

Managing Vacation Requests during COVID-19

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Managing vacation and time off requests can be tricky for any employer – even without the added complication of a global pandemic. Unsurprisingly, the coronavirus (COVID-19) has caused an already difficult issue to become infinitely more complicated and employers are left grappling with how to create policies that protect the business but are not unlawfully restrictive. One of the most significant complications is what to do when an employee travels to a location that has been designated as a COVID-19 “hot spot” by their home state, meaning that he or she will be required to quarantine after their vacation – potentially missing work for upwards of two weeks. As discussed below, the first line of defense for employers is always a clear written policy, as well as good communication with employees and careful planning with legal counsel.

State Quarantine Orders and Travel Advisories

Generally, employers cannot control what employees do on their personal time, including their travel plans. In fact, several states, including California and New York, have off-duty conduct laws that prevent employers from forbidding certain travel. This becomes quite complicated because of COVID-19 and the patchwork of regulations and orders that have been passed by each state to deal with the crisis, including mandatory quarantines. Several states, notably New York, New Jersey, and Connecticut, have imposed mandatory quarantine periods for travelers from certain states. Several other states, including Maryland, have issued travel advisories for certain states, strongly advising that travelers returning from those states either quarantine or be tested for the virus immediately on return. Further complicating the issue, employers have a duty to keep their employees safe while on the job, but it is unclear what an employer's duty is if it becomes necessary for an employee to travel to a hot spot

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on business, or what an employer's liability (if any) might be if an employee returns from a hot spot and does not follow any of the state recommendations before returning to work.

Employers are thus stuck with several issues, including how to deal with employees returning from hot spots, whether it is wise to allow business travel to certain states, and how to handle requests for vacations that could lead to a mandatory quarantine. Carefully designed policies around travel can help employers manage each of these issues while maintaining employer-employee relations and causing the least disruption to the business.

Building a Travel Policy

When employers build a travel policy for use during the COVID-19 pandemic, they must also be mindful of other legal obligations. First, it is important to remember that employees cannot be reprimanded for their personal travel choices. That said, employers can require that employees disclose whether they will be traveling to a location that would require a quarantine or is recommended for quarantine on return and can discipline an employee for failing to be truthful in this disclosure. Employers can also require that all time off be approved in advance and choose not to approve vacation time that would lead to a lack of coverage or difficulty for the business due to an extended absence.

Second, state quarantine orders can trigger the Family First Coronavirus Response Act (FFCRA) paid sick leave requirement. For employers with fewer than 500 employees, the FFCRA requires that employees subject to a quarantine order that causes them to be unable to work or telework receive up to 80 hours of paid sick leave. Employees have a right to this leave, so an employer cannot reprimand an employee for using the leave or deny them the ability to take it. While a state quarantine order would trigger this requirement, an employer-mandated quarantine would not, although an employee would be entitled to this leave if a healthcare professional recommends a quarantine.

Finally, employers must be careful that any measures they implement are not administered in a way that is or could be perceived as discriminatory. For example, if the employer decides to require some employees to receive a COVID-19 test after returning from a vacation, but not others, the policy could look discriminatory. Employers should carefully consider every policy to ensure that it is based on objective criteria and is evenly applied.

Best Practices

Bearing in mind all of the above, employers should consider the following:

- Frequently review the relevant state COVID-19 guidelines for updates on quarantine requirements or recommendations and consider communicating this information to employees. Communication is often the best way to avoid problems, especially in an evolving situation such as this.
- Continue to restrict any non-essential business travel. If an employee must travel to a location that would either require a quarantine or the home state recommends a quarantine, seriously consider if there are other options and whether to give the employee the ability to opt out in whole or part travel

to certain locations.

- Create a travel policy that requires approval for any personal travel and requires the employee to disclose whether they are traveling to a location that would cause them to be quarantined (or a quarantine is recommended). Again, employers cannot reprimand an employee for their personal travel choices, but they can reprimand an employee for failing to be truthful or failing to get the required approval.
- Employers may impose testing requirements and/or quarantines to employees returning from COVID-19 “hotspots” or from any travel. These measures can range from requiring a negative COVID-19 test, a quarantine period, or a period of enhanced scrutiny for COVID-19 systems. At the very least, employers should consider requiring a certification from all employees that have been out of the office that they are symptom free.

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