1. **POLICY PURPOSE:**

The purpose of the Judicial Branch’s *Temporary Testing Policy and Procedures* is to implement an additional safeguard to protect the health of Judicial Branch employees and their families, lawyers, litigants, witnesses, jurors, and all members of the public who visit Judicial Branch facilities from COVID-19 and its highly transmissible variant strains, which have greatly increased the number of Delawareans who have tested positive and been hospitalized with COVID-19 since July 2021.

This policy is adopted consistent with and under the authority of Chief Justice Collins J. Seitz, Jr.’s [Administrative Order dated August 11, 2021](https://courts.delaware.gov/rules/pdf/COVIDtesting.pdf), and will remain in effect for as long as the August 11, 2021 Administrative Order remains in effect.

1. **POLICY SCOPE:**

This policy covers all Judicial Branch employees, including judicial officers, full-time and part-time employees, including those classified as Merit employees under the *State of Delaware Merit Rules*, casual/seasonal employees, contract employees, and interns whether paid or unpaid.

1. **DEFINITIONS:**

Coronavirus (COVID-19) or SARS-CoV-2 – COVID-19 is a novel strain of coronavirus that was not previously identified in humans before 2019. The virus causing COVID-19 is not the same as the coronaviruses that commonly circulate among humans and cause mild illnesses, like the common cold. A variant has one or more mutations that differentiate it from other variants in circulation. As expected, multiple variants of SARS-CoV-2 have been documented in the [United States](https://covid.cdc.gov/covid-data-tracker/#variant-proportions) and [globally](https://covid.cdc.gov/covid-data-tracker/#global-variant-report-map) throughout this pandemic.

Employee – An Employee is any person working for the Judicial Branch, including judicial officers, full-time and part-time employees, including those classified as Merit employees under the *State of Delaware Merit Rules*, casual/seasonal employees, contract employees, and interns whether paid or unpaid.

Fully Vaccinated – The Centers for Disease Control and Prevention (CDC) has stated that a person is Fully Vaccinated for COVID-19 two weeks after receiving the second dose of a two-dose vaccine or two weeks after receiving the first dose of a one-dose vaccine.

Medical Exemption – A Medical Exemption is a medical excuse provided by a treating physician explaining why a Judicial Branch Employee cannot medically comply with an action mandated by the Judicial Branch.

Off-site Testing – Testing conducted at locations other than On-Site Testing, such as, but not limited to, a primary residence.

On-site Testing – Testing conducted at the Leonard L. Williams Justice Center, the Kent County Courthouse, or the Sussex County Courthouse.

PCR (or Polymerase Chain Reaction) Test – The PCR Test is the most accurate diagnostic test for COVID-19 and can detect virus from a nasal or oral swab. Tests results are usually available within 1 to 3 days but may take longer.

Healthcare IT Leaders, LLC (“HITL”) **–** HITL is a national provider of integrated clinical, IT and operational solutions for healthcare delivery. Healthy Returns is the COVID-19 services arm of HITL and will provide COVID-19 testing services for the Delaware Judicial Branch.

Rapid Antigen Test – The Rapid Antigen Test is a screening test that is intended to identify infected people who are asymptomatic and do not have a known, suspected, or reported exposure to SARS-CoV-2. The Rapid Antigen Test is a nasal swab, and testing can be completed in 10 minutes. Although it is less accurate than a PCR Test, it is a helpful tool to identify unknown cases of COVID-19 so that measures can be taken to prevent further transmission. If you receive a positive rapid test result that you have COVID-19 or if you have COVID-19 symptoms and receive a negative rapid test result, a PCR test may be required to conclusively rule out COVID-19.

Reasonable Accommodation- Title I of the Americans with Disabilities Act (ADA) provides for reasonable accommodations to qualified employees with disabilities, unless to do so would cause undue hardship. In general, an accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. Reasonable accommodations that apply to all persons with disabilities include, but are not limited to, the following:

* Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job**;**
* Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.

Primary Worksite – Primary Worksite is the Employee’s assigned and customary work address/location.

Religious Exemption/Accommodation**–** Under Title VII of the Civil Rights Act of 1964, the Judicial Branch may grant a Religious Exemption or Reasonable Accommodation to any Employee who objects to testing as part of their sincerely held religious beliefs, observances and practices, unless doing so imposes an undue hardship on the Judicial Branch’s business.

Vaccine – A Vaccine is a substance that teaches your body to recognize when a foreign invader such as a virus or bacteria has entered the body. Once the body recognizes the invader, the body’s immune system is activated, and fighter cells and proteins fight the virus or bacteria. A Vaccine is much like a decoy, it tricks the body into thinking it is the virus, but it does not actually cause the disease. It helps the body fend off the virus.

## **IV. POLICY:**

Every Judicial Branch Employee must either: (1) provide proof of Full Vaccination for COVID-19 to their designated Human Resources representative; or (2) undergo weekly testing for COVID-19.[[1]](#footnote-1) Testing is planned to begin the week of October 4, 2021. Employees who have not provided proof of Full Vaccination before testing begins shall be required to submit to testing consistent with this policy.

*Employees who are not compliant may be subject to discipline, up to and including leave without pay and termination.*

**No Employee, whether vaccinated or unvaccinated, should report to work or report for testing under this policy if the Employee is experiencing symptoms of COVID-19 or, if unvaccinated, has been notified that they have come into close contact with an individual who has tested positive for COVID-19.** Such Employees should notify their immediate supervisor, who shall contact a Human Resources representative, who will advise the Employee to take steps to get a PCR test and quarantine until they receive their results.

**V. PROCEDURES:**

1. **Registration**

Every Judicial Branch Employee who is required to undergo weekly COVID testing under this policy also will be required to complete a signed consent form.

**B. On-site Testing**

1. HITL will conduct Rapid Antigen Testing on-site at the Leonard L. Williams Justice Center located at 500 North King Street in Wilmington, the Kent County Courthouse located at 414 Federal Street in Dover, and the Sussex County Courthouse located at 1 The Circle in Georgetown.

2. Every Employee who is required to undergo weekly COVID-19 testing under this policy and whose Primary Worksite is at, or is located within one-half (.5) mile of, one of the Judicial Branch testing locations identified in paragraph 1 above *must* report to HITL staff at their Primary Worksite and undergo a Rapid Antigen Test.

3. The Rapid Antigen Test specimens will be collected on-site and individual test results will be provided to the Employee via email later that day.

4. Exceptions to On-site Testing:

a. Employees at sixteen (16) hour or twenty-four (24) hour court locations are exempt from On-site Testing and will be required to follow the procedures for Off-site Testing described in Subsection C below.

b. Any Employee who is required to report for On-site Testing but is absent from their Primary Worksite on the day of testing must follow the procedures for Off-site Testing described in Subsection C below.

c. Any Employee working from home pursuant to a teleworking agreement or whose Primary Worksite is not located within one-half (.5) mile of one of the Judicial Branch testing locations identified in paragraph 1 above must follow the procedures for Off-site Testing described in Subsection C below.

**C. Off-site Testing**

Any Employee who is required to undergo weekly COVID-19 testing but is subject to one of the exceptions to On-site Testing described in Subsection B.4 above *must* perform an at-home Rapid Antigen Test, which will be provided. The Off-site Testing process must be performed every week, once a week, except for those weeks in which an Employee receives an On-site Test. Off-site test kits and instructions will be provided.

**D. Positive Test Result**

If an Employee receives a positive COVID-19 result from the Rapid Antigen Test, they shall contact their immediate supervisor, who shall contact a Human Resources representative, who will advise the Employee: (i) to contact their health care provider for further guidance; and (ii) to follow the standard leave request process.  When the Employee is permitted to return to work, the Employee may submit medical documentation to their Human Resources representative to exempt them from the weekly testing for a specific amount of time (to be determined by Human Resources staff), during which the employee may still test positive.

**E. Exemptions**

1. Employees who are out of work on extended leave, including parental leave, FMLA, and short- or long-term disability are exempt from complying with this policy until such time as they return from leave.

2. Any Employee who has received a Medical or Religious Exemption from the Judicial Branch testing requirement. Any Employee who needs a Medical or Religious Exemption from the Judicial Branch testing requirement must submit a completed ADA Reasonable Accommodation request or a Religious Accommodation request to their Human Resources director. Reasonable Accommodations may be granted if it does not cause the Judicial Branch undue hardship or pose a direct threat to the health and safety of others.

3. Any Employee who becomes Fully Vaccinated after testing has begun may provide proof of Full Vaccination to their Human Resources director and will no longer be required to submit to weekly COVID-19 testing.

4. Any Employee who is diagnosed with COVID-19 during the effective dates of this policy may provide medical documentation of their diagnosis to their HR director and receive an exemption from further testing requirements for a specific amount of time during which the Employee may still test positive but is no longer contagious.

1. All information and requested documentation provided by an Employee under this policy shall be retained in the Employee’s confidential medical file. Certain information may be shared with Judicial Branch staff on a need-to-know basis, only as authorized by law. [↑](#footnote-ref-1)