

State Quarantine Mandates Complicate Business Travel

Employment attorneys say employers should be flexible and consistent

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In addition to international travel restrictions, business travelers should be aware of state quarantine mandates that were recently issued in response to COVID-19 surges.

Employers must stay current on state and local guidelines and orders, said Mark Goldstein, an attorney with Reed Smith in New York City. "Developments are unfolding daily, and employers need to keep constant tabs on what lawmakers and government agencies are saying in this regard."

Goldstein said employers should have a clear and open line of communication with employees and provide updates when legal guidance or rules change. "Consider establishing a policy on business travel, as well as how the business will handle requests for remote work or quarantine," he suggested.

"Be flexible when you can and also consistent about your expectations, rules and policies," said Katie Erno, an attorney with Crowell Moring in Washington, D.C.

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Review State Laws

Certain states, such as Connecticut, New Jersey and New York (www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/local-spikes-in-covid-19-cases-lead-to-more-travel-restrictions.aspx), are requiring travelers who arrive from coronavirus hotspots to quarantine for 14 days when they enter the area, though there are some exceptions.

"The quarantine requirements do not apply to individuals who only pass through designated states for less than 24 hours during their course of travel," Erno explained. However, the New York and Connecticut orders don't exempt nonessential employees who live in a restricted state and work in the tristate area. Delaware, for example, was recently added to the list of restricted states (<https://portal.ct.gov/Coronavirus/Covid-19-Knowledge-Base/Travel-In-or-Out-of-CT>), and there may be nonessential workers who reside in Delaware and work in New York who will be precluded from reporting to work now, she said.

Pennsylvania is recommending quarantine for travelers from certain states

(<https://www.health.pa.gov/topics/disease/coronavirus/Pages/Travelers.aspx>), and employers also should be aware of local travel rules, such as those in Chicago (<https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travel-order.html>), which are updated every Tuesday.

If workers regularly conduct business in both high-risk states and states with quarantine mandates, Erno said, employers should consider telework arrangements. If telework isn't an option, employers should provide workers with all applicable local, state and federal leave for the duration of a quarantine order.

Note that some states provide an exception to their quarantine orders for business travel, which could be read to encompass employees who work in a high-risk state, she said.

Consider the Risks

"Employers should be cautious about mandating travel to a high-risk state or traveling in general," said Alka Ramchandani-Raj and Melissa Peters, attorneys with Littler in Walnut Creek, Calif. Employees may have to travel through high-risk zones to reach their destinations, so employers should ensure employees are receiving proper instructions regarding the risk before travel, they said, noting that employers should advise workers that they may be required to quarantine or work from home after returning from the trip.

If employees can't work from home, Erno said, employers should at least implement daily screening policies for employees. For example, employers may ask about symptoms and possible exposure and take workers' temperatures before they access the workplace.

Travel to a high-risk state could increase the likelihood of the employer being hit with a workers' compensation claim, a tort-based lawsuit or a potential Occupational Safety and Health Act violation. "Anytime an employee travels to a high-risk state—even if just for a short period—it increases the company's potential legal liability related to COVID-19," Goldstein noted. Additionally, having employees travel to high-risk states puts their colleagues, family members and others at a higher risk of potential exposure to the virus.

Since employers are not typically in control of on-the-road worksites, such as client offices, shared workspace facilities and hotel conference rooms, Goldstein said, they need to be extra vigilant in ensuring that such sites, as well as any lodging or other travel-related accommodations, satisfy health and safety guidelines.

He recommended that employers take the following steps to reduce risk:

- Prohibit travel if employees have symptoms or potential exposure to COVID-19.
- Provide personal protective equipment as needed.
- Select hotels and transportation carefully to ensure providers are applying all appropriate health and safety practices.
- Review public health orders in the applicable state, county and city; share the requirements with employees; and highlight any specific requirements.
- Assess whether employees will be permitted to return to the office after traveling or will need to work remotely for a set period following their return.

So, what should an employer do if workers travel to high-risk states when they are off duty? "This question is tricky because employers generally cannot control what employees do in their free time," Erno noted. "That said, these new quarantine requirements can have significant implications for staffing and interrupt business operations."

One option, she said, is to create a policy notifying employees of the quarantine and encourage employees to disclose in advance if they anticipate travel to a high-risk state, so that the employer can plan accordingly. Employers can deny access to the premises for any employee who answers affirmatively, she explained.

Create Consistent Policies and Practices

"Develop a neutral policy and communicate with employees to ensure they are advised of the risk," Ramchandani-Raj and Peters said.

Employers have to be more careful about providing direction to their employees to ensure they are following proper protocols while traveling, such as staying in places that are sanitized and taking precautions when dining out, filling gas and going to populated areas, they noted.

If employers anticipate the need for business travel to a high-risk state, they should craft a policy for employees that tracks travel guidance and best practices issued by the U.S. Centers for Disease Control and Prevention. Erno said employers should also facilitate forms of travel that minimize contact with others. For example, the employer should allow an employee to rent a car rather than take a train when possible.

"Employers should be particularly mindful of employees who voice concerns about travel to a high-risk state and be flexible when possible," she added. "Keep the lines of communication open with employees, educate them about travel restrictions, and craft policies in advance to get ahead of these issues and ensure equal treatment of employees."

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