



**BUSINESS PLANNING REQUIRED** For Avian Flu



**Jeff Jones**

.....  
"The issue is not limited to food processing, as once the flu becomes contagious among humans, it will affect every industry."  
.....

Almost every newspaper and magazine now contains a major article on the potential threat of Avian flu. Because of the importance of the issue, the question becomes what information or planning is necessary or desirable. The issue is not limited to food processing, as once the flu

becomes contagious among humans, it will affect every industry.

The current and dangerous form of the virus is known as H5N1, which is spreading rapidly. Some form of Avian flu has been around for 100 years or more, but until

recently, outbreaks of virulent strains in poultry are quite rare. The H5N1 virus first appeared in 1997, but the outbreak was halted when public-health officials ordered the slaughter of all poultry in Hong Kong. The virus appeared again in southeast Asia in 2003 and has been spreading rapidly. Approximately 100 persons have died of the Avian flu since 2003, almost all in southeast Asia in households with backyard poultry flocks.

So far, H5N1 has not spread to the New World, nor is it transmissible among humans. However, the strain appears to be evolving, with one development appearing to be milder flu symptoms, and possibly more contagious. The fear, of course, is that it will spread to the New World, and become transmissible among humans, creating a pandemic.

The U.S. poultry industry has taken significant precautions to prevent a problem in the U.S. In January, the industry decided to expand its bio-security program by testing some birds in every flock for the most dangerous types of Avian flu before they leave the chicken houses. In case of a problem, all the birds in an infected flock would be put down immediately and the surrounding area quarantined. Sanitation measures include walking through disinfecting baths and wearing plastic booties over the shoes of persons entering or leaving the chicken houses.

Further, since the accepted explanation for the spread of the flu is through wild and migratory birds, the U.S. industry's modern system of enclosed, confined chicken growing seems to be a natural line of defense against the spread of Avian flu. While some European farmers have begun vaccinating their flocks against Avian flu, this approach does not appear practical in the U.S. Similarly, there is currently no anti-viral vaccination method effectively available for humans for the H5N1 strain.

Because of the importance and publicity given to the issue, it would seem prudent for food industry employers to provide information to their workers about this matter. Otherwise, employees may feel their employers do not have proper concern for them, and much of the information can be comforting inasmuch as the strain has not spread to the U.S., and that no harm has been found anywhere from eating cooked poultry. Beyond this, however, other planning appears to be prudent for all employers, not limited to those in food processing.

Many employers have set up internal Avian flu task forces to evaluate the situation and plan appropriate strategy. These task forces meet with government health officials, and discuss what information should go on their companies' websites, what information should be disseminated to employees, and what contingency plans should be. Sometimes crisis management consultants are included. Some of the planning might include addressing the following subjects:

- Forecast and allow for employee absences during a pandemic.
- Implement guidelines to modify the frequency and type of face-to-face contact among employees and between employees and customers.
- Evaluate, encourage and track annual influenza vaccination for employees.
- Evaluate employee access to and availability of healthcare services during a pandemic.

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## IMMIGRATION, POLITICS, AND Strange Bedfellows



Legislation is being debated on a national and state-wide basis to dramatically change the immigration laws in this country. While some could say it is just politics as usual, in this instance, traditional party, geographical, and/or conservative/liberal lines are not only blurred, but in some cases crisscrossed.

**Fred Bissinger** .....  
**...labor unions along with major U.S. corporations have joined together to support the creation of a program that would allow illegal immigrants to remain in the U.S. as guest workers.**

Historically, the Republican party in general, and business interests in particular, have favored broad immigration rights. President George W. Bush, a former border-state governor with strong ties to the President of Mexico, has promoted liberal immigration laws. There is a need to attract foreign workers not only to fill certain skilled jobs, such as the nursing profession, but also to fill certain low-skill jobs, such as agricultural jobs, that might otherwise be difficult to fill.

In contrast, historically the Democratic party in general, and their labor union allies specifically, have opposed liberal immigration laws. Their feeling has apparently been that liberal immigration laws drive down domestic pay rates because immigrants are often willing to take lower-paying jobs. At the same time, the immigrants have not been a fertile ground for union organization.

The situation today has vastly changed in an extremely short period of time. Perhaps the best example of this change is that the bill co-sponsored by Sen. Edward Kennedy (D-Mass.), and Sen. John McCain (R-Ariz.), dealing with comprehensive guest worker legislation. Kennedy is a liberal Democrat, long associated with protecting organized labor. McCain is a conservative Republican with long ties to corporate America. As part of this legislation, labor unions along with major U.S. corporations have joined together to support the creation of a program that would allow illegal immigrants to remain in the U.S. as guest workers. The bill has benefits for both sides. For the employers, it would allow a greater supply of workers, and potentially hold down cost increases. And for the unions, an officially sanctioned guest worker program might mean a new group of workers with a potential to more likely become union members. As one professor stated, "This is a workforce that, in many ways, is the future of the labor movement."

The total change in position on the part of organized labor toward guest worker programs is due in part to the encouragement of Sen. Edward Kennedy. Kennedy has stated that it is just "common sense" for labor and business to unite behind the bill because it "will strengthen our borders and strengthen our economy" simultaneously. Union interests feel a guest worker program will make immigrant workers more bold in seeking union representation, and further believe it is easier to organize those workers when it politically supports their legislative interests.

At the same time, a number of Republicans and some Democrats are opposing the legislation, arguing that measure would weaken the nation's borders and take jobs away from Americans. Last year, the House of

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## ADDRESSING THE NATIONAL Hispanic Boycott



**Kelly Campbell** .....  
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On March 24, 2006, employers across the country were faced with a “National Hispanic Boycott.” With little apparent organization but regular promotion on Hispanic radio, the boycott generated a significant disruption in regular production at many operations with substantial Hispanic workforces. A second, similar boycott was called for by the same organizers for April 10th, and a third boycott has been discussed for May 1, which is a “Labor Day” in Mexico.

The specified purpose of the boycott(s) is to pressure the U.S. Congress and several state legislatures to reject certain legislation deemed to be anti-immigration. Related legislation has been introduced in a majority of state legislatures across the country, and several legislatures, such as Georgia, have passed laws prohibiting illegal immigrants from receiving specific state benefits.

Although anti-war demonstrations have been held over the years, particularly during the Vietnam era, it has been extremely rare for there to be national boycotts or other concerted activities over employment-related legislation. The European experience has been somewhat different, as exemplified by the demonstrations in France currently over the “at-will” employment laws enacted for younger workers under age 26.

Numerous issues of a practical and legal nature are raised for employers with large numbers of Hispanic workers. Perhaps the first “legal” issue is whether such a work stoppage is a “protected strike” under the National Labor Relations Act. A “striker” can generally be permanently replaced, but retains the right to recall upon discontinuance of the strike subject to a suitable vacancy. However, a striker cannot be discharged or otherwise disciplined under applicable federal labor laws. The major exception to this principle is for unionized employers as almost all union contracts contain “no-strike” clauses which generally allow a worker to be lawfully terminated or otherwise disciplined for violating the no-strike

clause. Even in this union situation, however, there are some limitations on an employer’s right to take action against the strikers.

In addition, unions with collective bargaining agreements containing no-strike clauses generally have an obligation to exercise reasonable diligence to prevent or limit the work stoppage. As such, a union failing to help prevent a work stoppage may be deemed to have condoned it. Conceivably, the union can even be liable in damages to the employer. In order to secure union assistance, employers would be wise to document their communications with union representatives, informing them of the actual or contemplated work stoppage, so as to put the union on notice and secure the necessary cooperation and assistance.

In a non-union setting, whether such a work stoppage is protected against discharge or discipline appears to depend on whether the work stoppage is deemed to be “concerted activity of employees for mutual aid or protection.” The key seems to be whether the employee protests creating the work stoppage are sufficiently “related to employment,” regardless of whether or not their employer has any control over the employment laws being debated.

To complicate the matter further, the specific motives for the work stoppage might be deemed to vary somewhat from state to state or location to location and specific limitations apply to “intermittent” or repeated work stoppages; further, in any event, few employers want to create an issue by terminating or severely disciplining large numbers of their employees, including those participating in the Hispanic boycott. On the other hand, most employers feel compelled to “send a message” in some manner, because of the extremely disruptive nature of the situation.

A practical middle ground approach may be something like the following: First, wise employers should communicate to their workforce, in general, and their Hispanic workers in particular, the message that “we are in this together.” That is, we are not opposed to workers from outside the United States, and in fact, we depend upon our Hispanic workers to get our work done. Second, obviously it should be communicated that a boycott will take money out of their pocket and hurt them and their families, as well as other workers at our plant. An alternative might even be offered to the Hispanic workers of a way that some type of message can be sent

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- Evaluate key customers with special needs and incorporate the requirements of such customers.
- Establish policies for preventing influenza spread at the work site, such as respiratory hygiene/cough etiquette, and prompt exclusion of people with influenza symptoms.
- Establish policies for employees who have been exposed to pandemic influenza, or suspected to be ill, or become ill at the work site, such as infection control response and mandatory sick leave.
- Establish policies for restricting travel to affected geographic areas.
- Provide sufficient and accessible infection control supplies, such as hand-hygiene products.
- Enhance communications technology to support employee and customer communications.
- Insure availability of medical consultation and advice for emergency response.
- Develop and disseminate materials covering pandemic fundamentals, such as signs and symptoms of influenza, modes of transmission, personal and family protection, and response strategies.
- Anticipate employee fear and anxiety, rumors and misinformation, and plan communications accordingly.
- Assimilate information to employees about your pandemic preparedness and response plan.

More specific information on avoiding transmission among humans is available from the Centers for Disease Control in Atlanta. In March 2004, OSHA issued a guidance document for workers most likely to be exposed to bird flu, and currently is updating that document. The federal government has a website for information on bird flu at <http://www.pandemicflu.gov>.

Other considerations include the broad range of laws that may apply to a person with such flu or infectious disease symptoms, including the ADA, ERISA, state privacy laws, and possibly other laws. It would appear that in addition to privacy and protection against discrimination, employees with an infectious disease might have a condition serious enough to constitute a “disability” under the ADA, but if the condition is infectious, it would further appear that active employment could pose a current threat to health and safety, and therefore a company could take appropriate responsive action to protect its workforce. At the first sign of direct threat to others, common reactions might include a request or a demand for an appropriate fitness for duty examination, or a mandatory medical leave. In addition, companies should review the question of contract provisions that allocate the risk of emergencies during disease outbreaks. Some employers may also want to review their insurance policies to see if they are reimbursed for business interruption in the event a problem arises.

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## **IMMIGRATION, POLITICS, AND STRANGE BEDFELLOWS continued from page 2**

Representatives passed a bill rejecting the idea of a guest worker program. Many states have also gotten into the action, promoting or passing legislation that takes away certain state benefits from illegal workers.

The latest development occurred on April 4 when Sen. McCain stated that a majority of the 100-member Senate supported his and Massachusetts Democratic Senator Kennedy’s proposal to provide green cards to illegal immigrants after they have worked in the U.S. for 6 years, but he doesn’t have 60 votes to overcome opponents’ parliamentary tactics. McCain and Kennedy deny that their proposal is amnesty, saying illegal immigrants would have to pay \$2,000.00 in fines and any back taxes and clear background checks before they could get in line for a green card.

## **ADDRESSING THE NATIONAL HISPANIC BOYCOTT continued from page 3**

to political representatives, but pointing out that a boycott from work could end up making things worse politically, not better. Employers can also do their part in anticipating and answering questions on the issue. Third, most affected employers are applying their normal attendance rules to the work stoppages. While this point may be legally debatable, this rather mild form of discipline is an action which most employers feel is a necessity. However, a more permanent and long-term solution to repeated “boycotts” creates some difficult choices for employers. These choices must weigh the need to curtail such work stoppages without generating employee resentment “Hispanic or otherwise” and while avoiding the potential NLRB and practical implications of substantial disciplinary actions and terminations.