

Another Look at School Employee Travel

In June 2020, Governor Murphy issued a travel advisory (“Travel Advisory”) that recommended a fourteen (14) day self-quarantine for New Jersey residents who return from travel to any “impacted state” that is experiencing a substantial increase in COVID-19 cases. The Advisory currently remains in effect, but still does not address the extent to which public school employees who are quarantining as recommended after travel to an impacted state should be provided any type of leave during the period of the quarantine. Because the State has not released any guidance or directive on this issue to date, school boards continue to question whether they may or should require employees who have recently traveled to an “impacted state” to use sick leave or other paid leave for the period of quarantine recommended by the Travel Advisory.

School boards should be aware that compliance with the Travel Advisory remains completely voluntary, as it is not part of any Executive Order, and does not provide for any enforcement mechanism, such as a penalty for noncompliance.¹ Despite the fact that New Jersey residents are permitted discretion on whether or not to voluntarily comply with the Travel Advisory, the New Jersey Department of Health (“DOH”) has stated that “[i]t is expected that individuals will follow the recommendation to self-quarantine.” The DOH has further advised that it is not necessary for any household members who did not travel from an impacted state to self-quarantine, meaning that the Travel Advisory applies to employees who have recently traveled to an impacted state, but not those who merely have a household member who has recently engaged in such travel. The fourteen (14) days must be calculated beginning on the date on which the employee returned to New Jersey from travel to an impacted state, as listed in the Travel Advisory.

Because compliance with the Travel Advisory is not mandatory, school districts have the following options for the possibility of granting leave to employees who have recently traveled to an impacted state and are therefore recommended to self-quarantine for fourteen (14) days:

1. **Allow the employee to return to work without quarantining, if the employee is willing to do so.** While a school district could legally implement this course of action, districts should proceed with significant caution before doing so, as it presents a number of serious risks, the greatest of which relates to the negative public health consequences of permitting an employee who may have been exposed to COVID-19 during recent travel to an impacted state to enter into its buildings and potentially expose numerous staff members and students to COVID-19. The district would arguably be making its schools less safe by permitting employees, whom it knows to be at an elevated risk of exposure, to be present in the school buildings, and ignoring the requirements of the Travel Advisory. Along with the public health risks, it is possible that the

¹ The Travel Advisory currently includes 41 states on its list of “impacted states,” but also provides for a number of exceptions to the self-quarantining recommendation. See <https://covid19.nj.gov/faqs/nj-information/travel-and-transportation/which-states-are-on-the-travel-advisory-list-are-there-travel-restrictions-to-or-from-new-jersey>

board may also jeopardize any applicable insurance coverage and/or increase its possible exposure to liability for tort and other claims related to COVID-19, and allow for the possibility of an insurer disclaiming coverage based on an intentional disregard of the Travel Advisory. Moreover, the board would likely find it itself in a less-than-defensible position from a public relations perspective as well, particularly if the local community experiences any significant increase in COVID-19 cases around the same time that an employee who recently traveled to an impacted was permitted to return to work without quarantining, contrary to the Travel Advisory.

2. **Require the employee to stay home for fourteen (14) days and provide paid leave in order to help ensure that the employee will do so.** Providing paid leave in order to encourage employees to quarantine after travel to impacted states would avoid the public health risks and increase in possible liability described above, but may set a negative precedent that the board could be compelled to follow for future similar situations. In addition, it may even encourage employees to travel to impacted states in order to receive paid leave during the fourteen (14) day self-quarantine period upon their return to New Jersey.

3. **Require the employee to stay home for fourteen (14) days and deduct any available sick leave days during that time period.** This course of action would be subject to a legitimate challenge by the employee, assuming that the employee is not actually sick with any COVID-19 symptoms or otherwise, as sick leave is intended to be used only for days on which the employee is genuinely sick with an illness. Particularly if the employee may not be willing to use their available sick days, the board could be faced with a legal claim for improper application of the employee's sick days.

4. **Require the employee to stay home for fourteen (14) days on unpaid leave throughout that time period.** This option would also be subject to a legitimate challenge by the employee and/or the union, and from a legal perspective, would be the most difficult course of action to defend.

5. **Allow the employee to return to work prior to the fourteen (14) day quarantine period recommended by the Travel Advisory, but only after satisfying some specific condition(s).** For example, districts could consider requiring any staff members who have recently returned from travel to an impacted state to submit proof of receipt of a negative test result for COVID-19 on a minimum of two (2) occasions at least forty-eight (48) hours apart, in order to minimize the public health risks that could be caused by permitting an employee to return to work in person prior to the conclusion of the full fourteen (14) day period of self-quarantine recommended by the Travel Advisory. If the district pursues this option, the administration should consult with the school physician and/or local health department to request guidance in determining which specific conditions should be satisfied, and which documentation the employee should be required to submit, in order for the employee to return to work prior to the conclusion of the fourteen (14) days.

In view of the absence of any Executive Order that requires, rather than recommends, the self-quarantine of New Jersey residents who have traveled to an impacted state, it remains questionable whether employees are entitled to paid leave if they are quarantining as recommended by the Travel Advisory. While employees almost certainly have the right to use paid sick leave and/or other paid leave, such as personal and vacation days, if they cannot report to work because they are self-quarantining due to the Travel Advisory, the extent to which a school district may require employees to use paid leave during that self-quarantine continues to be unclear.

If any employees who are quarantining pursuant to the Travel Advisory are not ill and are able to work from home, districts should allow them to do so. However, 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 employees who cannot work from home and are quarantining in compliance with the Travel Advisory, after the district has reviewed any verification or documentation submitted by the employee as deemed necessary, the district should consider the above options and whether it will encourage those employees to stay home from work, with or without paid leave, for the fourteen (14) days following their return to New Jersey. If an employee reports that he or she has symptoms of COVID-19 or any other illness, the district should require that employee to stay home from work and apply any available sick days to that time period.

Are Teachers Exempt from the Travel Advisory as “Critical Infrastructure Workers”?

Some districts have inquired whether the exemption for “critical infrastructure workers,” as defined by the federal Cybersecurity and Infrastructure Security Agency (“CISA”), may apply to school employees, which would exempt them from complying with the self-quarantine recommended by the Travel Advisory. The CISA has indicated that the “16 Critical Infrastructure Sectors” include the “Education Facilities Subsector,” which covers pre-kindergarten through twelfth (12th) grade schools, institutions of higher education, and business and trade schools, as well as “facilities that are owned by both government and private sector entities.”²

While the CISA's definition of a “critical infrastructure worker” encompasses health care workers and state and local law enforcement, it is questionable whether teaching staff members, school administrators, and other school employees should be considered “critical infrastructure workers” who are exempt from the Travel Advisory. Although public schools would arguably be deemed facilities that are owned by a government entity and would fall within the Education Facilities Subsector, a review of the information provided on the CISA website regarding the

² The comprehensive list of “critical infrastructure industries” is available at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.

“critical infrastructure worker” exemption demonstrates that the exemption was most likely intended to apply to information technology (“IT”) staff members and building security staff members who are employed by public schools, but not to teaching staff members generally.

In any event, it is ultimately unnecessary to determine the extent to which public school employees may be exempt from the Travel Advisory as “critical infrastructure workers,” because the decision of whether to self-quarantine as recommended by the Travel Advisory remains within the discretion of the employee, and does not change the nature of that employee’s exposure to COVID-19. More specifically, compliance with the Travel Advisory remains merely “expected” rather than mandatory, and an employee who has recently returned from travel to an impacted state has significantly increased his or her risk of having contracted COVID-19 and exposing others to COVID-19, regardless of whether or not the employee falls within the “critical infrastructure worker” exemption. Therefore, school districts may still be required to address requests from employees who are quarantining following travel to an impacted state, even if they could arguably qualify as “critical infrastructure workers,” and the district will need to decide which of the available courses of action it will take in response to their absences from work.

To summarize, school boards should consider the following options, listed in order of most advisable to least advisable, with regard to employees who indicate that they have recently traveled to an “impacted state”:

1. Require the employee to stay home for fourteen (14) days and provide paid leave, to encourage the employee to do so.
2. Allow the employee to return to work prior to the conclusion of the fourteen (14) days, after satisfying specific conditions, such as proof of negative COVID-19 tests on two (2) occasions at least forty-eight (48) hours apart. It is recommended that the district consult with the school physician and/or local health department to determine which specific conditions should be satisfied in order for the employee to return to work before the conclusion of the fourteen (14) days.
3. Require the employee to stay home for fourteen (14) days and deduct any available sick leave days during that time period.
4. Require the employee to stay home for fourteen (14) days and provide unpaid leave.
5. Allow the employee to return to work without quarantining for fourteen (14) days, if the employee requests or expresses willingness to do so.

Finally, in the event that an employee’s frequent out-of-state travel has begun to impact the extent to which he or she is able to report to work regularly to the extent required for his or her position in the district, and/or adequately perform the functions of his or her job, the district would

be highly encouraged to consult with its Board attorney to determine the proper handling of a possible leave of absence, if applicable, or other legal options that may be available to the district.

Because of the frequently changing nature of issues pertaining to the Travel Advisory and other State-issued guidelines regarding COVID-19, school boards should be aware that all of the above information is subject to modification at any time. 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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