, there may be a tendency to rely on distributions of vaccines and antiviral drugs as the primary focus. However, in the event of an influenza pandemic, the virus will likely spread so rapidly that it is unlikely that a vaccine could be developed and sufficient quantities produced to provide protection from the disease. It is likely that after a pandemic virus emerges and is identified, it would take roughly six months for mass production, and even then quantities may not be sufficient to provide protection from a full-scale pandemic. Moreover, the issue of who receives vaccines and in what priority is highly contentious. Traditionally, the most at-risk for influenza are the elderly, the very young, and healthcare workers. However, in the Spanish Flu pandemic, the death rates from the flu were the highest among healthy adults aged twenty to forty years.

**Absenteeism and Loss of Productivity Will Be Critical Issues.** From a practical perspective, business planning for pandemic flu will focus first on absenteeism. Experts recommend that businesses plan for as much as 50% absenteeism during a two-week peak of the outbreak, with lower levels (around 25%) of staff absence during the weeks leading up to and following the peak. Staff absences will result from several reasons: illness (or exposure to the virus); to care for family members; school closures are likely to cause child care issues for some staff members; some staff may simply be unwilling to come to work because they feel safer at home; and some may be fulfilling other roles in the community (Red Cross volunteers, or National Guard duties). In addition, your company may be well advised to consider policies to encourage sick workers, or those with sick family members, to stay at home until they are well.

In addition to the difficulties this presents for your business, businesses all over the nation will suffer the same absenteeism during the same general timeframe. This could affect the ability of basic services necessary for your business to operate. Supplies may be disrupted if they are imported via airfreight, rail, or trucking. Subcontractors may be unavailable. Public utilities may be affected, public transportation may be reduced or unavailable, and public places such as museums and theatres may be ordered closed to help slow the spread of disease.

Pandemic flu business planning should also consider the impact of laws such as the Family Medical Leave Act on your work force because employees will likely need time to care for sick relatives or for bereavement. Businesses can likely expect to lose some portion of their work force in the wake of pandemic flu.

**Will Your Telecommunications System Work?** While working from home is one option available to many businesses, there are many factors to consider. How many of the company's employees can actually telecommute? While managers and professionals may be able to work effectively from a remote location, will secretaries and support staff be effective at a location separate from the managers and professionals that they support? Will your server be able to effectively handle the increased reliance from workers logging in from "outside"? Will your systems be able to sustain the demand with little or no human intervention from your technology department? Is there a plan of succession if key employees become ill or die?

**Human Resources Planning.** For these reasons, business planning for a pandemic outbreak of influenza must focus on human resources. Unlike other natural disasters where the primary problems are hardware related (telephone and electronic communication systems are damaged), the primary problems in this case would be the lack of staffing and lack of other resources that would result from absenteeism at suppliers and service providers upon which your business relies.

As employers, businesses should take the lead in educating staff regarding infection control. Employers can post signs around the office with reminders on stopping the spread of disease. The Centers for Disease Control and Prevention (CDC) has posters available on its website that contain, for example, reminders on hand-washing techniques and notices reminding employees not to come in to work if they are experiencing symptoms of the flu. Employees should be encouraged to stay at home for as long as they are not well, and should be encouraged to return to work when they are well (they are likely to have developed immunity to the illness and are not likely to become sick from the virus again).

If employees become ill at work, they should be encouraged to phone (rather than visit in person) their supervisor or human resources coordinator. Employees should

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then leave without talking or visiting other staff, and the human resources coordinator should have a plan in place for notifying others that the staff member has gone home as well as notifying those who may have been in close contact (within 1 meter) of the staff member within the previous twenty-four hours that they may have been exposed to the virus. Employers should consider whether any exposed employees should also be sent home until sufficient time has passed for effective infection control.

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**Financial Planning.** All businesses would expect to face a financial impact. For some businesses, the impact could be positive due to an increased demand for specific goods or services. For a vast majority of businesses, however, the impact could be staggeringly negative. It is estimated that seasonal influenza costs the U.S. economy between \$10 million to \$12 million in medical costs and loss of productivity annually. A severe pandemic flu could cost the U.S. economy \$70 to \$167 billion.

Some work places may need to close. Closure might become necessary because of a lack of staff, a lack of demand for the product or services you provide, or because remaining open is not feasible. Businesses may also face mandatory closure (for example, public amusement businesses such as movie theatres or other places of congregation such as conference centers, shopping malls, and sporting events may be ordered closed by government health officials). If your business is of the type that may be subject to a mandatory closure, financial reserves sufficient to meet your minimum expenses for a period of several weeks will be necessary. In addition, if your business is a supplier for businesses that may be shut down, your business must also have financial reserves to handle the reduced demand that may last for several weeks.

**Short Term Decreased Demand for Goods and Services.** Pandemic flu may affect the demand for a company's services or products. Certain businesses may see an increase in demand that can simply not be met (healthcare is an obvious example, but demand for internet services, cellular service, gasoline, and generators, for example, may all be increased). Conversely, other businesses may become extremely slow and demand may all but cease for weeks or months.

Some businesses would face loss of demand because of damage to reputation or a sense of fear regarding the products offered. Poultry and livestock farmers, and those who sell meat products, could face significant decrease in demand if consumers fear that the virus may be spread through consuming the product. These fears may have no factual basis, but companies nonetheless need to be prepared.

**Short Term Supply Chain Interruptions.** Businesses may also suffer from an interruption in their supply chain or in required services that make it impossible to meet any demand. For example, if electrical or Internet service is extensively interrupted, or travel restrictions are imposed, or trucking and shipping services are delayed due to absenteeism, how will your business obtain goods or services?

**Long Term Demographic Changes.** Long term, the changes in demand for services could significantly impact your business. A disproportionate death rate among twenty to forty year olds (as in the Spanish Flu) could significantly impact the housing market, as well as related construction, design, home product, and home-improvement businesses. The travel, tourism, and hospitality industries may all experience a significant blow. Airlines already in trouble may not be able to recover.

**The CDC Business Planning Checklist.** The CDC has developed a useful planning checklist for businesses. The checklist includes several items that are relevant to businesses of all sizes. For example, the checklist includes items such as providing sufficient infection control supplies like soap, tissues, and receptacles for their disposal at all business locations. The checklist also asks you to consider various aspects of your business and to develop policies to handle a pandemic. For example, how will you handle sick time in the event of a pandemic? Policies for non-punitive liberal leave and for flexible worksites and flexible work hours (staggered shifts) may be an effective way to keep your business operating while your employees are sick, tending to sick family members, and trying to avoid contracting and spreading the virus. Staggered shifts and telecommuting may make it possible for your business to stay in business rather than forcing employees to make a decision about coming to work where they may contract or spread the illness or losing their job.

The checklist is available through the CDC's website at <http://pandemicflu.gov/plan/businesschecklist.html>. Also available online is a "criticality assessment matrix" and useful information on business continuity planning

at <http://www.continuitycentral.com/feature0261.htm>. These checklists and articles are only tools for developing your business plan, and do not contain every element that your business should consider, but they do provide a helpful starting point for businesses to begin to formulate an individualized plan.

**Development of a Pandemic Flu Business Plan.** The specter of pandemic flu is like Y2K, but with teeth. The biggest differences between Y2K and pandemic flu are that pandemic flu will happen and will occur in succeeding waves. Businesses dedicated vast resources to Y2K, yet little has been dedicated to pandemic flu business continuity plans. Businesses should review *force majeure* clauses in their contracts with their customers and clients as well as in contracts with their suppliers. Perhaps businesses should require their suppliers to represent and warrant that the suppliers have implemented a pandemic flu business continuity plan.

The goal of your plan should be to reduce the risk of loss of services, loss of market share, loss of revenue, and loss of reputation. Your plan should also help to ensure continued compliance with legal, regulatory, and contractual requirements. Most importantly, your plan should protect the company's greatest asset, its people.

As your company considers its business continuity plan for pandemic disease, you should discuss the plan and coordinate with your suppliers, contractors, and clients. If communication regarding your firm's plan for closure or increased/decreased demand for supplies begins now, those who your business depends on for success can assist in development of your plan and begin to formulate plans for their own businesses.

The statistics and possible effects of a severe pandemic flu are sobering. The loss of life and the effect on the global economy are difficult to imagine. However, it is important to remember that a pandemic flu would not be the end of the world. Most likely, 95% of the population (or more) would survive. Businesses that prepare now for the financial pressures and industry changes that may result will be in a better position to survive the storm and emerge stronger companies on the other side.

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