

Pennsylvania Travel Restrictions

Prepared by the PSEA Legal Division

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On November 17, 2020, the Pennsylvania Secretary of Health issued an Order implementing new out-of-state travel restrictions in response to the rising number of COVID-19 cases in the Commonwealth.¹ These new restrictions are an effort to slow the spread of COVID-19 during the upcoming holidays.

The Order is effective November 20, 2020 and is summarized below:

Travelers entering Pennsylvania from other countries and states, as well as Pennsylvanians who are returning home from other countries or states, are required to either have a negative COVID-19 test within 72 hours prior to entering Pennsylvania or quarantine for 14 days upon entry into Pennsylvania.

The test must be a diagnostic test approved by the FDA.

Individuals who have the test specimen collected within 72 hours of entering Pennsylvania but who do not yet have the test result may enter the state but must remain at their destination apart from others, except those in their traveling party, until receiving the test result. If the test result is negative, they may exit quarantine upon receiving the result. If the result is positive, they must isolate.

Individuals who obtain a test to prove they are virus-free do so at their own expense.

Certain persons are exempt from the testing and quarantine requirements: those traveling inter-state for work, medical reasons, or military training, or traveling through the state to another designation (provided that the time spent in the Commonwealth is only the amount necessary to complete the transit, make use of travel services such as a rest stop, or to make necessary travel connections).

The Order remains in effect until further notice. Individuals who fail to comply with the Order may be fined between \$25.00 and \$300.00 dollars.

Pennsylvania's Department of Health issued a Q&A² stating that "[t]his [Order] is a requirement. The order is an enforceable disease control measure authorized by the Disease

¹ <https://www.governor.pa.gov/wp-content/uploads/2020/11/20201117-SOH-Travel-Mitigation-Order.pdf>.

² <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Travelers.aspx>.

Prevention and Control Law.” However, the Department has left it up to employers to determine how to implement the requirements in their workplaces. The Q&A contains the following:

I want to follow the travel quarantine requirement instead of getting the test, but my employer is requiring me to return to work. Do I have any recourse to stay home?

The Commonwealth does not dictate how businesses should implement the requirements in the Order.

How should businesses implement these recommendations? Can employers require employees returning from other countries or states to stay out of work for 14 days?

The Commonwealth does not dictate how businesses should implement the testing or quarantine requirement.

Since compliance is mandatory and because the Department of Health specifically allows employers discretion in implementation, it is difficult to argue that there are bargaining obligations regarding the requirements. In other words, employers can unilaterally determine to prioritize test results over quarantining. Employers can also specify the type of FDA-approved test to be used (either a molecular test³ or an antigen test⁴) and can require the employee to bear the cost of the test.

Therefore, school employers can require that employees who travel out of state provide documentation that they obtained the specified type of negative COVID-19 test 72 hours prior to returning to the Commonwealth. The employee may have to quarantine if the test results are delayed. But having presented evidence of a negative test, the employee should not be required by the employer to obtain further tests or to quarantine for an additional period.

In practicality it may be difficult for employees to obtain tests while they are out of state and it is likely that some school employers may allow the employee to delay the test until they return to Pennsylvania. The employer can also decide it will *not* accept a test result and instead direct the employee to quarantine for 14 days.

While the employee can request FFCRA leave while waiting for test results or while quarantining for fourteen days, the availability of that leave will depend on the circumstances. FFCRA leave is available when an employee is quarantining due to a “a federal, state, or local quarantine or isolation order related to COVID-19.”⁵ Unfortunately, PSEA cannot guarantee that in every situation school employers will grant FFCRA leave or otherwise compensate employees

³ Most molecular tests are polymerase chain reaction tests (PCR). PCR tests are designed to detect the virus’s genetic material. Results are typically very accurate but take several days to analyze as they must be shipped to an appropriate lab for review. The FDA recommends the use of molecular tests for asymptomatic individuals. See <https://www.fda.gov/health-professionals/closer-look-covid-19-diagnostic-testing>.

⁴ Antigen tests detect certain proteins in the virus. Antigen tests are faster, returning results in minutes, and less expensive than PCR tests. However, they are more susceptible to inaccurate results if the administering instructions are not followed carefully. See <https://www.fda.gov/health-professionals/closer-look-covid-19-diagnostic-testing>.

⁵ <https://www.dol.gov/agencies/whd/pandemic/ffera-employee-paid-leave>.

who are quarantining, and whether FFCRA leave provisions can be enforced in any particular situation will be fact-specific. Local leaders should consult with their UniServ Representative for advice regarding leave options for members who intend to travel out-of-state.

This Order will no doubt have a significant impact on PSEA members. Local associations, with the assistance of their UniServ Representatives, should meet with school employers regarding implementation and to address any anticipated issues and problems.