



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**

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**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)
New Mexico Department of Health (<https://cv.nmhealth.org/>)
General Public Emergency Pandemic Staffing Guide (<https://www.flcourts.org/>)
Occupational Safety and Health Administration (www.osha.com)
World Health Organization (www.who.int)
New Mexico Supreme Court Orders and Protocols
New Mexico Supreme Court Emergency Response Team (ERT) Frequently Asked Questions

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



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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.
- F. Employee:** Classified, at-will, term, and temporary New Mexico Judicial Branch employee.
- G. Individual:** An immediate family member or someone who regularly resides in your home.
- H. Key Position:** A position or employee in charge of ensuring that essential functions are continued during an emergency.
- I. Pandemic:** The worldwide outbreak of a serious communicable disease in numbers clearly in excess of normal.
- J. Self-Isolation:** 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. A person self-isolating may only leave a residence or place of lodging to receive medical care and should not allow others into the residence or place of lodging except for those providing medical care, emergency response, or other individuals designated by the NMDOH.
- K. Social Distancing:** Actions taken to reduce the opportunities for close contact between people in order to limit the spread of disease.
- L. 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. This policy is intended to be used in conjunction with the Supreme Court Orders and Protocols, and the Supreme Court Emergency Response Team Frequently Asked Questions (FAQs).



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In no event shall this policy supersede the Supreme Court Orders or Protocols, or 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.

Judicial officers and employees are required to follow the New Mexico Supreme Court Orders and Protocols, and should carefully review and monitor them for updates.

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 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:

Employees who have symptoms of a pandemic or communicable disease must stay home and not come into work. Management must follow the Supreme Court Orders and Protocols, including the ERT FAQs, and Coronavirus (COVID-19) Potential or Confirmed Case – Initial Report Checklist (Initial Report). The submittal of the Initial Report is due to the ERT within **24-hours** of the first notification to the judicial entity by the employee. A positive test must be reported to the ERT within **two (2) hours** of management being notified, and the Court Executive Officer or designee is responsible for reporting the positive case to the NMED OSHA Bureau within **four (4) hours** of learning of the positive case. Please forward the email response confirming receipt of the report to the AOC HRD.



7. CLEANING PROTOCOLS

All courthouses and other judicial buildings operated by the New Mexico Judiciary must be maintained in accordance with the guidelines issued by the New Mexico Department of Health for the cleaning and disinfection of public facilities during the current public health emergency.

In addition to wearing a face covering, and ensuring a minimum physical distance of six (6) feet from one another, all employees, judicial officers, contractors, vendors, and volunteers must:

- Frequently and daily disinfect their **face coverings**;
- Frequently wash their hands for at least 20 seconds with soap and water, or use hand sanitizer;
- Avoid touching your eyes, nose, and mouth with unwashed hands;
- Cover your coughs and sneezes;
- Stay home if you are sick and avoid contact with other people who are sick;
- Practice social and physical distancing by putting a minimum of six (6) feet of distance between yourself and other people;
- Clean and sanitize workspaces and frequently touched surfaces; and
- Limit the contact of using shared office supplies, frequently sanitize items located in high traffic areas, or that are used by multiple staff.

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 fourteen (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.



7. PAID PANDEMIC LEAVE FOR SCHOOL AND DAY CARE CLOSURES

Judicial employees may receive up to twenty (20) hours per week for four (4) weeks for a maximum of 80 hours of Paid Pandemic Leave when they are unable to telework and have a dependent child who requires care due to the closure of a day care facility, or public or private school due to the coronavirus (COVID-19). The leave may be used intermittently and is available for use between January 1, 2021 and March 31, 2021. The leave is entered into the state human resources time reporting system (SHARE) as administrative leave with a comment on the timesheet.

Employees must telework to the extent they are able and judicial entities are encouraged to allow the employees to work alternative work schedules to support teleworking, to include evenings and weekends, and to utilize the Emergency Response Team (ERT) Telework Training Opportunities.

Requirements for eligibility:

- 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 a dependent child for whom they must provide care due to a closure of a day care or school, (the closure must not be discretionary or a decision within the employee's control); and
- C. The employee has been employed with the State of New Mexico for at least thirty (30) days.

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 should carefully refer to the applicable Supreme Court Orders and Emergency Court Protocols, as well as ERT Frequently Asked Questions, which will outline the protocols for exposure, self-isolation, and testing. Leave for employees confirmed to have COVID-19 is further outlined herein.



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. PAID PANDEMIC LEAVE FOR POSITIVE CORONAVIRUS (COVID-19) TESTS

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. This leave may be used intermittently and is available for use between January 1, 2021 and March 31, 2021.

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 eighty (80) hours or ten (10) working days. The leave is entered into the state human resources time reporting system (SHARE) as administrative leave with a comment on the timesheet. Hours entered will reflect the employee's work schedule, e.g., 8 hours or 4 hours.

11. SUPPLEMENTAL ADMINISTRATIVE LEAVE

With the exception of the Paid Pandemic Leave for School or Day Care Closures or the Paid Pandemic Leave for Positive Coronavirus (COVID-19) Tests identified herein, administrative leave **cannot** be approved or awarded for the purpose of allowing an employee to remain at home without working during the coronavirus public health emergency, or to supplement



coronavirus (COVID-19) leave. The Emergency Response Team has compiled a list of training opportunities for staff whose job responsibilities do not typically allow for telework. The chief judge, administrative authority, or designee may utilize the teleworking training opportunities list, and amend or add as appropriate for their employee's needs, job classification, etc. The list includes work-related training resources such as manuals, rules, guidelines, webinars, and videos. Employees may review these training materials and resources from home allowing for telework.

12. SOCIAL DISTANCING, RESTRICTIONS, OFFICE CLOSURES AND TELEWORK

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. 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 should determine the business operations the employee can complete 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, and are restricted from working outside of their homes (e.g. coffee shops, libraries, etc.) to limit exposure.

FINAL APPROVAL

Arthur W. Pepin, AOC Director
Administrative Office of the Courts

Date