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Business Travel Picking Up, but Compliance Is Tricky

HR should review travel policies for coronavirus-related developments

By Roy Maurer

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New research indicates an uptick in U.S. domestic business travel, although employers still face a changing patchwork of coronavirus-related federal, state and local laws and regulations affecting work travel.

According to an Aug. 5-9 poll of 827 companies worldwide by the Global Business Travel Association (GBTA), a trade group in the Washington, D.C., area, 74 percent of respondents reported that all or most of their organization's domestic business trips have been cut. That's progress, though—93 percent of respondents reported curtailed domestic business travel in April.

"The business travel landscape continues to be difficult in the U.S., but we do see some small glimmers of recovery here and there," said Dave Hilfman, the GBTA's interim executive director.

The survey found that 74 percent of organizations reported having started to develop a travel recovery plan and 31 percent planning to provide personal protective equipment (PPE) for their travelers, while another 20 percent will require employees to provide their own PPE in order to travel.

"With the pandemic, a return to normal for business travel will likely require multiple elements," Hilfman said. "Companies need certainty that travel is safe, that testing is readily available, results timely reported and that the global economy is trending positively. Once those elements fall into place and if we see real progress on a COVID-19 vaccine, I would expect business travel to respond positively."

Benjamin Han, an attorney with Seyfarth in Atlanta, said that since the onset of the pandemic, employers have had to rely on videoconferencing and other remote workplace tools to replace the in-person meetings that often drive business travel. He added that employers considering restarting business travel face competing obligations, including keeping their employees safe, complying with an evolving set of return-to-work laws and driving business growth.

"Though there is not a one-size-fits-all approach or right answer when addressing whether and how to return workers to business travel, there are practical considerations which can assist businesses in doing so," Han said. "By addressing those practical considerations head-on, employers can more easily anticipate and adapt to the legal landscape regarding COVID-19 and business travel."

Reviewing Travel Policies for Compliance

Doug Dexter, a partner in the San Francisco office of law firm Farella, said employers should remain cautious about business travel.

"The safest approach is to prohibit work-related travel, but for employers for whom travel is essential, implementing a thoughtful travel policy can help reduce the risk of employees becoming sick or spreading illness to others in the workforce," he said. "As a starting point, employers should ensure that the travel really is essential."

Some business travel can't be avoided, but employers should factor into their decisions whether remote conferencing is feasible when deciding whether the trip is truly essential.

"If there is a valid basis for concluding that the travel is essential, employers should still consider discouraging travel, making travel optional, requiring advance managerial approval and documenting in writing that any employee agreeing to travel is doing so voluntarily," Dexter said. "Some employees may be uncomfortable with travel, either because they are at higher risk of contracting COVID-19 themselves or because they live with someone who is at a higher risk of contracting the virus."

He added that employers that require employees to travel may need to defend that requirement in response to various legal claims, including:

- Workers' compensation, if the employee becomes sick while traveling. An employee's eligibility for this type of claim will vary according to applicable state law.
- Disability discrimination or failure to accommodate a disability. Employers can require employees to travel to nonrestricted areas but must consider whether an employee's refusal to travel warrants a reasonable accommodation under the Americans with Disabilities Act.

Brett Bartlett, a partner in Seyfarth's Atlanta office, noted that the Fair Labor Standards Act (FLSA) and other state and local wage and hour laws also need to be considered in relation to business travel during the pandemic. "The FLSA and state and local wage and hour laws impact, to varying degrees, the circumstances under which hourly employees must be paid for, among other things, traveling, waiting, and putting on and taking off equipment," he said. "Likewise, wage and hour laws also address whether and how employees must be reimbursed for business expenses. Employers may also consider tracking time spent traveling and breaking that time down to individual activities."

Han added that requiring employees to travel to severely impacted countries or areas within the U.S. could trigger the employer's obligation under the Occupational Safety and Health Act's general duty clause, which requires employers to provide a safe workplace.

State and Local Restrictions

Organizations must be aware of the many state and local restrictions in place (www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/State-COVID-Quarantine-Mandates-Complicate-Business-Travel.aspx). Certain states have instituted mandatory quarantines or negative COVID-19 testing requirements for people traveling from states with high positivity rates. Several Northeastern states require travelers to affirm compliance with the state's travel requirements before checking into lodging. Massachusetts announced a $500 daily civil fine for failing to comply with the state's mandatory quarantine requirement. Exceptions to the quarantine requirements vary, but most states include exceptions for essential workers and essential travel.

"Employers are encouraged to review state and local travel restrictions when considering any type of business travel," said Delaney Busch, an attorney in the Boston office of Mintz. "Some states may require arriving out-of-state travelers and returning residents to quarantine for 14 days, and other states may continue to operate under stay-at-home orders. Employers should continue to review the CDC [Centers for Disease Control and Prevention] guidance on travel, monitor transportation disruptions and COVID-19 spread, and update their business travel policies accordingly."

Dexter said travel policies should include guidance to employees to review all relevant state and local requirements and precautions for where the employee is traveling and should discourage employees from visiting high-risk businesses such as restaurants, bars or gyms during their downtime.

Traveling Abroad

International business travel has its own considerations, including foreign entry or quarantine restrictions on U.S. travelers visiting other countries as well as restrictions in the U.S. after returning from abroad. "The CDC recommends that companies requiring international business travel exercise increased precautions, particularly as there have been extensive issues repatriating U.S. employees from abroad in light of flight cancellations and border restrictions," Busch said.

"As COVID-19 outbreak conditions evolve, travel into or out of certain countries may not be possible, safe or advisable," she continued. "If employees are traveling outside the United States, employers should have plans and practices in place for the employees to seek medical care as needed in the destination country. Employers should also prepare for the possibility that employees engaging in international business travel might experience substantial departure or arrival delays. Creating contingency plans now, including remote work and lodging accommodations for employees who cannot return to the U.S. for longer than expected, will minimize the potential for operational frustrations."

Safety First

Employees exhibiting symptoms of COVID-19 should be strictly prohibited from traveling, Dexter said. "Employers might also consider requiring any employee embarking on work-related travel to certify in writing that they have no symptoms of COVID-19 and have not been diagnosed with COVID-19 recently," he added.

If an employee does travel, PPE should be provided. This could include a face covering or a mask, gloves, hand sanitizer, and sanitizing wipes, Dexter said. "To reduce the risk of exposing employees to COVID-19 while traveling, employers might review precautions the transportation carriers are taking and select carriers with the strongest safeguards in place. For example, this might include selecting an airline that is limiting passenger capacity on commercial flights, requiring cloth face coverings for all passengers, and reducing or eliminating food and beverage service."

Employers should also have a protocol in place for employees returning from travel. "The most cautious approach would be for the employee to work from home for two weeks to minimize their risk of infecting anyone else," Dexter said. "Employers can also require employees to undergo COVID-19 testing before returning to the workplace so long as the testing is job-related and consistent with business necessity, and any out-of-pocket costs are reimbursed."

[SHRM members-only HR form: COVID-19 Employee Self-Certification to Return to Work (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-forms/Pages/COVID-19-Employee-Self-Certification-to-Return-to-Work.aspx)]

The Future Is Uncertain

Hilfman said it's difficult to predict what the future holds for business travel. "Companies will look long and hard at which trips are essential and which can be handled by videoconference or telephone," he said. "We will also see tighter security measures for employees who do take a trip, with greater attention to safety protocols. I think those are certainties, but as to the rest, only time will tell."

[How have you adapted to the pandemic? Share your story with SHRM's Government Affairs Team (https://shrm.formstack.com/forms/resiliency) as they educate decision-makers on crafting policies on work, workers and the workplace.]

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