

Coronavirus (COVID-19) Considerations for Traveling Employees

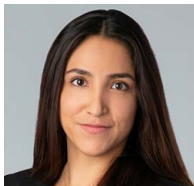
A Lexis Practice Advisor® Article by
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This article discusses key health and safety considerations for employee travel within the United States and abroad during the COVID-19 pandemic. Employers need to be especially diligent about the travel policies and procedures during the coronavirus pandemic. Employers should also consider carefully whether they can minimize or cancel employee travel altogether.

For more guidance on a wide variety of coronavirus legal issues, see [Coronavirus \(COVID-19\) Resource Kit](#).

Employee Travel Policies

For employers whose employees must travel within the United States and abroad, it has always been important to adopt policies and procedures governing employee travel. Employer travel policies often include information about:

- Local cultures and business etiquette
- Weather issues
- Potential impacts of civil unrest
- Unfamiliar local laws
- Availability of medical support
- Appropriate travel documents
- Pre-booking arrangements –and–
- Local and international emergency services and security training

All of those factors, and others, remain in play today.

However, the coronavirus pandemic has accentuated the need for employers to be especially diligent about policies and procedures relative to employees traveling within the United States and overseas. Employers should review those policies and procedures to make sure they address the particular implications of COVID-19.

Employee Travel during the COVID-19 Pandemic

This section addresses key issues to consider for employees traveling on business during the coronavirus pandemic, including (1) stay-in-place and quarantine orders, (2)

Department of State Travel Advisories, and (3) Occupational Safety and Health Administration (OSHA) and Occupational Safety and Health Act (OSH Act) considerations.

Stay-in-Place Orders and Quarantine Orders

Employers whose employees must travel within the United States need to educate those employees about local and state “stay-in-place” orders, some of which now require a quarantine period before one can travel within the jurisdiction.

As of April 13, 2020, 43 states have issued executive orders or travel advisories of this type. Seven of those states, including Delaware, Rhode Island, Kentucky, Maine, Massachusetts, and Nevada, instruct all non-exempt visitors to self-quarantine for at least 14 days upon arrival to the state. De. State of Emergency Declaration, modification 7 (Mar. 29, 2020); R.I. Exec. Order No. 20-14 (Mar. 28, 2020); Ky. Exec. Order No. 2020-258 (Mar. 30, 2020); Me. Exec. Order No. 34 FY 19/20 (Apr. 3, 2020); Mass. Travel Advisory (Mar. 27, 2020); Nev. Travel Advisory (Mar. 31, 2020); Vt. Exec. Order No. 01-20, addendum 7 (Mar. 30, 2020).

Other states such as Florida, Kansas, North Dakota, Oklahoma, South Carolina, Texas, and West Virginia, only require a quarantine from visitors from hard hit areas of the country, such as California, Louisiana, and New York. Fla. Exec. Order No. 20-80 (Mar. 23, 2020); Kan. Dep’t of Health and Env’t Mandate (Apr. 6, 2020); N.D. Dep’t of Health, Confinement Order (Mar. 28, 2020); Okla. Exec. Order No. 2020-07, (Sixth Amended) (Mar. 29, 2020); S.C. Exec. Order No. 2020-14 (Mar. 27, 2020); Tex. Exec. Order No. GA-11 (Mar. 29, 2020); W. Va. Exec. Order No. 14-20 (Mar. 30, 2020).

On March 29, 2020, the Centers for Disease Control and Prevention (CDC) issued a domestic travel advisory urging residents of New York, New Jersey, and Connecticut to refrain from non-essential travel for 14 days. This travel guidance is no longer in place, but employers should continue to monitor the [CDC’s website for travel updates and official guidance](#).

Employers requiring employees to continue traveling should also consider, depending upon the circumstances, whether to issue personal protective equipment (PPE) to traveling employees, particularly those who may work in industries where exposure to the virus is most concerning (e.g., health care, death care, laboratories, airline operations, border protection, and solid waste management facilities).

Federal Law Impacting Health and Safety for Traveling Employees

This subsection addresses key federal laws affecting employees on business travel during the COVID-19 pandemic.

Department of State Travel Advisories

Federal law also impacts health and safety concerns for traveling employees. The United States has been operating under a level 4 or “do not travel” advisory from the Department of State since March 31, 2020. Therefore, employers should refrain, to the extent possible, from sending employees abroad.

In early March 2020, President Trump also issued a proclamation that restricts travel to the United States of foreign nationals who have recently been in most European countries. Although this restriction does not apply to U.S. citizens, the Department of State has been encouraging all U.S. citizens to return to the United States unless they are prepared to remain abroad for an indefinite period of time. Employers whose employees are currently abroad on a temporary basis should therefore consider planning to have their employees return to the United States as soon as possible and assisting employees in taking necessary precautions upon their return.

OSHA Guidance on Respiratory Protection Standards

Employers requiring their employees to travel also should keep informed of recent guidance that the Occupational Safety and Health Administration (OSHA) issued regarding enforcement of their Respiratory Protection Standards. See 29 C.F.R. § 1910.134. Under this guidance, employers must develop a written respiratory protection plan, select a program administrator, and implement certain measures to protect all employees, including traveling employees, from harmful airborne exposures.

OSHA Enforcement Memorandums

We summarize OSHA’s three most recent enforcement memorandums below.

- **March 14, 2020 enforcement memorandum on annual testing of respirator facepieces.** OSHA issued an enforcement memorandum regarding the annual testing of respirator facepieces. In this memorandum, OSHA recommends healthcare providers to consider providing employees with respirators that have equal or higher protection to the N95 facepiece which filters

95% of airborne particles. OSHA also recommends giving employees reusable elastomeric respirators with appropriate filters or cartridges or powered air purifying respirators. To conserve supplies, OSHA advises healthcare employers to consider changing their method of fit testing from a destructive to a non-destructive method.

- **April 3, 2020 guidance on alleviating shortage of respirator facepieces.** OSHA issued further guidance to alleviate the shortage of respirator facepieces due to the increased need during the coronavirus pandemic. In this memorandum, OSHA empowers compliance officers to use enforcement discretion to permit the extended use and reuse of respirators, as well as the use of expired respirators, so long as employers follow certain guidelines. OSHA also recommends non-healthcare employers who are subject to the Respiratory Protection Standards to consider whether it is possible to use wet methods, move operations outdoors, or even temporarily suspend operations. For more information, see [Employers Providing Face Masks Should Review Their Health and Safety Obligations](#).
- **April 3, 2020 guidance on the use of respirators from foreign countries.** OSHA issued guidance regarding the use of respirators that have been certified under the standards of other countries. In its memorandum OSHA acknowledges that, during a period of shortage, respirators certified using the standards of other jurisdictions, such as Australia, Brazil, China, the European Union, Japan, South Korea, and Mexico, will provide greater protection than surgical mask or homemade masks. Therefore, employers may want to consider these types of respirators provided they follow certain additional guidelines.

For more guidance on key OSHA issues related to the coronavirus, see [COVID-19 and OSHA](#). For more information on the OSHA COVID-19 guidance and memorandums, see [OSHA COVID-19 Overview](#) and [OSHA Enforcement Memos](#).

Retaliation Protection and Whistleblower Protection Program under the OSH Act

Employers should be aware that Section 11(c) of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. § 660(c), prohibits employers from retaliating against workers for raising concerns about safety and health

conditions. OSHA's Whistleblower Protection Program also protects employees from retaliation for raising or reporting concerns about violations of certain industry specific federal laws, including various airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health insurance reform, motor vehicle safety, nuclear, pipeline, public transportation agency, railroad, maritime, securities, and tax laws.

On April 8, 2020, the U.S. Department of Labor issued a [news release](#) reminding employers that "[e]mployees have the right to safe and healthy workplaces," and encouraging employees to contact OSHA if they "believe[] that their employer is retaliating against them for reporting unsafe working conditions[.]" Employers should carefully consider these risks before taking an adverse employment action against an employee who raises health and safety concerns related to coronavirus, including health and safety concerns over work-related travel requirements or conditions.

For more information on retaliation under the OSH Act and other key OSH Act legal issues, see [OSH Act Requirements, Inspections, Citations, and Defenses](#).

Alternatives to Travel during the Coronavirus Pandemic

In light of the potential health and safety risks, employers must consider carefully whether they can minimize or cancel altogether employee travel during the coronavirus (COVID-19) pandemic. For example, employers can often substitute in person meetings with phone calls and/or video calls using Skype, Teams, Facetime, Webex, Zoom, or other video conference services. Further, most of these services allow participants to live share their computer screens to show documents, including e-mails, memoranda, webpages, and Powerpoint presentations, making these tools a viable option in lieu of in person meetings.

In addition to facilitating business meetings, employers can also use live video to replace tasks requiring visual review, such as manufacturing site inspections and house/apartment tours.

Finally, to the extent employers cannot cancel completely their employees' travel, they should at least consider postponing such travel until pandemic conditions have improved.

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