

Pennsylvania Secretary of Health Issues Mandatory Travel and Mask Orders

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On November 17th, Pennsylvania Secretary of Health Dr. Rachel Levine issued travel and masking orders intended to address the recent dramatic rise in COVID-19 infections. (See link to orders and FAQs at <https://www.health.pa.gov/Pages/default.aspx>). The travel order covers all travel outside of Pennsylvania (the “Mitigation Relating to Travel” or “Travel Order”) while the mask order expands the earlier July Order that mandates the wearing of masks in certain circumstances (the “Mask Order”). Since both orders have immediate consequences, all public employers should update their employee travel and masking policies.

Unlike the Secretary’s earlier travel “hot spots” recommendation, the November 17th Travel Order is not a guidance: it is an order. It applies to all “individuals” who travel into or return to Pennsylvania from anywhere else in the nation or the world, and it requires that the individual either: “produce evidence of a negative [COVID-19] test from a specimen collected within 72 hours prior to entering the Commonwealth” or “quarantine for a period of 14 days upon entering,” unless certain exceptions to this mandate apply. Those exceptions are: (1) if the travel is for work; (2) if the travel is for medical reasons, including providing comfort or support to a patient; (3) military personnel traveling under orders; (4) individuals who are in transit through the Commonwealth with a final destination outside the Commonwealth; and, (5) any other exemptions that the Secretary may allow in subsequent guidance.

The Travel Order does not identify how the Commonwealth will enforce it, but FAQs issued by the Secretary state that a violation is punishable by a fine between \$25 and \$300. A person who returns from out-of-state travel and who does not have a negative COVID-19 test is permitted to leave quarantine for the purpose of medical treatment, including for obtaining a COVID-19 test. In response to questions about what employers can require employees to do regarding returning to work after out-of-state travel, the FAQs state that “the Commonwealth does not dictate how businesses should implement the requirements in the Order” and that “Employees should work with their employers about leave and pay issues related to COVID-19 quarantine absences.”

The Mask Order expands the Secretary’s July 15, 2020 Mask Order and requires that “face coverings” (i.e., masks) be worn indoors in the workplace, regardless of the worker’s ability to physically distance themselves from other workers. Masks also must be worn outdoors if the individual is not able to physically distance themselves from others. People who “work alone” where there is little or no expectation of interruption from other workers are not required to wear a mask; examples include people who work in an individual office or a high-walled cubicle with a door, or inside the cab of a construction vehicle.

The Mask Order provides exceptions such as: (1) if wearing a mask while working would create an unsafe condition in which to operate equipment; (2) if a person has a medical condition that would be created or exacerbated by wearing a mask; (3) when it’s necessary to remove the mask to confirm a person’s identity; and, (4) when it’s necessary to remove the mask to communicate

with someone who has a hearing impairment or disability. FAQs issued by the Secretary state that the Mask Order applies to individuals inside government buildings and makes no distinction between employees and members of the public generally.

Section 4 of the Mask Order also directs a “business or school entity” to take certain measures, such as posting notices of the obligation to wear a mask and to take “reasonable steps” to enforce this requirement. Those measures also include an obligation to “mitigate or eliminate employee, teacher, student, visitor and customer exposure to people who cannot wear or refuse to wear a face covering.” Although the Secretary’s FAQs state that the mask-wearing requirement applies inside government buildings, there has been no clarification from the Secretary whether the directive towards a “business” applies to a non-school entity local government. All public employers should update their existing policies regarding employee mask requirements in light of the revised Mask Order.

The Travel Order creates difficult issues for public employers, particularly with Thanksgiving and other holiday travel imminent. Employees who travel out-of-state for non-exempt reasons and who fail to obtain a negative COVID-19 test prior to their return must quarantine. Neither the Travel Order nor the FAQs are clear as to whether a person who returns without a test can shorten their quarantine period by obtaining a negative test after their return, although this would seem to be consistent with the Travel Order’s recognition that a person can break quarantine in order to obtain a COVID-19 test.

More importantly, what can a public employer do to address unnecessary employee absences caused by voluntary non-exempt travel out-of-state? All employers should have a current travel policy in light of the Travel Order. This policy should require employees to notify the employer of out-of-state travel, obtain a COVID-19 test 72 hours prior to return to Pennsylvania, and notify employees that they are subject to discipline if they create a self-quarantine situation by failing to obtain a negative COVID-19 test prior to return. Employees who must quarantine due to the Travel Order likely qualify for paid leave under the FFCRA, unless those employees are emergency responders and your municipality has excluded emergency responders from the paid leave benefits of the FFCRA. Police and firefighters likely do not qualify for Pennsylvania’s Act 17 benefits if their quarantine is only as a result of the Travel Order because their quarantine is not as a result of a COVID-19 exposure. Campbell Durrant attorneys are available to assist you in drafting update travel and masking policies and to answer related FFCRA and Act 17 leave questions.

Takeaways:

- The Secretary of Health’s revised Mask Order applies to all individuals inside governmental buildings, including employees, and generally requires all persons to wear masks while indoors even if they are able to be physically distant from other employees. It applies to persons working outside who are unable to be physically distant from others

while doing so. Certain exceptions apply and public employers should update their mask policy to comply with the Mask Order's requirements.

- The Travel Order requires persons who travel outside of Pennsylvania for non-exempt reasons to obtain a COVID-19 test from a specimen taken no earlier than 72 hours prior to the person's return, or to quarantine for 14 days upon return if the person has not obtained a test. Public employers should adopt a travel policy to address issues such as notice of out-of-state travel and discipline for employees who create an avoidable quarantine situation by failing to obtain a COVID-19 test when engaging in non-exempt travel outside of Pennsylvania.

Bottom Line:

The Mask Order and the Travel Order have immediate impact on the public employer workplace. Municipalities should review their current mask/social distancing rules to ensure compliance and should adopt a travel policy in order to address notice and leave issues created by the Travel Order. Campbell Durrant attorneys are available to assist you in drafting update travel and masking policies and to answer related FFCRA and Act 17 leave questions.