

Requirements for COVID-19 Testing and Face Coverings as an Alternative to Proof of Full Vaccination

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§ 1. Introduction

The COVID-19 Pandemic

The Coronavirus Disease 2019 (“COVID-19”) is an urgent and serious danger to the health of the people who work in state agencies, along with the members of the public who visit those agencies. As of August 13, 2021:

- COVID-19 has infected more than 1.1 million people in North Carolina, which is more than 10% of the State’s population.
- The disease has killed at least 13,826 people in North Carolina.
- More than 2,480 people are hospitalized with COVID-19, the highest number since early February 2021.

As COVID-19 has continued to spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed. The Delta variant of COVID-19 is more transmissible than the original COVID-19 virus. The spread of the Delta variant among the unvaccinated population in North Carolina has generated increased concern from medical professionals. The Delta variant now makes up the vast majority of all new COVID-19 cases in North Carolina. The Delta variant’s growing dominance, coupled with its increased transmissibility, has led to a significant increase in North Carolina’s number of COVID-19 cases and hospitalizations.

Although the Delta variant represents a severe threat to the unvaccinated, people who are fully vaccinated have a greatly reduced chance of being infected by the Delta variant. Further, being fully vaccinated greatly reduces the risk that anyone who does contract the Delta variant becomes severely ill or requires hospitalization. The best way to prevent infection and severe illness from COVID-19 is being vaccinated.

The Centers for Disease Control and Prevention (“CDC”) and the North Carolina Department of Health and Human Services (“NCDHHS”) recommend that:

- Everyone 12 years and older should get a COVID-19 vaccination to help protect against COVID-19.

- All people wear Face Coverings¹ if they are indoors in a public place and are in areas of substantial or high transmission. (As of the date this Policy is released, all North Carolina counties are areas of substantial or high transmission.)

Staff in state government workplaces, if they are not Fully Vaccinated, pose a greater risk of spreading COVID-19 to their colleagues and members of the public. The same is true for staff who provide public service outside of their homes. Because workers who are not Fully Vaccinated create a higher risk to their colleagues and members of the public, the agencies who have joined in this Policy are taking measures to reduce that risk. This Policy mitigates that risk by (1) requiring Workers who are not Fully Vaccinated to be tested each week for COVID-19 and (2) requiring Workers who are not Fully Vaccinated to wear Face Coverings.

About This Policy

The purpose of the Policy is to assist in the protection of the health and safety of state employees and the general public. This Policy is adopted by the department head and the Director of the Office of State Human Resources under N.C.G.S. § 143B-10(j)(3) as a policy “which reflect[s] internal management procedures within the department” and as a policy “governing the conduct of employees of the department.” Sections 4.1 and 4.2 of Executive Order 224 called for Cabinet agencies to adopt such a policy. This Policy is also adopted as Provision 8.1 under the Communicable Disease Emergency Policy, stating public health emergency response measures that Participating Agencies may implement.

Consistent with Section 4.1 of Executive Order 224, this Policy may be amended, both before and after this Policy’s September 1, 2021 effective date. This Policy replaces the Interim Policy for Face Covering Requirements issued July 30, 2021.

¹ Capitalized terms in this introduction are defined below in § 2 of this Policy.

§ 2. Definitions

Designated Person — A person designated by Human Resources to collect documents under this Policy, treat them confidentially, provide them to Human Resources, and (if applicable) return them to the Worker.

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. Face Coverings do not need to be worn by a person who:

1. 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);²
2. Is actively eating or drinking;³
3. Is seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;
4. Is giving a speech for a broadcast or to an audience;
5. Is working at home or is in a personal vehicle;
6. Is temporarily removing his or her Face Covering to secure government or medical services or for identification purposes;
7. Would be at risk from wearing a Face Covering at work, as determined by local, state, or federal regulations or workplace safety guidelines; or
8. Has found that his or her Face Covering is impeding visibility to operate equipment or a vehicle.

² Using this first exception requires use of the accommodation process set out in § 13 of this Policy.

³ Agencies may restrict use of this exception to reasonable intervals during the workday if a Worker attempts to abuse this exception by constantly having food or drink in hand.

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

9. They have symptoms while strenuously exercising, such as trouble breathing, dizziness, or lightheadedness;
10. They are wearing equipment like a mouthguard or helmet and are having trouble breathing;
11. They are doing any activity in which the Face Covering could become entangled and a choking hazard or impair vision in high risk activities; or
12. 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.

To the extent that an agency may require Face Coverings for Guests and have children in the workplace, the following additional exceptions apply:

13. 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.
14. 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.

Fully Vaccinated means that it has been at least 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). Participants in the Novavax trial who are two weeks after having received both doses in the series also count as “Fully Vaccinated” under this Policy. People who have received all recommended doses of a COVID-19 vaccine that is listed for emergency use by the World Health Organization also count as “Fully Vaccinated” under this Policy.⁴

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

⁴ Participants in other clinical trials should contact OSHR and DHHS so that guidance about those clinical trials can be added to this Policy. OSHR and DHHS will provide guidance in the future about how people who are authorized for additional vaccination doses should be treated for purposes of counting as “Fully Vaccinated.” For the initial version of the Policy effective September 1, 2021, people who are authorized for additional doses do not need to have taken those doses to count as “Fully Vaccinated” under this Policy.

Home – Place of residence.

Participating Agency – Agencies that adopt this Policy in whole or in part.

Worker – Any employee (full or part-time, permanent, temporary, probationary, or time-limited), intern, volunteer, or contractor.⁵

§ 3. Scope of This Policy

Agencies Covered by This Policy

This Policy, like Section 4 of Executive Order 224, applies 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 this Policy in whole or with any modifications. Non-Cabinet agencies may adopt this Policy by sending a letter or email to the Office of State Human Resources' Chief Deputy Director.

When and Where This Policy Applies

This Policy applies at Participating Agencies to all Workers.

The Face Covering requirements of this Policy apply to:

- Any indoor public space, within a state government office, building, or facility, that is controlled by a Participating Agency; and
- Participating Agencies' Workers when they are indoors doing work for their job, even if they are not on the Participating Agency's premises.

⁵ Agencies may limit the measures in this Policy to not cover contractors that they do not logistically control (for example, HVAC or electric technicians), contractors they obtain through other agencies, contractors for whom the contract cannot be changed, or contractors for whom the contract is in the process of being changed. Further, it satisfies this Policy for an agency to have a contractor's employer, rather than the agency, ensure that the requirements of this Policy about vaccination and testing are being met.

§ 4. Policy on Being Vaccinated or Tested

Requirement to Be Vaccinated or Be Tested for COVID-19

All Workers at Participating Agencies must either:

1. Provide proof that they are Fully Vaccinated; or
2. Be tested at least once a week for COVID-19, with the last test result negative for COVID-19 infection.

Proof of Vaccination

To provide proof of Full Vaccination, a Worker should follow the procedures in § 8 of this Policy.

Proof of Testing

If a Worker chooses to be tested rather than becoming Fully Vaccinated, a Worker meets the requirements of this Policy by providing the following to the Participating Agency's Human Resources office, to an Information Technology support system designated by the Human Resources office, or to a Designated Person.

- The Worker needs to provide a negative result from a COVID-19 test, and this COVID-19 test must have been taken in the last seven days (168 hours) before the beginning of the Worker's shift.

The procedures for Workers to provide test results are set out in § 9 of this Policy. Four days before the next test result would be due, Human Resources staff (or an IT system on behalf of HR) are encouraged to regularly prompt Workers to either become Fully Vaccinated or be tested again for COVID-19. However, a Worker's duties under this Policy apply whether or not HR staff provide this prompt to the Worker.

Waiting on Test Results

At the discretion of an agency, a Worker can come on-premises to the work site even if the Worker is still waiting on the test results for a test conducted in the last week, so long as the Worker is asymptomatic for COVID-19. In this situation, a Worker will need to provide proof

of being tested, such as a receipt from the test provider.⁶ The agency, through HR staff, can evaluate the circumstances and instruct the Worker whether to come in.

Timing for Testing Requirement

Tests beginning on September 1, 2021 fulfill the requirements of this Policy. Beginning on September 8, 2021, workers must either prove that they are Fully Vaccinated or have a negative test result taken in the last week.

§ 5. Responding to Symptoms of COVID-19 or Positive Test Results

Stay Home If Sick

Workers who are symptomatic for COVID-19 must not come to work on-site, whether or not they are Fully Vaccinated, unless the symptoms are explained by another known cause (such as diagnosed seasonal allergies) or they receive a negative COVID-19 test. A Worker also must stay home if he or she is instructed by a treating health care provider or public health official to quarantine after having close contact with someone who has COVID-19.

When an Employee Tests Positive for COVID-19

If the Worker's last test result was positive for COVID-19, the Worker cannot come on-premises to the work site until the end of the number of days of isolation set out in current CDC and NCDHHS recommendations.

As of the date when this Policy was issued, the CDC and NCDHHS recommendation for non-health care workers was:

- For people who test positive and remain asymptomatic, to isolate until ten days have passed since the date of the first positive COVID-19 test; and
- For people who test positive and have symptoms:
 - To isolate for at least ten days after the worker first had symptoms, and

⁶ Under this Policy, an inconclusive test is the same as waiting on a test result.

- Not to return to work, even after ten days, until both (i) the Worker has had no fever (without using fever-reducing medicine) for at least one day and (ii) the Worker's other symptoms are removing.

(This matches the DHHS Symptom Screening Checklist for Non-Healthcare Workers, available at <https://covid19.ncdhhs.gov/symptom-screening-checklist-english-0/open> .) This isolation period will automatically update in this Policy as the CDC and DHHS recommendations change over time. Refer to the Communicable Disease Emergency Policy for any employee leave options that may be applicable.

If an agency experiences a worker shortage, the agency head may waive the provisions of this Policy and allow asymptomatic people who are in their isolation period to work on-site while wearing Face Coverings.

Once someone has contracted COVID-19, he or she may continue to test positive for many weeks afterwards. In addition, the likelihood of reinfection within 90 days of an initial infection is low. Therefore, once someone tests positive for COVID-19 and completes the isolation period, he or she does not need to be tested again under this Policy for 90 days after the first positive test.

§ 6. Details on Getting Tested

Where to Be Tested

Many Participating Agencies will provide testing on site at the workplace. Workers who have testing at the work site must use the tests available at the work site, except in extraordinary circumstances. For on-site testing, Workers must bring their insurance information. Agencies may establish a schedule for Workers to be tested each week to minimize disruption to business operations.

If tests are not available at the work site, or if extraordinary circumstances prevent getting tested at the work site, Workers may go to a private testing provider (like a pharmacy, doctor's office, public health department, or urgent care site) to be tested.

How to Receive a No-Cost COVID-19 Test

The State Health Plan currently waives the cost of COVID-19 testing from in-network providers. See <https://www.shpnc.org/blog/2020-03-03/coronavirus-updates> for more details. If Workers use a testing provider other than a test at work, they should make sure the provider is in-network. Additionally, uninsured workers are eligible for no-cost COVID-19 testing through local health centers and select pharmacies. See <https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html> for more details.

Types of Tests That Meet the Requirements of This Policy

Accepted diagnostic testing includes an antigen or molecular test (nucleic acid amplification test [NAAT] or RT-PCR) authorized by the Food and Drug Administration. Results must come from a Clinical Laboratory Improvement Amendments (CLIA) certified setting appropriate for the test type (i.e., high, moderate, or waived laboratory), which means that at-home tests are not authorized. The test result should include name, date of birth, date of specimen collection, date of result, and diagnostic test result.

Time Entry for Being Tested

Employees subject to the Fair Labor Standards Act (“FLSA-subject” employees, commonly called hourly employees) can list as “Time Worked” any time getting tested to perform the weekly tests required under this Policy.⁷ This includes time spent waiting before or after the test. However, at an agency’s discretion, an FLSA-subject employee’s time may not be compensable in the following situation: the employee had on-site testing available, but the employee chose for reasons of personal convenience to utilize a third-party testing method that took more time than the testing method available on-site.

For all other Workers, including without limitation employees who are exempt from the Fair Labor Standards Act (commonly called salaried employees), time spent being tested is compensable only if they are being tested at the state agency’s office and work site.

⁷ Employees’ time is not compensable for additional tests beyond the ones required under this Policy.

§ 7. Policy on Face Coverings

Face Covering Requirements for Workers of Participating Agencies

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; or
2. A policy requiring Face Coverings indoors for all Workers — vaccinated and unvaccinated.

How Agencies Can Elect One of These Face Covering 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).

Local Government Emergency Orders requiring Face Coverings

This Policy does not serve as an exception from any Face Covering requirements issued by other governmental entities that apply to Fully Vaccinated people.

For example, if a county or city has issued an emergency order that requires Face Coverings indoors for everyone, then Participating Agency facilities in that county or city must have all Workers and Guests wear Face Coverings indoors.

Face Coverings for Guests

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

Exceptions to Face Coverings

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

§ 8. How Workers Can Show They Are Fully Vaccinated

Process

A Worker shall follow their agency's process for submitting proof of vaccination. This process may be a manual or electronic process. The proof can be provided directly by the Worker to the agency's Human Resources office, to an Information Technology system designated by the agency's Human Resources office, or to a Designated Person.

What to Submit

A Worker can show that they are Fully Vaccinated by submitting any of the following:

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. The Worker's 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, people may visit https://covid-vaccine-portal.ncdhhs.gov/s/?language=en_US.⁸

⁸ 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

§ 9. How Workers Can Show They Have Been Tested and Provide Test Results

A Worker shall follow their agency's process for submitting test results. This process may be a manual or electronic process. The proof can be provided directly by the Worker to the agency's Human Resources office, to an Information Technology system designated by the agency's Human Resources office, or to a Designated Person.

§ 10. What Participating Agencies May Do with Vaccination or Testing Documentation

If staff at a Participating Agency receive any of the vaccination documentation or testing results listed above from a Worker, laboratory, or IT system as part of verification under this Policy, they must do the following.

Review of Information by HR

Authorized Human Resources staff must review the material in good faith to determine whether it appears to be valid.

- Under this 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.
- However, the Human Resources staff member is authorized to require additional verification if the staff member has a reasonable basis to suspect that the information provided is inauthentic or fraudulent.

Confidentiality

If any vaccination documentation or test results are stored:

Policy may be updated in the future to identify additional systems that can have printouts used to show that an employee is Fully Vaccinated.

- Each staff member who receives those records must store them only in an agency confidential health information file that is maintained in accordance with any applicable State Records Center retention schedule.
- 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 Participating Agency.
- Workers should not be asked to transmit these records through a system (like email) unless that system is encrypted or otherwise secured with limited access.

The reason for any exemption from the requirements of this Policy must also be maintained consistent with these confidentiality requirements.

Managers and supervisors shall not have direct access to vaccination status, testing information, or the reason for any exemption from this Policy unless they are Designated Persons (as that term is defined in § 2 above).

Information That Can Be Provided to Managers and Supervisors

So that managers and supervisors may implement the Policy, Human Resources staff members shall communicate to managers and supervisors:

- Whether and when Workers are available to work on-site. (Workers may be unable to come to work if they have tested positive for COVID-19 or if they have not met the weekly COVID-19 testing requirements in this Policy.)
- Whether Workers are exempt from the weekly COVID-19 testing requirement. (Workers may be exempt from testing if they are Fully Vaccinated, are within a 90-day period after a diagnosed infection, or if they have received an exemption for some other reason.)
- Whether Workers are exempt from the Face Covering requirement. (Workers may be exempt from this requirement if they are Fully Vaccinated or if they have received an exemption for some other reason, such as an accommodation for medical reasons.)

If asked, managers and supervisors may tell other workers that a particular Worker is exempt from any part of this Policy. Managers and supervisors should not say what the reason is for the Worker being exempt.

§ 11. Duty to Provide Truthful Information

Workers violate this Policy if they knowingly provide a false or inauthentic document under this Policy. This includes any kind of document provided under this Policy, including but not limited to proof of vaccination, COVID-19 test results, or any information related to requests for exemption.

§ 12. Discipline for Violations of this Policy

Policy

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

If a Worker willfully refuses to comply with this Policy, he or she may be removed from the work site so that the Worker does not endanger other people on the site. The next day, if he or she again willfully refuses to comply, that is a new, additional violation of this Policy.

Willful violations of this Policy may be grounds for terminating a contractor's contract.

Pursuant to Subsections 4.1 and 4.2 of Executive Order 224, violations of this Policy shall be enforceable only through disciplinary action for workers, and not by law enforcement under N.C. Gen. Stat. § 166A-19.30(a)(2).

§ 13. Accommodation Requests and Other Exemptions or Exceptions to Policy

Workers may seek reasonable accommodations from relevant requirements of this Policy on the basis of disabilities, because they are not recommended by a physician licensed in North Carolina to be vaccinated or wear a Face Covering, because they have a sincerely held religious belief, practice, or observance, or for any other lawful reason.

The testing option may serve as a reasonable accommodation for workers seeking an accommodation from the proof of vaccination option.

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. Workers may be asked to submit documentation to substantiate their request for accommodation.

§ 14. How This Policy Applies to Remote Workers or Workers on Leave**Workers Who May Be On-Site**

Workers are not exempt from this Policy if they are, or may be, required to come into a Participating Agency's office for meetings or any part of their duties.

Workers With Remote Duty Stations Who Interact with the Public

Workers are not exempt from this Policy, even if they never come into a Participating Agency's office, if they meet with the public as part of their job duties.

Fully Remote Workers

Field-based or home-based Workers are exempt from this Policy if their duty station is their home, the Worker stays home with no work-related in-person public interaction, and the Worker is never expected to come into the work site. In this scenario, the Worker shall not be asked for vaccination information or be required to get weekly tests for COVID-19.

No Change of Duties

Each state agency has important jobs to fulfill under state law, and those jobs often require employees to come on-site or interact with the public. Pursuant to the state Teleworking Program Policy, employees will not be asked, for reasons of convenience, to incur additional duties routinely performed by other employees specifically for the purpose of enabling them to telework to avoid requirements of this policy.

§ 15. Other Exceptions

Exception for Workers on Leave/Vacation

A Worker who has been on leave will not be in violation of this policy if, upon return to the work site, the Worker has a negative test result from a test taken within the previous seven days.

Exception for Adverse Weather or Other Events That Prevent Testing

If adverse weather, emergency closings, or other conditions make testing procedures not feasible, an agency head or the State Director of Human Resources may provide a temporary exception from the requirements of this Policy.

Relationship to Other Policies

Nothing in this Policy prevents any agency, now or in the future, from requiring vaccination for certain groups of employees under other policies. This Policy sets minimum, not maximum, requirements.

§ 16. Effective Date and Duration

This Policy is effective September 1, 2021. It shall remain in effect until rescinded. It may be modified or rescinded by the Director of State Human Resources (for Cabinet agencies) or

agency head (for non-Cabinet Participating Agencies) for any reason, including but not limited to COVID-19 developments, any additional Executive Orders, and any additional federal or NCDHHS guidance.

§ 17. Miscellaneous Terms

No Private Right of Action

Except as stated below under the heading “Grievances,” this 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.

Grievances

An employee may grieve any discipline imposed against him or her as a result of this Policy, subject to the provisions of the State of North Carolina’s Employee Grievance Policy, but an employee may not file a grievance based on an assertion that another person violated this Policy. Nothing in this Policy restricts an employee’s right to file a grievance for any of the issues stated in N.C.G.S. § 126-34.02, any other law, or any State Human Resources Commission policy.

Savings Clause

If any provision of this 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 Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

§ 18. 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 agency heads and the Director of the Office of State Human Resources to issue policies (N.C.G.S. § 143B-10(j)(3)), and the Communicable Disease Emergency Policy issued by the State Human Resources Commission pursuant to N.C.G.S. § 126-4.

§ 19. History of this Policy

Date	Version
August 13, 2021	First version