SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA
ADMINISTRATIVE OFFICE

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MEMORANDUM

TO: **ALL COURT EMPLOYEES**

FROM: **JOSEPH M. ARMSTRONG, ADMINISTRATIVE DIRECTOR**

DATE: **AUGUST 31, 2020**

SUBJECT: **LEAVE, REMOTE WORK, AND COVID-19**

Beginning with the Court's first COVID-19 Protocols issued on March 12, 2020, the Court has taken a proactive role in protecting employees from possible COVID-19 exposure and accommodating employees facing unprecedented hardships due to community mitigation efforts. As we enter the sixth month of the pandemic in West Virginia, and as we develop ways to safely "live with" the virus, the Court will continue to adapt its policies, protocols, and procedures accordingly.

Effective **September 8, 2020,** the Court will resume its regular leave and record keeping policies subject to the following supplemental policies and protocols:

1. If an employee is off work for any reason, the Court's pre-pandemic leave policies outlined in the Supreme Court of Appeals Employee Handbook apply, subject to Paragraphs (2) through (8) below.
2. If an employee works in a county subject to a local judicial emergency order pursuant to W. Va. Code § 2-2-2 AND if the employee is unable to perform his or her job duties due to the closure of their primary work location, then the employee does not have to take leave sufficient to cover the time away from work. Employees who can work remotely and employees that are required to maintain essential court operations must still perform duties as directed by their supervisor.
3. If an employee works in an office that is closed temporarily due to a possible COVID-19 exposure, AND if the employee is unable to perform his or her job duties due to the closure of their primary work location, then the employee does not have to take leave sufficient to cover the time away from work. Employees who can work remotely and employees that

are required to maintain essential court operations must still perform duties as directed by their supervisor. Only the Chief Circuit Judge or Chief Family Court Judge has the authority to close an office for this reason.

4. If an employee is unable to work because the employee (a) is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), (b) is experiencing COVID-19 symptoms and seeking a medical diagnosis, (c) is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or (d) is directed to stay home and self-quarantine in consultation with the Administrative Director or his designee, then the employee may take two (2) weeks of special leave (equivalent to eighty (80) hours) afforded to them by the Families First Coronavirus Response Act (FFCRA)[1] and the Court's May 16, 2020 Resumption of Operations Protocols. This leave is in addition to regular accumulated sick and annual leave. Employees will not be required to exhaust all or some of their accrued annual or sick leave before utilizing this special leave, however they may choose to if they desire.
5. If an employee is unable to work because of the need to care for a child whose school or day care provider is closed for reasons related to COVID-19, then the employee is entitled to take the same two weeks of special leave (equivalent to eighty (80) hours) identified in Paragraph (4) above. After the exhaustion of the eighty (80) hours, the employee is entitled an additional ten (10) weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay under FFCRA. Employees will not be required to exhaust all or some of their accrued annual or sick leave before utilizing this special leave, however they may choose to if they desire.
6. The leave and out-of-state travel policy outlined in the July 8, 2020 Masks and Return from Vacation Policy remains in effect.
7. If the employee can work remotely based on already assigned court technology resources and job responsibilities, then the employee and supervisor may discuss modified work schedules or work arrangements to accommodate COVID-19 related hardships. Supervisors are encouraged to develop plans that are objective so that expectations are clearly communicated and capable of measured evaluation after a reasonable time-period. While modified schedules may look different for each individual situation, the Court encourages and supports reasonable accommodations that assist employees. However,

[1] The FFCRA's provisions expire December 31, 2020.

these accommodations are not without limit, and the Court system must continue to function efficiently and without unreasonable delay. Offering remote work is not indefinite, and the employee must know the supervisor can withdraw approval at any time, without notice. The availability of remote work is solely at the full discretion of the employee's supervisor and/or Selecting Authority.

8. Requests for leave are still subject to advanced approval by an employee's supervisor. See Sections 3.1 & 5.2(g) Supreme Court of Appeals Employee Handbook. A supervisor may require an employee to be present during normal work hours, especially to avoid an unreasonable delay or disruption in judicial functions. If an employee's plans, weekend or otherwise, results in an anticipated COVID-19 self-quarantine when the supervisor needs work performed, then the supervisor may, at his or her discretion, deny the request for leave.

Questions regarding this memorandum, or other COVID-19 specific issues, can be addressed to CommentsConcerns@courtswv.gov. Several employees in the Administrative Office monitor this email account, and this is the most efficient way to reach someone if you need assistance.

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MEMORANDUM

TO: **ALL COURT EMPLOYEES**

FROM: **JOSEPH M. ARMSTRONG, ADMINISTRATIVE DIRECTOR**

DATE: **JULY 8, 2020**

SUBJECT: **MASKS AND RETURN FROM VACATION POLICY**

This Memorandum is in response to several questions our office has received regarding (1) the application of the Governor's Executive Order No. 50-20 to Court employees and (2) clarification regarding the Court's policy regarding return from vacation and self-quarantine. Please read it closely as both subjects are extremely important in our efforts to protect our employees and the judicial system from COVID-19.

I. USE OF MASKS IS REQUIRED AT ALL COURT FACILITIES

On May 6, 2020, the Chief Justice of the Supreme Court of Appeals of West Virginia entered an order regarding Resumption of Operations and adopting the COVID-19 Resumption of Operations Protocols ("Protocols"). The Protocols (1) required that "[m]embers of the public, attorneys, parties, and witnesses must wear masks or face-coverings in a courtroom or judicial office", (2) permitted a judicial officer to direct an individual to remove a mask or face covering if addressing a court or testifying, assuming sufficient social distance is maintained; and (3) provided that Court employees should wear a mask or face-covering in common areas or when interacting with the public.

As a reminder, the purpose of the mask or face-covering requirement is to reduce the risk of a person spreading the disease to protect Court and county employees, attorneys, parties, jurors, witnesses, and the public. Consistent with recommendations from the CDC and from the Governor, any type of face covering sufficient to catch droplets leaving the nose and mouth, including homemade fabric masks or bandanas, is appropriate. Medical masks or N95 masks are not required.

On July 6, 2020, the Governor of West Virginia entered an Executive Order mandating that all individuals over the age of nine must wear a mask or face-covering indoors in public spaces where social distancing cannot be maintained.

In furtherance of the Court's prior Protocols, **all individuals, including court and county employees and judicial officers, must wear a mask or face-covering at all times while inside a court facility**, except for the following limited circumstances:

- Court and county employees may remove masks or face-coverings in private offices;
- Court and county employees may remove masks or face-coverings if alone in a room for an extended period of time;
- Masks or face-coverings may briefly be removed to consume food or beverages;
- A judicial officer may permit a mask or face-covering to be removed when speaking in a courtroom only if sufficient social distancing can be maintained and if removal is required to ensure an accurate record or evaluate the credibility of testimony;
- The individual has trouble breathing with a mask or face-covering;
- The individual is unable to don or remove a mask or face-covering without assistance; or
- The individual is a child age nine or under.

II. CLARIFICATION ON THE COURT'S POLICY REGARDING OUT-OF-STATE TRAVEL AND RETURN TO WORK

Paragraph 8 of the Human Resource section of the Protocols states:

> While each employee is free to travel for personal reasons while abiding by travel directives from the state and CDC, the Court strongly discourages employees from traveling out-of-state until the pandemic is fully under control. A Selecting Authority may prohibit an employee from returning to the workplace following an out-of-state trip if the employee traveled by air or other mass transit, or if the employee traveled to an area with an active COVID-19 outbreak. Upon return, remote work may be required where appropriate. If remote work is not possible, the Selecting Authority may require the employee to utilize leave and self-quarantine for fourteen (14) calendar days before allowing the employee to physically return to the workplace.

We have received questions regarding out-of-state travel by employees. Please understand that the COVID-19 situation was, and remains, unpredictable. This has required the Court to constantly monitor the situation and adapt our protocols and procedures as the circumstances change.

We cannot risk the health of our employees and the public or the extended closure of a court facility because an employee returns from vacation and transmits the disease to court or county employees.

Therefore, I ask that employees strongly reconsider domestic or international travel to a "hot-spot" area at this time.[1]

For domestic travel, if the destination(s) county is a "hot spot" or red at any time during an employee's trip, then the policy in Paragraph 8 applies. For international travel, if a destination country is orange or red, then the policy in Paragraph 8 applies. If the trip includes multiple destinations, each overnight stay must be independently evaluated. The policy also applies to air or mass transit travel regardless of the destination. Employees must understand that this status could change mid-trip.

If an employee insists on travel to a "hot-spot", he or she has three options prior to physically returning to work:

(1) The employee can work remotely during the fourteen calendar days following return, if appropriate based on job functions and available technology. This option is completely within the discretion of the supervisor.

(2) The employee can wait 3-4 days after return and seek a COVID-19 test at their own expense, if available. Upon receipt of a negative[2] test result, the employee must provide the results of the tests to the supervisor, and then return to work. The employee can take additional available sick or annual leave sufficient to cover the time between returning from the trip and receiving a negative test. Because testing availability differs around the state, this route is available as an option, but not required.

(3) The employee can take additional available sick or annual leave sufficient to cover the fourteen-day calendar period.

We recognize that all of these options are disruptive to the employee's supervisor and coworkers, and our hope is that employees recognize these effects when making travel arrangements for the foreseeable future.

Because the situation is fluid, the Court may elect to modify this policy at any time. Communication between an employee and supervisor is crucial to minimize the impact of any out-of-state travel.

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[1] The Court will use data available from the Harvard Global Health Institute's website (https://globalepidemics.org/key-metrics-for-covid-suppression/) to determine whether a county or location is a "hot-spot."

[2] If an employee tests positive, additional leave options may be available under federal law and the Court's prior COVID-19 policies.

III. QUESTIONS REGARDING THESE POLICIES

Questions regarding either of these policies, or other COVID-19 specific issues, can be addressed to CommentsConcerns@courtswv.gov. Several employees in the Administrative Office monitor this email account, and this is the most efficient way to reach someone if you need assistance.