

## Employment Law *Trending Now*

# The Interplay Between Chicago's Emergency Travel Order and Paid Leave Provided By the Families First Coronavirus Response Act

**O**n July 6, 2020, the City of Chicago became one of a growing number of cities and states to have implemented a self-quarantine policy on travelers. Chicago's [Emergency Travel Order](#) ("Emergency Travel Order") requires travelers entering or returning to Chicago from states experiencing a surge in new coronavirus ("COVID-19") cases to quarantine for 14 days after the travelers' last contact within the identified state. The City of Chicago has published a series of questions and answers on its website that are helpful in interpreting the Emergency Travel Order. Those questions and answers can be found [HERE](#).

Several of our employer clients have reached out with the following questions:

- 1) Are its employees subject to the Emergency Travel Order?
- 2) What states are included within the Emergency Travel Order?
- 3) Can an employer require an employee to notify it about travel to states or countries experiencing heightened COVID-19 levels?
- 4) Must an employee be paid during the 14-day quarantine mandated by the Emergency Travel Order?

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- 5) May an employer impose a 14-day quarantine for travel to “hot-spot” states when its employees are not subject to the Emergency Travel Order?
- 6) What happens if an employer takes disciplinary action or retaliates against an employee for quarantining in accordance with the Emergency Travel Order?

This alert will provide guidance on those and other key issues relating to the Emergency Travel Order and its interplay with paid sick leave afforded to eligible employees under the Families First Coronavirus Response Act (“FFCRA”).

## **1). Who Is Covered By the Emergency Travel Order?**

The Emergency Travel Order applies to those individuals who live or work in, or who travel to, Chicago. Even if an employer is not located within the city limits, it may be required to allow employees subject to the Emergency Travel Order to take time off of work to quarantine.

The Emergency Travel Order does not apply to employees who do not work, live or spend any time in Chicago. Certain essential workers, and those who must travel for medical care or parental shared custody, are also exempt from the self-quarantine requirement of the Emergency Travel Order.

## **2). What Travel Destinations are Subject to the Emergency Travel Order?**

The following states are currently covered by the Emergency Travel Order: Alabama, Arkansas, Arizona, California, Florida, Georgia, Idaho, Louisiana, Mississippi, North Carolina, Nevada, South Carolina, Tennessee, Texas and Utah. This list will be updated on the City’s [website](#) every Tuesday starting July 14, 2020.

## **3). Can an Employer Require Employees to Provide Notification of Travel to States Covered By the Emergency Travel Order?**

Yes. If an employer wishes to require such notification, it is best practice to create and distribute a written policy requiring travel notifications for any travel to the “hot-spot” states covered by the Emergency Travel Order. Employers are also encouraged to include in that written policy a similar travel notification for any trips to countries that the Center For Disease Control (“CDC”) recommends travelers avoid due to ongoing transmission of COVID-19. Those countries currently include Brazil, China, Iran, most European countries, the United Kingdom and Ireland.

## **4). Must an Employee Be Paid During the 14-Day Quarantine?**

Maybe. Although the Emergency Travel Order does not require employers to pay employees during a quarantine, employees may be entitled to payment if they are eligible for paid sick leave under the FFCRA, the employer’s paid time off policies or other applicable law.

Readers may recall our various [alerts](#) on the FFCRA over the last few months in which we explained the requirement that certain employers provide eligible employees with up to 80 hours of paid sick leave if the employees were unable to work or telework due to, among other things, a federal, state or local government quarantine or shelter-in-place order. The Emergency Travel Order is a government quarantine order under the FFCRA.

If an employee who is subject to the 14-day quarantine works in a role that requires physical presence at the worksite – meaning, that the employee cannot work remotely – the employee may be entitled to paid sick leave under the FFCRA during the quarantine. However, if the employee has already used all 80 hours of paid sick leave, the employee would not be entitled to additional paid leave pursuant to the FFCRA. But, employers should be mindful that the employee may be able to use other employer-provided paid time off, or sick time mandated by the Chicago Paid Sick Leave Ordinance, Cook County Earned Sick Leave Ordinance, or other applicable law.

If an employee is able to telework, that employee would not be entitled to paid leave under the FFCRA – namely, because the employee could work during the quarantine and would not require paid time off. This analysis may change if, during the course of the quarantine, the employee tests positive for COVID-19 or exhibits symptoms of the virus and they can no longer work remotely.

### **5). Can an Employer Require a 14-Day Quarantine Even When Its Employees Are Not Subject to the Emergency Travel Order?**

Yes. Under the Occupational Safety and Health Act of 1970 (“OSHA”), employers have a legal obligation to provide employees with a workplace free from recognized hazards likely to cause death or serious physical harm, including COVID-19. Irrespective of whether employees are covered by Chicago’s Emergency Travel Order, employers are encouraged to implement a travel policy requiring notification of travel to areas experiencing a surge in COVID-19 cases and self-quarantine for 14 days to promote the health, safety and security of the workplace. This policy should be provided in writing, clearly communicated to all employees, updated regularly to reflect current guidance by the CDC and other federal, state or local authority, and applied in a non-discriminatory manner.

### **6). What Are the Ramifications If an Employer Takes Disciplinary Action or Retaliates Against an Employee for Quarantining in Accordance With the Emergency Travel Order?**

The City of Chicago’s recently enacted COVID-19 Anti-Retaliation Ordinance (the “Ordinance”) prohibits employers from retaliating against covered employees for obeying the Emergency Travel Order, as well as any other orders issued by the Mayor, the Governor of Illinois or the Chicago Department of Public Health. Employers who violate the Ordinance may be subject to legal action by the Commissioner of the City’s Department of Business Affairs and Consumer Protection. Additionally, employees who have been retaliated against may pursue damages in their own civil actions and may pursue: (a) damages equal to

three times the full amount of wages that would have been owed had the retaliation not occurred; (b) actual damages caused by the retaliatory conduct; and (c) costs and attorneys' fees.

*If you have any questions about this Alert, Chicago's Emergency Travel Order, or the interplay between the Emergency Travel Order and the FFCRA, or if you would like assistance with creating a travel notification and quarantine policy, please contact the authors listed below or the [Aronberg Goldgehn attorney](#) with whom you work.*

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