

# NORRIS, MURRAY & PELOQUIN, LLC



Legal Counsel to Employers and Schools

COVID-19 UPDATE

Client Advisor

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A lot happened last week. On Friday, Governor Baker stepped up the state's efforts to protect Massachusetts from the surges in coronavirus raging through many other parts of the country. For the first time, travelers entering Massachusetts from states other than states deemed to be low-risk states, will be required to quarantine for 14 days or face a \$500-a-day fine. The new rules apply to vacationers, students returning to local colleges or universities and Massachusetts residents returning from out-of-state trips. In addition, further guidance and clarification has been issued by the U.S. Department of Labor regarding FFCRA and the FMLA, and the Center for Disease Control (CDC) has revised its Return to Work criteria. And as the summer races by, the DESE continues to release Reopening Guidance as we wait for more definitive information about what school will look like this Fall.

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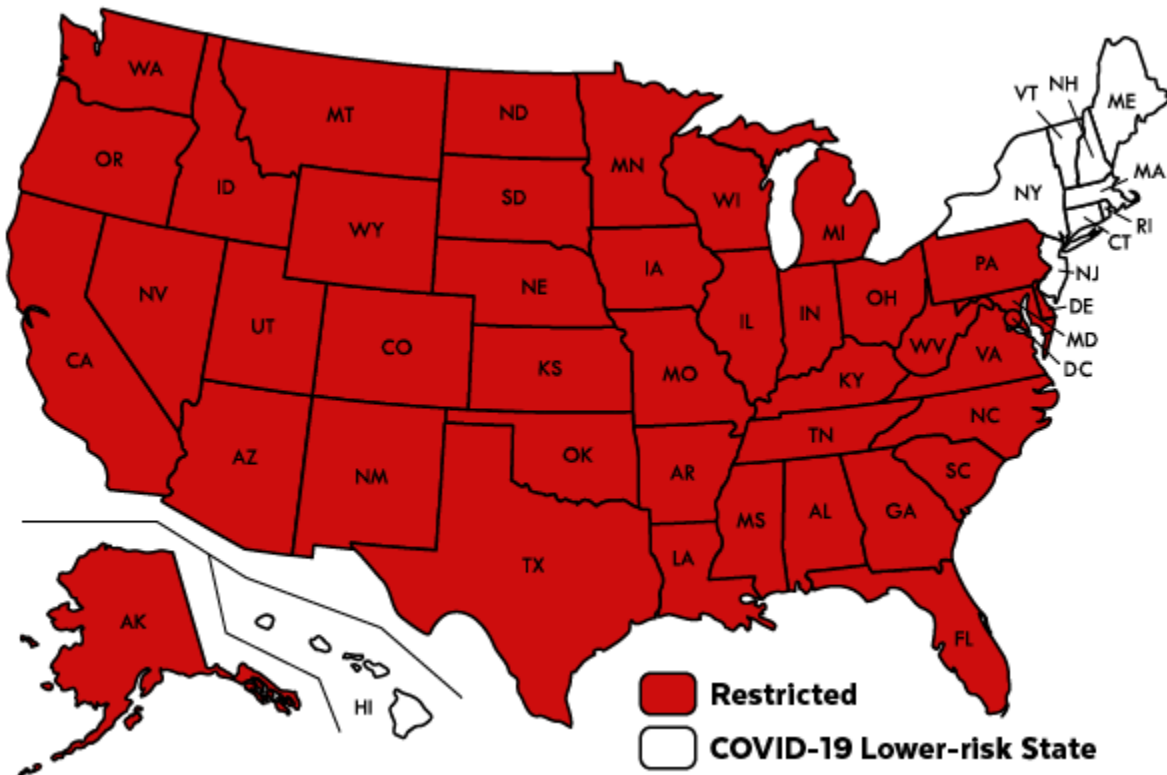
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## **A. Governor Baker Signs Executive Order Enacting New Travel Restrictions Effective August 1**

On Friday, July 24, Governor Baker signed an Executive Order requiring all individuals traveling to Massachusetts, including Massachusetts residents returning from out of state travel, to quarantine for 14 days, unless arriving from an exempt low-risk state or able to provide proof of a negative COVID-19 test within the last 72 hours. The new restrictions imposed by the Executive Order are effective on August 1. Failure to comply with the quarantine order will be punishable by civil fines in the amount of \$500 fine per day and per violation.

### **Which states are low-risk and how is that determined?**

Currently, the following "low-risk" states are exempted from the quarantine requirement: Connecticut, New Hampshire, Maine, Rhode Island, Vermont, Hawaii, New Jersey, and New York. Low risk states are designated as states with average daily cases of COVID-19 below 6 per 100,000 people and a positive test rate below 5%, both measured over a 7-day rolling average. The Commissioner of the Department of Health (DPH) may add or remove states to the low-risk list based on the available public health metrics.



Source: <https://www.mass.gov/info-details/covid-19-travel-order#information-for-employers-> (as of 7/27/2020)

**Does the Governor’s Order have any exceptions?**

The quarantine order is subject to a number of exceptions such as: military personnel traveling to Massachusetts on official orders, individuals transiting through Massachusetts, individuals commuting to or from Massachusetts for work or school, and individuals traveling to Massachusetts to provide critical infrastructure services. Critical infrastructure workers traveling to Massachusetts for personal or leisure reasons will not be exempt from the quarantine requirement.

The Executive Order also modifies the Mandatory Workplace Safety Rules to include a provision instructing employers to ensure that their employees comply with all rules concerning out-of-state travel for any employer-paid travel. Although Governor Baker discourages employers from requiring business travel to non-exempt states and recommended that employers “strongly discourage” employees from personal travel to non-exempt states.

**Is there an option to test rather than quarantine?**

Individuals will not be required to quarantine if they test negative for COVID-19 after arriving in Massachusetts. Individuals who take a COVID-19 test after arriving in Massachusetts from a non-exempt state must quarantine until they obtain the negative test result. Similarly, individuals who undergo COVID-19 testing prior to traveling to Massachusetts but do not yet have the results must

quarantine until they receive the negative test result. The testing method must be one approved by the Department of Public Health (DPH).

### **Who is responsible for enforcing the Order?**

The DPH is primarily responsible for enforcement of the Order and may request assistance from State and municipal police when necessary. Local boards of health are authorized to enforce the Order, upon request by DPH.

### **Is this 14-day quarantine by covered by the Families First Coronavirus Response Act (FFCRA)?**

Yes. The Department of Labor WHD currently takes the position that Governor Baker's new travel order requiring a 14-day quarantine period does qualify as a Federal, state, or local government order for the purposes of FFCRA leave and employees must be granted leave for EPSL for that reason whereas a quarantine advisory (which is what is currently in effect through the end of the month) does not qualify.

The Governor's Executive Order will clearly have implications for employer vacation policies and the use of FFCRA leave for employees who are required to quarantine after returning from travel to a non-exempt state. It is worth noting that the Baker-Polito Administration currently takes the position that emergency paid sick leave (EPSL) under the FFCRA (or Massachusetts paid sick leave) will not be available to an employee who voluntarily travels to a non-exempt state for personal or leisure reasons and is required to quarantine for 14 days as a result. One explanation for this interpretation is that while the quarantine order technically constitutes a state quarantine order for the purposes of the EPSL, the order itself arguably does not prevent the employee from reporting to the workplace, but for the employee's voluntary personal travel. When asked about this, the WHD acknowledged that this scenario was certainly not envisioned (like many others) when the regulations were enacted, but that at this time its position was that the new travel order triggers FFCRA eligibility.

As a reminder, employers should clearly communicate their policies with respect to quarantines so that employees have enough advance notice of the consequences prior to traveling to non-exempt states and ensure that such policies are applied consistently.

## **B. DOL Issues Additional Guidance on FFCRA and FMLA Leave**

Last week, the U.S. Department of Labor updated its guidance regarding FFCRA and FMLA leave taken during the COVID-19 pandemic.

The DOL clarified the following issues with respect to FMLA leave:

- Telemedicine visits will be considered "in-person" visits with a health care provider for the purposes of establishing a serious medical condition as long as the appointment includes an examination, evaluation, or treatment by a health care provider; is performed by video conference; and is permitted by state licensing authorities.

- Employers may require employees returning from FMLA leave to take a COVID-19 test, provided that such requirement is part of a testing policy that applies to all employees, even if the policy was instituted while employee was out on FMLA leave.

The DOL added additional material to its FFCRA FAQs (Questions 94-97) regarding returning to work after furloughs and FFCRA leave:

- Generally, an employee returning from FFCRA leave has a right to be restored to the same or an equivalent position. However, given concerns regarding employee's exposure or potential exposure to someone with COVID-19 after returning from FFCRA leave, employers may consider requiring such employees to telework or work in an equivalent position with less interaction with other employees. Additionally, employers may require employees to comply with workplace safety protocols that are unrelated to taking FFCRA leave, such as a general rule requiring employees to be tested for COVID-19 if they experience symptoms or have been in close contact with an infected individual. Employers may not require employees to telework or get tested for COVID-19 merely because they took FFCRA leave.
- An employee who exhausts his or her FFCRA leave prior to being furloughed is not entitled to additional FFCRA leave upon returning to work after the furlough ends. Full-time employees are limited to a total of 80 hours under the FFCRA.
- If an employee took EFMLEA/FMLA+ leave prior to a furlough, the employee is entitled to the balance of his or her EFMLEA/FMLA+ leave when the employee returns to work. The time that the employee was furloughed does not count toward FFCRA leave. DOL clarifies that where an employee takes FFCRA leave both before and after a furlough, the employer should treat the post-furlough leave as a new leave request and require the employee to provide appropriate documentation.
- An employer may not extend an employee's furlough because the employee will need to take FFCRA leave to care for his or her child once the workplace reopens and the employee returns to work. DOL reiterates that an employer may not discriminate or retaliate against an employee for exercising their rights to take leave under the FFCRA.

### **C. CDC Provides Revised Return to Work Criteria**

Last week, the Centers for Disease Prevention and Control (CDC) revised its Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings, which can be used by employers to determine when an employee can safely return to work. Notably, the modified criteria states that an individual must remain free of fever symptoms for 24 hours compared with the previous requirement of having no fever for 72 hours. The symptom-based criteria for discontinuing

isolation for individuals who were directed to isolate at home because of COVID-19 symptoms is as follows:

- At least 10 days have passed since symptoms first appeared; and
- At least 24 hours have passed since last fever without the use of fever reducing medications; and
- Other symptoms have improved.

The CDC test-based criteria for symptomatic employees requiring resolution of fever and other symptoms and two negative test results at least 24 hours apart remains the same. The CDC guidance stating that asymptomatic individuals who test positive for COVID-19 may discontinue isolation 10 days after the date of the positive test, also remains unchanged.

#### **D. DESE Announces Additional Fall Reopening Transportation and Facilities Guidance**

On July 22, DESE issued guidance regarding facilities and operational issues to supplement its earlier Fall Reopening Guidance (Initial Guidance, June 25, 2020; Additional Guidance on Fall Reopening Plans, July 10, 2020). DESE also released guidance regarding transportation issues. The complete version of the guidance may be found on our [website](#), however, a summary of the guidance can be found below:

##### General Considerations for Facilities and Space

- Clear all learning spaces of any non-essential items to maximize learning space
- Reconfigure larger areas into smaller learning spaces with temporary walls or dividers.
- Schools must ensure that appropriate signage is placed in visible locations throughout school property reminding students to comply with health and safety protocols.
- Wherever possible, schools should increase outdoor air ventilation by adjusting HVAC settings and opening doors and windows when appropriate.
- Schools should create a plan for hallway and stairwell use to minimize congestion. Wherever possible, hallways and stairwells should be made one-directional so that students avoid passing each other.
- Schools should limit or completely restrict the use of lockers and other shared spaces/items.

##### Entry and Exit Points

- Schools should consider assigning multiple entry/exit points or staggering arrival and dismissal times to help enforce distancing requirements.
- Schools should ensure that handwashing and sanitation is available at entry and that all students are wearing masks when entering the building.

##### Spaces for Mask Breaks and Recess

- DESE recommends that schools and districts provide students with at least two mask breaks per day (e.g. lunch and recess).

- The spaces for mask breaks must allow for students to be at least 6 feet apart and schools should consider using designated markers to identify the proper distance.
- Hand washing and sanitation must be available for students entering and exiting recess areas.

### School Cleaning and Disinfecting

- Cleaning and disinfecting should occur at least daily for shared spaces and furniture. For high contact surfaces (e.g. door handles, light switches, water fountains, bathrooms, etc.) cleaning should occur three to four times per day.
- Desks should be cleaned daily. In situations where students eat at their desks or when cohort groups move between classrooms, cleaning must occur after meals and between classes.

### Food Service

- Students must maintain 6 feet of distancing while eating meals.
- DESE recommends, based on CDC guidance, that students eat in classroom spaces, although schools may need to develop alternative solutions as this may not be feasible based on the classroom size. For example, half of the students may eat in the classroom while the other half takes a mask break or goes on recess, in which case the desks and surfaces used for eating must be cleaned between groups.
- If the cafeteria is used for meals, schools must clearly mark spaces 6 feet apart where students and cohorts will sit. Tables and eating surfaces must be cleaned between each group.
- Students must wash or sanitize their hands immediately before and after eating.
- Schools should adjust food offerings so that meals and food items are individually packaged to reduce contact.
- Schools should re-configure kitchen workspaces or stagger staff inside the kitchen to allow for physical distancing requirements. Schools should also consider implementing measures to maintain continuity of food service if a staff member becomes ill.
- Districts and schools must continue to offer meals to eligible students who are learning remotely and communicate any changes regarding meal delivery or pick up for those students.

### Transportation Guidance

- All students and staff will be required to wear masks on school buses at all times, with certain exceptions for students with medical and/or behavioral issues.
- Students should be seated no more than one student per bench and alternating sides for each row, at least 3 ft apart. Students from the same household may sit together on the same bench.
- Windows should be kept open during operation, unless severe weather issues do not permit.
- Students should be given seat assignments and assigned to one bus. Drivers and other transportation staff (e.g. bus monitors) should be assigned a single bus and a specific route.

- Districts should consider adding a bus monitor to ensure that students follow health and safety guidelines. Bus monitors may also be responsible for visually screening students for COVID-19 symptoms as the board the bus.
- Districts should develop a transportation plan, that includes surveying parents regarding the demand for bus services, developing alternatives for boarding, pick-up, and drop-off protocols, adding additional routes to existing bus schedules, encouraging parents to transport their children.

#### **E. COVID-19 Postings on NMP Website**

NMP continues to post COVID-19 orders, advisories, guidelines and legislation on its website ([www.nmplabor.com](http://www.nmplabor.com)). The following is a list of the new materials added since our last Advisor:

- Governor Baker Announces Mandatory Quarantine for those Entering State
- DESE Transportation and Facilities Guidance
- US Dept. of Labor has Issued Guidance and the FFCRA Employee Rights Notice (revised 7/27/2020)

If you have any questions or would like to discuss the above in more detail, please contact:

**Leo Peloquin**

lpeloquin@nmplabor.com

**Melissa Murray**

mmurray@nmplabor.com

**Brett Sabbag**

bsabbag@nmplabor.com



<https://nmplabor.com/covid-19-resources/>

**Tim Norris**

tnorris@nmplabor.com

**Philip Collins**

pcollins@nmplabor.com

**Antoine Fares**

afares@nmplabor.com