

EMPLOYEES' PERSONAL TRAVEL RAISES COVID-19 CONCERNS: FAQs FOR EMPLOYERS

Insights
Sep 2, 2020

There is no doubt the summer of 2020 has been memorable, but likely not for overseas jaunts or exotic vacations. Although the CDC recently relaxed its COVID-19 guidance regarding quarantine after travel, it still recognizes: "Travel increases your chance of getting and spreading COVID-19. Staying home is the best way to protect yourself and others from COVID-19." While you may recognize the importance of following this advice, your employees may see things differently. In fact, as we head into the Labor Day holiday, some employees may be planning that overdue getaway. This raises questions regarding whether you can – or should – restrict personal travel among your workforce, and whether you can take other steps to ensure a safe workplace during the pandemic. This alert provides the most frequently asked questions employers have regarding this thorny issue and offers practical guidance to navigate the best policies and practices.

Can an employer inquire about an employee's personal travel plans?

Yes – provided you inquire equally for all employees and the inquiry is consistent with business necessity.

Can an employer prohibit or restrict an employee's personal travel?

Some states, such as California, prohibit employers from interfering with employees' lawful off-duty conduct. Though these laws are generally interpreted to apply to lawful off-duty conduct involving political activity and may not necessarily restrict action based on conduct that harms or

Related People



Nicole Kamm

Partner

818.230.4253



Hannah Sweiss

Partner

818.230.4255

has the potential to harm the employer or the workplace, the language of these laws is often fairly broadly worded. It is possible a court could apply these protections to other lawful off-duty conduct, such as engaging in personal travel. At the same time, employers are required under OSHA's general duty clause and other applicable laws to ensure a safe workplace. To balance these interests, you may require employees to disclose any travel plans or recent travel and remind employees of CDC recommendations regarding travel and any mandatory state or local self-isolation or quarantine periods post-travel.

Service Focus

Counseling and Advice

Workplace Safety

Can an employer require an employee to self-quarantine or isolate after personal travel?

If mandated by applicable law, you may require employees to self-quarantine or isolate. Otherwise, to the extent possible, you should allow employees who have traveled to work remotely for at least 14 days following their return. If remote work is not available, there may be some risk in requiring employees to self-quarantine or isolate without pay.

Is an employee who self-isolates or quarantines after travel entitled to FFCRA or other paid leave?

Possibly. If there is a federal, state, or local order mandating self-isolation or quarantine following travel, the employee may be entitled to FFCRA or other paid sick leave. Additionally, if the employee has been advised by a health care provider to self-quarantine, tests positive for COVID-19, or is experiencing symptoms and seeking a medical diagnosis, they may also be entitled to FFCRA or other paid sick leave. If the employee cannot work remotely and is not subject to any of the foregoing, this time may be unpaid. Exempt employees, however, must be paid their full salary for any week during which they perform work. You may permit employees not entitled to FFCRA or paid sick leave to use any accrued vacation or other paid time off as well.

What are steps an employer can take to ensure a safe workplace regarding personal travel?

Having clear travel policies and procedures in place that incorporate CDC and applicable federal, state, and local guidelines and/or orders is essential. As noted above, you may require employees to disclose any travel plans or recent travel and remind employees of CDC recommendations regarding travel and any mandatory state or local self-isolation or quarantine periods post-travel. You may also

require employees to 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. Such policies should be clearly communicated to employees in writing and consistently enforced. In addition to travel policies and questionnaires, you should train employees regarding the risks of travel during the pandemic and emphasize that maintaining a safe workplace requires participation from all involved. As guidance on COVID-19 continues to evolve, you should notify employees of any changes to employer policies.

Can an employer require employees to provide a negative COVID-19 test before returning to work after personal travel?

Possibly. The COVID-19 crisis presents unique circumstances and employers have a compelling interest in keeping the workplace free from the coronavirus. According to the EEOC, you may require medical testing that is “job related and consistent with business necessity.” The EEOC does not object to COVID-19 virus testing during the pandemic, provided the testing method is safe, accurate, and consistently applied.

However, it is important to consider that testing in this manner may not be effective. COVID-19 symptoms can appear two to 14 days after exposure and an individual may test negative prior to developing symptoms. In addition, recent guidance from the CDC discourages a test-based strategy and encourages a symptom-based screening strategy to identify when an individual with symptoms can return to work. Wait times for testing and results of testing can also present an obstacle as employees may spend more time out of work trying to get a test and waiting for results than if the employer had implemented a different policy, such as a self-isolation period. You should also factor in that the health care system is over-burdened and current guidance encourages you to be flexible about the types of certification required.

It is also important to note that if a 14-day quarantine is mandated by a federal, state, or local order, the quarantine period may not be cut short by a negative test, unless expressly authorized by the applicable order.

What are the CDC’s current recommendations on return from travel?

Currently, the [CDC](#) recommends staying home as the best way to protect an individual who traveled and others from the spread of COVID-19. CDC guidance also indicates that travel to any destination during the pandemic increases an individual's chances of getting and spreading COVID-19. After travel, regardless of the destination, all individuals should take the following precautions:

- When around others, stay at least six feet from other people who are not from your household. It is important to do this everywhere, both indoors and outdoors.
- Wear a mask to keep your nose and mouth covered when you are outside of your home.
- Wash your hands often or use hand sanitizer.
- Watch your health and look for symptoms of COVID-19. Take your temperature if you feel sick.

The CDC also indicates that if an individual participated in higher risk activities during travel, the individual should take extra precautions for 14 days after returning from their trip:

- Stay home as much as possible.
- Avoid being around people at increased risk for severe illness from COVID-19.
- Consider getting tested for COVID-19.

These higher risk activities include travel to an area that is experiencing high levels of COVID-19, including destinations with a [Level 3 Travel Health Notice](#). The CDC also lists large social gatherings (such as weddings, funerals, or parties), mass gatherings (such as sporting events, concerts, or parades), being in crowds (such as restaurants, bars, airports, bus, and train stations, and movie theaters), and traveling on a cruise ship or river boat as higher risk activities.

As discussed above, it is important to have a written travel policy, incorporating CDC and any federal, state, or local guidance, that is clearly communicated to employees and enforced consistently.

Which states currently have travel restrictions in place?

Various states have established travel advisories, restrictions, and/or quarantine periods for incoming

travelers (residents and non-residents). As an example, Connecticut, New Jersey, and New York issued a joint travel advisory that travelers from designated states with significant community spread must quarantine for 14 days on arrival. Currently, the following states have travel advisories with restrictions or requirements regarding quarantine, questionnaires, etc.:

- [Alaska](#)
- [Connecticut](#)
- [District of Columbia](#)
- [Hawaii](#)
- [Kansas](#)
- [Kentucky](#)
- [Maine](#)
- [Maryland](#)
- [Massachusetts](#)
- [Nebraska](#)
- [New Hampshire](#)
- [New Jersey](#)
- [New Mexico](#)
- [New York](#)
- [North Dakota](#)
- [Ohio](#)
- [Oklahoma](#)
- [Pennsylvania](#)
- [Rhode Island](#)
- [Vermont](#)

Most current travel restrictions contain an exception for critical infrastructure workers. In addition to state orders, many local orders contain travel restrictions as well.

Are there different considerations if an employee travels domestically or internationally?

Not directly. According to the CDC, any travel, whether domestic or international, can increase chances of getting and spreading COVID-19. Prior to traveling, the CDC recommends individuals check [travel recommendations for their destination](#) and the [number of cases in the state to which they are traveling](#).

For employers, it is important to educate employees on the risks of personal travel and emphasize that maintaining a safe workplace and safe community requires participation from all involved. Provide resources for employees to inquire about travel recommendations, in addition to maintaining a travel policy that can be enforced consistently.

What if an employer finds out an employee has traveled through a coworker or social media, but the employee failed to notify the company in advance?

It is best to avoid monitoring employee off-duty conduct through social media or workplace gossip. While you have a duty to maintain a safe workplace and should have policies in place to do so, you should stay away from actively monitoring off-duty conduct. However, the strategies discussed above, such as implementing a travel policy and return-to-work questionnaire, can help you navigate this situation if it arises (e.g., informed of activity by a coworker, etc.).

What if an employee does not truthfully respond to a return-to-work questionnaire?

Employees who violate company policies, including falsifying information on a return-to-work questionnaire, *without an excuse* may be subject to discipline. It is important that travel policies are clearly communicated to employees in writing and consistently enforced. Prior to issuing any discipline, you should engage in a dialogue with the employee and document the response and any follow up.

CONCLUSION

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any

member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.