

## DIVISION OF HUMAN RESOURCES

### 4.4.3 POLICY ON ATTENDANCE AND LEAVE DURING PERIODS OF A PANDEMIC OR OTHER OUTBREAK OF A SERIOUS CONTAGIOUS DISEASE CONSTITUTING A HEALTH EMERGENCY

#### (a) Purpose and Scope

- (1) **Purpose.** To ensure that the Judiciary has a comprehensive, equitable, and scalable human resources policy that facilitates the containment of a pandemic or other outbreak of serious infectious disease while supporting Judicial Branch operations and protecting the health and welfare of employees.
- (2) **Scope.** This policy applies to all state-paid Judicial Branch employees.
- (3) This policy does not apply to the Register of Wills Offices and the Orphans' Courts.

#### (b) Definitions

- (1) **Accrued Leave** – Sick, annual, personal, or compensatory leave that an employee has earned at the time of the employee's absence.
- (2) **Administrative Head:**
  - (A) For the Supreme Court of Maryland, the Clerk of the Supreme Court for all employees under the Clerk's supervision, and the Chief Justice for all other employees;
  - (B) For the Appellate Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision, and the Chief Judge of the Appellate Court for all other employees;
  - (C) For the Circuit Courts, the Clerk of the Court for all employees under the Clerk's supervision and the County Administrative Judge for all state employees under their supervision;
  - (D) For the District Court, the Chief Judge of the District Court, the Chief Clerk, or the Administrative Clerk for all employees under their supervision;
  - (E) For the Administrative Office of the Courts (AOC), the State Court Administrator;
  - (F) For any units, the head of the unit where the employee works; or,
  - (G) Any person who serves as the authorized designee, by express written designation, of any of the foregoing persons.
- (3) **Close Contact** – Please see the current Centers for Disease Control and Prevention ("CDC") definition of close contact.
- (4) **Emergency Leave.** -- Administrative or other leave that may be provided during a specific health emergency, including a pandemic or other outbreak of a serious contagious disease.
- (5) **Essential Employee** -- An employee whose absence would jeopardize the continuation of essential functions or those positions deemed essential by the Judiciary. An Essential Employee serves in an essential position that has been officially designated as such, or the position or employee has been designated as such on an ad hoc basis depending on the nature and extent of the emergency or disaster.

- (6) **Illness due to a serious contagious disease causing a pandemic or other outbreak constituting a health emergency (“serious contagious disease”)** -- A condition under which a person displays some or all of the following signs or symptoms typically associated with a serious illness such as the flu: fever; chills; cough; sore throat; runny nose; body aches; headache; tiredness; diarrhea; or vomiting or other signs or symptoms as determined by the CDC. Fever is usually described as temperature of 100.4° F (38° C) or greater.
- (7) **Health Care Provider** -- A medical doctor authorized to practice medicine or surgery by the state in which the doctor practices, or other person listed in the Judiciary Policy on Leave, Section (b)(9), if authorized to practice in a state and performing within the scope of that authority.
- (8) **Judiciary Human Resources Division (JHRD)** – The division within the AOC that is responsible for, but not limited to, the following functions for State employees in the Maryland Judiciary: human resources policy development, administration, and interpretation; talent acquisition; employment and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.
- (9) **Unit** - The Attorney Grievance Commission, the Client Protection Fund, the State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Maryland Court of Appeals Standing Committee on Rules of Practice and Procedure.

### (c) Policy Statement

A pandemic or other outbreak of serious contagious disease constituting a health emergency may require special policies and procedures to address the unique challenges presented by such an event. This policy addresses the attendance and leave issues that typically are at issue during a pandemic or other outbreak of a serious contagious disease constituting a health emergency. This Policy will provide guidance to Administrative Heads, managers, supervisors, and employees on how to navigate those challenges. In addition to this policy, there may be administrative orders or other directives of the Chief Justice of the Supreme Court of Maryland, the Chief Judge of the Appellate Court of Maryland, the Chief Judge of the District Court, Administrative Judges, or the State Court Administrator that could apply.

### (d) Procedures

There are many variables associated with a potential outbreak of a pandemic or other outbreak of a serious contagious disease constituting a health emergency and the possible effects on Judiciary employees and the State. These include how widespread the pandemic or other serious contagious disease is, the severity of signs or symptoms and effects, how many people are affected by it, and local variations in the severity. This policy therefore identifies three levels of response to a pandemic or other outbreak of a serious contagious disease constituting a health emergency, each of which can be applied to any location of the Judiciary or State (*i.e.*, a county, city, or an individual building) or to the Judiciary as a whole, depending on the level and extent of the effects in a specific location.

The Chief Justice of the Supreme Court of Maryland, in consultation with the appropriate Administrative Judge or Judges and others as necessary, shall determine the appropriate level of response for a given area.

## **(e) Levels of Operation During a Pandemic or Other Outbreak of a Serious Contagious Disease**

### **(1) Level 1 – Normal Operations during Health Emergency**

(A) **Level 1** is marked by a low to moderate level of risk associated with a pandemic or other outbreak of serious contagious disease, such as the number of cases whose severity is equivalent to the normal seasonal flu. During this stage, the number of pandemic disease or other serious contagious disease cases may increase over time. Although all Judiciary facilities will be open and conducting business, as a pandemic or outbreak progresses, absenteeism may become noticeable and begin to cause operational concerns. The objectives at this level are to: ensure the safety and health of Judiciary staff and visitors to Judiciary facilities; facilitate Judiciary operations; ensure that employees are using sick leave appropriately; and to ensure that telework agreements and deliverables are closely monitored by supervisors. Administrative Heads should identify Essential Employees and provide educational and informational material on employee health, including hygiene practices to be used in the workplace. Employees are encouraged to get an annual flu vaccination and COVID and other vaccinations and boosters as recommended by the CDC. Such vaccinations and boosters may be required as a condition of employment.

### **(B) Employee Attendance**

- (i) Employees are expected to report to work as usual unless ill, on approved leave, or as otherwise directed by the Administrative Head or the JHRD.
- (ii) The Administrative Head may declare any employee to be an Essential Employee during a pandemic or other outbreak of serious, contagious disease to ensure that the Judiciary continues to function effectively and efficiently. In addition, the Administrative Head may require any employee to report to work unless the employee is on an approved sick/medical leave absence.
- (iii) To ensure that operations can continue, the Administrative Head may revoke approval of previously approved use of Accrued Leave.
- (iv) An employee who fails to report to work as required or to perform assigned duties, unless the employee or immediate family member for whom the employee must provide care is ill, will be subject to a disciplinary action, up to and including the termination from employment.
- (v) An Administrative Head may alter an employee's work schedule, work location, or allow telework pursuant to the Policy on Telework to meet the needs of the Judiciary and to provide service to the citizens of Maryland, or, if necessary, to promote social distancing to prevent or slow the spread of the pandemic or other serious contagious disease.

- (vi) An employee who reports to work exhibiting the signs or symptoms of the disease causing the pandemic or other outbreak or any other contagious illness will be sent home, with the employee using Accrued Leave, Emergency Leave, if available, or leave without pay if no balance of paid leave is available.

**(C) Employee Absence**

- (i) An employee who is absent due to the employee's illness or that of an immediate family member may use Accrued Leave, Emergency Leave, if available, or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD, pursuant to the Policy on Leave.
- (ii) An employee who stays home because the employee's child's school or childcare provider is closed due to a pandemic-related event or other serious contagious disease may, if the employee provides documentation from the child's school or childcare provider that the school is closed, use Accrued Leave, other than sick leave, unless sick leave is authorized under an Emergency Leave provision, or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD.
- (iii) **During a health emergency:** an employee displaying signs or symptoms of a serious contagious disease or having had close contact with someone who has a serious contagious disease will be required to adhere to current Judiciary protocols and guidance from Administrative Heads in order to return to work.

**(2) Level 2 – Flexible Emergency Operations**

- (A) **Level 2** is marked by a moderate level of risk associated with a pandemic or other outbreak of a serious contagious disease, such as a moderate to high level of related cases, but low mortality rates. The number of cases is expected to increase. Judiciary facilities may be open, although certain facilities may be closed, and out-of-state travel for employment purposes may be restricted. Some schools may be closed, forcing parents to stay home.

**During a health emergency:** Employees should consult CourtNet to determine the status of any travel alerts and related guidelines which are updated to reflect current CDC and Maryland Department of Health guidance.

- (B) The objectives at this level are to: minimize the risks associated with the emergency and to minimize the spread of the serious contagious disease causing the pandemic or other outbreak; encourage employees to stay home if ill to avoid spreading the disease; and reduce risk to those reporting to the workplace through enhanced telework where practical, so that those who do report in person have adequate space for social distancing and in person contact is avoided where possible.
- (C) The Judiciary will communicate relevant and accurate information to employees regarding any changes in policy or practice.
- (D) **Employee Attendance**
  - (i) Employees are expected to report to work as usual unless on sick leave or other approved leave, or as otherwise directed by the Administrative Head or the JHRD.

- (ii) The Administrative Head may declare any employee to be an Essential Employee and require an Essential Employee to report to work during a pandemic or other outbreak of serious contagious disease to ensure that the Judiciary continues to function effectively and efficiently. In addition, the Administrative Head may require any employee to report to work unless the employee is on an approved sick/medical leave absence.
- (iii) To ensure that operations can continue, the Administrative Head may revoke approval of previously approved use of Accrued Leave.
- (iv) An employee who fails to report to work as expected or directed or to perform assigned duties, unless the employee or immediate family member is ill, will be subject to a disciplinary action, up to and including the termination from employment.
- (v) An Administrative Head may alter an employee's job duties, work schedule, work location, or allow telework to meet the needs of the Judiciary and to provide service to the citizens of Maryland, or to promote social distancing to prevent or slow the spread of the disease causing the pandemic or other outbreak.
- (vi) Employees with jobs suitable for telework may be allowed or required to telework at the discretion of the Administrative Head, even if there is not a prior telework agreement in place.
- (vii) An employee who reports to work exhibiting signs or symptoms of the disease causing the pandemic or other outbreak or any other contagious disease will be sent home, with the employee using Accrued Leave, Emergency Leave, if available, or leave without pay if no balance of paid leave is available.

**(E) Employee Absence**

- (i) An employee who is absent due to the employee's illness or that of an immediate family member for whom the employee must provide care may use Accrued Leave, Emergency Leave, if available, or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD, pursuant to the Policy on Leave.
- (ii) An employee who stays home because the employee's child's school or childcare provider is closed due to a pandemic-related event or other serious contagious disease may, if the employee provides documentation from the child's school or childcare provider that the school is closed, use Accrued Leave, other than sick leave, unless sick leave is authorized under an Emergency Leave provision, or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD.
- (iii) **During a health emergency:** Employees displaying signs or symptoms of a serious contagious disease or having had close contact with someone who has a serious contagious disease will be required to adhere to current Judiciary protocols and guidance from Administrative Heads in order to return to work.

**(3) Level 3 – Essential Emergency Operations**

- (A) **Level 3** is marked by a higher level of risk associated with a pandemic or other outbreak of serious contagious disease, such as the number of cases or a greater severity of the resulting

illness, with the likelihood of increasing mortality rates. Schools may be closed, either throughout the State or in affected areas. Judiciary facilities may be closed to the public, either statewide or in designated areas, such as by county or facility, and out-of-state travel for employment purposes may be restricted.

**During a health emergency:** Employees should consult with the travel alert posted to CourtNet and JHRD to determine the applicable guidelines which will be updated per CDC and Maryland Health Department guidance, and, if required by any travel guidance to do so, inform their Administrative Head of their planned or completed travel. The Administrative Head shall inform the JHRD to determine if other steps, such as a quarantine or laboratory test, need to be taken.

- (B) The objectives at this level are to contain the risks associated with the emergency or the pandemic or other outbreak of a serious contagious disease by: maintaining all essential/mission-critical functions, but ceasing nonessential functions; requiring employees who are ill to remain at home in order to avoid the spread of the disease; instituting onsite screenings for employees entering facilities; and facilitating social distancing by relaxing telework limitations.
- (C) During this stage, only mission-critical functions will continue on-site. Employees who are not required to report to work but who can telework may be required to do so. Employees who are not required to report to work or telework may be placed on administrative leave.
- (D) Employees may be screened at the workplace entrance, and those who exhibit signs or symptoms of being ill will not be allowed into the building.
- (E) **Employee Attendance**
  - (i) All Essential Employees, unless on sick leave or other approved leave, may be required to report for work. Other employees also may be required to report as determined by the Administrative Head and/or the JHRD.
  - (ii) To ensure that operations can continue, the Administrative Head may revoke previously approved use of Accrued Leave.
  - (iii) An employee who fails to report to work as required or to perform assigned duties, unless the employee or immediate family member is ill, will be subject to a disciplinary action, up to and including the termination from employment.
  - (iv) The Administrative Head may alter an employee's job duties, work schedule, work location, or allow telework to meet the needs of the Judiciary or to promote social distancing to prevent or slow the spread of the disease causing the pandemic or other serious outbreak. An employee may be required to perform work assignments even though the assigned duties are not within the scope of the employee's classification. An employee may be assigned to work at any location in the State for periods of time other than those normally designated as the employee's regular work hours.
  - (v) Employees with jobs suitable for telework may be allowed or required to telework at the discretion of the Administrative Head, even if there is not a prior telework agreement in place.

- (vi) An employee who reports to work exhibiting signs or symptoms of the disease causing the pandemic or other outbreak or any other contagious disease will be sent home, with the employee using Accrued Leave, Emergency Leave, if available, or leave-without pay if no balance of paid leave is available.

**(F) Employee Absence**

- (i) Employees may be placed on administrative leave if the employee's work location is closed, there is no alternative Judiciary location available, and the employee is not allowed, or, for other than personal reasons, is unable to telework.
- (ii) An Essential Employee who is absent due to the employee's own illness or that of an immediate family member for whom the employee must provide care may use Accrued Leave, Emergency Leave, if available, or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD, pursuant to the Policy on Leave.
- (iii) An employee who stays home because the employee's child's school or childcare provider is closed due to a pandemic-related event or other serious contagious disease may, if the employee provides documentation from the child's school or childcare provider that the school is closed, use Accrued Leave, other than sick leave, unless sick leave is authorized under an Emergency Leave provision, or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD.
- (iv) An Essential Employee denied entry into the building pursuant to (e)(3)(D) may be required to use the employee's own Accrued Leave, Emergency Leave, if available, or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD.
- (v) An Essential Employee may return to work after an absence of five (5) days from the onset of any illness other than the disease causing the pandemic or other outbreak and after remaining symptom-free and fever-free (without the use of fever reducing medications) for twenty-four (24) hours, without providing medical documentation.
- (vi) Notwithstanding paragraph (e)(3)(F)(v), Essential Employees will be required to provide medical certification to return to work, if confirmed to have been ill with the disease causing the pandemic or other outbreak.

**(f) Travel Restrictions and Reporting Requirements During a Health Emergency**

- (1) As stated in Section (e), for workplace safety reasons, travel for employment purposes may be restricted during a pandemic or other outbreak of a serious contagious disease. The Administrative Head may prohibit work-related travel to areas affected by such an event and may further prohibit a return to work by any employee who has travelled to such areas for business or personal reasons until that employee has secured a medical clearance to return to work.

## **(2) Reporting Requirements during a Health Emergency**

- (A) Employees shall follow the applicable guidelines contained in a Travel Alert issued by JHRD and posted on CourtNet. The Travel Alert will be updated as necessary to reflect the current applicable guidelines provided by the CDC and Maryland Department of Health. The Administrative Head shall notify the JHRD of travel by employees to areas covered in the guidelines to determine whether other steps need to be taken to safeguard health in the workplace.
- (B) Consistent with the CDC's recommendations, an Administrative Head may send an asymptomatic employee home or require the employee to work from home upon returning from travel to an affected area. Upon the employee providing medical certification that the employee is able to work and presents no risk to the workplace, the employee will be allowed to return to the workplace.
- (C) Whether fully vaccinated or unvaccinated, all employees must report to their Administrative Head if they have had close contact with a symptomatic individual or have been diagnosed with a laboratory-confirmed case of the disease causing the pandemic or other outbreak.
- (D) Employees must report to their Administrative Head having close contact with secretions or bodily fluids of a person infected with the disease causing the pandemic or other outbreak (*e.g.*, being coughed on).
- (E) Employees must report to their Administrative Head any voluntary or ordered isolation or quarantine, any laboratory test confirming infection with the disease causing the pandemic or other outbreak, and any signs or symptoms of the disease causing the pandemic or other outbreak, (*e.g.*, fever, cough, difficulty breathing).
- (F) Employees who have been confirmed to have been infected by the disease causing the pandemic or other outbreak may return to work: (1) upon certification by a Health Care Provider that the employee is able to work and presents no risk of infecting others; or (2) consistent with current Judiciary protocols and guidance from Administrative Heads.
- (G) The above information will assist in determining whether to allow an employee to return to work or to require the employee to be absent and take leave.

## **(3) Quarantine as a Result of Exposure during a Health Emergency**

- (A) If required to quarantine, the employee shall follow the Maryland Judiciary Quarantine Protocols found on CourtNet.
- (B) An employee who is required to quarantine is required to use their Accrued Leave, Emergency Leave, if available, or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD, pursuant to the Policy on Leave, during a quarantine period unless the employee is able and permitted to telework.
- (C) In lieu of a quarantine, employees may provide medical certification from a Health Care Provider that they are not infected or are no longer contagious with the disease causing the pandemic or other outbreak and therefore are safe to return to the workplace.

## **(g) Vaccinations**

(1) In a declared health emergency by the Chief Justice of the Supreme Court of Maryland, employees working for the Judiciary may be required by Administrative Order to meet vaccination requirements set forth therein.

- (A) If vaccinations are required, Administrative Heads are to maintain copies of the employee's vaccination cards or other medical documentation that proves the employee is fully vaccinated in a secure, confidential location, stored separately from the employee's personnel file. The vaccination cards or other medical documentation may be sent encrypted to [er@mdcourts.gov](mailto:er@mdcourts.gov) for secure filing.
- (B) Employees may use up to one hour of Administrative Leave to attain each dose of a vaccine for an identified contagious disease emergency as declared by the Chief Justice of the Supreme Court of Maryland.
- (C) Employees must use their own Accrued Leave for any time used over one hour for each vaccination.
- (D) Employees who use their Accrued Leave for additional time expended in obtaining a vaccination may be required to show medical documentation pursuant to the Policy on Leave.
- (E) Employees who become ill and are unable to return to work as a result of vaccination may use Accrued Leave, unless administrative leave is authorized under an Emergency Leave provision or leave without pay if no balance of paid leave is available subject to the approval of the Administrative Head and/or the JHRD.
- (F) Exemptions may be made on a medical or religious basis. Employees and potential employees with questions about religious exemptions should contact the Fair Practices Department at (410) 260-3679. Employees and potential employees with questions about medical exemptions (ex. ADA accommodations) should contact Employee Relations and Accountability at (410) 260-1732. Prior to accepting a job offer, potential employees must finalize their exemption requests before setting a start date.

## **(h) Policy Not Subject to a Grievance Action**

Management's decisions or actions related to this policy do not provide grounds for a grievance.

## **(i) Interpretive Authority**

The JHRD is responsible for the interpretation of this policy.

**(j) Exceptions**

The Chief Justice of the Supreme Court of Maryland or the State Court Administrator may make exceptions to any provision of this policy.

**(k) Not a Contract:** This policy is not intended to, and does not, create contractual employer obligations with respect to any matter it covers. Nothing contained in this policy is intended to be a guarantee that employment or any other benefit will continue for any period of time. Furthermore, no representative of the Judiciary has the authority to provide such assurances, oral or written, to at-will employees.