



EMERGENCY LEGAL PREPAREDNESS AND RESPONSE FAQs

Ebola Public Health Emergency Legal Preparedness and Response

What screening measures have been implemented for travelers coming or returning to the U.S. from affected areas?


Government and civil aviation authorities in affected countries in West Africa are screening passengers at international airports under their jurisdiction. Airports in [affected countries](#) are screening all outbound passengers for Ebola symptoms with the assistance of the [U.S. Centers for Disease Control and Prevention \(CDC\)](#). Screenings include visual assessment and temperature check with a noncontact thermometer, as well as a health questionnaire.

Airlines have [legal authority to deny boarding](#) to sick passengers who pose a direct threat based on specific criteria and guidance from CDC (and others) that consider transmissibility of the illness in the aircraft cabin environment and potential health impact. Persons known or suspected to have a communicable disease that is a public health threat may also be placed on [CDC's "Do Not Board" list](#) or issued a "Border Lookout," preventing them from entering the U.S. Additionally, airplane captains are [required to report](#) deaths onboard or ill travelers meeting specific criteria to CDC before arriving at a U.S. airport. More robust and systematic screening programs may also be implemented if necessary. Federal control over U.S. borders can also authorize mandatory screening at all points of entry for conditions like Ebola if supported by evidence.

West African travelers must enter the U.S. through one of five airports: New York's John F. Kennedy International Airport, Washington Dulles International Airport, Newark Liberty International Airport in New Jersey, Chicago O'Hare International Airport and Hartsfield-Jackson Atlanta International Airport. These travelers are then screened according to [Department of Homeland Security requirements](#) and may be subject to additional monitoring per regulations of the state in which they arrived. Several states have implemented additional restrictions on travelers with potential Ebola exposure, up to and including involuntary quarantine (as noted in the [Network's Ebola Primer](#)).

How do federal, state, tribal, and local legal authorities intersect regarding isolation and quarantine of travelers at points of entry such as airports?

Federal, state, tribal and local officials have separate but overlapping authorities to issue quarantine and isolation orders to control the spread of infectious diseases at points of entry. Quarantine refers to the separation of a person or group suspected or known to have been *exposed* to a communicable disease to prevent the spread of infection, while isolation refers to the separation of persons known or suspected to be *infected* with a communicable disease.



States and tribal authorities have significant isolation and quarantine authority pursuant to their inherent “police powers” to protect public health, safety, and general welfare within their borders. All states have isolation and quarantine authority although applicable laws and processes vary. States may also delegate authority to local officials to varying degrees.

Conversely, federal isolation and quarantine authority is limited to specific circumstances. CDC is empowered under the federal [Public Health Service Act](#) to isolate and quarantine individuals and groups traveling into the U.S. or between states. This authority applies to a specific list of diseases as specified by [executive order](#), including Ebola. While interjurisdictional cooperation is the norm in enforcing isolation and quarantine at points of entry, federal authority may preempt conflicting state or local efforts.

Are there state and local laws in place that would allow public health officials to restrict domestic travel in case local exposures reoccur?

Traditionally, health officials may restrict the movement of an individual or group of individuals when necessary to limit the transmission of a communicable disease. State laws in [Hawaii](#) and [South Carolina](#), for example, authorize the “restriction of movement or confinement” to physically separate infected individuals from the healthy population. Constitutionally-grounded procedural protections are in place to regulate the use of such restrictions.

In general, such measures may only be used when they represent the “least restrictive” means of protecting the public’s health and subject to varied processes. Hawaii’s Department of Health, for example, must obtain a written court order authorizing quarantine. The affected person must be notified of the order and may contest it. However, quarantine may still be implemented prior to the issuance of the order if the delay in securing the court order poses an immediate threat to the public’s health. Similarly, before restrictions are imposed in South Carolina during a declared state of public health emergency, the health commissioner or trial court must issue an order authorizing quarantine measures and serve those affected with notice within 24 hours. A temporary emergency order may be issued if delay would significantly jeopardize efforts to limit transmission of a contagious disease.

Are quarantines legal?


Public health authorities must be prepared to demonstrate that 1) the subject of quarantine is actually or reasonably suspected of being exposed to an infectious condition, 2) that the infectious condition (like Ebola) poses a specific threat to the public’s health, 3) that the terms of quarantine are warranted, safe, and habitable, and 4) that procedural due process including fair notice, right to hearing, and right to counsel are provided.

If less restrictive interventions exist, these alternatives should be exercised rather than quarantine. CDC, under [recently updated guidance](#), recommends that states tailor the level of monitoring to the individual’s risk of exposure, using voluntary quarantine for known exposure and direct active monitoring for those with some risk of exposure during the length of the incubation period. As noted above, however, several states have implemented traveler monitoring and quarantine approaches that exceed CDC recommendations.

How are affected individuals protected by law?

Federal and state laws provide worker protections against disability discrimination related to illness and job loss related to exercise of public health powers, such as isolation and quarantine. Employers’ duties to provide a safe workplace further protect against potential infections, especially in health care settings.

The [Americans with Disabilities Act \(ADA\)](#) prevents employers from inquiring into medical conditions or requiring medical examinations except for job-related reasons of business necessity. It also requires reasonable accommodation by employers and prohibits discrimination against persons who have or are regarded as having a disability unless the individual poses a direct threat to health or safety (e.g., such as a person with an active case of Ebola). The [Family and Medical Leave Act \(FMLA\)](#) allows eligible employees to take up to 12 weeks of unpaid leave to address a serious health condition in themselves or immediate family members, among other purposes, and protects the employee from termination or retaliation by an employer.



In addition to federal laws like the ADA and FLMA, several states protect individuals subject to isolation and quarantine orders by protecting their positions and pay. For example, New Jersey law states that a permanent employee “who has been placed in isolation or quarantine . . . shall be reinstated to such employment or to a position of like seniority, status and pay.” *N.J. Stat. § 26:13-16 (2005)*. New Mexico provides that employers “shall not discharge from employment a person who is placed in isolation or quarantine.” *N.M. Stat. Ann. § 12-10A-16 (2003)*.

Finally, the general duty clause of the Occupational Safety and Health Act (OSHA Act) requires employers to provide a workplace “free from recognized hazards” that may cause injury or death, including from infectious diseases. Employees may have to take extra precautions, such as being asked to work from home for a set period.

What are the rights of public health or hospital workers to refuse to care for/help with someone suspected of having Ebola?

Hospitals and other health providers may require employed health care workers (HCWs) to provide care so long as employers also make available personal protective equipment, employ practices to prevent exposure and infection, and properly train and educate personnel.

HCWs that refuse to care for Ebola patients may face dismissal and other sanctions from their employer, as well as licensing sanctions and ethical reviews. They might also face legal liability if they owed a duty to care for a pre-existing patient. When a patient arrives in an emergency room requesting care, the [Emergency Medical Treatment & Labor Act \(EMTALA\)](#) requires the hospital to examine the patient and if an emergency condition exists to provide stabilizing care. While that hospital may not require a HCW to be put directly in harm’s way, it can require its HCWs to provide care where universal precautions eliminate potential risks of infection. Additionally, while many off-duty HCWs are not legally required to treat patients (absent some other existing relationship or duty), on-call physicians have a legal and [ethical](#) duty to respond and treat emergency patients. Finally, HCWs may be contractually required to provide care when requested by their employer, or face dismissal or other sanctions.

For more on Ebola Emergency Legal Preparedness, [view the Network’s Primer](#).

The Western Region Office of the Network for Public Health Law provides real-time legal guidance (but not specific legal advice) for Ebola legal preparedness and response in collaboration with federal, state, and local partners. Contact us for questions about testing, screening, isolation and quarantine powers, possible emergency declarations, regulation of experimental and unapproved drugs, potential liability of varied actors and entities, and other preparedness issues. Submit questions online at networkforphl.org/assistance or call (480) 727-8576.

SUPPORTERS



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