



## COVID-19 Update

August 2020

### Uncharted Territory: COVID-19 Travel and School Challenges Facing Employers

Employers have faced no shortage of challenges during 2020, and as we near the end of summer, new ones are on the horizon. Employees and their families seeking a change of scenery are traveling again, sometimes to COVID-19 hot spots, and when they come home, their return to the workplace has employers justifiably concerned. At the same time, employees with school-aged children have unique concerns of their own, including uncertainty over whether, when and where their children will begin their studies. This alert will address issues related to employee travel during the pandemic and offer guidance on how the Families First Coronavirus Response Act (FFCRA) leave laws will be applied in the context of school restarting.

#### Travel Concerns

Travel during the pandemic looks markedly different than it did in February. While trips outside the country remain heavily restricted, travel within U.S. borders is permitted, though there may be conditions in certain areas.

Many popular summer travel destinations, especially in the South and West, have seen surges in COVID-19 cases since early July. States have responded by issuing travel restrictions that are designed to help avoid the spread of the virus. At least 19 states and a handful of large metro areas and U.S. territories have implemented quarantine rules for travelers – including their own citizens – entering their borders from various hot spots. And as the number of states crafting travel-related quarantine rules grows, the places from which states limit travel also differ, with each state's list of restricted travel locations ever changing.

While these orders focus on individual travelers, employers should be aware of them and how they may affect their workforces. For example, an employee living in New York who returns from a Florida vacation must self-quarantine for 14 days. If that employee cannot work remotely, the continued absence can have a significant impact on the business. And because the FFCRA provides up to 80 hours of paid sick leave to employees who are unable to work due to a government-ordered quarantine, the returning employee could be entitled to paid leave upon return if the employer is subject to its requirements. Although New York and some other states have attempted to close this loophole in their own paid sick leave laws, the U.S. Department of Labor (DOL) has not taken similar action with regard to the FFCRA.

As such, an employer can (and should) require employees to disclose all planned travel to COVID-19 hot spots as part of the vacation approval process. The employer can generally deny vacation requests involving trips to COVID-19 hot spots and even in states that do not require a self-quarantine upon return from travel, an employer is free to implement its own rules so long as they are not discriminatory. The employer can also discipline an employee who travels to a hot spot despite having their vacation request denied or is revealed to have falsified the request to obtain approval. However, if the employer takes such steps, they should be included in a written policy that is communicated to employees ahead of time.

An employer can also establish return-to-work conditions for returning employees. The EEOC permits an employer to require a returning employee to answer questions about COVID-19 symptoms and obtain a negative COVID test

and/or a doctor's release before allowing the employee to return to work. However, employers should consider whether requiring a test or release is practical given the current delay in obtaining test results, as this may only further hinder the employee's ability to come back to work.

### Preparing for Return to School

As school districts gear up for or have already started a new school year, things look different. In the spring, schools in most of the country shut down completely or switched to "distance learning" models. While not a seamless transition, knowing children would be learning from home only for the remainder of the school year created at least some consistency for both employers and parents. This fall, schools are taking various approaches, with some fully reopening, others beginning on a distance learning model and others choosing to blend the two at either the school's direction or the parents' option. This can be true for neighboring districts or those that are otherwise within the same metro area. As a result, employees may have wide-ranging child care needs. To make matters worse, a school may reopen only to shut down at a moment's notice due to a positive COVID-19 test. The possible scenarios are nearly endless.

Those who work for employers with 500 or fewer employees may be entitled to up to 12 weeks of paid child care leave under the FFCRA. While some employees may have exhausted all 12 weeks of eligible leave during the spring, those who still have leave remaining may use it if their child's school remains closed (or partially closed) to in-person learning this fall. Some states and municipalities have also passed paid sick leave laws that are triggered by a COVID-19-related event or absence, including school closures. Many do not have a maximum employee threshold, so employers of all sizes need to be cognizant of them.

The DOL has indicated that an employee's ability to use FFCRA leave last spring will not necessarily affect whether he or she can use such leave this fall, and it has stated that an employer should not assume that the same schedule or arrangement that worked in the spring will work moving forward. As the DOL acknowledges, circumstances may change, including employees realizing they are not able to

effectively provide child care and work remotely at the same time.

The DOL has also clarified that if a child care provider or school is open to *some* students, but not to an employee's child (due to capacity or other COVID-related limitations), the school or child care provider is still considered "closed" to the student who is unable to attend. This means that an employee could be entitled to FFCRA leave when needed to care for a child whose school utilizes a fully remote or "hybrid" model of in-person and distance learning. Notably, the FFCRA permits parents to use paid child care leave intermittently in any amount, whether it be days at a time or only a few hours per day. In these circumstances, it may take an employee longer than 12 weeks to exhaust all available leave.

In light of employees' differing needs and the possibility that circumstances could change rapidly, employers – especially those not subject to the FFCRA – should consider what they can do to offer workers as much flexibility as possible. This may include offering child care support (such as child care on-site or through partnerships with day care or online care providers), alternative leave programs or other flexible options such as remote work capabilities, flexible scheduling, open job sharing or shift trading, or other forms of alternative scheduling.

### FOR MORE INFORMATION

For more information, please contact:

**Keith P. Spiller**

513.352.6722

[Keith.Spiller@ThompsonHine.com](mailto:Keith.Spiller@ThompsonHine.com)

**Megan S. Glowacki**

513.352.6503

[Megan.Glowacki@ThompsonHine.com](mailto:Megan.Glowacki@ThompsonHine.com)

**Anthony P. McNamara**

513.352.6657

[Anthony.McNamara@ThompsonHine.com](mailto:Anthony.McNamara@ThompsonHine.com)

or any member of our [Labor & Employment](#) group.

### Additional Resources

Our August 13 webinar, [“Uncharted Territory New Employment Issues Raised by the Pandemic,”](#) provides a more in-depth discussion of COVID-19-related issues confronting employers.

We have assembled a firmwide multidisciplinary task force to address clients’ business and legal concerns and needs related to the COVID-19 pandemic. Please see our [COVID-19 Task Force](#) page for additional information and resources.

*This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.*

*This document may be considered attorney advertising in some jurisdictions.*

© 2020 THOMPSON HINE LLP. ALL RIGHTS RESERVED.