

Hospitals at risk of no-show health care workers during Ebola outbreak

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Hospitals and other health care agencies are at risk of doctors, nurses, janitors and other essential workers walking off the job during an infectious disease outbreak, says a University of Illinois expert in labor relations.

According to Michael LeRoy, a professor of labor and employment relations at Illinois, both the government and the private sector haven't accurately accounted for the number of no-show workers in the event that the current crisis turns into a full-fledged outbreak of the Ebola virus.

LeRoy, who has published research that studied emergency responders not complying with work orders to clean up debris or attend to victims in the event of a dirty bomb attack or a smallpox outbreak, says it's likely that up to one in five [health care workers](#) might not report for work if the Ebola crisis worsens.

"Just before 9/11, the military and intelligence community simulated a smallpox attack in Oklahoma City and found that 20 percent of doctors and nurses would fail to report to work out of fear of contamination," he said. "Last week, it was airport cleaners at LaGuardia refusing to clean an airplane out of fear of Ebola and walking off the job. If more people become infected with Ebola in the U.S., I think you're going to see an increased number of health care workers who choose to stay home."

According to LeRoy, the legal protections for workers who

spontaneously walk off the job or are no-shows due to abnormal conditions are weak and somewhat ambiguous.

"Two federal laws ostensibly protect workers in these situations: Section 502 of the National Labor Relations Act, and a work refusal rule promulgated by the Labor Department under the Occupational and Health Safety Act of 1970," LeRoy said.

But LeRoy's studies show that courts have given these laws "a miserly construction," and that stronger language is needed to protect workers who choose to put their own health ahead of their jobs.

The laws also are "more than a little archaic at this point," LeRoy said.

"Section 502 of the NLRA provides protection for workers who confront abnormally dangerous [working conditions](#)," he said. "Ebola would certainly qualify on that count, but the lead case from that law is a coal-mining case. In the coal-mining case, there were mechanisms to work through problems before the worker could walk off the job. With a virus like Ebola or any other bioterror threat, there is no protocol. So these might or might not be the type of extreme cases that would fit under the umbrella of the laws."

According to LeRoy, there's a similar provision under the NLRA that shields workers against retaliatory discharge if they walk off the job in the event of abnormally dangerous working conditions.

"It's an exercise of a worker's rights under the act, but again, workers have very tenuous protection," LeRoy said. "If you're a health care worker, it's ambiguous because the [health care](#) field itself is a dangerous working environment. It's not that workers always lose, but the interpretation of these two federal laws suggests that workers have less protection than what appears in the statute."

A worker doesn't have to be a member of a union to be afforded the protections of the NLRA, LeRoy notes.

"But here's the catch: Workers are supposed to act in concert," he said. "If they walk off alone over a safety issue, that's not protected. But if two or more workers walk out together in concert, that's protected. So a nurse who refuses a work order has less protection than two nurses who articulate the same concern and walk off the job."

Rather than get into situations where workers are walking off the job, LeRoy says it's imperative for employers to pay attention to the "fear factor" that workers confront during times of abnormal working conditions.

"That's a major element that has gone unaddressed," he said. "It's unfair to put certain workers in a life-or-job situation. The takeaway is that they often choose life over job. The teachable moment from the smallpox simulation from 2001 was to have better safety mechanisms for workers in place to make them feel more secure about showing up for work. And I think recent events have shown that, once again, we're not as prepared as we had thought we were."

More information: The complete paper is available online: papers.ssrn.com/sol3/papers.cfm?abstract_id=993255

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