

Interim Policy on Face Covering Requirements

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§ 1. Introduction

This Interim Policy is issued under Section 4.2 of Executive Order 224, issued on July 29, 2021. This policy implements only Section 4.2 of the order, which is effective August 2, 2021. A later policy, to be issued by the Office of State Human Resources (“OSHR”) by August 13, 2021, will implement both Sections 4.1 and 4.2 of the executive order. That later policy will replace this Interim Policy effective September 1, 2021.

§ 2. Scope of This Policy

Agencies Covered by This Policy

Section 4 of Executive Order 224 applies by default only to agencies that are either part of the Governor’s Office or are headed by a member of the Governor’s Cabinet. Other state and local government agencies are strongly encouraged by the Governor to voluntarily adopt the policy. Agencies may adopt this policy by sending a letter or email to Glenda Farrell (glenda.farrell@nc.gov) or Ronnie Condrey (ronnie.condrey@nc.gov) at OSHR.

Areas Covered by This Policy

This Interim Policy applies to any indoor space, within a state government office, building, or facility, that is controlled by a Participating Agency. It does not apply to teleworking Workers’ homes.

§ 3. Policy

Options for Participating Agencies Concerning Face Coverings

Participating Agencies have the flexibility to adopt either:

1. A policy requiring all Workers to wear Face Coverings indoors if they are not Fully Vaccinated;¹ or
2. A policy requiring Face Coverings indoors for all Workers — vaccinated and unvaccinated.²

¹ Exec. Order 224 § 4.2(a)-(b).

² Exec. Order 224 § 4.2(c).

How Agencies Can Elect One of These Options

By sending an email to all employees, posting a notice in the workplace, or any other reasonably effective means, agencies may instruct whether they are adopting option 1 (under which Fully Vaccinated Workers are not required to wear Face Coverings) or option 2 (under which all Workers are required to wear Face Coverings).

§ 4. Requirement to Wear Face Coverings

Covered Workers

Effective August 2, 2021, all Covered Workers must wear Face Coverings in any indoor space, within a state government office, building, or facility, that is controlled by a Participating Agency.

Guests

Each Participating Agency may set its own policy about whether Face Coverings are required for Guests.³ This policy may be issued by posting a notice at entrances and exits, or by any other reasonably effective means.

Exceptions

The Face Covering requirements in this policy do not apply if the Worker is alone in a room, if a Face Covering Exception applies, or if the Worker is in his or her home.

§ 5. Interim Process for How, Under Option 1, Workers Can Show They Are Fully Vaccinated

Information Provided by Workers to Qualify for Exception

If a Participating Agency elects option 1 (under which Fully Vaccinated Workers are not required to wear Face Coverings), a Worker can show that he or she is Fully Vaccinated and

³ Exec. Order 224 § 4.2(c).

qualify not to wear a Face Covering only by providing information to Human Resources staff under the process listed below. Statements to supervisors or to any other employees do not qualify Workers for the Face Covering exemption; the only method to gain the Face Covering exception is to provide information to Human Resources under the process below.

If a Participating Agency elects option 1 (under which fully vaccinated workers are not required to wear face coverings), a Worker can show that he or she is Fully Vaccinated by providing to Human Resources staff any of the following. A Worker may give this information directly to Human Resources or choose to have a supervisor, manager, or friend provide this.

1. An original or copy of a COVID-19 Vaccination Record Card issued on the form provided by the U.S. Centers for Disease Control and Prevention (“CDC”).
2. A note or receipt signed by a licensed nurse, physician pharmacist, physician’s assistant, or other representative of the place where the vaccine was administered. This note or receipt must show at least:
 - a. Your name
 - b. The name of the healthcare provider administering the vaccine
 - c. Date(s) of vaccination
 - d. Place of vaccination
 - e. Vaccine product name (i.e., Moderna, Pfizer, or Johnson & Johnson)
3. A printout made by the Worker of the Worker’s record from North Carolina’s COVID-19 Vaccine Management System (“CVMS”). (Note that some people may not have their information available in CVMS.) For information about accessing CVMS and to register, Workers may visit https://covid-vaccine-portal.ncdhhs.gov/s/?language=en_US.⁴

NOTE: Under the policy effective September 1, this interim verification process will be updated. This verification process only covers requests for Face Covering exemptions during the period from August 2 to August 31. Re-verification may be required for exemptions under the revised process that becomes effective September 1.

⁴ Other vaccine management systems (for example, the systems used in other states or the systems used by pharmacies or other health care providers) may also contain vaccination information. This Interim Policy may be updated in the future to identify additional systems that can have printouts used to show that an employee is Fully Vaccinated.

What Staff Should Do with Vaccination Information Provided by a Worker

If staff at a Participating Agency receive any of the vaccination information listed above from a Worker as part of verification under this Interim Policy, they must do the following.

1. Authorized Human Resources staff must review the material provided by the Worker in good faith to determine whether it appears to be valid.
 - a. Under this Interim Policy, no additional research is required by the Human Resources staff member to determine whether the information provided by the Worker is truthful and accurate.
 - b. However, the Human Resources staff member is authorized to require additional verification if the information provided by the Worker, upon review, shows signs of being inauthentic or fraudulent.
2. Each staff member who receives this information must keep any records resulting from this review only in an agency confidential health information file. This file (including any database containing this information) must be separate from any employees' general personnel files and must be available only to Human Resources staff within the agency.
3. So that managers and supervisors may implement the policy that Fully Vaccinated Workers are not required to wear Face Coverings:
 - a. Human Resources staff members may communicate whether Workers are exempt from the Face Covering policy because they have shown that they are Fully Vaccinated.
 - b. Human Resources staff members should tell managers and supervisors which of their employees (if any) are exempt from the Face Covering policy.
 - c. If asked, managers and supervisors may tell other workers that a particular worker is exempt from the Face Covering policy.

Duty to Provide Truthful Information

Workers violate this Policy if they knowingly provide a false or inauthentic document in an attempt to show that they are Fully Vaccinated and gain an exemption from wearing Face Coverings under this Policy.

§ 6. Discipline for Violations of this Policy

Employees may be subject to disciplinary action for violations of this Interim Policy, up to and including dismissal. Each Participating Agency may determine the appropriate level of discipline for violations. This determination may be made by issuing guidelines or policy. Different Participating Agencies need not adopt the same kind of discipline for violations of this Interim Policy, but each Participating Agency must be consistent with respect to the kind of discipline issued by that particular Participating Agency.

§ 7. Accommodation Requests

Workers may seek reasonable accommodations from Face Covering requirements on the basis of disabilities that impair or prevent wearing Face Coverings or for any other lawful reason. These workers may request an exception by contacting their agency's Human Resources office. These requests shall be considered under the agency's standard reasonable accommodation process.

§ 8. Definitions

Covered Worker – If an agency chooses to adopt option 1 (under which Fully Vaccinated Workers are not required to wear Face Coverings), “Covered Worker” means any Worker who is not Fully Vaccinated. If an agency chooses to adopt option 2 (under which all Workers are required to wear Face Coverings), “Covered Worker” means all Workers.

Face Covering – A covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears and fits snugly against the side of a person's face. Based on recommendations from the CDC, face shields do not meet the requirements for Face Coverings.

Face Covering Exception means any of the following exceptions from a requirement to wear a Face Covering.

1. Children under five (5) years of age need not wear a Face Covering, and children under two (2) years of age should not wear a Face Covering.

2. Face Coverings need not be worn by a child whose parent, guardian, or responsible person has been unable to place the Face Covering safely on the child's face.

Further, a Face Covering does not need to be worn by a Worker or Guest who:

3. Should not wear a Face Covering due to any medical or behavioral condition or disability (including, but not limited to, any person who has trouble breathing, or is unconscious or incapacitated, or is otherwise unable to put on or remove the Face Covering without assistance);
4. Is actively eating or drinking;
5. Is seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;
6. Is giving a speech for a broadcast or to an audience;
7. Is working at home or is in a personal vehicle;
8. Is temporarily removing his or her Face Covering to secure government or medical services or for identification purposes;
9. Would be at risk from wearing a Face Covering at work, as determined by local, state, or federal regulations or workplace safety guidelines; or
10. Has found that his or her Face Covering is impeding visibility to operate equipment or a vehicle.

In addition, people need not wear a Face Covering while exercising if:

11. They have symptoms while strenuously exercising, such as trouble breathing, dizziness, or lightheadedness;
12. They are wearing equipment like a mouthguard or helmet and are having trouble breathing;
13. They are doing any activity in which the Face Covering could become entangled and a choking hazard or impair vision in high risk activities such as gymnastics, cheerleading, or tumbling; or
14. They are doing activities that may cause the Face Covering to become wet, like swimming or other activities in a pool, lake, water attraction, or similar body of water.⁵

⁵ Exec. Order 224 § 1.2(b); Exec. Order 209 §§ 2.3 and 2.4.

Fully Vaccinated means that it has been two weeks after someone has received the second dose in a two-dose COVID-19 vaccine series (Pfizer or Moderna), or that it has been two weeks after someone has received a single-dose COVID-19 vaccine (Johnson & Johnson).

Guest – Any attendee, customer, guest, member, patron, spectator, or other person lawfully on the property of the agency, other than a Worker.

Participating agency – Any agency that either (1) is part of the Governor’s Office or is headed by a member of the Governor’s Cabinet or (2) elects to adopt this policy.

Worker – An employee (full or part-time, permanent, temporary, probationary, or time-limited) or contractor, regardless of whether the employee or contractor is generally working on-site or generally teleworking.

§ 9. Effective Date and Duration

This Interim Policy is effective at the beginning of the day on August 2, 2021. Pursuant to Section 4.2(b) of Executive Order 224, this Interim Policy will be replaced, effective September 1, 2021, by a policy that implements both Sections 4.1 and 4.2 of the order.

§ 10. Miscellaneous Terms

No Private Right of Action

This Interim Policy is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60), or any other person.

A violation of this Interim Policy is not grievable.

Savings Clause

If any provision of this Interim Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Interim Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Interim Policy are declared to be severable.

§ 11. Authorities

Source of Authority

This policy is issued by direction of Section 4 of Executive Order 224 (July 29, 2021). Section 4 of the executive order takes the form of (1) prohibitions and restrictions issued under the Emergency Management Act, as well as (2) a direction to the Office of State Human Resources to issue a policy. Therefore, this policy is issued under the Emergency Management Act (Chapter 166A of the North Carolina General Statutes), the statute empowering the Director of the Office of State Human Resources to issue rules In accordance with the statutory authorities referenced in Executive Order 224, this policy is issued under N.C.G.S. § 143B-10(j)(3), and this policy is also issued under the Communicable Disease Emergency Policy issued by the State Human Resources Commission pursuant to N.C.G.S. § 126-4.

§ 12. History of this Policy

Date	Version
July 30, 2021	First version