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Hepatitis A and the Workplace

The Hawaii Employers Council has prepared the following white paper on Frequently Asked Questions (“FAQ”) regarding Hepatitis A in the workplace. This FAQ provides answers to general questions about Hepatitis A, as well as several employment-related questions regarding Hepatitis A that have been commonly raised by employers and human resources practitioners.

1. *What is Hepatitis A?*

Hepatitis A is a liver infection that is caused by the Hepatitis A virus (“HAV”). The virus can lead to inflammation of the liver and affect the liver’s ability to function properly. Its effects may range from a mild illness lasting a couple of weeks to severe illness lasting several months.

Symptoms of HAV can include fever, headache, body ache, loss of appetite, nausea, stomach pain, vomiting, diarrhea, dark colored urine, pale colored stool, and Jaundice (i.e. yellow skin and eyes). Not every infected person will have any or all of the symptoms. Illness can occur as quickly as two weeks or as late as 50 days after exposure to HAV.

HAV is also found in the stool of infected individuals. It is usually spread by eating contaminated food or drinking water or through close personal or sexual contact. It is highly contagious.

2. *How long is a person with HAV contagious?*

According to the State of Hawaii Department of Health (“DOH”), Disease Outbreak and Control Division (“DOCD”), individuals with HAV are most contagious between the one to two weeks before symptoms start and at least one week after the start of the first symptoms.

3. *Who should get tested for HAV infection?*

Individuals who have symptoms of HAV should be tested. Due to the long incubation period for HAV, testing for individuals who do not exhibit any symptoms is generally not recommended because it may result in a false negative test if taken too early.

However, unvaccinated individuals who are “food handlers” and are deemed by the DOH to be “contacts” of infected individuals should get tested for HAV infection because they are required to have a negative Hepatitis A IgM test before they can return to work. (This issue is discussed further in Question #5 below).

4. *Is there a vaccine that can prevent HAV infection?*

Yes. Two doses of Hepatitis A vaccine are needed for protection from the virus. According to the Center for Disease Control (“CDC”), the two doses should be given at least six months apart.

Individuals who have already received the vaccine or have had HAV in the past do not need to get vaccinated.

5. Does the DOH require employees in certain fields of work (e.g. food service or healthcare) to obtain HAV vaccinations prior to working?

Currently, the law does not require any employees to obtain an HAV vaccination prior to working, not even food service or healthcare workers.

However, the law does impose some restrictions on employees in food handling and direct care occupations. For example, individuals who are infected by HAV and work in food handling or direct care occupations are restricted from working for the first two weeks of illness, but no later than one week after jaundice. Additionally, any individual who works in food handling and is deemed by the DOH to be a “contact” of an infected person is required to obtain a negative Hepatitis A IgM test before returning to work. For such individuals, however, a vaccination is still not required by law.¹

“Foodhandling” is defined as “any contact with food, beverages, or materials and/or items used in their preparation that has the potential to result in the transmission of infectious microorganisms via ingestion of the food and/or beverage. Examples of foodhandling include (but are not limited to) transporting food or food containers, preparation or service of food, and contact with utensils or food associated equipment.”

“Direct care occupations” are defined as “any occupational activity that has the potential to result in the transmission of infectious microorganisms from a care-giver to persons receiving care. Direct care occupations include persons engaged in providing care to children, patients, the elderly, or infirm.”

“Contact” is defined as “a person who has been in such association with an infected person or animal or a contaminated environment as to have had an opportunity to acquire the infection.” According to the DOH, a contact can include unvaccinated household members, sexual contacts, anyone sharing illicit drugs with the infected individual, anyone sharing food or eating or drinking utensils with an infected person, and anyone consuming ready-to-eat foods prepared by an infectious food handler.

6. How does a food service employer know if an employee has been found to have been infected with HAV?

If an individual tests positive for HAV, the individual’s physician and the laboratory conducting the test are required to report the matter to the Director of Health in writing. The DOH will then contact the individual’s employer in order to conduct an investigation of the employee’s workplace to determine whether other individuals could have also been infected.

¹ Any individual who has tested positive for HAV is not required to obtain a negative IgM test before returning to work because such a negative test is not possible for anybody who has contracted the virus. Unfortunately, the virus will always remain in the individual’s system.

7. How does a food service employer know which employees are a “contact” that needs to obtain a negative IgM test before resuming work?

Upon being notified that an individual has tested positive for HAV, the DOH will conduct an investigation of the person’s household and workplace. If the individual works in food service, the DOH will request the employee’s work schedule and contact information for co-workers who worked with the individual when the worker was contagious. The DOH will then determine which co-workers constitute a “contact” that needs to obtain a negative HAV test before continuing to work. The employer does not make this determination.

8. Can an employer require employees to get vaccinated? If so, can the employer limit this requirement only to certain job classifications?

Yes, private employers can generally require employees to obtain an HAV vaccination as a condition of employment, subject to certain exceptions. For instance, one such exception may arise where an employee is entitled to an exemption from a mandatory vaccination requirement based on a disability that prevents the individual from taking the vaccine. Similarly, if an employee has a sincerely held religious belief, practice or observance that prevents the individual from taking the vaccine, the employer must provide the employee with a reasonable accommodation unless doing so would pose an undue hardship. Finally, employers that are subject to a collective bargaining agreement (“CBA”) may need to bargain with the employee’s bargaining representative (i.e. union) over the impact of such a requirement.

When determining whether to impose a mandatory vaccination requirement on employees, employers should also consider the impact that such a requirement may have on employee morale. Specifically, it is reasonable to expect some employees to get upset if they are forced to obtain an HAV vaccination or risk being terminated from employment, as opposed to deciding on their own whether to obtain the vaccine.

Therefore, instead of imposing a vaccination mandate on employees, employers may want to contemplate simply suggesting or encouraging employees to get vaccinated instead.²

If an employer decides to implement a mandatory vaccination requirement, it can be limited to specific categories of individuals (i.e. food handling occupations in a hotel), as long as it is not done in a discriminatory manner.

9. Is the employer required to pay for the vaccination?

No, the employer does not have to pay for the cost of the vaccination.

As a practical matter, however, employers should consider whether the benefits of preventing HAV from entering the workforce outweigh the costs of paying for the vaccination for employees. For some employees, their medical plan may cover the full cost of the vaccination. For others, however,

² As an example, the EEOC has advised that employers “encourage” rather than “require” employees from obtaining an influenza vaccination. See *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act*, at 13 (“Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it.”)

the employee may have to make a co-payment that discourages the employee from obtaining the vaccination. Finally, part-time employees who do not have health insurance may also be reluctant to obtain the vaccination if its cost is too high.

10. *Is time spent getting an HAV vaccination at the direction of the employer compensable?*

Yes. If a non-exempt employee is sent to see a doctor at the direction of the employer to obtain an HAV vaccination, that time is compensable. For exempt employees, no additional compensation in addition to their normal salary would be required.

11. *Aside from requiring or encouraging vaccinations, is there anything else an employer can do to help prevent the spread of HAV?*

Yes. Employers should consider implementing policies and procedures that help prevent the spread of germs in the workplace, such as proper hand washing practices, cleaning the workplace thoroughly, providing hand sanitizers in the workplace, and encouraging employees who may have a communicable disease to remain at home. Allowing employees to telecommute temporarily may also be helpful in certain instances.

In addition, educating employees about appropriate safety standards and the risks associated with the spread of HAV may also aid in preventing further outbreak of the disease. For instance, employers can provide employees with the informational poster regarding Hepatitis A that was prepared by the DOH. For a link to the poster, see Question #14.

12. *If an employee informs his employer that he has tested positive for HAV, what can the employer tell employees?*

The employer should keep this information confidential and not inform the staff that the particular employee has HAV. The employer may, however, inform the employees that a case of HAV has been reported for the workplace. The employer can also inform the employees that they may have to get tested.

In addition, the employer must make sure not to keep such medical information in the employee's personnel file. Rather, medical information needs to be kept in a separate medical file, and only those few individuals who really need the medical information for work-related purposes should have access to the file.

Finally, if the employee works in a food service establishment, the infected individual should be made aware that the DOH will be conducting an investigation that involves interviewing co-workers. Through the investigation, the DOH may reveal that a particular individual has contracted HAV.

13. *An employee informed her employer that she consumed food from a business that has been identified as a Place of Interest (i.e. a food service business where an employee has been diagnosed with Hepatitis A). What can the employer do?*

The employer can provide the employee with information about HAV and explain that the employee can get tested if she is experiencing any symptoms. The employer should also remind the

employee about company policies and procedures that help prevent the spread of germs in the workplace. For further discussion, please see Question #11.

14. *Where can I read more information about Hepatitis A, as well as related issues involving the workplace?*

A FAQ from the DOCD regarding Hepatitis A can be viewed here: [Hepatitis A FAQ](#).

The DOH has prepared the following information poster on how to prevent the spread of HAV: [DOH Hepatitis A Informational Poster](#).

The DOH has also provided a list of locations that provide the Hepatitis A vaccination: [Where to Get Your Adult Vaccinations](#).

The Center for Disease Control and Prevention has provided its own set of questions and answers here: [CDC Q&A for Hepatitis A](#)

Guidance from the EEOC regarding pandemics in the workplace can be viewed here: [Pandemic Preparedness in the Workplace and the ADA](#)

Guidance from the EEOC regarding the ADA and food service employers can be viewed here: [How to Comply with the ADA: A Guide for Restaurants and Other Food Service Employers](#).