



**NEW MEXICO JUDICIAL BRANCH**  
**GENERAL PERSONNEL POLICY AND PROCEDURE: Pandemic, Communicable Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave**

**Policy No. 2020.NMJB.19**

Dev.: 3/12/2020, Rvd. 3/31/2020  
Inquiries: AOC HRD 505/827-4810

**PANDEMIC, COMMUNICABLE DISEASE EMERGENCY, INCLUDING THE CORONAVIRUS (COVID-19) POLICY AND EMERGENCY LEAVE**

**1. PURPOSE**

The purpose of this policy is to provide a safe and healthy workplace for all employees, and to establish and outline provisions, preparedness, and response in the case of a pandemic, communicable disease or other serious public health threat that is declared to be a public health emergency.

**2. REFERENCES**

Center for Disease Control ([www.cdc.gov](http://www.cdc.gov))  
Families First Coronavirus Response Act (H.R. 6201)  
General Public Emergency Pandemic Staffing Guide (<https://www.flcourts.org/>)  
Occupational Safety and Health Administration ([www.osha.com](http://www.osha.com))  
World Health Organization ([www.who.int](http://www.who.int))  
New Mexico Supreme Court Order No. 20-8500-003

**3. DEFINITIONS**

- A. AOC:** The Administrative Office of the Courts.
- B. AOC HRD:** The Administrative Office of the Courts Human Resources Division.
- C. Administrative Authority:** Individual or designee with the primary responsibility to supervise and coordinate the administration of a judicial entity, or as designated by the Chief Judge and approved by the Supreme Court Order.
- D. Child:** As defined by the FMLA regulations as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability.
- E. Director:** The Director of the New Mexico Administrative Office of the Courts or designee.



**NEW MEXICO JUDICIAL BRANCH**

**Policy No. 2020.NMJB.19**

**GENERAL PERSONNEL POLICY AND PROCEDURE: Pandemic, Communicable Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave**

- F. Emergency Paid Sick Leave:** A paid leave under the Families First Coronavirus Response Act, which grants qualified employees with a paid absence who are unable to telework during the coronavirus (COVID-19) public health emergency. Qualifications are subject to qualifying reasons. Full-time employees receive up to 80 hours and part-time employees receive a prorated amount. Judicial entities may not require employees to use other accrued leave before using Emergency Paid Sick Leave. Classified, at-will, term, and temporary employees may request Emergency Paid Sick Leave.
- G. Emergency Family Medical Leave Expansion Act:** Amends the Family Medical Leave Act. After taking two weeks of accrued leave, employees who have been employed for at least 30-days may be eligible for up to an additional ten (10) weeks of paid emergency family medical leave. Family Medical Leave Act and Emergency Family Medical Leave Act may not exceed twelve (12) workweeks in a twelve (12) month period. Classified, at-will, term, and temporary employees may request Emergency Family Medical Leave under the Expansion Act.
- H. Employee:** Classified, at-will, term, and temporary New Mexico Judicial Branch employee.
- I. Families First Coronavirus Response Act (FFCRA):** Is an Act that was signed on March 18, 2020, and is the response to the spread of the novel coronavirus and the illness it causes, COVID-19. The act expands the Family and Medical Leave Act (FMLA) temporarily from April 1, 2020, through December 31, 2020, to cover leave needed for the care of children out of school because of the coronavirus (COVID-19), and creates two weeks of paid sick leave related to the coronavirus.
- J. Family Medical Leave Act:** Provides eligible employee with up to twelve (12) weeks of unpaid, job-protected leave per year for qualifying reasons, and requires that group health benefits be maintained during the leave.
- K. Individual:** An immediate family member or someone who regularly resides in your home.
- L. Isolation:** Restriction of movement and/or the action of individuals infected with a communicable disease to reduce the chance of spreading disease.
- M. Key Position:** A position or employee in charge of ensuring that essential functions are continued during an emergency.
- N. Paid Sick Leave:** Paid leave under the Emergency Paid Sick Leave Act.



- O. Pandemic:** The worldwide outbreak of a serious communicable disease in numbers clearly in excess of normal.
- P. Quarantine:** Restriction of movement and/or action of individuals who are known to have been exposed to or may reasonably be suspected to have been exposed to a communicable disease and who do not yet show signs or symptoms of infection.
- Q. Social Distancing:** Actions taken to reduce the opportunities for close contact between people in order to limit the spread of disease.
- R. Telework:** The practice of having an employee working from home with prior approval.

#### **4. GENERAL POLICY**

This policy is designed to provide guidance to judicial entities and supervisors in the event of a pandemic, communicable disease, and specifically the coronavirus (COVID-19), and to provide emergency leave for employees. In no event shall this policy supersede regulations under federal and state law, including federal and state law regarding terms and conditions of employment for which employees are eligible, including the Fair Labor Standards Act, the Family Medical Leave Act, and the Americans with Disabilities Act. Changes to attendance and leave policies in response to a pandemic influenza emergency should be communicated with employees with emphasis that these changes apply only during a pandemic.

#### **5. STAFFING, SUCCESSORS, AND ENSURING CONTINUITY OF SERVICES**

The New Mexico Judicial Branch's continuity of services during a pandemic is essential to preserving the rule of law, and the system of justice has no provision for closure. Pandemic planning responses include the prioritization of services and their continued delivery and that each judicial entity is able to provide vital services, exercise civil authority, and maintain the safety of the public in the event of high employee absenteeism due to a pandemic or communicable disease emergency.

In the event of an emergency, it is critical to maintain leadership by establishing orders of succession. Succession planning ensures decisions can be made when key decision makers are unable to exercise authority during an emergency. To that end, each judicial entity is responsible for developing an order of succession for all key positions. The number of key decision makers may depend upon the size of the judicial entity and its structure. In some entities, an Administrative Authority and Court Executive Officer may handle the major



**NEW MEXICO JUDICIAL BRANCH**

**Policy No. 2020.NMJB.19**

**GENERAL PERSONNEL POLICY AND PROCEDURE: Pandemic, Communicable Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave**

policy decisions while in larger entities; there may be several layers of management. Successors should be identified to properly plan for, and respond in an emergency. Judicial entities should develop emergency plans to ensure mission essential work and continuity of services to the public are continued despite possible high absentee rates. Judicial entities should identify and cross-train employees that have the skills and abilities to perform mission essential functions.

Such staff may be:

- A. Employees in the same job classification series as those who typically perform the task or function;
- B. Employees who have previously performed the work and are currently employed in another role;
- C. Employees who have demonstrated the versatility and that management believes could be trained either in advance of the need or on-the-job when the need arises; and
- D. Other employees who may be available to perform the mission essential functions, and may include retired employees, and former employees.

In order to ensure that essential and critical services are met, special requirements may need to be put in place to address staffing shortages.

Some examples include:

- A. Employees' work schedules and/or hours of work may change with minimal notice.
- B. Employees may be required to report for work with minimal notice.
- C. Employees may be assigned overtime with minimal notice.
- D. Employees may be assigned special duties with minimal notice.
- E. Employees may be assigned to other work units with minimal notice.
- F. Employees may be assigned to alternate work locations with minimal notice.

If management is unable to ensure adequate staffing for essential services to the public previously approved annual leave, compensatory time, sick leave, or leave of absences (other than for sick or family medical leave purposes) may be rescinded with minimal notice. Leave requests should only be rescinded if the supervisor is unable to adequately staff an essential work unit, and the employee should be notified, as soon the supervisor believes that a potential staffing shortage will require the employee to work. Managers and supervisors should keep an updated calendar or list of all approved leave requests and provide access to that calendar or list to those in their line of succession.

**6. IDENTIFICATION OF POTENTIALLY INFECTIOUS EMPLOYEES:**



**NEW MEXICO JUDICIAL BRANCH**

**Policy No. 2020.NMJB.19**

**GENERAL PERSONNEL POLICY AND PROCEDURE: Pandemic, Communicable Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave**

Employees who have symptoms of a pandemic or communicable disease must stay home and not come into work. In the case of the coronavirus (COVID-19) the Center for Disease Control (CDC) states employees should not report to work and must remain home until they are free of fever, signs of fever, and other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medications (e.g. cough suppressants). Employees must follow their judicial entity reporting requirements for staying home sick.

During a pandemic or communicable disease, emergency employees and supervisors should self-monitor for signs and symptoms if they suspect possible exposure. The CDC believes that symptoms for the coronavirus (COVID-19) may appear in as few as two (2) days or as long as 14 days after exposure. Employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath, fever) upon arrival to work or become sick during the day should be separated from other employees and instruct them to seek medical attention. As a safety consideration, management should consider the physical well-being of all employees in the workplace. Accordingly, while supervisors are not able to make a medical diagnosis, they may reasonably rely on visual observations of an employee's symptoms in making a determination to send home an employee who appears to be sick in the workplace, after consultation with management, and human resources.

Employees the CDC has identified as a higher risk of the coronavirus (COVID-19) include older adults, people who have chronic medical conditions related to heart disease, diabetes, and lung disease. Management should work with employees who fall into a higher risk category who believe they have been exposed, or have fear of being exposed. Employees who are subject to a federal, state or local quarantine or isolation order related to COVID-19 may be eligible under the Families First Coronavirus Response Act of 2020, for Emergency Paid Sick Leave or EPSL.

**7. EMERGENCY PAID SICK LEAVE UNDER THE FAMILIES FIRST CORONVIRUS RESPONSE ACT OF 2020**

Eligible employees between April 1, 2020 and December 31, 2020 may use Emergency Paid Sick Leave under the Families First Coronavirus Response Act. All current employees are eligible for Emergency Paid Sick Leave under the Families First Coronavirus Response Act regardless of the length of employment. Eligible full-time employees may use up to 80 hours of Emergency Paid Sick Leave for qualifying reasons. Part-time employees' hours of Emergency Paid Sick Leave are prorated based on the number of hours worked, on average, over a two-week period. Judicial entities may not require employees to use other accrued leave before using Emergency Paid Sick Leave.



**NEW MEXICO JUDICIAL BRANCH** **Policy No. 2020.NMJB.19**  
**GENERAL PERSONNEL POLICY AND PROCEDURE: Pandemic, Communicable**  
**Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave**

The Act allows employees to use Emergency Paid Sick Leave for the following qualifying reasons:

- A. Quarantine/Self Isolation order—when the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- B. Self-Quarantine—when the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- C. COVID-19 Symptoms—when the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- D. Care for Others—when the employee is caring for an “individual” who is subject to a quarantine or isolation order or whose health care provider has advised the individual to self-quarantine due to concerns related to COVID-19;
- E. School/Childcare Closure—when the employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions (this can overlap with E-FMLA); or
- F. The employee is experiencing any other substantially similar condition specified by the secretary of health and human services in consultation with the secretary of the treasury and the secretary of labor.

To the extent an employee falls under one or more of these categories and is able to telework, including teleworking training opportunities, they must do so. Managers are encouraged to allow employees alternate work schedules such as early morning or evenings to allow for teleworking opportunities. If employees are unable to telework, (e.g., extenuating circumstances), and fall under one or more of these categories, those employees may submit a request to their Administrative Authority for submittal to the AOC HRD for paid COVID-19 leave beginning on April 1, 2020, up to eighty (80) hours. Once approved the employee will enter the time reporting code “PDCVL” or Paid COVID-19 Leave in SHARE with one or more conditions above in the comment bubble on the timesheet.

Intermittent and incremental use of Emergency Paid Sick Leave may be allowed by management however if the employee is working part-time at a judicial entity, intermittent use will only be allowed in circumstances where the employee is taking leave for school closures or childcare is unavailable.

**8. EMPLOYEES CONFIRMED TO HAVE A PANDEMIC, COMMUNICABLE DISEASE OR THE CORONAVIRUS (COVID-19)**

If an employee is confirmed to have the coronavirus (COVID-19), management should inform those employees or other persons such as vendors and contractors of their possible exposure. Management must maintain confidentiality as to the worker and their health information, and



not identify by name the infected employee. Management should have the work areas of the affected employee(s) cleaned thoroughly.

Management must discuss self-quarantine methods with employees who have been exposed to a confirmed case of the coronavirus (COVID-19). Employees who are well but have a family member or household member with a confirmed case must notify their supervisor and refer to the CDC guidance on how to conduct a risk assessment of their potential exposure.

There is no obligation to report a suspected or confirmed case of coronavirus (COVID-19) to the CDC. The healthcare provider that receives the confirmation of a positive test result is a mandatory reporter who will handle that responsibility.

**9. MEDICAL VERIFICATION AND THE FAMILY MEDICAL LEAVE ACT (FMLA)**

In the case of a pandemic, communicable disease, and specifically the coronavirus (COVID-19) a healthcare provider's note for employees who are sick with acute respiratory illness, in order to validate their illness or return to work, will not be required. This is in response to the CDC's recommendation, and a statement that healthcare provider offices and medical facilities may be extremely busy and may not be able to provide such information timely. Employees should attempt to receive a return to work medical certification that they are no longer exhibiting symptoms of the pandemic, which may be harmful to other employees, but in the absence of a release and in response to the CDC's recommendation, one will not be required.

Employees requesting leave could conceivably be protected by the Family and Medical Leave Act (FMLA) to the extent they otherwise meet FMLA-eligibility requirements. An eligible employee will be placed on FMLA if an employee or an immediate family is diagnosed with the coronavirus (COVID-19), has a healthcare provider's note, and as required under the FMLA.

**10. DAY CARE, SCHOOL CLOSING AND ELDERCARE:**

An employee whose child or parent requires care due to the closure of a day care facility, public or private school, or elder care facility because of a pandemic, communicable disease or the coronavirus (COVID-19), may telework. Judicial entities will not close if schools and day cares close. Essential employees are expected to come to work or may be approved to telework. If dependent child and elder care coverage become impossible, arrangements should be made in advance with the supervisor to telework, if appropriate and feasible, and to have essential work covered with a backup. If telework is not a viable option for the employee then the employee, if appropriate, may request leave under the Emergency Family Medical Leave Expansion Act or E-FMLA.



**11. EMERGENCY FAMILY MEDICAL LEAVE EXPANSION ACT (E-FMLA):**

The Emergency Family Medical Leave Expansion Act (E-FMLA) may be used by eligible employees between April 1, 2020, and December 31, 2020, for an employee whose child requires care due to the closure of a day care facility, or public or private school due to the coronavirus (COVID-19). The E-FMLA amends the Family Medical Leave Act to provide for up to twelve (12) weeks of job-protected leave for employees who are unable to work and unable to telework because of a qualifying need related to a public health emergency as defined as: *Care for a son or daughter under 18 years old if the school or place of care for the child has been closed, or the child care provider of such son or daughter is unavailable due to a public health emergency.* Employees may take a maximum of twelve (12) weeks of FMLA including the Emergency Family and Medical Leave Expansion Act.

The first ten (10) days of leave under the E-FMLA are technically unpaid, but employees may use leave under the Emergency Paid Sick Leave Act. Therefore, to the extent that employees exhaust the 80 hours of Emergency Paid Sick Leave and are unable to work from home or telework, they may submit a request to their Administrative Authority for additional paid leave up to ten (10) weeks, through December 31, 2020, if they meet the following conditions:

- A. The employee is unable to telework and if at any point the employee becomes able to telework they must do so,
- B. The employee has been employed with the state of New Mexico for at least thirty (30) days, and
- C. The employee has a qualifying need related to a public health emergency and as defined by the E-FMLA.

The E-FMLA leave is available for the number of hours that an employee is normally scheduled to work even if that is more than 40 hours per week, including overtime, but in no event will the total number of hours paid exceed 80 hours per two-week period as stated in the E-FMLA.

If employees are unable to telework and fall under one or more of the above categories, those employees may submit a request to their Administrative Authority for submittal to the AOC HRD for paid E-FMLA leave. Once approved the employee will enter the time reporting code “EFMLA” in SHARE with one or more conditions above in the comment bubble on the timesheet.

As with the Family Medical Leave Act, an employee who exercises their right to receive paid E-FMLA leave to care for a child due to the employee’s need to care for their son or daughter under 18 years of age if schools are closed or their caregivers are unavailable because of the



**NEW MEXICO JUDICIAL BRANCH** **Policy No. 2020.NMJB.19**  
**GENERAL PERSONNEL POLICY AND PROCEDURE: Pandemic, Communicable**  
**Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave**

public health emergency is entitled to job restoration to the same or a substantially equivalent position provided they can return to work within the protected leave period, and subject to certain exceptions in the E-FMLA.

Intermittent and incremental use of E-FMLA may be allowed by management however if the employee is working part-time at a judicial entity, intermittent use will only be allowed in circumstances where the employee is taking leave for school closures or childcare is unavailable.

**12. PANDEMIC AND COMMUNICABLE DISEASE EMERGENCY LEAVE:**

Employees who are exhibiting symptoms of or diagnosed with a pandemic, communicable disease or the coronavirus (COVID-19), may be eligible for pandemic and communicable disease emergency leave.

Employees whose immediate family members or household members are confirmed with a pandemic, communicable disease or the coronavirus (COVID-19) and must provide care may also be eligible for pandemic and communicable disease emergency leave. Pandemic and communicable disease emergency leave may not exceed ten (10) working days. The leave is entered into the state human resources time reporting system (SHARE) as administrative leave. Hours entered will reflect the employee's work schedule, e.g., 8 hours or 4 hours.

Pandemic and Communicable Disease Emergency Leave may be used following the use of Emergency Paid Sick Leave, and Emergency Family and Medical Leave Expansion Act paid leave under the Families First Coronavirus Response Act.

**13. EMPLOYEES TRAVELING DURING A PANDEMIC, COMMUNICABLE DISEASE EMERGENCY OR CORONAVIRUS (COVID-19)**

Employees who become sick while traveling during a pandemic, communicable disease or the coronavirus (COVID-19) must inform their supervisor of their symptoms, and be tested prior to returning to work. Employees are required to inform management of any personal travel plans to China, Italy, Iran, South Korea, or any location where there is a travel ban or travel advisory, and upon their return require they comply with the Supreme Court Travel Order 14-day quarantine period. If management believes, an employee may have an unconfirmed case of coronavirus (COVID-19), contact human resources.

**14. SOCIAL DISTANCING, RESTRICTIONS, OFFICE CLOSURES AND TELEWORK**



**NEW MEXICO JUDICIAL BRANCH** **Policy No. 2020.NMJB.19**  
**GENERAL PERSONNEL POLICY AND PROCEDURE: Pandemic, Communicable**  
**Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave**

Judicial entities should review their normal business hours and employee's work schedules to determine if they can be modified in a manner that best promotes social distancing, business continuity or other pandemic response goals during an emergency. Due to potential staffing shortages, some employees may be asked to provide support for varied operations in alternative worksites. In the case of closure of specific offices, employees will be sent home as a last resort. Due to potential staffing shortages, and the need for social distancing; management should consider the option of telework for those positions where it is viable.

In order for an employee to be approved to work at an alternate work location or to temporarily work from home due to a pandemic, communicable disease or the coronavirus (COVID-19), management must have determined there are critical business operations that can be completed working remotely. Management and employees must discuss what physical items may be taken from the workplace temporarily, and how the employee and management will communicate throughout the day.

Employees who are out of the office due to a pandemic, communicable disease or the coronavirus (COVID-19) whether for their own illness or to care for an immediate family member or household member, may not meet with other employees, colleagues, contractors, vendors, or coworkers for that duration to limit exposure.

Employees who are out of the office or for social distancing, or telework due to a pandemic, communicable disease or the coronavirus (COVID-19) are restricted from working outside of their homes (e.g. coffee shops, libraries, etc.) to limit exposure.

**15. DISCRIMINATION AND HARASSMENT**

Management should closely monitor any concerns that employees of Asian descent are being subjected to due to their national origin, which may include disparate treatment or workplace harassment. This may include employees avoiding other employees because of their national origin. Management may not base a decision to bar an employee from the workplace on the employee's national origin. However, if an employee, regardless of their race or national origin, was recently in China and has symptoms of the coronavirus (COVID-19), management has a legitimate reason to send that employee for testing or home.

**FINAL APPROVAL**

*~original signed~*

\_\_\_\_\_  
Karl Brooks, AOC Deputy Director

\_\_\_\_\_  
Date



**NEW MEXICO JUDICIAL BRANCH** **Policy No. 2020.NMJB.19**  
**GENERAL PERSONNEL POLICY AND PROCEDURE: Pandemic, Communicable**  
**Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave**

Administrative Office of the Courts