

# Putting Employers Back in the Driver's Seat? How the Governor's Latest Executive Order May Restore Connecticut Employers' Ability to Manage Out-of-State Employee Travel

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## Working Together

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***[UPDATED: This post has been updated to reflect the travel advisory issued by the Connecticut Department of Public Health on September 17, 2020 implementing Executive Order No. 9B]***

Connecticut employers have been given more power to avoid business disruption when employees travel to COVID-19 “hot spots.” On September 15, 2020, Governor Lamont issued Executive Order No. 9B containing revised protocols for persons entering Connecticut from states with COVID-19 infection rates higher than 10 per 100,000 residents, or a seven-day rolling average test positivity rate above 10%. Importantly, the mandatory 14-day quarantine is still in effect for Connecticut residents who spend 24 hours or longer in an affected state, as well as for residents of those states who are visiting Connecticut. (It does not apply to someone who is remaining in Connecticut for fewer than twenty-four hours.) The order imposes a civil penalty of five hundred dollars per violation for refusing or failing to self-quarantine, refusing or failing to submit the Travel Health Form, or refusing or failing to complete the Travel Health Form truthfully and accurately.

As of September 15, the list of states locations meeting the infection rate criteria includes: Alabama, Alaska, Arkansas, Delaware, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Significantly, the travel advisory includes a new “Testing Alternative,” under which a traveler “is exempt from the self-quarantine requirement if he or she (i) has had a test for COVID-19 in the seventy-two (72) hours prior to arrival in Connecticut or at any time following arrival in Connecticut, (ii) the result of such COVID-19 test is negative, and (iii) he or she has provided written proof of such negative test result to the

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Commissioner...Only results for nucleic acid COVID-19 tests, such as reverse transcriptase polymerase chain reaction (RT-PCR) tests, shall be accepted. If a test was obtained in the seventy-two (72) hours prior to arrival in Connecticut, or following arrival in Connecticut, and such Affected Traveler has not yet received his or her test results, such Affected Traveler shall remain in self-quarantine while in Connecticut until a negative test result is submitted to the Commissioner.”

Prior to this change, the Testing Alternative was only available to individuals who were “unable to self-quarantine...[and] strictly for the limited purpose of attending to the circumstance that renders him or her unable to self-quarantine.” These circumstances were limited to traveling to Connecticut to drop-off a child at school, to attend to a family member or a loved one whose physical or mental health or well-being is at risk, to attend to a family member or loved one's medical procedure, or to assist with end of life care, to have an end of life visit, or to attend the funeral of a family member or loved one. The lack of a testing alternative outside of those circumstances was especially problematic for employers, because it effectively required any employee who had traveled to an affected state to quarantine for 14 days prior to returning to work. Employees who could not perform their duties remotely were generally entitled to paid sick leave under the Families First Coronavirus Response Act (“FFCRA”), which in turn caused some employees to view weekend or vacation travel to high risk states as a gateway to securing an undeniable additional 2-week paid vacation. Employers faced unavoidable staffing shortages while employees could intentionally or unintentionally disrupt business operations with a two-hour drive.

Thanks to the revised executive order, however, employers appear to be back in the drivers' seat and should be better able to ensure that operations are not negatively impacted by employees traveling out of the state. By requiring employees to be tested before leaving the “hot” location, or after returning to Connecticut, employers will be able to get them back to work promptly. To aid in this, employers should develop and implement clear Out-of-State Travel policies outlining the protocols employees must follow both prior to and upon return from travel, such as disclosing travel plans in advance, making testing arrangements, and planning for remote work where necessary and possible.

But we're talking about COVID, so there has to be some bad news too, right? Although unrelated to travel, the new executive order also authorizes fines of \$100 for any person who fails to wear a mask or face covering in any location (public or otherwise) where required by executive order, DECD Sector Rules, or “other lawful authority”. While individuals are responsible for their actions on their own time, the order specifies that the “business entity, rather than the employee, is liable for a fine of the same amount for any employee's failure to wear a required mask or cloth-face covering while at work.” This means that employers can now be fined \$100 per occurrence when an employee does not wear a mask in the workplace as required. Disgruntled customers, visitors, or other employees can report such non-compliance, and fines can be issued by the Commissioner of Public Health, local health directors, district health directors, municipal chief executive

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officers, state and municipal police officers, peace officers, special police forces, and public safety departments of institutions of higher education. Employers should immediately review applicable guidance to confirm what mask-wearing requirements apply to their workplaces. Organizations should also revise their COVID-19 workplace policies to ensure appropriate mask-wearing protocols are in place, including discipline for non-compliance. Employees should be reminded of and trained on these policies, and enforcement should be stern to avoid fines or other compliance issues.

Pullman & Comley has policy templates and other useful resources available to aid employers in navigating the confusing web of executive orders, laws, regulations, and other guidance related to COVID-19. If your organization is unsure about its obligations under the new executive order, travel advisory, or any other COVID-19 guidance, please contact any of our Labor and Employment Law attorneys for assistance.

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