

Tips for Employers to Manage Employee Travel During the Pandemic

The holidays are near and employees may be planning that overdue getaway. Amid the pandemic, employers are questioning whether they can or should restrict employee travel or whether there are alternative measures to ensure a safe and healthy workplace. Even though most states are experiencing a significant increase in the number of COVID-19 cases, interstate travel is increasing and expected to be high during the holidays. Employers are in a challenging predicament. Regulation of employee travel could conflict with state laws and hurt morale during an already stressful time. It is imperative employers are aware of federal and state guidelines regarding travel and develop, implement and communicate clear travel policies before the upcoming holiday season.

New Hampshire updated its COVID-19 Travel and Quarantine Guidance and Employer Screening and Exclusion Criteria as of August 27, 2020 (“Travel Guidance”): [NH Travel Guidance](#). On November 12, 2020, Governor Sununu revised the Travel Guidance. New Hampshire residents or out-of-state visitors traveling to or from areas outside of New England (Vermont, Maine, Massachusetts, Connecticut, or Rhode Island) for a non-essential reason must self-quarantine for the first 14 days of an intended stay in NH after travel (starting from the last day of their travel outside New England) **or** self-quarantine for 7 days after returning to NH and then obtaining a negative COVID test. “Essential” travel is defined as travel for personal safety, medical care, care of others, parental shared custody, for food, beverage or medication or for work. The Travel Guidance recommends that Occupational Medicine and businesses should screen staff for such travel before returning to work after vacation. The self-quarantine is applicable regardless of the mode of transportation, whether by public or private transportation. It is also acceptable for travelers to New Hampshire to self-quarantine in their home state prior to arrival as long as they do not travel on public transportation. For example, if your employee takes a week off and travels to Florida over Thanksgiving, when the employee returns to New Hampshire, he/she has two options before returning to work: self-quarantine for 14 days **or** self-quarantine for 7 days and then obtain a negative COVID test after the 7 day period has passed. If your employee can work remotely during the 7 or 14-day quarantine period, there may not be a disruption to your business.

The Travel Guidance provides exceptions to the quarantine period that are applicable to employees who work in critical infrastructure sections but are not recommended for situations involving non-essential travel and should not be standard practice. In the first instance, all efforts should be made to allow employees to work remotely during the quarantine period. Exceptions should only be made for employees who work in critical infrastructure sectors (chemical, commercial facilities, communications, critical manufacturing, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, materials and waste, transportation systems, and water and wastewater systems (<https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>) AND who are deemed essential to the functioning of the business.

Essential critical infrastructure employees may be permitted to work during the quarantine period if all the following criteria are met:

- The employee is not exhibiting any signs or symptoms of COVID-19;
- The employee is not a household contact to a confirmed case of COVID-19;
- The employee is deemed essential to the functioning of the business and substantial business impact would be experienced if the employee does not work in person;
- The employee cannot conduct essential functions remotely;
- There is no replacement personnel for the employee;
- The employee self-quarantines for all other purposes other than reporting to work; and
- The employee wears a mask, maintains at least 6 feet of separation from other employees and customers, and participates in daily health screening while at work or other public locations as outlined in CDC guidance.

Specialized or technical workers who must come to New Hampshire from other locations to support critical infrastructure businesses are permitted to stay overnight in New Hampshire hotels without quarantining in their home state prior to arrival. They must follow the other guidance above pertaining to mask wearing and social distancing while at work and in public settings (e.g., transiting through their hotel, getting take-out food, etc.), and they must quarantine and stay out of public settings when not working.

The Travel Guidance poses challenges to businesses in situations where employees do not work in an essential critical infrastructure sector and travel outside of New England, but remote work is not available during the quarantine period. Employees who do not work in an essential critical infrastructure structure or cannot work remotely may be eligible for extended paid sick leave under the Families First Coronavirus Response Act (“FFCRA”). Under FFCRA, where the employee is unable to work because the employee is quarantined pursuant to a federal, state, or local government order, the employee may be eligible for up to two weeks (up to 80 hours) of paid sick leave at the employee’s regular rate of pay. To be eligible under FFCRA, the business has to employ fewer than 500 employees and the employee has to have been on the payroll for at least 30 calendar days. (For more specific information regarding FFCRA eligibility and requirements, please see article here: [FFCRA Eligibility and Requirements](#).) It is also important to note that FFCRA applies through December 31, 2020 which means that any quarantine period that falls after that day will not be covered by FFCRA and likely unpaid – unless the business has other paid leave policies.

Employers can mitigate against potential business losses and the potential spread of COVID-19 by implementing a well-defined travel policy, communicating that policy in writing to employees in advance of holiday vacation plans and travel, and applying the policy equally. A travel policy can require that employees disclose any travel plans or recent travel and remind employees of CDC and state recommendations regarding travel and any mandatory state quarantine period post-travel. The policy can also require that employees complete a questionnaire prior to returning to work inquiring about any travel and confirming they do not have a temperature and are symptom-free and/or conduct symptom/temperature checks. Additionally, the policy should specify whether employees required to self-quarantine must work remotely or use paid time off or FFCRA leave. The policy should include a statement related to the risks of travel during the pandemic and emphasize that maintaining a safe workplace requires

involvement by all employees. Employees who violate company policies, including falsifying information on a return-to-work questionnaire, without an excuse may be subject to discipline. Prior to issuing any discipline, you should engage in a dialogue with the employee and document the response and any follow up.

Ultimately, the goal is to protect others in the workplace from COVID-19 exposure. Before the holiday season hits, clear communication and well-defined travel policies, equally applied will be instrumental in regulating employee travel during the pandemic to the greatest extent possible. Should you have any questions about how the laws apply to you or your business, please contact a member of our Employment Law Practice Group, comprised of Terri L. Pastori, Beth A. Deragon, Ashley D. Taylor, and Brooke A. Moschetto (Candidate NH Bar Exam, results pending) at 603.369.4769. We are here to help.

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