

Vacation Travel Policies May Need to Be Altered Due to Pandemic

By Allen Smith, J.D. August 11, 2020 SHRM.ORG



Employer attempts to restrict where employees go on vacation to prevent their exposure to COVID-19 are limited by laws and employee-relations considerations. However, pre-travel inquiries and advisories are allowed, so long as they are applied neutrally and uniformly.

"Employers across the country are grappling with the question of whether to change their vacation policies in light of the coronavirus pandemic and, if so, how to do it," said Anthony Mingione, an attorney with Blank Rome in New York City.

In general, employers may reject requests for vacations to hot spots due to the need to quarantine afterwards, according to Nancy Gunzenhauser Popper, an attorney with Epstein Becker Green in New York City.

"Employers have wide latitude in approving or not approving time off, and that does not change during COVID-19," said Michael Elkins, an attorney with MLE Law in Fort Lauderdale, Fla.

But "it is very difficult to effectively monitor where employees go when they are not working, and even more difficult to try and control it," Mingione said.

Moreover, regulating where employees go on vacation could conflict with some state laws protecting off-duty conduct and could hurt morale, cautioned Carolyn Rashby, an attorney with Covington & Burling in San Francisco. Such laws exist, for example, in California, Colorado, Nevada, New York and North Dakota.

Pre-Travel Inquiries

Employers generally can require employees to inform them about travel plans.

"However, employers should only require information necessary to discern whether the employee is traveling out-of-state or internationally and for how long, and should avoid asking personal details," Rashby said.

In addition, she cautioned that employees who telecommute during the pandemic should not be required to disclose travel plans to their employers. "The purpose of a travel policy would be to protect others in the workplace from COVID-19 exposure, and that concern is not present where employees are telecommuting," she explained.

Before implementing a pre-travel inquiry, employers should clarify their use of the information and goal of the policy, Mingione said.

"Will there be an attempt to discourage employees from traveling to certain places? This can create problems of enforcement and morale," he noted.

If a company with a pre-travel inquiry policy doesn't ask employees at all levels about their plans, employers should expect claims that the policy was applied unfairly or discriminatorily, Mingione cautioned.

Employers should consider amending vacation policies to require employees who plan to travel during their vacation to provide advance notice to their supervisors or HR about the details of their travel plans, including their intended travel destinations and means of transportation, said Paul Scheck, an attorney with Shutts & Bowen in Orlando, Fla.

Businesses also should consider requiring employees who travel to a country designated as a hot spot by the World Health Organization and/or the U.S. Centers for Disease Control and Prevention (CDC) to self-quarantine before returning to the workplace, he added.

Clear Communication

"Any such amendment to an employer's current vacation policy should be clearly communicated to employees in advance," Scheck said.

Employers should consider requiring employees who intend to travel to take their company laptops so they can work if they are stranded in another state or country or are required to self-quarantine on their return, Scheck added.

The policy also should specify whether employees who are required to self-quarantine must telecommute during the self-quarantine or use paid time off to cover that period.

An employee probably isn't entitled to paid sick leave under the Families First Coronavirus Response Act (FFCRA) for having to self-quarantine after travel, said Suzanne Singer, an attorney with RumbergerKirk in Miami. "However, if the employee is able to get a doctor to issue a quarantine order or if the employee develops symptoms, the employee may become eligible for FFCRA sick leave," she said.

Travel Advisories

Employees can be required to sign a travel advisory before vacation, Singer suggested.

The travel advisory might ask the employee to acknowledge that if the worker travels to any area designated as a hot spot, he or she may be required to self-quarantine on return. The CDC's most recent guidance recommends self-quarantining [for 14 days after a potential exposure or 10 days after a positive test](#).

Singer said that an employer's travel advisory also might state, "As your employer, we are responsible for providing a safe and healthy workplace. During the COVID-19 pandemic, nonessential travel is discouraged."

The advisory should add, she said, that if a worker intends to travel, the following guidelines, among others, should be followed:

- Avoid close contact with others—keep a distance of at least six feet.
- Clean hands often—washing with soap and water for at least 20 seconds.
- Wear a face covering in public.
- Notify the employer immediately if you or a family member has been diagnosed with COVID-19.

Health Screenings

"Employers should encourage good choices by employees, provide up-to-date information regarding policies and COVID-19 hot spots, and develop a plan for how to reintegrate employees into the workplace following time off," Mingione said.

Include the identification of recent travel destinations in any regular health screenings employers conduct, he suggested.

"If employees are accustomed to providing this information before each workday, this will hopefully motivate them to make safe travel choices and help employers avoid appearing overly involved in employees' personal lives," he said.