

## Update on the Impact of New York Travel Restrictions on Employers

On July 2, 2020, the New York Department of Health (DOH) published [Frequently Asked Questions \(FAQs\)](#) regarding the travel restrictions imposed by [Executive Order 205 \(EO 205\)](#) and [Guidance issued by DOH on June 24, 2020](#), both effective on June 25, 2020. For more information about EO 205 and the DOH's June 24th guidance (Original Guidance) on the travel restrictions, please see our earlier client alerts [here](#) and [here](#).

The FAQs begin by reinforcing several points made by EO 205 and the Original Guidance. Specifically, the FAQs confirm that EO 205 is not applicable to individuals arriving in New York prior to June 25, 2020, or those who spent less than 24 hours in a designated state. They also set forth the same nine restrictions applicable to individuals in quarantine, ranging from restrictions on food delivery to requirements for separate living quarters. It is clear that this 14-day quarantine applies to all non-essential employees, whether they are New York residents or simply visitors to the State.

The FAQs also clarify that an employee who has traveled to a restricted state cannot return to work even if the employee has tested negative for COVID-19 after returning to New York. DOH points out that symptoms of COVID-19 can appear as late as 14 days after exposure, and therefore, a negative test prior to the conclusion of the full quarantine period is not proof that the individual will not become ill.

The FAQs next address the question of how EO 205 applies to essential workers, stating that the 14-day quarantine is required "unless you are an essential worker or fall under another exception as determined by the Commissioner [of Health]." In an apparent clarification of the Original Guidance, the FAQs state that "all essential workers who have been in a designated state in the 14 days prior to arrival in New York State shall abide" by the short term/medium term/long term requirements stated in the Original Guidance. Although referencing "all essential workers," the FAQs actually appear to contemplate that essential workers will fall within three categories: (1) health care workers; (2) essential workers with COVID-19 symptoms or close contact with COVID-19 positive persons; and (3) all other essential workers.

For the third category, all other essential workers, whether they are New Yorkers returning to the State or non-resident essential workers who will remain in New York for greater than 36 hours (a long-term stay), the FAQs state they should at a minimum:

- seek COVID-19 diagnostic testing as soon as possible upon arrival (within 24 hours) to ensure they are not positive;
- monitor temperature and signs of symptoms;
- wear a face covering when in public;
- maintain social distancing;
- clean and disinfect workspaces for a minimum of 14 days; and
- to the extent possible unless required for their essential work, avoid extended periods in public, contact with strangers, and large congregate settings for at least 14 days.

In the second category, essential workers returning to work after a suspected or confirmed case of COVID-19 or after coming into close contact with such a person must adhere to the [DOH's May 31st Guidance](#). In that case, the returning employee must be asymptomatic. In addition, the May 31st Guidance requires a documented determination by the employee's supervisor and a human resources (HR) representative in consultation with appropriate state and local health authorities that the employee

is essential and critical for the operation or safety of the workplace. If those conditions are met, the employee may return to work as long as the employee adheres to the following practices prior to and during their work shift, which should be monitored and documented by the employer and employee:

- the employee must self-monitor for temperature and symptoms;
- the employee must wear a mask at all times in the workplace;
- the employee must follow social distancing;
- the employer must clean and disinfect the employee's work stations; and
- the employee must self-quarantine and self-monitor for temperature and symptoms when not at the workplace for 14 days after his/her last exposure.

Health care personnel (HCP) appear to have special status as essential workers. Under the FAQs, employers may allow HCP who have traveled to a restricted state to work if eight distinct conditions are met. Importantly, the first of these conditions mandates that an essential health care worker may only return to work after having been in a restricted state if “furloughing such HCP would result in staff shortages that would adversely impact operation of the healthcare entity, and all other staffing options have been exhausted.” The remaining seven conditions are:

- the HCP must be asymptomatic;
- the HCP must receive diagnostic testing for COVID-19 within 24 hours of arrival in New York;
- the HCP must self-monitor twice a day for fever and other symptoms, and must receive temperature monitoring and symptom checks at the beginning of each shift and at least every 12 hours during a shift;
- the HCP must wear a face mask while working;
- to the extent possible, the HCP should be assigned to patients at lower risk of severe complications from COVID-19;
- the HCP should self-quarantine when not at work; and
- the HCP should immediately stop working and isolate at home if any COVID-19 symptoms develop.

The FAQs also remind employers of EO 202.45, which precludes employees from receiving New York COVID-19 paid leave if they voluntarily travel on a non-work-related trip to a restricted state.

The Original Guidance and the FAQs address a complex set of issues and some things are more clear than others under these DOH guidance documents. The facts pertaining to each travel situation and the nature of the services rendered by the employee will matter. Employers may also decide that their unique circumstances require tailored approaches. We recommend that you consult with your Bond attorney for the latest updates and advice related to your particular situation.

If you have questions about this information memo, please contact [Theresa Rusnak](#), [Subhash Viswanathan](#), any [attorney](#) in our [Labor and Employment practice](#), or the attorney at the firm with whom you are regularly in contact.



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