MANAGING MEASLES IN THE WORKPLACE: Questions and Answers for Employers

What’s behind the rise in measles cases?
The overall rise in cases over the past decade can be attributed to a few factors, among them:

- Measles is still common in many parts of the world, including many popular travel destinations in Europe, Asia, the Pacific and Africa, so outbreaks can be triggered by visitors or those returning home from travel abroad.
- There’s a growing number of people living in the US today who are not vaccinated or immune:
  - Those who refuse vaccines for themselves or their children because of religious, philosophical or personal reasons.
  - Those who did not live in the US during the pre-2000 vaccination heyday (and their children).
  - People who cannot get vaccinated because of a weakened immune system, allergic conditions or other competing health conditions.

Measles is a highly contagious virus, easily spread through coughing and sneezing. One reason is that the virus can linger in the air or on a surface for up to 20 minutes. In fact, measles is so easily spread that 90% of those in close proximity to an infected person will become infected if not otherwise immune or vaccinated. An unvaccinated young person who happens to walk through a ‘cough cloud’ left a few moments earlier by an infected person and takes it back to a classroom of similarly unvaccinated students or an office with unvaccinated employees has set up a scenario for an outbreak.

For all these reasons, the number of large spikes in measles cases (as seen in the Centers for Disease Controls (CDC) chart) is on the increase. A good illustration is 2014, where the US experienced over 20 measles outbreaks. This year included one large outbreak of 383 cases that occurred in several unvaccinated Amish communities in Ohio and another brought in from the Philippines, where measles outbreaks that year were particularly strong.

And in early 2015, the big story is the measles outbreak that has occurred at Disneyland, where to-date, over 100 confirmed cases have been tied to the southern California park since the outbreak began in early December.

The location of the outbreak particularly problematic because California is also one of the 20 or so states that has a “Personal Belief Exemption” loophole in its vaccination law. As a result, in some counties, the percent of unvaccinated children in schools has been reported to be as high as 45%. The more unvaccinated children there are in the population, the greater the chance of an outbreak.

Who is Susceptible Today?
If a person was vaccinated years ago, are they still susceptible? The MMR vaccine is highly effective, but it doesn’t provide 100% protection. According to the CDC, among those recently infected at Disneyland, 6 people...
confirmed receiving their MMR vaccine. So what may have happened?

Some may have only received 1 of the 2 required vaccination doses as children. Others may have very weak immune systems or fall into the 5% of those considered ‘non-responders’ to the vaccine. Whatever the reason, the growing number of unvaccinated people in this country is slowly stripping away the ‘herd immunity’ protection that existed a decade ago. Large numbers of people who are immune act as a shield for those who might otherwise be vulnerable. Now, that shield has a growing number of ‘holes,’ where pockets of infection opportunity exists.

Changing vaccination preferences/beliefs, a growing number of unvaccinated young people and global mobility are creating more and more groups of susceptible people, increasing the probability that this highly contagious and sometimes deadly virus will make a comeback.

**What Does This Mean for Employers?**

No one wants a sick workforce. The threat of lost productivity, the expense associated with medical treatments and downtime as well as difficulty providing services to citizens makes many employers seek to understand what options and level of control they have when it comes to protecting their workplace from a measles outbreak or responding to one if it occurs.

Here are some key questions and answers for employers:

**Can an employer ask employees if they have been vaccinated or are immune to measles?**

The issue of vaccination is a complicated one. The Americans with Disabilities Act bars an employer from discriminating on the basis of medical status. Furthermore, the Civil Rights Act bars discrimination on the basis of religion. One could argue that acknowledging immunization status could reveal one or both of these factors for an employee.

If immunization is a job requirement for specifically defined groups of employees (e.g., healthcare workers who are greater risk of exposure) then it is permissible to ask for proof of immunization as a condition of employment. However, this requirement must be consistently enforced to help avoid claims of discrimination.

**Can an employer require vaccination?**

The answer here is -- it depends. California requires that healthcare employers make vaccines available to all susceptible workers. Exceptions exist for outpatient medical facilities whose policy is not to diagnose or treat aerosol transmissible diseases like measles. But the law does not require vaccination, even in populations that are more at risk for contracting the disease.

Public schools do not require that teachers or employees provide proof of immunization from measles although they require proof of immunization for students. The generally accepted argument here is that requiring students to be immunized is a more effective and less disruptive way to control infectious diseases like measles.

It is important to note that if an agency has not previously required vaccination for the measles as a precondition of employment, it may be problematic to retroactively add that requirement for current employees.

If your agency is considering such a course of action for any of your employees, you should consult a labor relations attorney.

**Even if an employer can require vaccination, should they?**

Some groups of employees -- healthcare workers, employees who work with immigrant populations -- face a higher risk of being exposed to measles that most employees. So it may be tempting to have an immunization requirement as a prophylactic measure. However, requiring vaccinations opens the door to significant administrative burdens, possible morale issues and the very real potential that one of the following may be violated:

*Americans with Disabilities Act (ADA)* - Some people cannot be vaccinated for medical reasons. These individuals’ medical conditions are most likely qualified disabilities protected by the ADA. If a qualified disability prevents an employee from obtaining a mandatory workplace vaccination, then that person may be entitled to a reasonable accommodation allowing them to continue performing the essential job duties without obtaining vaccination.

The ADA’s protection also covers employees who may not currently be symptomatic, but would be aggravated by the vaccine. In these situations, the employer would either need to make an exception to the policy or demonstrate that doing so would create an undue hardship upon the workplace.

*Title VII of the Civil Rights Act of 1964* requires that employers reasonably accommodate an individual’s religious beliefs. Therefore, if an employee has a religious or faith-based objection to being vaccinated, then the employer must accommodate this unless doing so would create a substantial burden to the business or organization. And while employers are permitted in such cases to ask for confirmation that the objection is based on bona fide religious doctrine, they must tread carefully; probing too deeply can give rise to a claim of religious discrimination.

Contractual and Collective Bargaining agreements in the workplace may be violated by a unilateral vaccination requirement. Mandatory vaccination policies may require specific bargaining through union or labor contractors.

For more information on York Public Entity, visit our website at [www.yorkrsq.com](http://www.yorkrsq.com).
And, with 96% of the adult population in the US already immune to measles, is the risk and burden of imposing requirements on employees worth it?

However, if you are considering an employee vaccination requirement, it’s advisable to consult an experienced employment attorney.

**What can employers do right now?**

Employers can educate workers about measles, how the disease is spread and what factors can give someone immunity to measles. Employees may not realize that someone is typically considered immune to measles if they meet the following criteria:

- They received two doses of the MMR (Measles, Mumps and Rubella) vaccine
- They were born before January 1, 1957
- They have a history of confirmed measles (you can only get it once)
- They have a blood test confirming immunity

Agencies can also encourage employees to check their status and can even set up on-site clinics to allow employees to have their immunity tested (with the results being shared only with the employee) and to receive vaccinations if the employees choose to do so. There may be other resources in the employees’ communities -- including local pharmacies and doctors in the employer’s healthcare benefits network(s) that employees can contact to be tested or vaccinated. Proactive education about these resources is another option for employers to pursue. It can also be advisable to seek the advice of legal counsel experienced in employment law when communicating with employees and offering options such as onsite testing and vaccination clinics.

If an employee -- or more than one -- becomes infected with the measles, proactive involvement can be a key factor in controlling costs and durations of an individual claim and, potentially, the impact of a single case on your workforce. If even one employee is known to have measles and was present in the workplace while contagious, then other employees who came in contact with the infected person may have been exposed to the disease. Proper monitoring and isolation of employees who may have been exposed (e.g., through “work at home” programs, paid time off or other options supported by agency policy) can help limit the spread of the disease through the workforce and manage the overall impact on productivity.

**What about Workers’ Compensation?**

Employees seeking workers’ compensation coverage for measles will need to demonstrate that they could not have been exposed to measles except at work (e.g., the exposure arose out of or occurred in the course of employment). Unlike the flu, which can and often does affect large groups of people, measles outbreaks are still limited because so much of the US population is immune, so it may be easier to identify when the point of exposure was the workplace.

**How Can York Help?**

York’s integrated approach to managing workers’ compensation claims includes sophisticated predictive analytics that allow us to identify claims that have the potential to incur high costs, long durations. We can proactively manage those claims using the claims and managed care expertise of our team members. We call our approach “TeamComp™.” The algorithms TeamComp™ uses can also look for diagnosis codes related to diseases like measles, mumps and rubella.

Our TeamComp™ process can help ensure that the right medical resources are assigned to these cases early to help limit the spread of the virus. Through our extensive medical management resources, York is able to provide adjusters and other non-medical resources with support and education on the impacts of medical conditions like measles, and helping them to understand how these conditions might impact their claims.

While claims involving these diseases are infrequent, it is all the more important that employers are made aware of these claims as soon as they occur.

**Want to learn more?**

Here are a few good resources that can provide additional information about Measles:

- The Centers for Disease Controls and Prevention (CDC):
  - [http://www.cdc.gov/measles/cases-outbreaks.html](http://www.cdc.gov/measles/cases-outbreaks.html)
  - [http://www.cdc.gov/measles/about/faqs.html](http://www.cdc.gov/measles/about/faqs.html)


- A New York Times article on the retraction of the controversial original study linking the measles vaccine to autism: [http://www.nytimes.com/2010/02/03/research/03lancet.html?_r=1&](http://www.nytimes.com/2010/02/03/research/03lancet.html?_r=1&)
