

Appellate Courts

Return to Workplace Planning

A Pandemic Resource from CCJ/COSCA

June 24, 2021 | Version #1



Recent weeks have brought some long-awaited improvement in COVID-19 data, as well as loosening of emergency restrictions in many states and by the CDC. In response, a number of state appellate courts have begun, or will be soon undertaking, a planning process for return to in-person oral arguments and consideration of a remote work policy for their staff. The Rapid Response Team has prepared this outline of important considerations for this return to workplace planning. For those appellate courts about to begin, this can serve as a foundational document to ensure that these issues are addressed as needed. For courts that have already begun having staff return to the courthouse, they can serve as a checklist. This outline is not comprehensive – individual appellate courts will likely encounter issues not included here. There may also be items included in this outline that do not apply to each appellate court.

This outline consists of two sections; Administrative Functions and Staffing & Judicial Operations. There is also an example of a decision matrix for a phased return to workplace policy at the end of the outline.

Considerations for Return to Workplace Planning – Appellate Courts

I. ADMINISTRATIVE FUNCTIONS

A. Guiding Principles

1. The health and safety of all personnel is a priority. Public health data trends and recommendations from the Center for Disease Control and State and local public health authorities will be monitored. COVID-19 vaccinations should be encouraged but not required.
2. The return to workplace strategy will be iterative and change should be based on evolving guidelines.
3. The return to workplace strategy may be phased-in with emphasis on job responsibilities that require, or most benefit from, being on-site. Continuation of remote work for certain positions may be considered.

B. Key Initial Planning Decisions

1. Review Critical Factors

- a. How long COVID-19 vaccines provide protection and prevent transmission of the virus (as information becomes available).
- b. Local public health data regarding continued infection rates, the percentage of the population vaccinated, and other metrics.
- c. How well appellate practitioners and litigants are currently being served by the appellate court(s).
- d. Developing a phased-in approach for staff returning to work.
- e. Level of filings and management of the caseload, both current and anticipated.
- f. Ability of remote personnel to work efficiently and maintain their expected productivity.

2. Considerations for a Phased-In Approach (See example matrix for phase levels at the end of this outline)

- a. Develop and define spectrum of reentry phases; i.e., Level X – Level XX
- b. Use approved health-related data metrics and health data measures d to inform progression or regression through the levels.
- c. Define appropriate values for each health data measurement level supporting the progression between phases. Workplace/facility-related matters, occupancy

levels, masks, and social distancing. Decisions should be based on medical consultation and the protective measures applicable to each level. (See decision matrix and the end of this outline)

- d. Identify employee groups for phased reentry considerations (positions required to be onsite, positions that benefit from onsite access, positions with flexibility, etc.). This should be determined based on the type of work and not characteristics of the workforce.
- e. Establish policies and practices that align to each phase of reentry.
 - i. Building and workspace cleaning protocols
 - ii. HVAC improvements
 - iii. Building sign-in requirements
 - iv. Availability of PPE and sanitation supplies
 - v. Exit and entry guidelines
 - vi. Temperature Screening
 - vii. Mask usage
 - viii. Social distancing
 - ix. Reconfiguration of workspaces
 - x. Courtroom requirements (See Section II. A. 1. & 2. below)
 - xi. Break rooms and kitchen guidelines, including guidelines for removal of masks to eat and drink
 - xii. Directional flow considerations
- f. Meeting considerations – size, time limits, etc.

C. Prioritize the Health and Safety of Appellate Personnel and Public Visitors

1. Facility cleaning and equipment

- a. Develop cleaning/sanitization schedule consistent with transition of employees into the building and opening to the public. (Recent information suggests that daily cleaning is sufficient unless a COVID-19 infected person was present)
- b. Install hand sanitizer stations at all entrances, restrooms, conference rooms, departmental office areas and public service areas.
- c. Consider installation of low/no touch plumbing fixtures, doors, light switches, etc.

2. Workplace design

- a. Review office and workspaces to determine appropriate capacity while facilitating appropriate social distancing.
- b. Reconfigure workspaces, conference rooms, and break areas to permit social distancing where appropriate.
- c. Consider effectiveness and need for glass partitions/protection shields between coworkers and public.

3. Specific Health & Safety Precautions

- a. Face coverings: Should be addressed and outlined in a Court order (where and when masks are required, applicability to vaccinated/unvaccinated persons, proper use, etc.).

- b. Social Distancing: Appropriate distancing maintained wherever possible. In those workstations where it is not possible, consider partitions or schedule adjustments, including remote work, to allow distancing to be maintained. May vary based on vaccination status.
 - c. Testing strategy: If a strategy is adopted, consider frequency of testing, persons to whom it is applicable (does it apply to vaccinated individuals?), cost, privacy of results, etc.
 - d. Special handling of employees who may be, or have immediate family members who are, immuno-compromised or have specific health concerns.
- 4. Staff Training & Education
 - a. Train all staff on cleaning and social distancing procedures (scheduling for capacity, sign-in/-out, clean desk policy, clean workspace, wearing and the donning/doffing of masks, masks covering nose and mouth), what to expect, including permission to hold others accountable for masks, distancing, etc.
 - b. See example training at:
<https://www.vitalsmarts.com/crucialskills/category/how-do-i-say-that/?from-minicourse-page>
 - c. Team members should discuss safety; e.g., Can we talk about what we all need to do to keep each other safe?
 - i. Philosophy: It is Kind to Remind;
 - ii. Technique of Speak Up & Let Go: Can you please stand further away? Can you please make sure your mask is covering your nose? This conference room has a capacity of 5.
 - iii. In response: gratitude, not attitude.
- 5. Assess Building Capacity Limits
 - a. Align phased reentry of defined employee groups (See I. B. 2. d.) with facility capacity limits (See I. C. 2. a.)
 - b. Consider utilizing staggered work times
 - c. Consider office-sharing protocols
 - d. Identify reconfiguration and/or safety equipment needed to support social distancing and respective funding requirements.
 - e. Identify signage needs for entry/exit, foot traffic flow, spacing, other instructions.
- 6. Review Court Policies and Procedures and Revise as Needed
 - a. Introduce or revise policies to align with phased entry plan and short or long-term changes
 - b. Employee Conduct
 - c. Employee Travel
 - d. Remote Workplace
 - e. Computer equipment/office supplies; procurement & reimbursement
 - f. IT and data security
 - g. Work safety policies

7. Communication Strategy Plan

- a. Timing – Consider how much notice is appropriate to allow staff to make child/elder care arrangements, transportation alternatives, etc.
- b. Types of Communication:
 - i. Emphasize employee well-being.
 - ii. Describe the plan and the phases.
 - iii. Outline the process for employees returning to the workplace.
 - iv. Vaccination – recommended, but not required
 - v. Communicate health and safety precautions – both the protections physically installed at the courthouse and the new or continued behavioral requirements (especially any distinctions among vaccinated/unvaccinated persons).
 - vi. Communicate new or revised policies/procedure documents.
 - vii. Set expectations – if feeling sick, do not come into work.
 - viii. Develop a method for employee feedback at the start and throughout the return to workplace process.

II. STAFFING & JUDICIAL OPERATIONS

A. Oral Argument Considerations

1. Questions to Consider for Remote Oral Argument – Wide use of remote oral argument allowed appellate courts to maintain this critical aspect of deciding appeals. As judges and staff return to the courthouse, many appellate courts are considering procedures and rules regarding continuation of remote arguments in addition to in-person. Plans for continuing remote arguments should include the following questions.
 - a. Are remote arguments appropriately formal? If not, what changes are needed?
 - b. Do attorneys read more in remote arguments and if so, how to address that ?
 - c. Do remote appearances affect rates of oral argument? If so, are changes needed?
 - d. Do remote appearances affect the confidentiality of parties, documents, witnesses, children, etc.? Is some correction needed?
 - e. How does live-streaming oral arguments affect?
 - i. Confidentiality
 - ii. Privacy Rights
 - iii. Potential for misuse of Recorded Audio and/or Video
 - f. Is closed captioning required? Is it feasible?
 - g. Are there unique challenges for interpreters? If so, plan to minimize them.
 - h. How should the court control unruly attorneys/parties remotely?
 - i. Under what circumstances is use of the mute feature appropriate?
 - j. How best to control behavior in remote hearings?
 - k. Inappropriate use of remote videos; can likelihood be minimized?
 - l. Are rule changes governing video/audio needed for remote appearances?
 - m. Do remote appearances violate camera in the courtroom restrictions?

- n. Do remote appearances affect the client's involvement in oral argument, especially self-represented and in-custody clients?
- o. Will the court provide a means for clients to access remote oral arguments?
- p. If co-counsel or counsel are handling related litigation, can they appear?
- q. Should there be restrictions on who can use the passcode for accessing remote oral argument?

2. Resumption of In-Person Oral Arguments

- a. Determine whether all judges must appear in-person or remotely and whether a hybrid approach (some in-person, some remote) will be permitted.
- b. Determine whether all lawyers must appear similarly (in-person or remotely) or a hybrid approach.
- c. Should decisions on scheduling remote arguments be made on a case-by-case basis?
- d. Is a motion required for a remote argument? If so, Is the motion decided by the assigned panel, the court, the chief judge.
 - i. Is good cause required to be included in the motion?
 - ii. Must the motion be agreed to by opposing counsel?
- e. If both in-person and remote oral arguments are scheduled, will they be heard on the same calendar setting?
- f. What equipment/technology is required (display screen in courtroom so that lawyers/judges and gallery can see judges/lawyers who appear remotely)?
- g. Develop a protocol if attorneys appear in-person but fail to pass temperature screening at entry.
- h. Will face coverings be required, optional or not permitted for judges? For lawyers? For people in the gallery? For officers and staff in the courtroom?
- i. Will social distancing be required for judges? For lawyers? For people in the gallery? For officers and staff in the courtroom?
- j. Use lessons learned during the pandemic to make decisions.
- k. Survey the appellate practice section of the local bar for input.

B. Remote Workplace Practices & Policies

- 1. Determine if remote workplace practices will be continued as the pandemic eases and more operations return to the courthouse.
- 2. Consider whether staff will work remotely, fully on-site, or a hybrid model.
- 3. Consider if there is a need for new or revised policies pertaining to judges; chambers staff; central staff attorneys; clerk's office, and others.
 - a. Designate core business hours; e.g., all remote staff to be available by phone or email between 9:00 am and 2:00 pm but also account for total required hours during each pay period.
 - b. Consider whether a method of tracking/reporting work hours is necessary.
 - c. Develop productivity/performance measures and responsibility for monitoring them.
 - i. Related accountability must be clearly defined.
 - ii. Consider deadlines and periodic progress reporting to supervisors.

- d. Consider State or local law/regulations or collective bargaining provisions that impact employee workplace practices, time reporting, etc.
 - e. Plans may be different depending on Department/Job Type/Past Performance
 - i. Some jobs may not require on-site presence.
 - ii. Some jobs include service and interaction with attorneys, litigants, and other members of the public.
- 4. Court Records and Documents
 - a. Are trial records and case documents fully digitized?
 - b. Is there continued reliance upon hard copies?
 - c. Does the court primarily rely on e-filing?
 - d. Are briefs, motions or other documents reduced to paper when reviewed?
 - i. What is the practice?
 - ii. Can/should use of digital documents be increased?
- 5. Remote workplace arrangements could be considered as a perk for good/high performance rather than more broadly available. If so, ensure reliable metrics are in place to determine past performance and monitor future performance.
 - a. Are these issues applied to chambers staff?
 - b. Should each judge make these decisions individually or should it be a court-wide decision?
- 6. Adapting to a Continued Remote Workplace
 - a. Educate and provide resources to all judges and staff to maintain a healthy work-life balance, manage work-related stress, stay engaged in the job, etc.
 - b. Develop Policies to Promote Collaborative Working.
 - i. Among staff attorneys, among law clerks, among clerk's staff, among judges and among other court departments.
 - ii. Between the above groups as needed.
 - iii. Refine and Develop Practices to Build a Collegial Appellate Court Culture.
 - iv. Examine past practices designed to build a collegial environment; determine how well they have worked and whether they can be continued as is or refined. Common examples include court-wide meetings, holiday parties, judicial lunches and/or dinners, summer picnics, sporting events, etc.
 - v. Create new approaches; e.g., ensuring regular communication between managers and staff both individually and as a group; ongoing recognition of achievements; developing or obtaining short webinars or educational programs on current issues such as work-life balance, managing stress, organizational matters, etc.

<u>Key Health Measures</u>	Level 5	Level 4	Level 3	Level 2	Level 1	Level 0
State's Current Stage	Lockdown (Initial Stage)	Stage One	Stage Two	Stage Three	Stage Four	No restrictions
Confirmed Cases - Appellate Bldg.	Yes (past 7 days)	Yes (past 14 days)	Yes (past 30 days)	0 cases for weeks	0 cases for weeks	0 cases for months
Average Daily Cases - State (adjust for your state population)	500+	1000+	400+	200+	100+	0
Test Positive Rates - Local	Severe	High	Moderate	Moderate	Moderate	Zero
Vaccinations Administered - Local Health Districts	0%	0-5%	6-20%	21-40%	41-60%	60%+
<u>Protective Measures</u>						
On-Site Staffing	Only duty that requires onsite presence	Only duty that requires onsite presence	Only duties that benefit from onsite access	Gradual return with staggered teams	Gradual return with staggered teams	Full on-site return
Remote Work	Full remote work	Full remote work	Primary remote work	Primary remote work	Optional remote work	Optional remote work
Mask Wearing	100.00%	100.00%	100.00%	100.00%	Encouraged	Not required
Physical Distancing	6 ft	6 ft	6 ft	6 ft	6 ft	None
Face-to-Face Meetings	None	Physical distancing; 60 minutes or less	Physical distancing; 60 minutes or less	Physical distancing; 60 minutes or less	50 or less participants with physical distancing	Allowed
Cleaning Protocols	4 times a day in spaces used	4 times a day in spaces used	Twice a day in spaces used	Twice a day in spaces used	Once a day	Once a day
Entry/Exit - Traffic Flows	One-way bldg. entry/exist & traffic flows	One-way bldg. entry/exist & traffic flows	One-way bldg. entry/exist & traffic flows	Limited restrictions in congested areas	Limited restrictions in congested areas	None