

EXECUTARY

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news

SWINE FLU

Lethal weapon

Swine flu cases are on the increase and for many employees, contracting the virus provides the perfect ammunition. By Kate Hilpern

EMployers who fail to protect staff from swine flu could face expensive personal injury claims, lawyers have warned.

Jill Andrew, an employment lawyer at Dawsons LLP, explains: 'Employers have a general duty under health and safety legislation to take reasonable steps to protect their employees.'

But Charles Maher of Marsden Rawsthorn solicitors, isn't sure that lawsuits will happen in practice. 'Staff would have great difficulty in proving they had contracted swine flu in the workplace.'

Nonetheless, even Maher believes employees can expect certain things – not least to

be made aware of the medical guidance set by the Government.

Even if you don't see a doctor, but are reasonably certain you have swine flu, you shouldn't hurry back to work. Lauren Harkin, from Lemon & Co solicitors, points out: 'The Department of Health is considering doubling the amount of time that staff can sign themselves off from work without a doctor's note to up to 14 days.'

By far the most sensible employers, according to lawyers, are those who draw up a 'swine flu policy', which deals not only with the position of staff, but also contains contingency plans if large numbers are ill at the same time.

Edward Wanambwa, partner at CM Murray LLP does foresee the possibility of litigation arising under discrimination legislation though. For example, where employers have applied their discretion to flexible working or sick and dependent leave, in what is perceived to be an unequal manner.

In other words, if your younger, more senior male colleagues are allowed to work from home to avoid swine flu or are allowed to stay home to look after their unwell partners and/or children,

while you – a middle-aged woman in a junior role – have your requests repeatedly turned down for no good reason, you may indeed have a legal case.

However, Peter Mooney, head of consultancy at Employment

Law Advisory Services, believes employees must also take responsibility. 'Individuals can take steps to avoid catching swine flu – it starts with basic hygiene such as using a tissue when you sneeze and then washing your hands.

