

# Your Boss Can Restrict Your Holiday Plans in the Pandemic

Employers have latitude to know how workers are spending their off hours and can take away vacation time to protect the workplace from Covid-19

By Patrick Thomas | Dec. 6, 2020 | Wall Street Journal

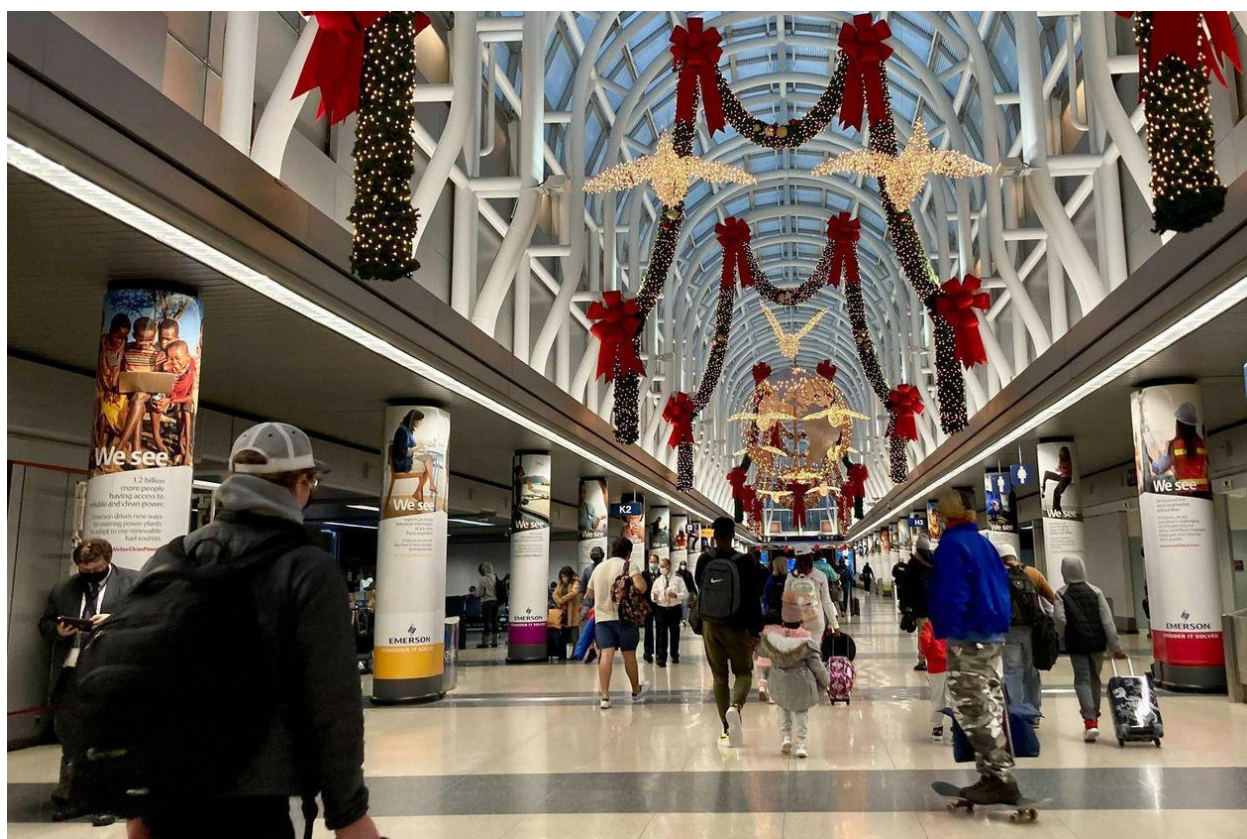


PHOTO: ERIN HOOLEY/CHICAGO TRIBUNE/ZUMA PRESS

Companies can require employees to disclose any travel plans or recent trips and can enforce recommendations from federal or local authorities for post-travel quarantine periods.

As the holiday season gets under way amid a Covid-19 surge across the country, employers are taking measures to encourage employees to limit their potential virus exposure and to safeguard workplaces. What is your boss is entitled to know about your holiday plans?

## **The Bottom Line**

Employers have wide latitude during a pandemic in what they can ask regarding your holiday plans. That includes asking workers to take a pledge to refrain from any risky behavior—as some companies did right before Thanksgiving—and cautioning employees against any conduct that would violate federal or local health guidelines. It varies by state, but if it is a matter of protecting the safety of the workplace, employers can also discipline workers for what they do during off hours. That could include if workers don't disclose potential exposure to the virus and return to the workplace without quarantining after personal travel or after attending large celebrations.

## **The Details**

Limitations on what employers can restrict in your off-time vary by state, but companies generally have leeway when it comes to protecting workplace safety.

Employers are required under Occupational Safety and Health Administration rules to provide a safe workplace, says Jennifer Merrigan Fay, an employment-law partner in Boston at Goodwin Procter LLP. While companies can't unreasonably invade an employee's privacy and make requests such as not to go outside, they can take other unusual, but not illegal, steps during a health crisis aimed at preventing the spread of Covid-19.

Companies can, for example, require employees to disclose any travel plans or recent trips, and can enforce recommendations from the U.S. Centers for Disease Control and Prevention or local health mandates for post-travel quarantine periods. Some firms also ask or require employees to sign pledges stating they'll keep celebrations small, wear a mask or even limit contact with people outside of their household, she said.

"It does feel unnatural, but behavior outside of the workplace causes such a risk to workplace health and safety," says Ms. Fay. "Employers are able to encroach more into employees' personal lives than they otherwise would."

Ms. Fay said it is key that whatever rules employers adopt are applied consistently to all employees.

Vacation time also isn't guaranteed under federal law, and most employers are within their rights to cancel a vacation and require workers to return to the job to prevent unnecessary travel.

"They are asking employees to change how they act outside of the workplace, and it isn't a normal request for employers," Ms. Fay said. "But in this time, we have to act differently than we normally would."

Some states, such as California and New York, have off-duty conduct laws that prevent employers from restricting activities that employees may do lawfully outside the workplace, including personal travel, says Rachel Conn, an employment attorney in San Francisco at Nixon Peabody LLP. Some union contracts could also include an off-duty conduct rule potentially preventing an employer from taking action against an employee.

Companies can also discipline employees if they are caught on social media violating state or local health mandates, such as being at a large party or traveling to a Covid hot spot and refusing to quarantine after.

"If an employer sees someone doing something on social media that is not in line with state or local orders, depending on employer policy, they could discipline that person or require them to quarantine," Ms. Conn said.

Companies in some states that ask workers to stay away from the workplace as a preventive measure aren't required to offer paid time off, said Ms. Fay. The Families First Coronavirus Response Act, enacted in March, requires private companies with 500 employees or fewer to provide up to 10 days of paid sick leave to workers in states that have quarantine mandates. The policy is set to expire Dec. 31.

Enforcement of policies regarding travel or large celebrations, however, can be difficult and in most cases falls on the employee to be honest about their plans.

"Employees should know what your employer's travel policy is and what would be required of you if you make travel plans," Ms. Conn said. "Employees should educate themselves on if there are advisories or guidance on travel before they make their plans."