



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

November 17, 2020

To: Superintendents, Member School Districts (K-12)

From: Damara L. Moore, Senior Associate General Counsel *DM*

**Subject: Public Health Issues Out of State Travel Advisory and
FFCRA Implications
Memo No. 69-2020 - REVISED**

On November 13, 2020, the California Department of Public Health (“CDPH”) issued a travel advisory¹ recommending the following restrictions for those who engaged in non-essential travel, defined as travel that is considered tourism or recreational in nature:

1. “Persons arriving in California from other states or countries, including returning California residents, should practice self-quarantine for 14 days after arrival. These persons should limit their interactions to their immediate household[;]” and²
2. “Californians are encouraged to stay home or in their region and avoid non-essential travel to other states or countries.”

This advisory was released due to the increasing rate of spread of COVID-19 in many states and countries. It comes as many employees consider holiday travel.

While the language is not mandatory, we believe that a local educational agency (“LEA”) could cite to the advisory to establish a rule, after negotiating with applicable bargaining units, restricting employees who engage in such travel to either work from home, if the LEA has work to offer, or to take a leave of absence for fourteen (14) calendar days. If the LEA were to establish such a rule, employees should have advance notice of the rule.

¹ Available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Travel-Advisory.aspx>.

² This recommendation does not apply to individuals who cross state or country borders for essential travel, defined as “work and study, critical infrastructure support, economic services and supply chains, health, immediate medical care, and safety and security.”



Whether and how employees would be paid for such an enforced leave would depend first on any existing Memorandum of Understanding (“MOU”) with the bargaining unit, then on past practice, and lastly on subsequent negotiation. We recommend meeting with labor partners quickly to establish such a rule prior to Thanksgiving and winter holidays.

Applicability of Family First Coronavirus Response Act (“FFCRA”)

Recall that through December 31, 2020, employees are entitled to up to two weeks and 80 hours of emergency paid sick leave at the employee’s regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis.³ The travel advisory is not a quarantine order. However, if an employee seeks and receives advice from a health care provider to stay home after engaging in such travel, then the employee can access this leave if they have not already exhausted this entitlement. In short, employees could only receive FFCRA leave for this recommended two-week quarantine **if** a) their medical provider advises a quarantine; and b) they have not already received two weeks of FFCRA leave this year.

Requiring Testing Prior to Return

This is a reminder that the Americans with Disability Act and the Equal Employment Opportunity Commission permit employers to require testing of an employee at the employer’s expense if the employer has a reasonable belief based on objective evidence that this person might have the disease.⁴

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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³ 29 C.F.R. §§ 826.10, 826.20.

⁴ <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>, FAQ A-9 (last visited on November 16, 2020).