



Does Return to Work Mean Return to Court?

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As we begin to transition into our new normal, many of us wonder how the courts will be impacted by the COVID-19 pandemic. We are starting to see the beginning of a significant change in shelter-in-place orders. Some jurisdictions are retaining or enhancing shelter-in-place restrictions, but for the first time since the COVID-19 crisis emerged, others are moving towards loosening them. Over the next few weeks, employers and businesses evaluating a return to work plan will face a complex patchwork of legal requirements and tricky practical considerations—including those from the judicial branch.

As courts begin to implement remote hearings and as lawyers become more comfortable taking depositions wearing blazers over sweatpants, the reality is we will be transitioning back into the courtroom in some capacity in the relatively near future. This means attorneys will most likely see an increase in their litigation workload—both their typical case load and potential new COVID-19-related cases.

While we know states, counties, and cities will implement their own return to work protocol, we also know there will be phasing-in at all levels of the workforce. While every workspace is different, generally, employers should consider:

- Keeping people at least six feet apart and being creative in how they do it, including space configurations, traffic patterns, using shifts to reduce density, etc.;
- Rigorous cleaning and sanitizing;
- Testing, if available;
- Mandating or encouraging employees to wear masks;
- Eliminating common food/snacks/coffee service;
- Preventing employees with fevers, coughs, or other illness indicators from coming to work; and
- Responding quickly and effectively to isolate exposed areas and people when a worker becomes sick.

In addition to the above, we can anticipate that courts may restrict visitors to only essential ones such as attorneys and parties, and bar family members, friends, and other non-essential visitors for many months. As of the date of publication, Missouri courts have suspended all in-person

proceedings in all state courts through May 1, 2020¹ and Kansas courts have suspended all but emergency operations, until further order.²

Additionally, on April 27, 2020, the Administrative Office of the U.S. Courts distributed guidelines for restoring operations in the federal courts.³ These guidelines rely on local conditions and the communities those courts serve, and the guidelines model the phased-in approach outlined by the federal government.⁴ The guidelines direct federal courts to process through the phases at their own pace while considering overall community trends, status of local orders, and confirmed or suspected COVID-19 cases in a court's facilities. The AO Director, James C. Duff, added, "Issues such as testing potential jurors, social distancing considerations during jury assembly, voir dire, jury deliberations, and many others are being considered." However, guidance on these types of issues will be forthcoming.

Currently, the four phases implemented in the federal courts are:

- PHASE ONE: Courthouses remain closed to the public, all necessary proceedings are postponed, and most employees telework;
- PHASE TWO: Loosen restrictions by, for example, allowing an increase in court filings and proceedings while continuing to rely on remote filing and telework. Non-vulnerable individuals permitted to return to the workplace;
- PHASE THREE: Many employees return to their workspaces and practice social distancing while taking other precautionary measures such as wearing masks and deep cleaning surfaces frequently.
- PHASE FOUR: Return to normal operations.

So, should we plan on a medical exam prior to each status hearing? Will jurors be required to wear masks or hear the case through telecommunication? Maybe. As we navigate towards the post-COVID world, we will eventually be back in the courtroom—but for a while at least, it won't be the same courtrooms we left in March.

¹ <https://www.courts.mo.gov/pandemic/>

² [https://www.kscourts.org/About-the-Courts/Court-Administration/OJA/Kansas-Courts-Response-to-Coronavirus-\(COVID-19\)](https://www.kscourts.org/About-the-Courts/Court-Administration/OJA/Kansas-Courts-Response-to-Coronavirus-(COVID-19)). Note: Kansas released an Order amending their original Order to clarify procedures during the suspension (see <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-032.pdf>).

³ <https://www.uscourts.gov/news/2020/04/27/courts-begin-consider-guidelines-reopening>

⁴ <https://www.whitehouse.gov/openingamerica/>