

“Hot Spot” or Not: Employer Travel Policies in the Time of COVID-19

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At the high point of summer vacation season, a surge in COVID-19 cases resulted in the Pennsylvania Department of Health recommending quarantine periods for individuals who have traveled to designated hotspot states. On July 2, the Pennsylvania Department of Health issued a travel advisory recommending that visitors to hotspot states quarantine for a period of fourteen (14) days after returning to Pennsylvania. [The Department of Health website](#) updates this state hotspot list periodically based upon surge data and currently identifies nineteen (19) states as hotspots.

On July 10, the Department of Health posted answers to [frequently asked travel questions](#) and clarified that quarantine is only a recommendation and not a mandated requirement. Since quarantine is recommended but not required the decision to quarantine employees following travel to hotspots is up to the discretion of each individual employer. Employers currently have the discretion to either require enhanced safety procedures or to quarantine employees who travel on vacation to these hotspot¹ states. However, if the decision is made to require employees to quarantine at home, employers must be aware of a host of considerations implicated by such a decision including whether such employees are entitled to paid sick leave under the Families First Coronavirus Relief Act (FFCRA) or the state’s Act 17 (for police or fire employees) and other bargainable issues impacting quarantined union employees.

Because the fourteen (14) day quarantine period is only a recommendation, employers have the option of simply requiring employees who have vacationed to follow enhanced health and safety protocols—such as mandatory temperature checks, mask wearing required at all times, or other arrangements designed to lessen the potential that a returning employee might infect the workplace. Alternatively, employers could choose to follow the recommendations of the Pennsylvania Department of Health or their local county health department and require travelers to quarantine at home for fourteen (14) days before returning to work.

Employers opting for a quarantine must define “travel.” For example, an employer could determine that car travel through or a layover at an airport in a hotspot state falls within the definition of “travel” regardless of the length of time the employee is actually physically located in the hotspot state.

A vacation quarantine policy necessarily impacts pay. Employers can require employees to use accrued paid leave time—such as vacation leave, personal leave, or sick days—to cover the quarantine period, or be placed on an unpaid leave of absence if no such leave is available. However, there are bargaining issues for unionized employees associated with forced use of paid time off and/or unpaid leave. Some quarantined employees may be able to work remotely during this quarantine period and therefore pay or forced use of paid time off is not at issue. At a minimum, employers should be prepared to engage in impact bargaining with any affected bargaining units

¹ There are nineteen states identified as hot spots as of July 14, 2020

as it is uncertain how the Pennsylvania Labor Relations Board would view a unilateral change in a term or condition of employment during a global pandemic.

A vacation quarantine policy may implicate the emergency sick leave provisions of the FFCRA as well as Pennsylvania's Act 17. Under the FFCRA, public employers must provide up to two (2) weeks (80 hours) of paid sick leave if an employee is unable to work, or telework, due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

It seems clear that if federal, state, or local health officials mandate a quarantine period for those returning from out-of-state travel that an affected employee would qualify for paid sick leave under the FFCRA as being subject to a governmental quarantine or isolation order. A public employer's directive to *remain home from work* following travel is likely not a "local quarantine or isolation order related to COVID-19" and therefore does not qualify employees for FFCRA benefits. It must be noted, however, that there is no clear guidance on the application of FFCRA benefits to a recommended state travel restriction and there have been no judicial interpretations or cases involving the same.

Employers must be aware of the potential impact of Act 17 of 2020, which provides full salary benefits to police officers, fire fighters and other covered first responder employees who are subject to quarantine due to COVID-19 exposure for up to sixty (60) days per incident. While an employer may take the position that a police officer/firefighter quarantine after hotspot travel does not qualify for Act 17 benefits because the quarantine is not "due to COVID-19 exposure" as defined by Act 17, it is anticipated that unions will argue that an employer ordered quarantine assumes COVID-19 exposure and therefore full salary Act 17 benefits are payable.

The decision to require employees to quarantine following travel to COVID-19 hotspot states or in the alternative to require enhanced workplace safety procedures implicates a host of issues that attorneys at Campbell Durrant are prepared to assist employers with. We are available to assist you in developing vacation travel policies to best achieve your operational needs while protecting and promoting the health and safety of your employees and the general public.