

Should I Quarantine?
Addressing Employees Who Have Returned from “Impacted States”

On or about June 24, 2020, Governor Murphy issued an out-of-state travel advisory (“Travel Advisory”) that recommended a fourteen (14) day self-quarantine for any New Jersey residents who have recently traveled to any of the “impacted states” currently experiencing a substantial increase in COVID-19 cases. However, the Travel Advisory did not address the issue of how employers should respond when employees cannot report to work during the recommended fourteen (14) day period of self-quarantining that is recommended upon return to New Jersey from an impacted state. As a result, school boards are left to question whether they may or should require employees who have recently traveled to an impacted state to use their available sick leave or other paid leave for the time period of self-quarantine recommended by the Travel Advisory.

Under the Travel Advisory, any New Jersey resident who returned to New Jersey from travel to an “impacted state” on or after June 24, 2020 should follow its self-quarantining recommendations. As of July 14, 2020, there are twenty-two (22) “impacted states” covered by the Travel Advisory and it is anticipated that the list of states will be reviewed and updated weekly. Although the Travel Advisory is not part of any Executive Order and its requirements are completely voluntary, compliance is nevertheless “expected,” as reflected in the FAQ document* issued by the New Jersey Department of Health (“DOH”):

The self-quarantine is voluntary, but compliance is expected. Travelers and residents returning from impacted states typically will not need to check-in with public health officials, unless otherwise they are involved in contract tracing efforts or required to do so by their employer or any other federal, state or local law or order. It is expected that individuals will follow the recommendation to self-quarantine.

The “Self-Quarantine for Travelers FAQ” document also provides that [i]ndividuals who are traveling to New Jersey from impacted states for business are exempted from the application of the travel advisory,” such as “truckers driving from an impacted state to New Jersey, and any state local and federal officials and employees traveling in their official capacities on government business.” However, “[i]ndividuals traveling for business should still consider postponing travel to the extent possible.” The document further states, “[i]t is not necessary that other household members who did not travel from an impacted state self-quarantine.” As such, the Travel Advisory would apply to an employee who has recently traveled to an impacted state, but would not apply to an employee who merely has a household member who has recently engaged in such travel.

* “Self-Quarantine for Travelers FAQ,” available at:

https://www.nj.gov/health/cd/documents/topics/NCOV/Travel_advisoryFAQs_6-25-2020.pdf

With regard to sick leave, the FAQ document issued by the DOH states that it is possible that an employee who must self-quarantine pursuant to the recommendations set forth in the Travel Advisory is entitled to use State-mandated earned sick leave, and offers the following guidance:

The Jersey Earned Sick Leave Law permits an individual who has worked for their employer for at least 120 days, to use earned sick leave that they have accrued under law when, during a state of emergency declared by the Governor, or upon the recommendation, direction or order of a health care provider or the Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine as a result of a suspected exposure to a communicable disease and a finding by the provider or authority that the employee’s presence in the community would jeopardize the health of others.

The Earned Sick Leave Law pertains only to those school employees who are not eligible for paid sick leave under the School Sick Leave Law. That law provides that employees are entitled to the use of their accumulated sick leave days in the event of illness or injury, or because they have been excluded from school by the school district’s medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.

Similarly, the FAQ document further indicates that an employee who must self-quarantine under the Travel Advisory may be eligible for family leave, specifically stating as follows:

The New Jersey Family Leave Act (“NJFLA”) entitles an employee to take job-protected leave from work when a health care provider or public health authority recommends that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of the family member in need of care by the employee would jeopardize the health of others.

Notwithstanding the above, the Travel Advisory does not explicitly advise whether employers must provide paid time off for employees during their fourteen (14) day quarantine period upon their return from an impacted state. Under the Families First Coronavirus Response Act (“FFCRA”) enacted as a result of the COVID-19 pandemic, employees of covered employers, such as school boards, are eligible for emergency paid sick leave if they are subject to a federal, state or local quarantine or isolation order (but not necessarily a mere recommendation).

The New Jersey Legislature has also expanded the Earned Sick and Safe Leave Law (“NJESSL”) to allow additional reasons for taking leave, such as when employees undergo isolation or quarantine during a State-declared state of emergency, or upon the recommendation, direction, or order of the Commissioner of Health. Nevertheless, to date New Jersey has not issued any Executive Order by Governor Murphy that incorporates the content of the Travel Advisory.

Rather, the Travel Advisory simply strongly urges, but does not mandate, that any employees who are traveling back to New Jersey from an impacted state should voluntarily self-quarantine.

In view of the absence of any Executive Order that requires, rather than recommends, the quarantine of New Jersey residents who have traveled to an impacted state, it is questionable whether employees must be given paid time off if they are self-quarantining as recommended by the Travel Advisory. Employees are almost certainly entitled to use paid sick leave and/or other paid leave, such as personal and vacation days, if they are unable to report to work because they are complying with the fourteen (14) day quarantine period recommended by the Travel Advisory. However, the issue of whether a school district may require that its employees use paid sick days, personal days, and/or vacation days during that time period is not clear.

As a general matter, if any employees who are quarantining in compliance with the Travel Advisory are not ill and are able to work from home, districts should allow them to do so. Of course, if an employee reports that he or she is self-quarantining for fourteen (14) days due to recent travel to an impacted state, and also requests to use sick leave during that time period due to an illness, the district should allow that employee to use any available sick days, and may request a doctor’s note, in accordance with any applicable collective bargaining agreement.

For any employee who expresses an intent to self-quarantine due to the Travel Advisory but cannot work from home, the district may (but is not obligated to) request written verification that the employee is covered by the Travel Advisory. This verification could take the form of proof of payment for airfare, EZ-Pass statements or other proof of payment for tolls in an impacted state, proof of payment for gas in an impacted state, or simply a signed and dated statement from the employee confirming the travel and that he or she will self-quarantine as recommended by the Travel Advisory. The fourteen (14) day quarantine period should be calculated beginning on the date on which the employee returned to New Jersey on or after June 24, 2020 from an impacted state. If the district asks the employee to submit written verification documenting such travel to an impacted state, such verification may be used not only for purposes of confirming that the travel actually occurred, as well as confirming the date of the employee’s return in order to calculate the quarantine period.

For employees who cannot work from home and intend to self-quarantine due to recent travel to an impacted state, after the district has reviewed any verification submitted by the employee as deemed necessary, the district should encourage those employees to stay home from work for the fourteen (14) day period following their return to New Jersey, in accordance with the Travel Advisory. If the employee reports that he or she has symptoms of COVID-19 or any other illness, the district should apply any available sick days to that time period.

However, if an employee who cannot work from home reports that he or she intends to self-quarantine as recommended by the Travel Advisory, but the employee does not have an illness, or does have an illness but has exhausted all available sick leave, it is recommended that the board should pay the employee for the entire fourteen (14) day self-quarantine period, without

charging personal and/or vacation days, notwithstanding that the board does not have any statutory or other clearly established legal obligation to do so.

For liability reasons, school districts should refrain from encouraging an employee to report to work in person after the employee indicates a need to self-quarantine pursuant to the Travel Advisory. If the district were to require employees who are not sick, and therefore not entitled to sick leave, to use personal and/or vacation days for the self-quarantine period, there is a considerable likelihood they would choose to simply report to work, against the advice of the Travel Advisory, if they must use personal and vacation days to stay home to self-quarantine as recommended by the Travel Advisory. As such, if the board incentivizes employees to comply with the Travel Advisory by not requiring them to use personal and/or vacation days to do so, the potential for liability for future tort claims related to COVID-19 will be reduced significantly.

Ultimately, school districts would be well-advised to avoid being found to have acted in a manner that would discourage employees from complying with the public health recommendations of the Travel Advisory, which could place numerous employees at risk of contracting COVID-19 and spreading the virus, despite the State’s efforts to minimize the consequences of any recent travel by New Jersey residents to impacted states.

To summarize, school boards should address the paid leave issues created by the Travel Advisory as follows, with respect to any board employees who indicate that they traveled to an “impacted state” and returned to New Jersey from that travel any time on or after June 24, 2020:

- (1) Any employees who are able to work from home, if they are not ill and are only quarantining due to recent travel to an impacted state, should be permitted to do so.
- (2) With regard to any employees who express an intent to self-quarantine pursuant to the Travel Advisory but cannot work from home, school boards should respond as follows:
 - (a) The school district’s administration may request that the employee submit written verification documenting recent travel to an impacted state listed in the Travel Advisory, from which he or she returned to New Jersey on or after June 24, 2020. The list of impacted states is available at:

https://www.nj.gov/health/cd/documents/topics/NCOV/Travel_advisoryFAQs_6-25-2020.pdf
 - (b) The district should inform the employee that he or she should stay home and not report to work for the fourteen (14) day self-quarantining period upon his or her return to New Jersey, in accordance with the Travel Advisory. If the employee reports that he or she has any COVID-19 symptoms or any illness, or is simply not feeling well, then any available sick leave should be applied to those days.

However, if the employee does not have any illness and is healthy, or if an employee does have an illness but has exhausted his or her available sick leave, the district should continue to pay the employee for the fourteen (14) day period during which he or she is self-quarantining in accordance with the Travel Advisory, without requiring the employee to apply any personal and/or vacation days to that time period. Despite that a school board does not have any statutory or other strict legal obligation to do so, from a liability perspective, it would be advisable for the board to avoid being viewed in the future as having encouraged an employee to report to work in person, after having been informed that the employee may have been exposed to COVID-19 as a result of recent travel to an impacted state.

The fourteen (14) days should be calculated beginning on the date on which the employee returned to New Jersey on or after June 24, 2020 from travel to an impacted state, as listed in the Travel Advisory. A school district may request written verification from the employee documenting such travel for purposes of both confirming that the travel actually occurred and the date of the employee’s return, in order to properly calculate the self-quarantining period, but is not legally required to do so.

- (c) The board should continue to pay the employee throughout the conclusion of the full fourteen (14) day self-quarantining period described in the Travel Advisory, in order to encourage its employees to comply with the State’s public health recommendations intended to limit the spread of COVID-19.

The Travel Advisory and School District Employees: Potential Questions and Answers

- 1. **Question:** If an employee voluntarily elects to self-quarantine, has symptoms, and refuses to work from home, how should the district respond?

Answer: This employee fits the criteria for COVID-19 sick leave and regular sick leave. Any available sick days should be applied.

- 2. **Question:** If an employee voluntarily elects to self-quarantine, has no symptoms, and refuses to work from home, or is one for whom remote work is not feasible, how should the district respond?

Answer: This employee does not fit the COVID-19 sick leave or regular sick leave criteria, but the board may be justified in charging personal or vacation days. Note, your collective bargaining agreement may permit additional paid leave at the discretion of the Superintendent or the Board.

- 3. **Question:** If an employee is advised by a healthcare provider to self-quarantine, has symptoms, and refuses to work from home, how should the district respond?

Answer: This employee fits employee fits the criteria for COVID-19 sick leave and regular sick leave. Any available sick days should be applied.

4. **Question:** If an employee is advised by healthcare provider to self-quarantine, has no symptoms, and refuses to work from home, how should the district respond?

Answer: This employee fits the criteria for COVID-19 sick leave and regular sick leave. Any available sick days should be applied.

5. **Question:** If an employee is directed by the school district to self-quarantine, has symptoms, and refuses to work from home, how should the district respond?

Answer: This employee fits the criteria for COVID-19 sick leave and regular sick leave. Any available sick days should be applied.

6. **Question:** If an employee is directed by the school district to self-quarantine, has no symptoms, and refuses to work from home, how should the district respond?

Answer: This employee would satisfy the criteria for COVID-19 sick leave if the district’s directive to self-quarantine is considered to be a “local order.” Additionally, this employee may satisfy the criteria for regular sick leave, if the district’s directive is considered to have been issued by the district’s medical authorities.

Because of the constantly changing nature of State-issued guidelines regarding the COVID-19 pandemic, school boards should be aware that the above information is subject to modification at any time. It is certainly possible that within the coming weeks or months, the State may issue further guidance that may assist employers in responding to employees’ requests for leave in order to comply with the Travel Advisory and its self-quarantining recommendations.

The Busch Law Group will continue to provide legal updates on this and other significant COVID-19 related issues as necessary. Should you have any questions or concerns, our attorneys are always available to assist you.

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