

The Office of the State Courts Administrator



Pandemic Staffing Guide

Ensuring Staffing and Administering Attendance and Leave During a Pandemic

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Introduction

If the pandemic influenza spreads to the State of Florida, a cumulative absentee rate of up to 40 percent of court related employees is expected for up to three months, on a rolling basis. This number includes sick employees, employees who are caring for sick family members and employees who do not come to work out of fear of becoming ill. In addition, there may be a significant need for social distancing in order to limit the number of persons concentrated in the workplace.

Such a scenario will require special handling of staffing and attendance and leave issues. Each Court has an approved Continuation of Operations Plan (COOP). This plan requires courts to identify mission essential functions and employees who will be responsible for carrying out these functions. These employees will be assigned to the Court Emergency Management Team (CEMT). However, in the case of a pandemic the COOP may not be activated initially, if at all, and staffing and personnel issues will need to be given special consideration immediately.

This document has been written for court management and is intended to address related questions, support Court COOP's by providing methods to ensure mission essential functions are performed, and to serve as guide for staffing your office and administering attendance and leave in the event of a pandemic.

Pandemic Staffing Guide

In no event shall this guide supersede regulations under 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 Disability 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. Remind staff who have been identified as being on your CEMT what you will expect from them in the event of a pandemic. These staff may be called upon independent of, or prior to COOP activation.

I. Staffing

Ensuring Mission Essential Functions Are Performed

1. Courts should have established a Court Emergency Management Team as part of their COOP. Consider creating redundancy in addition to those employees identified on your court's CEMT to ensure that mission essential work will be covered since absentee rates may reach 40%.
2. Courts should identify and cross-train personnel that have the skills and abilities to perform mission essential functions. Such personnel may be:
 - a. Employees in the same classification series as those who normally perform the function;

- b. Employees who have previously performed the work and are currently employed in another role; and/or
 - c. Employees who have demonstrated versatility and that you feel could be trained either in advance of the need or on-the-job when the need arises.
3. Courts should also consider identifying other personnel who may be available to perform the mission essential functions. Such personnel may include retired employees, former employees, Other Personal Services (OPS) employees, if spending authority is in place, and contract workers.

Each court should have designated the payroll and benefits functions as mission essential functions and have a plan of management succession and staff cross-training for the payroll and benefits functions. We all must ensure uninterrupted pay and continuation of employee's benefits as income and medical care will be primary concerns. Cross-training staff to perform basic payroll actions such as creating Personnel Action Requests (PAR's) within payroll deadlines, and understanding how to administer benefits will be very important. You are highly encouraged to create desk manuals in these areas as a primary cross-training tool.

Establishing a Management Succession Plan

Courts should have established a management line of succession plan as part of their COOP. A line of succession provides a list of predetermined alternates for key leadership positions in each organizational unit.

1. The personnel identified for the line of succession should know the operations of the work units; have the confidence of the supervisor to act in his or her absence; clearly understand the scope of the powers and duties delegated to him or her; and clearly understand the constraints, if any, of the powers and authorities he or she will be delegated.
2. The succession plan should clearly identify the names of designated personnel, their regular titles, and how they can be contacted. (Consider having the supervisor's home phone and cell number, work cell-phone number, pager number, and home e-mail address forwarded to the person who assumes the powers and duties of the supervisor in his/her absence.)
3. The names and order of succession of designated personnel should be communicated to the employees within the chain of command.
4. The plan should clearly set forth the powers and duties that will be performed and by whom. Courts should predetermine the individuals who will have the delegated authority to make decisions and communicate this to the employees.
5. Courts should determine if those in the line of succession need to be cross-trained in advance and provide such training as needed. Advanced cross-training for mission essential functions is imperative.

6. Courts should construct a method by which those in the line of succession will have access to information and needed items (i.e. computer passwords, calendars for employee approved time off, office keys, file cabinet keys, etc.) should they take over leadership responsibilities.

Coordinating with Court Partners

One of the biggest challenges courts will face during a pandemic is coordinating with court partners to ensure continued operations. While we can ensure court staffing to accomplish mission essential functions, without coordination with the Clerks of Court, County Administration, State Attorneys, Public Defenders, and others, our efforts alone won't be sufficient. Court COOP's also highlight the importance of this type of coordination.

The best way to overcome this challenge is to meet with your partners and develop an interagency pandemic response plan. Share the essentials of our plan and then invite them to work with you to:

- Develop a “ramping up” strategy tied to the Center for Disease Control (CDC) Pandemic Severity Index. This index is explained in a CDC report outlining pre-pandemic intervention strategies. This comprehensive report can be found at http://www.pandemicflu.gov/plan/community/community_mitigation.pdf
- Agree on mission essential court operations and staffing obligations.
- Identify what would be required to ensure continued court operations.
- Create a document to serve as a multi-agency Justice System Pandemic Plan.
- Identify training opportunities, or pre-pandemic testing once a plan is in place.

Each agency will have its own priorities and will be in a different state of readiness with regard to pandemic planning. However, each individual plan will have limited impact on operations. Ultimately, the ability of each agency to continue operations in their court related functions will be determined by the level of planning and coordination among all parties.

II. Attendance Strategies

Policy Considerations

In order to ensure that essential services are met, special requirements may need to be put in place. Some examples include:

1. Previously approved annual leave, compensatory time, leave of absences (other than for sick or family leave purposes) may be rescinded with minimal notice.
2. Employees may be required to report for work with minimal notice.

3. Employees' work schedules and/or hours of work may change with minimal notice.
4. Employees may be asked to telecommute with minimal notice.
5. Employees may be assigned overtime with minimal notice.
6. Employees may be assigned special duties with minimal notice.
7. Employees may be assigned to other work units with minimal notice.
8. Employees may be assigned to alternate work locations with minimal notice.

Rescinding Approved Leave

Employees who have accrued annual or compensatory leave credits and request use of their leave are typically granted such requests; however, this may not be the case in the event of a pandemic if an employee's absence would disrupt the Court's business operations. Therefore, if the pandemic emergency causes significant staffing shortages, previously approved annual leave and compensatory time off may be rescinded to provide staffing coverage for court services. The authority to rescind previously approved annual leave and compensatory leave currently exists as a management right in the event of business need.

Managers and supervisors should note the following:

- A. 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.
- B. Annual leave and/or compensatory leave requests should only be rescinded if the supervisor is unable to adequately staff a work unit.
- C. Annual and/or compensatory time off should be rescinded as soon as the supervisor believes that a potential staffing shortage will require the employee to report to work.
- D. Prior to rescinding previously approved annual leave or compensatory time off, the supervisor should attempt to staff the unit through other available means.
- E. Rescinding an employee's leave which is already in progress will be reasonably based upon the employee's ability to report to work. For example, it would be reasonable to require that an employee who is on annual leave at home report to work with as much notice as possible, but it may be unreasonable to require that an employee who is on annual leave out of the country, state or city to report to work.
- F. When rescinding annual leave and/or compensatory time off, the supervisor should have actual contact with the employee to ensure that the employee receives the directive to report to duty. Rescinding leave should be followed up in writing, if possible. For example, an e-mail exchange between the employee and the supervisor or a letter from the supervisor to the employee in which the employee acknowledges receipt is acceptable contact; a message left on an employee's home telephone message

recorder is not an acceptable contact, unless the message was left and the employee returned the call acknowledging the directive.

Telecommuting

Telecommuting is defined in Section 110.171(1)(c), Florida Statutes, as “A work arrangement whereby selected state employees are allowed to perform the normal duties and responsibilities of their positions through the use of computers or telecommunications, at home or another place apart from the employees’ usual place of work.”

Telecommuting is not appropriate for all employees and no employee is entitled or guaranteed the opportunity to telecommute. Section 110.171(3)(c), Florida Statutes, provides that participation by an employee in a telecommuting program is voluntary, and that the employee may elect to cease to participate in a telecommuting program at any time. However, this provision will likely be waived by executive order since telecommuting is also a way to support social distancing (limiting the number of persons concentrated in the workplace) or other pandemic response goals and may be viewed as necessary to respond to a pandemic emergency.

- A. Possible telecommuters should be identified by the Court as soon as possible to make the necessary technological arrangements.
 1. Courts should consider a broader use of “telecommuting” than they would under normal operations or other types of emergencies to accomplish social distancing for a pandemic influenza emergency
 2. Courts should determine the functions that may be accomplished remotely and whether the person performing these functions needs access to all systems and applications or only e-mail and/or voice communications.
 3. A court’s ability to telecommute should be determined and tested before a potential pandemic, keeping in mind that information technology resources are valuable assets. The confidentiality, integrity, and availability of those resources must be protected at all times. The use of mobile devices poses risks to the information they contain, as well as to the devices themselves. Appropriate security controls must be in place to mitigate security risks presented by using mobile devices.
 4. Flexible work schedules are another consideration for those authorized to telecommute. These schedules may reduce peak demands on information technology systems.
 5. Employees authorized for telecommuting may be allowed to engage in limited dependent child care or elder care during a pandemic influenza emergency if providing care does not impact the ability of the employee to accomplish assigned tasks.
- B. When feasible, employees whose work could be conducted from home should be given an opportunity to initiate a written telecommuting request to their immediate supervisor.

After technology and other considerations have been worked out, approval by management should also be in writing, outlining the parameters of the agreement. In other instances, it may be necessary that telecommuting arrangements be requested, communicated, approved and/or processed via e-mail or telephone.

Flexible Scheduling

The administration of normal and flexible work schedules may be modified during a pandemic emergency to enhance social distancing, business continuity or other pandemic response goals as follows:

- A. Courts 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.
- B. Courts should identify mission essential functions that may be staffed with personnel on flexible work schedules. Examples include staff performing administrative functions such as payroll, benefits, accounting or purchasing; or judicial support roles performed by law clerks.
- C. If feasible, supervisors should first ask for employees to volunteer to work hours other than their normal schedule. If certain work schedules cannot be staffed in this manner, Court management may direct staff to work the schedules necessary.
- D. Supervisors may change regular or flexible work schedules at any time. It is preferred that employees receive at least a 24-hour notice. If that is not possible, management may make such changes effective immediately.
- E. Courts are encouraged to work with staff to minimize the impact of decisions affecting schedule changes by taking into account personal needs and utilizing other available staff if such conflicts arise, when allowable. Overtime is probable and should be expected.
- F. Flexible work schedules may be requested, communicated, assigned and/or processed via e-mail, fax or telephone. Approved schedules should be formally documented within one week of the start of a flexible work schedule, or as soon as possible thereafter. A supervisor may document the change via e-mail, memorandum, or fax.
- G. If an employee makes a request for a flexible work schedule and the request is denied, no written explanation of why the request has been denied is required.
- H. When appropriate, management may assign an employee back to their regular work schedule.

III. Attendance and Leave Issues

While nothing in this guide is intended to supersede Federal or State laws, or the SCS Personnel Rules, some changes in how these laws and rules are administered will be necessary. This includes modifying the process of documenting and recording attendance and leave so that overpayments and leave without pay can be accounted for in a timely manner.

Submitting Timesheets

It may be impractical to expect all employees to submit electronic timesheets during a pandemic emergency. Supervisors need to have a supply of paper timesheets, or electronic versions of paper timesheets, for included and excluded employees so that attendance and leave for staff that are out sick or quarantined may be recorded on a regular basis. Employees should be given their beginning leave balances upon request so they can keep track of their leave use, approvals, and how much available leave they have, in order to furnish accurate leave records for the emergency period. Supervisors, or their designees, should work with employees in approving leave, and collecting and approving timesheets, and ensure that the information is transferred to the automated system, at the appropriate time after the emergency. The goal is to timely capture overtime and leave without pay so that we can correctly pay employees during the emergency.

Sending Employees Home

As a safety consideration, management should look to the physical well-being of employees and whether the health of fellow employees is endangered by an employee exhibiting symptoms of the pandemic influenza. Therefore, if an employee appears to have the pandemic influenza at the workplace, supervisors have the authority and obligation to require the employee to leave the workplace.

- A. Where practical, supervisors should first seek the approval of their manager before sending a sick employee home. Employees who are sent home will need to obtain a note from a health care professional excusing the absence and indicating when they can return to work, or clearing them to come back if they do not have influenza.
- B. Supervisors are not to make a medical diagnosis, but may rely on observations of an employee's symptoms in making a reasonable determination to send home an employee who appears sick. Symptoms of flu in humans may include:
 - Fever
 - Cough
 - Sore throat
 - Muscle aches
 - Eye Infections (conjunctivitis)
 - Pneumonia
 - Acute respiratory distress
 - Viral pneumonia

The Florida Department of Health website should be consulted for updates on pandemic influenza symptoms at <http://www.doh.state.fl.us/>

- C. The employee may use sick leave or other personal leave, as needed. If the employee has no leave, they may be sent home with approved leave without pay.
- D. Paid administrative leave is not available to an employee who is being sent home because of exhibiting symptoms of pandemic influenza.
- E. When the employee's condition improves so that he/she no longer poses a health hazard to fellow employees, or if they are not diagnosed with the influenza, the employee will return to work.

Family Medical Leave Act (FMLA) and Sick Leave

During the pandemic emergency, the necessity for supporting employees seeking medical assistance will be crucial. The Family Medical Leave Act (FMLA) provides employees with options in using leave for medical reasons as follows:

- A. Employees will be allowed to use their accrued sick leave for the employee's personal illness, injury, or exposure to a contagious disease that would endanger others. Sick leave may also be used for the employee's personal appointments with a doctor, dentist or other recognized practitioners. In addition, sick leave may be used for the illness, injury or well-care check-ups of the employee's spouse, the children or parents of the employee or the spouse, or a person for whom the employee or the spouse has a caretaker responsibility, when the employee's presence is necessary.
- B. Employees may use their accrued annual leave, compensatory leave and leave without pay in lieu of, or in addition to the accrued sick leave.
- C. The decision to put all eligible, affected employees on FMLA is a court decision, and should be applied consistently within each court. However, courts have an obligation to inform eligible employees that they qualify for FMLA immediately upon learning that they or a family member has contracted influenza, even if the court decides not to place all eligible, affected employees on FMLA.
- D. Should a court decide to place affected employees on FMLA, they may put eligible, affected employees on notice that the leave used will be designated as Family Medical Leave in accordance with the Family Medical Leave Act, 29 Code of Federal Regulations (CFR). The FMLA entitles employees up to 12 weeks of leave for certain family and medical reasons during a 12-month period. Paid leave may be substituted for unpaid FMLA leave and counted against the 12-week FMLA leave entitlement if the employee is properly notified of the designation when the leave begins.

For more information on the Family Medical Leave Act, 29 CFR, go to <http://www.dol.gov/esa/whd/fmla> .

- E. Courts may approve flexible work schedules, job sharing, or family medical leave to assist employees in meeting the medical needs of family members. If waived under the executive order, the prevailing emergency may necessitate that approval of family medical leave be granted for a shorter period than six months. Benefits coverage will continue as per current practice, however, should an employee not have enough leave to cover their absence; the employee will be responsible for their portion of premium payments.

Return to Work Authorization

Health officials have stated that an employee can come back to work 24 hours after their fever has dissipated. When an employee is ready to return to work from leave (paid or unpaid), the following procedures shall apply:

- A. The employee who is ready to return from leave will contact his/her supervisor (or a person acting in that capacity) for instructions on when and where they should report. Contact is to be made in the manner deemed appropriate by the Court
- B. The supervisor will inform the employee of his/her work location (or whether the employee will be assigned to work from a remote location or telecommute), work schedule and shift, and specific work assignments, if different from their regular assignment.
- C. With the exception of employees exhibiting symptoms that were sent home from work, medical certification will not be required to return to work. Department of Health officials have determined that healthcare professionals will not have time to provide certification during an influenza pandemic.

Facility Closures

Should the Chief Justice or a Chief Judge order a facility closed, most employees performing non-essential functions will be placed on administrative leave. Employees performing essential functions, or back-up employees who will be performing mission essential tasks due to absences, may be instructed to perform certain duties per the COOP. When feasible, this work can be performed remotely, via telecommuting.

Because of potential staffing shortages, some employees may be deployed to provide support for varied operations in alternative worksites and should expect to come to work.

In the case of closure of specific offices, employees will be sent home as a last resort. Should employees be sent home, payment of wages to employees will be made in accordance with the following established emergency processes:

- A. If a facility is closed and no alternative site is designated for the employee to report to work, employees performing non-essential functions scheduled to work will be put on paid administrative leave until the facility is reopened or alternative worksites are arranged.

1. If the closure extends into a second week, the status of displaced workers may be reviewed by the Chief Justice to determine whether a furlough due to lack of work is in order. This applies to affected employees who are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), as well as hourly employees who are not exempt from the overtime provisions of the FLSA.
2. Employees who, prior to a facility closure, had requested and been approved for time off (e.g., annual leave, sick leave, compensatory leave, or leave of absence) will have hours deducted from their accruals as approved, in accordance with established policies.
3. Other Personnel Services employees will only be paid for hours actually worked during a facility closure.
4. Employees providing essential services who are unwilling to report to work will have their time charged to annual leave, compensatory time, or leave without pay and may be subject to disciplinary action.
5. If the facility closes after the start of an employee's shift, employees who are scheduled to report to work but do not and do not contact the supervisor or designee before the facility closure are considered to have been absent without leave. These employees will be subject to leave without pay for the full day. However, the supervisor may at his or her discretion, authorize the use of annual leave or compensatory time for the absence as individual circumstances warrant.

Employee should be notified of the court's procedure for communicating closures or re-openings of facilities.

Closure of Schools and Daycares

To minimize the effect of any disease outbreak, the Florida Department of Health is authorized to order disease control measures that include a broad array of actions. Isolation, quarantine orders and social distancing measures are likely to be used in a pandemic influenza event. In addition to closing large social gatherings such as sporting events, theater shows, and concerts, the local county health department may close schools and day care centers as a social distancing strategy. It is anticipated that this action would occur in coordination with any emergency proclamation that may originate from the Florida Department of Health.

School and daycare closures are expected to have a significant effect on staff absenteeism in both the private and public sectors. The State Courts System must be prepared for a reduction in its staff resulting from healthy parents staying home to take care of healthy children or other healthy dependants. In addition, college and university closures may result in healthy parents needing time off to move college age children home. If schools and daycare centers are closed, employees will not be allowed to bring their children to work.

Such closures should be anticipated during a pandemic and all employees should have a family care plan in place. The courts will not close if schools and daycares close and employees are expected to come to work. If dependent child and elder care coverage becomes impossible,

arrangements should be made in advance with the supervisor to telecommute, if appropriate and feasible, or to have essential work covered with a backup.

Quarantines

If an employee is subject to quarantine and is unable to report to work the following will apply:

- If the employee is sick or is caring for a sick family member he/she may use sick or family sick leave, annual leave or comp time. If the employee runs out of available leave, he/she will be on approved leave without pay. Both paid and unpaid leave will count toward FMLA time off.
- If the employee is not sick and telecommuting is an option, the employee should telecommute to offset some or all of the work time away from the office. If telecommuting is only a partial solution or not a viable option, the employee may use their annual leave or compensatory time. If the employee runs out of available leave he/she will be on approved leave without pay.
- All employees returning to work after having been quarantined will need documentation indicating that the quarantine has been lifted.

Discipline - Conduct, Including Unauthorized Absences

There may be occasions during the emergency when employee misconduct or unexcused absenteeism arise and need to be addressed. In some cases, that will mean that discipline is appropriate. Disciplinary actions range from verbal warning to written warning, then to suspension with or without pay, and finally termination.

The type and level of disciplinary action will be determined based on the nature and severity of the behavior and/or performance deficiency that led to the disciplinary action.

- Employees should be informed of the expectation that they report to work and that the consequence of not doing so is potential disciplinary action, up to and including termination.
- Administering discipline may be delayed pending the State's return to normal business operations.
- Administrative leave remains available, with approval of the Chief Judge or Chief Justice, to utilize when it is determined that an employee should not return to work pending the outcome of the disciplinary process if the conduct was severe enough to need to be addressed immediately.
- An unauthorized absence means the absence of an employee from duty without specific authorization.

- Unauthorized absences during a pandemic emergency may result in discipline up to and including termination. The level of severity of discipline will be dependent upon the length of the absence, and if the incident is a repeat offense or a pattern with previous issues having been documented and discussed with the employee.
- Mitigating circumstances underlying the unauthorized absence should be taken into consideration in any analysis of disciplinary action proposals, including termination. Incidents should be reviewed on a case-by-case basis.
- Any disciplinary action for an employee's unapproved leave of absence will be reduced to a form of written correspondence (e.g. letter, e-mail, facsimile) by the appropriate court authority so that a copy is provided to the employee. The correspondence will set forth the dates of the employee's unapproved absence(s), the disciplinary action being taken, and provide an opportunity for the employee to be heard, should the employee wish to address the action.

Suggestions for Paper Timesheets

- Print and disseminate sufficient copies of the manual timesheets.
- Develop a distribution and collection method for affected employees so that when necessary to ensure payment of overtime and deductions for leave without pay, employees know how to obtain and submit manual timesheets.
- Disseminate payroll submission timelines to affected employees and supervisors so that the timesheet can be processed in the appropriate payroll.
- In emergency circumstances, managers may submit manual timesheets on behalf of their affected employees if they are unable to complete them. The employee will need to update manual timesheets into the electronic system, and supervisors and personnel staff will need to approve timesheets after the emergency has subsided to ensure a smooth submission of the annual leave liability report.
- When mailing timesheets, affected employees should retain a copy for their records in the event mail service is interrupted.

Pre-Planning Checklist

Determine Critical Functions and Personnel

- Review CEMT to determine personnel who are designated to perform mission essential functions
- Identify secondary personnel who have the skills and abilities to perform mission essential functions

- Identify which staff performing mission essential functions have equipment necessary to telecommute.
- Identify other personnel, such as retired employees, former employees, OPS employees, and contract workers, who may be available to perform mission essential functions
- Identify potential volunteers who have the skills to perform needed court functions
- Identify functions that may be suspended while personnel are assigned to more critical roles

Succession Planning

- Determine the payroll function as an essential function and cross-train for this function
- Determine the insurance benefits function as an essential function and cross-train for this function
- Establish and identify a management line of succession plan which lists alternates for key leadership positions in each court
- Determine the individuals who will have the delegated authority to make decisions and communicate that succession plan to court personnel
- Provide for alternate lines of succession
- Provide for access to information and needed items to those in the line of succession (i.e. computer passwords, office keys, file cabinet keys, etc)
- Forward document succession plans to the court management

Review Business Hours, Work Schedules and Mode of Service Delivery

- Review business hours and 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
- Identify mission essential functions that may be accomplished via telecommuting and whether employees performing the function need access to all systems and applications or only e-mail and/or voice communications
- Identify technical planning methods such as the Internet, Virtual Private Network, and teleconferencing to be implemented before a pandemic influenza emergency occurs.

Develop a Communications Plan

- Communicate with employees about the threat of a pandemic influenza emergency, and describe the preparation steps being taken such as:

- Potential changes to personnel policies
 - Changes in business culture which may include social distancing, increasing telecommuting, or suspending non-mission essential functions
 - The importance of staying home if employees are ill or have influenza symptoms and are diagnosed with influenza
- Distribute practical information on maintaining a healthy work environment
 - Update employee emergency contact information