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NAVIGATING THE MEASLES OUTBREAK: A Q&A GUIDE FOR PENNSYLVANIA SCHOOLS

As you are no doubt aware, a measles outbreak has begun. In the following question and answer format we wish to provide you with information which you will likely need:

Q: Is there information available from the Department of Health?

The Pennsylvania Department of Health (DOH) has published [Measles: Information to Prevent Spread in School and Child Care Settings](#). This document provides you with general information about the situation.

Q: What do you do if you determine someone with measles has been at your school?

According to the DOH document entitled “Respiratory Outbreaks,” if you are located within a county that has a county or municipal health agency, a report needs to be made to that agency. If there is no local or county agency, the report needs to be made to the DOH. Under state regulations (*28 Pa. Code §27.21(b)(1) and §27.3*), a suspected or identified case of measles must be reported by a health care practitioner within 24 hours after it is identified by symptoms and appearance of diagnosis.

Q: What are the rules for someone who has been diagnosed with or suspected of having measles?

Anyone who has been diagnosed with or suspected of having measles must be excluded from school for 4 days after the rash first appears (*28. Pa. Code §27.71(2) and §27.160(a)*).

Q: What do you do if an employee or student has been exposed to measles?

The state regulations require that anyone who is presumed susceptible to measles and is suspected by a physician or school nurse of having been exposed to the disease must be excluded from school (*28. Pa. Code §27.75 and §27.160*). This means that the individual is barred from entering a school building, riding the school bus and attending school activities.

Q: What does it mean to be “presumed susceptible”?

A person is presumed susceptible if they cannot show they received two documented doses of the measles vaccination (at least a month apart) while age 12 months or older or

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have lab evidence of immunity (e.g. antibody test) or was born after December 31, 1956. (28 Pa. Code §27.160(b)(1)).

Q: What does it mean to be exposed?

According to the DOH, a person is exposed when they are in the same space (e.g. room, office, building area) with someone who has measles, or occupies one of these spaces within 2 hours after the infected person has left. Common scenarios where exposure is likely to occur include:

- Classroom contacts
- Transit contacts
- Extracurricular contacts
- Direct physical contact

Q: If someone is presumed susceptible and has been exposed, how long must they be excluded?

State regulations and DOH guidance provide that exclusion must be for no later than 5 days after exposure and through day 21, without getting sick following the last exposure (28 Pa. Code §27.71(2)). Because of what we view as ambiguities in the regulations it is our advice that decisions about exclusions should be made in consultation with DOH or local health authorities as appropriate for your jurisdiction.

Q: How do you count days of exclusion?

How to count days should be reviewed with your healthcare professionals. However, it is our understanding that day 0 is the day of exposure and day 1 is the first official day of the 21-day exclusion period. If there is a new exposure during the exclusion period, the 21-day exclusion clock starts over. The return date is day 22, so long as the individual has remained symptom free.

Q: What role does the DOH, the county or local health department play concerning the exclusion rules for someone who is presumed susceptible and has been exposed?

Under Pennsylvania regulations (28 Pa. Code §27.160(b)(2)), when measles is determined to be present in a school, either the DOH or the local department of health has the authority to order exclusion of students or staff who are presumed susceptible and who do not present evidence of having received measles vaccination within 30-days prior to an outbreak and to require continuation of an exclusion until those individuals prove they are not susceptible, receive a vaccine or no case of measles has occurred for a 14 day period. It appears, however, this authority is discretionary.

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Q: What are the exclusion rules for someone who is susceptible and has been exposed if neither the DOH nor the local department of health has issued an exclusion order?

The answer to this question is unclear.

Section 27.75 (28. Pa. Code §27.75) of the state regulations states that those “having contact with children shall be excluded from school during a measles outbreak under the procedures described in 28 Pa. Code §27.160”.

The ambiguity raised by this language relates to whether only the department of health (state or local) can order exclusion. Section 27.160, in our opinion, supplies the criteria used to determine who must be excluded so that the reference in section 27.75 of the regulations to section 27.160 does not mean exclusion is optional for you if there is no separate DOH order. It is our interpretation that exclusion is mandatory for anyone who meets the criteria listed in section 27.160.

The argument to the contrary is that section 27.160 authorizes the DOH (state or local) to determine who is susceptible and to order exclusion. This could be read to mean that exclusion under section 27.75 occurs only through the DOH.

While it is our opinion that you have the authority to exclude someone who is susceptible and has been exposed even in the absence of a DOH order, we strongly recommend that you confer with DOH (state or local) before you make that decision. Our research establishes that historically DOH and school entities have worked well in tandem to address these kinds of issues.

Q: Is anyone exempt from exclusion even if they have been exposed?

Yes. In order to be considered immune and exempt from exclusion, a person must be able to show they received two documented doses of measles vaccination (at least a month apart) while age 12 months or older or have lab evidence of immunity (e.g. antibody test) or was born on or before December 31, 1956. (28 Pa. Code §27.160(b)(1)).

Another exception, according to the [CDC Manual for Measles Surveillance](#), is that a susceptible person who receives a dose of MMR within 72 hours of a first exposure may return to school. It appears this exception is recognized by the DOH though there is no direct language in the regulations addressing this issue. Accordingly, we recommend you confer with DOH before implementing this exception.

Q: If an employee has been diagnosed with measles and has been placed in “excluded status” is it paid or unpaid?

Since an employee who has been diagnosed with measles by law must be excluded, it is our opinion that the employee can use sick leave if it is available. If the employee has no available sick leave, they can use other available leave consistent with your practices for leave, but you do not have to keep them in paid status.

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Q: If an employee who is presumed susceptible and has been exposed to measles is placed in “excluded status” is it paid or unpaid?

If the local or state health department issues a quarantine/exclusion notice, it is our opinion that the same rules as set forth in answer to the last question apply. If the local or state health department does not issue a quarantine/exclusion notice (since it appears to be discretionary) the answer is more complicated.

As we described in our answer to an earlier question, it is our opinion that in the absence of a DOH exclusion notice you can make a decision on your own to exclude someone who is presumed susceptible and been exposed since we interpret section 27.75 of the regulations to mean that such an individual shall be excluded provided the criteria set forth in section 27.160 are met. Therefore, sick leave can be used, and the leave is without pay if there are no sick days available.

We do note that should this interpretation of the regulations be challenged and it is determined that only DOH can authorize exclusion for someone who is presumed susceptible and exposed, it is likely that an arbitrator would find an exclusion that was not DOH authorized, would need to be paid without the requirement to use sick leave.

Q: If you wish to allow employees to be on paid status during exclusion without having to use sick days if available, can you do so?

If you wish to allow employees to be on paid status during the exclusion period, without having to use available sick days, it is our opinion that you can do so. If you do, we recommend you enter into a memorandum of agreement with the union representing the impacted employees that makes clear what you are doing, how long you are doing it, why you are doing it and that the payments are non-precedent setting.

If the impacted employees are not represented by a union, we recommend that the board approve a motion that includes much the same information as the memorandum of agreement.

Q: Would FMLA leave be available for employees who are exposed and therefore excluded but are asymptomatic?

For an employee in this situation (exposed but asymptomatic) it is our opinion that FMLA would not be available. Exposure alone does not constitute a “serious health condition.” If an employee, after exposure, contracts measles and becomes ill, the virus could then qualify as a serious health condition triggering FMLA protection. Also, if a family member becomes ill and the employee is providing care the employee may qualify for FMLA leave.

Clients who have questions regarding issues discussed in this article, or any employment law matter, should feel free to call us at 215-345-9111.

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