

### COVID-19 Effects on Summer Vacation: Considerations for Employers in Response to Vacation Requests

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With summer in sight, Michigan employers can expect to receive an uptick in vacation requests. However, a patchwork of administrative guidance and executive and county orders may pose unforeseen consequences when employees try to return from their travels.

#### Daily Screening Processes

Executive Order 2020-97 (“EO 97”) requires Michigan employers to utilize, “at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19.” While EO 97 does not explain what “suspected or confirmed exposure” means, several local counties implemented their own orders that delineate the required travel-related inquiry with more specificity.

Guidance from the Centers for Disease Control and Prevention recommends that individuals stay home for 14 days upon travel to and from a country with “widespread ongoing transmission” (i.e., all countries as of March 27, 2020). Therefore, employers should continue to ask if employees have travelled internationally in the preceding 14 days. Whether employers must also ask about domestic travel (i.e., travel outside of Michigan) depends upon the county in which the employer operates:

- **Bay County**<sup>1</sup> requires employees who have travelled internationally or domestically, and by any mode of transportation, to be excluded from the worksite for 14 days unless the travel was the result of commuting to the employee’s work from a home location outside of the State.
- **Oakland County**<sup>2</sup> requires employees who have travelled internationally or domestically, and by any mode of transportation, to be excluded from the worksite for 14 days unless:

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<sup>1</sup> The Bay County Emergency Order 2020-2 does not have an expiration date.

<sup>2</sup> The Oakland County Emergency Order 2020-10 does not have an expiration date.

Ingham and Washtenaw Counties implemented similar public health orders that were rescinded upon the issuance of EO 97’s “questionnaire” requirement.

1. The travel was the result of commuting to the employee's work from a home location outside of the State; or
  2. The employee is a necessary worker engaged in travel related to supply chain and critical infrastructure.
- **Wayne County**<sup>3</sup> requires employees who have travelled internationally or domestically via airplane to be excluded from the worksite for 14 days. The order makes no exceptions for commuting or business reasons.

When these orders were initially issued, much of the country was subject to stay-in-place mandates. As states have loosened restrictions, and as warmer weather has arrived, employers are now faced with having to approve vacation requests, knowing that employees may not be back to work for an additional two weeks, depending on the vacation destination and mode of travel.

Employers should review their local obligations, and if there is no county order in place, they are permitted, but not required, to ask about domestic travel in addition to international travel. Without a governmental directive, employers should design a travel-related inquiry that makes sense for their workforce, considering factors such as the ability of employees to socially distance while working, as well as the rate of infection in the surrounding community and the community to which an employee travelled.

### Examples

Employee A works in Oakland County. He plans to visit Picture Rocks National Lakeshore with his family this summer. They will travel by car. He may resume work when he returns from vacation because he travelled within the State and by car.

Employee B works in Oakland County and plans to stand up in her sister's wedding in Put-In-Bay, Ohio as the maid of honor. She drives the less than 200-mile trip. When she returns from vacation, she will have to quarantine for two weeks because her destination was outside of Michigan.

Employee C works in Wayne County. She plans to visit the Great Smoky Mountains in Tennessee with her family. They will travel by car. Despite the long drive, when she returns from vacation, Employee C will be able to resume work immediately.

Employee D also works in Wayne County. He flies to South Bend, Indiana for the day. Upon his return, Employee D will not be permitted access to the worksite for 14 days.

Employee E works in Oakland County but lives in Toledo, Ohio. She regularly commutes across state lines from home to work. Though technically traveling domestically, Employee E is not subject to the 14-day waiting period.

Employee F works and lives in Oakland County. He and his family decide to travel to Toledo, Ohio for lunch. This short trip for a dine-in experience will necessitate his removal from the worksite for 14 days.

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<sup>3</sup> The Wayne County Local Public Health Emergency Order # 20-02 does not have an expiration date.

## **Paid Leave?**

Further complicating the 14-day waiting period is the Families First Coronavirus Response Act (“FFCRA”), entitling eligible employees to two weeks of paid leave for qualifying reasons under the Emergency Paid Sick Leave Act (“EPSLA”).

One such qualifying reason is designed for employees who are unable to work or telework because they are subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

For instance, Employee B, above, may be eligible for paid leave because her employer has work available, but she is unable to report onsite due to Oakland County’s public health order, which constitutes a local quarantine or isolation order related to COVID-19. If, however, Employee B’s position allows her to telework, then she no longer requires paid leave.

Employees still must properly request FFCRA leave, submitting a written request supplemented by corresponding documentation (e.g., local quarantine or isolation order). To maintain compliance, employers must ensure that employees have access to a written leave request form, and that the FFCRA poster is conspicuously displayed.

## **Consistent Enforcement**

As with any other workplace rule, employers must enforce the screening requirements consistently. For example, Employee B, above, may not be entitled to paid leave if her employer is not covered by the FFCRA, or if she has already exhausted such leave; therefore, she may be required to take an unpaid leave of absence. If her employer allows another employee who temporarily left the State, such as Employee F, above, to return to work without enforcing the 14-day waiting period, there could be discrimination concerns.

Similarly, any customized travel-related inquiry should be based upon legitimate estimations of the spread and prevalence of COVID-19, not upon assumptions or prejudice.

## **Mitigating Measures**

As summer approaches, employers should remind employees of the screening protocol and communicate the ramifications of out-of-state visits.

*Note: The Oakland County Order referred to in this article was rescinded shortly after publication. Oakland County’s Public Health Department now refers employers to the “[s]creening, social distancing, face coverings and additional public health strategies . . . now addressed by [Michigan Executive Orders](#) and guidance provided by the Centers for Disease Control and Prevention (CDC).” (<https://www.oakgov.com/covid/Pages/Health-Orders.aspx>)*

*Bay and Wayne Counties’ Orders, also mentioned in the article, are still active.*

*Even if not ordered to do so, employers in any county may include travel-related inquiries in their daily screening*

Contact any member of **Bodman's Workplace Law Group** to discuss your daily screening processes, determine whether your workplace is subject to a county-specific order, and understand your FFCRA responsibilities. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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