

## Mexico Practice

To: Our Clients and Friends

May 2009

### H1N1 VIRUS: EMPLOYEES IN MEXICO

In light of the current H1N1 virus outbreak events around the globe, the Mexico Practice of Bryan Cave has prepared the following list of issues and recommendations to be taken into consideration by our firm's clients and friends with employees in Mexico, so as to avoid any improper or unlawful employer conduct under Mexican labor laws. Such list is consistent with communications and actions taken by the Mexican Government, including the health and labor ministries.

- **Mandatory Close of Business.** Pursuant to a Presidential resolution published on April 30, 2009 in the Mexican Official Gazette, all federal government agencies and “non-essential” private sector entities must close during the period from May 1<sup>st</sup> through 5<sup>th</sup>. “Essential” entities include, without limitation, those involved in medical and pharmaceutical services, telecommunications and mass media, financial institutions, restaurants, hotels, gasoline and groceries. It is worth noting that May 1<sup>st</sup> and 4<sup>th</sup> are mandated federal holidays.
- **Affected Employees.** Under Mexican labor law, an employee's contagious disease is cause for temporary suspension of the employment relationship (and any legal effects thereof during such period). Therefore, the employee is not bound to work, and the employer is not obligated to pay salary. An employee is obligated to notify the employer, and deliver proof, of such condition in order to justify his/her absence at the workplace. Mexican President, Felipe Calderon, has asked the private sector to be mindful and supportive of affected employees.
- **Expecting Mother Employees.** Mexican labor law is protective of pregnant employees. Along those lines, it sets forth that expecting mothers are not obligated to work when any condition or circumstance in the workplace, or the working activities in general, pose any type

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of risk to her or the child's wellbeing. To the extent the risk of being affected by the H1N1 virus is present at the workplace, pregnant employees should not be working but get paid.

- **Working from Home.** Any modification in the work conditions must be mutually agreed upon by employer and employee. Therefore, employers may give this option to employees (when the nature of the activity so permits), provided the employee agrees to such modification, even if on a temporary basis.
- **Preventive Measures.** Employees are obligated to obey any preventive measures adopted by their employer with respect to any dangerous conditions at the workplace. Disobedience is one of the causes that entitle employers to terminate labor relationships. Consistent with general recommendations in the wake of the H1N1 virus threat, the following preventive guidelines have been issued by Mexican government officials:
  - Employers should incorporate in their health prevention handbooks any provisions or requirements issued by the health authorities.
  - Employers should provide employees with information about the risks associated with the H1N1 that is issued by the health authorities.
  - Employers are responsible for special medical tests for employees potentially exposed to the virus.
  - Every workplace should have a contingency plan.
  - Employers should clarify and inform the employees about what departments, areas or personnel will have more flexibility with respect to working schedule, attendance and ability to work from home, among other aspects of their work.
- **Consult Counsel.** Should any question arise regarding how to proceed with a specific situation with an employee or interpretation of government guidelines or resolutions, do not hesitate to promptly consult your counsel.

For further information about the H1N1 Flu outbreak in Mexico, Mexican employees can consult the Mexican Government website for H1N1 Prevention [www.prevencioninfluenza.gob.mx](http://www.prevencioninfluenza.gob.mx) or call 01-800-123-1010 (in Mexico).

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