

## Policy on Face Coverings and on Vaccination or Testing

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### Contents

IMPORTANT NOTICE CONCERNING VERSION 3.0 OF THIS POLICY .....	3
§ 1. Introduction .....	4
The COVID-19 Pandemic .....	4
About This Policy .....	6
§ 2. Definitions .....	7
§ 3. Scope of This Policy .....	9
Agencies Covered by This Policy .....	9
When and Where This Policy Applies .....	9
§ 4. Policy on Being Vaccinated or Tested .....	9
Requirement to Be Vaccinated or Be Tested for COVID-19 .....	9
Proof of Vaccination .....	10
Proof of Testing .....	10
Waiting on Test Results .....	10
Timing for Testing Requirement .....	10
§ 5. What to Do After a Positive Test or Symptoms of COVID-19 .....	11
§ 6. Details on Getting Tested .....	11
At-Home Rapid Tests .....	11
On-Site Testing .....	12
How to Receive a No-Cost COVID-19 Test .....	12
Types of Tests That Meet the Requirements of This Policy .....	12
Time Entry for Being Tested .....	13
§ 7. Policy on Face Coverings .....	13
General Policy .....	13
Identifying Areas Where Face Coverings Are Required .....	13
Employees Are Welcome to Wear Face Coverings .....	14
Local Government Orders or Federal Authority Requiring Face Coverings .....	14
Exceptions to Face Coverings .....	14
Applying the Face Coverings Policy to Shared Facilities .....	14

§ 8.	How Workers Can Show They Are Fully Vaccinated.....	15
	How to Provide Documents, and What to Do While Waiting for HR Review.....	15
	What to Submit.....	15
§ 9.	How Workers Can Show They Have Been Tested and Provide Test Results.....	16
	What to Provide for Rapid Tests.....	16
§ 10.	What Participating Agencies May Do with Vaccination or Testing Documentation.....	17
	Review of Information by HR.....	17
	Sampling.....	17
	Confidentiality.....	17
	Information That Can Be Provided to Managers and Supervisors.....	18
§ 11.	Duty to Provide Truthful Information.....	19
§ 12.	Discipline for Violations of this Policy.....	19
§ 13.	Accommodation Requests and Other Exemptions or Exceptions to Policy.....	19
§ 14.	How This Policy Applies to Remote Workers, Field-Based Workers, and Workers on Leave.....	20
	Workers Who May Be On-Site.....	20
	Workers With Remote Duty Stations Who Interact with the Public.....	20
	Fully Remote Workers.....	20
	Workers on Leave, Vacation, or Days Off.....	21
	No Change of Duties.....	21
§ 15.	How This Policy Applies to Contractors.....	21
§ 16.	Miscellaneous Exceptions.....	21
	Exception for Adverse Weather or Other Events That Prevent Testing.....	22
	Relationship to Other Policies and Requirements.....	22
§ 17.	Effective Date and Duration.....	22
§ 18.	Miscellaneous Terms.....	22
	No Private Right of Action.....	22
	Grievances.....	23
	Savings Clause.....	23
§ 19.	Authorities.....	23
	Source of Authority.....	23
§ 20.	History of this Policy.....	24

**IMPORTANT NOTICE CONCERNING VERSION 3.0 OF THIS POLICY**

Effective May 9, 2022 and until further notice, Participating Agencies are no longer required to implement the terms of this Policy that require weekly testing for Workers who are not Fully Vaccinated. However, agency heads may, in their discretion, continue to require testing for Workers who are not Fully Vaccinated consistent with this Policy in those settings that the agency head determines to be high-risk to employees, the public, or others. Such places may include, but are not limited to, long term care facilities, correctional facilities, homeless shelters, and health care facilities. Federal rule may also require testing, in certain settings, for Workers who are not Fully Vaccinated.

**All of the following provisions of this policy addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing for some or all of the Participating Agency's Workers who are not Fully Vaccinated.** The weekly testing provisions apply only to the unvaccinated Workers identified by the Participating Agency as needing to continue testing under this Policy.

Participating Agencies should notify Workers who will continue to be tested under the terms of this Policy by sending an email, posting a notice in the workplace, or any other reasonably effective means of notifying Workers of the continued requirement. Agency heads may discontinue testing at any time, in their discretion.

Workers may choose to continue providing documentation of their vaccination status, so that they are exempted if testing resumes in the future. For this reason, Participating Agencies that elect to discontinue the weekly testing component of this Policy should continue to accept vaccination documentation.

Participating Agency heads may reinstate the testing requirement of this Policy in their discretion, in coordination with the Governor's Office and OSHR, and with no less than one (1) week notice to impacted Workers.

Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

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## § 1. Introduction

### The COVID-19 Pandemic

As of the date of Version 3.0 of this Policy, community burden of the Coronavirus Disease 2019 (“COVID-19”) is relatively low in almost all North Carolina counties. The number of North Carolinians testing positive for COVID-19 has generally decreased in the weeks preceding the effective date of this revised Policy; the same holds true for the number of positive cases detected amongst state employees who are not Fully Vaccinated.

Accordingly, this version of this Policy removes the requirement for unvaccinated Workers at Participating Agencies to test weekly for COVID-19, but allows agency heads to continue to require testing, in their discretion, for unvaccinated Workers who work in settings that they determine to be high-risk.

Despite the recent positive trends in the trajectory of the virus, COVID-19 remains a 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 April 30, 2022:

- There have been more than 2.6 million cases of COVID-19 in North Carolina.
- The disease has killed at least 24,577 people in North Carolina.

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, and the Omicron variant is more transmissible than the Delta variant. When each of these variants came to North Carolina, they produced significant increases in the number of COVID-19 cases and hospitalizations. As of February 25, 2022, the Omicron variants make up almost all new COVID-19 cases in North Carolina. New variants and new lineages of the existing variants may develop in the future, posing new risks.

Although COVID-19 represents a severe threat to the unvaccinated, people who are fully vaccinated have a reduced chance of being infected by COVID-19. Further, being fully vaccinated reduces the risk that anyone who does contract COVID-19 becomes severely ill

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or requires hospitalization. This protection is strengthened further by taking recommended boosters to become up-to-date on vaccination.

Having previously recovered from a COVID-19 infection may, in certain cases, provide partial protection against the risks of future reinfection and severe disease; however, the data do not demonstrate that this protection is more effective than what would be produced in the same circumstances from vaccination.<sup>1</sup> Even those who have already contracted COVID-19 can benefit from strengthening their protection through vaccination.

The Centers for Disease Control and Prevention (“CDC”) and the North Carolina Department of Health and Human Services (“NCDHHS”) recommend that everyone 5 years and older should get a COVID-19 vaccination to help protect against COVID-19, and individuals should also receive a booster shot, if and when eligible. The best way to prevent infection and severe illness from COVID-19 is being vaccinated and staying up-to-date on COVID-19 vaccinations.

State government staff, if they are not Fully Vaccinated, pose a greater risk of spreading COVID-19 to their colleagues in the workplace and members of the public they may contact in-person as part of their jobs. Further, for people who are at the highest risk of severe illness and death – workers who are not yet Fully Vaccinated – periodic testing increases the chance of an early diagnosis, which permits more effective therapeutics or other treatments.

Wearing Face Coverings lowers the risk of transmission and infection from COVID-19. The CDC recommends that employers should implement Face Coverings as an enhanced COVID-19 prevention measure in high-risk congregate settings, such as correctional facilities and homeless shelters, and people should consider wearing Face Coverings if they have contact with people at high risk for severe COVID disease. Therefore, this Policy allows agency heads to require Face Coverings in higher-risk settings.

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<sup>1</sup> This Policy takes previous infections into account by exempting covered Workers who are subject to the testing requirement for a period of 90 days following infection with COVID-19.

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The agencies participating in this Policy take these measures, among other reasons: (1) to mitigate the risks of spreading COVID-19, (2) to protect the health of their employees by encouraging COVID-19 vaccination, and (3) to protect the health of their employees by early detection of COVID-19 cases among Workers who are unvaccinated, the people who have the highest risk of severe COVID-19 illness and death.

### **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 this Policy; those directions have been continued in subsequent executive orders, including Executive Order 253 issued March 1, 2022. This Policy reflects the Governor’s directions in Executive Order 253. 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.

As authorized by the Governor’s executive orders, 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. This version of the Policy<sup>2</sup> (Version 3.0) replaces the previous version (Version 2.0) effective at the beginning of the day on March 9, 2022.

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<sup>2</sup> A previous version of this Policy was named “Requirements for COVID-19 Testing and Face Coverings as an Alternative to Proof of Full Vaccination.” Agencies are encouraged to revise their documents about this Policy to list its revised name, but agency documents remain fully valid if they identify this Policy by its prior name, by the phrase “vaccination-or-testing policy,” or by any other reasonably clear name.

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## § 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);<sup>3</sup>
2. Is actively eating or drinking;<sup>4</sup>
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

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<sup>3</sup> Using this first exception requires use of the accommodation process set out in § 13 of this Policy.

<sup>4</sup> 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.

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8. 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:

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 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).<sup>5</sup>

Home – Place of residence.

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<sup>5</sup> In addition, the following people who have taken other vaccines count as “Fully Vaccinated”:

- Participants in the Novavax trial who are two weeks after having received both doses.
- For any other COVID-19 vaccine that is listed for emergency use by the World Health Organization, people who have received all recommended doses, after any waiting period recommended for the doses to take full effect.

For the current version of this Policy, people who are authorized for additional vaccination doses (so-called “booster shots”) do not need to have taken those doses to count as “Fully Vaccinated” under this Policy.



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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.<sup>6</sup>

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### § 3. Scope of This Policy

#### **Agencies Covered by This Policy**

This Policy 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 on days that they either:

- (1) come to the Participating Agency’s facility for work or
- (2) interact with members of the public as part of their job duties.

See § 14 of this Policy for further details about how this Policy applies, or does not apply, to remote workers, field-based workers, and workers on leave.

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### § 4. Policy on Being Vaccinated or Tested

#### **Requirement to Be Vaccinated or Be Tested for COVID-19**

Workers covered by this Policy at Participating Agencies must either:

1. Provide proof that they are Fully Vaccinated; or
2. Provide a timely test result for COVID-19.

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<sup>6</sup> See the discussion in Section 15 of this Policy for how it applies to contractors.

Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

### **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.<sup>7</sup> 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.

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<sup>7</sup> Under this Policy, an inconclusive test is the same as waiting on a test result.

Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

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## § 5. What to Do After a Positive Test or Symptoms of COVID-19

Workers who test positive or who are symptomatic for COVID-19 must follow the isolation period established in current CDC and DHHS recommendations.<sup>8</sup> 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. 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.

The state Communicable Disease Emergency Policy has provided a limited amount of paid “CDE-Administrative Leave” to employees who must isolate or quarantine. Refer to the provisions under the Communicable Disease Emergency Policy for conditions and details.

Once someone has contracted COVID-19, he or she may continue to test positive for many weeks afterwards. 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. If someone receives an initial positive test that is later confirmed to be a false positive, this 90-day exemption from testing does not apply.

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## § 6. Details on Getting Tested

### At-Home Rapid Tests

Beginning on March 7, 2022, Workers may meet the testing requirements of this Policy by completing at-home rapid COVID-19 antigen tests.<sup>9</sup>

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<sup>8</sup> As of the date of this version of this Policy, these recommendations are found at <https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html>.

<sup>9</sup> Agency heads may continue to require PCR tests, rather than at-home rapid tests, for Workers (a) where required by the federal government and (b) in settings that the agency head determines to be high-risk to employees, the public, or others.

Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

### **On-Site Testing**

Some Participating Agencies will provide testing on site at the workplace. 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.

### **How to Receive a No-Cost COVID-19 Test**

The State Health Plan currently

- (1) Covers 100% of the cost of at-home rapid COVID-19 tests, with a limit of 8 covered at-home rapid tests per 30 days; and
- (2) Waives the cost of traditional PCR COVID-19 testing from in-network providers.

See <https://www.shpnc.org/coronavirus-updates> for more details and important conditions. If Workers use a testing provider other than a test at work, they should make sure the provider is in-network.

Additionally, everyone is eligible for no-cost COVID-19 testing that takes place at No-Cost Community Testing Events. At these events, there is no cost to the insurer or the person being tested. As of the date of this Policy, there are dozens of these events occurring every day, all across the state. See <https://covid19.ncdhhs.gov/about-covid-19/testing/find-my-testing-place/no-cost-community-testing-events> for more details.

### **Types of Tests That Meet the Requirements of This Policy**

Accepted diagnostic testing includes either:

- (1) An at-home rapid COVID-19 antigen self-test, or
- (2) A molecular COVID-19 test (nucleic acid amplification test [NAAT] or RT-PCR).

In either case, the test must be authorized by the Food and Drug Administration (including but not limited to authorizations for emergency use). Methods of taking these tests may include nasal swabs, saliva tests, or other methods authorized by the FDA.

Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

### **Time Entry for Being Tested**

Because at-home rapid COVID-19 tests are allowed under this Policy, and because some agencies have on-site testing programs, it should rarely be the case that employees take substantial amounts of time to get tested under this Policy.

Employees subject to the Fair Labor Standards Act (“FLSA-subject” employees, commonly called hourly employees) can list as “Time Worked” the time getting tested for the weekly tests required under this Policy.<sup>10</sup> Employees should take reasonable measures to minimize the amount of time taken to complete weekly tests. Reasonable measures to minimize this time include employees using (1) at-home rapid COVID-19 tests, if those are available in the area, and (2) using on-site, rather than off-site, testing when available.

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 on-site at an agency-designated work site.

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## **§ 7. Policy on Face Coverings**

### **General Policy**

Face Coverings are generally optional in Participating Agency facilities. Agency heads, in their discretion, may require Face Coverings in settings that the agency head determines to be high-risk to employees, the public, or others. Such places may include, but are not limited to, long term care facilities, correctional facilities, homeless shelters, and health care facilities.

### **Identifying Areas Where Face Coverings Are Required**

By sending an email to all employees, posting a notice in the workplace, or any other reasonably effective means, agencies may instruct whether Face Coverings are required in a facility.

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<sup>10</sup> Employees’ time is not compensable for additional tests beyond the ones required under this Policy.

Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

### **Employees Are Welcome to Wear Face Coverings**

Employees continue to be welcome to wear Face Coverings, even where not required. Individuals are recommended to consult DHHS guidance to inform their decisions about wearing Face Coverings. Unvaccinated employees are strongly encouraged to wear Face Coverings, even in situations where Face Coverings are not required.

### **Local Government Orders or Federal Authority Requiring Face Coverings**

This Policy does not serve as an exception from any Face Covering requirements issued by other governmental entities. For example, the federal government has several Face Covering requirements that apply in particular settings, such as health care. These federal Face Covering requirements override any contrary language in this Policy. Similarly, 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 everyone wear Face Coverings indoors. If a local emergency order contains exceptions for government operations, the Face Covering requirements of this Policy, rather than the local emergency order, will apply.

### **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.

### **Applying the Face Coverings Policy to Shared Facilities**

If an agency requires Face Coverings in certain situations, those requirements apply to:

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

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## § 8. How Workers Can Show They Are Fully Vaccinated

### How to Provide Documents, and What to Do While Waiting for HR Review

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.

After Workers have submitted proof of vaccination, they do not need to be tested weekly for COVID-19 while they are waiting on HR staff to review the documents. However, those Workers must wear Face Coverings indoors in the workplace while they are waiting for HR review, unless a Face Covering Exception applies.

### 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

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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](https://covid-vaccine-portal.ncdhhs.gov/s/?language=en_US).<sup>11</sup>

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## § 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. For tests that go to a laboratory, where feasible, and where a Worker is notified and provides consent, agencies may set up a process to receive test results directly from that laboratory.

The Worker should indicate to the best of his or her ability whether the lab's report said the results were positive, negative, or inconclusive.<sup>12</sup>

### What to Provide for Rapid Tests

For rapid at-home COVID-19 tests, the Worker may submit a smartphone photo of the test result, or the Worker may provide some other reasonable proof of the test result suggested by the agency's Human Resources office.

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<sup>11</sup> 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 Policy may be updated in the future to identify additional systems that can have printouts used to show that an employee is Fully Vaccinated.

<sup>12</sup> If the lab report is not easy to understand, a Worker cannot be disciplined for incorrectly indicating whether the test was positive, negative, or inconclusive.



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## § 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 may 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.

### Sampling

For proof of vaccination, Human Resources staff will review each document provided by the employee. For test results, HR staff may use sampling (for example, reviewing only one out of every four documents submitted), but HR staff must review any document where the Worker did not indicate whether the test result was positive, negative, or inconclusive.

### Confidentiality

If any vaccination documentation or test results are stored:

- 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.

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- 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 any Face Covering requirement that might be in place.

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.

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**§ 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.

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**§ 12. Discipline for Violations of this 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 applicable executive orders, 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).

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**§ 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

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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.

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**§ 14. How This Policy Applies to Remote Workers, Field-Based Workers, and Workers on Leave**

**Workers Who May Be On-Site**

Workers must follow this Policy if they are, or may be, required to come into a Participating Agency's facility for meetings or any part of their duties.

**Workers With Remote Duty Stations Who Interact with the Public**

Workers must follow this Policy if they meet with the public as part of their job duties, even if they never come into a Participating Agency's office.

**Fully Remote Workers**

This Policy does not apply to a Worker on any day when he or she did not:

- (1) come to the Participating Agency's facility for work or
- (2) interact with members of the public as part of their job duties.

Therefore, Workers will never be covered by 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.

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### **Workers on Leave, Vacation, or Days Off**

A Worker who has been on leave, on vacation, or who has had days off 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.

### **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.

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## **§ 15. How This Policy Applies to Contractors**

Contractors must follow the requirements in this Policy to (1) be Fully Vaccinated or tested weekly and (2) wear Face Coverings indoors at Participating Agency facilities. Where possible, it satisfies this Policy for an agency to have a contractor's employer, rather than the agency, ensure that the requirements of this Policy are being met. If necessary, Participating 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 for whom the contract cannot be changed, or contractors for whom the contract is in the process of being changed.

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## **§ 16. Miscellaneous Exceptions**

Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

### **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 and Requirements**

This Policy sets minimum, not maximum, requirements, and it does not override other governmental requirements. For example, the vaccination requirement issued by the Centers for Medicaid and Medicare Services (CMS) overrides any contrary language in this Policy.

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## **§ 17. Effective Date and Duration**

This Policy became effective September 1, 2021, and this version of the Policy is effective May 9, 2022. 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.

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## **§ 18. 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.

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### **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.

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## **§ 19. Authorities**

### **Source of Authority**

This Policy is issued independently under each of the sources of authority below:

- a) The Emergency Management Act (Chapter 166A of the North Carolina General Statutes), at the direction of Executive Order 224 (July 29, 2021), the subsequent executive orders continuing that direction, and Executive Order 253 (March 1, 2022).
- b) 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)).
- c) The statute providing the Governor with the power and duty to supervise the official conduct of all executive and ministerial officers (N.C.G.S. § 147-12).
- d) The Communicable Disease Emergency Policy issued by the State Human Resources Commission pursuant to N.C.G.S. § 126-4.

Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

## § 20. History of this Policy

Date	Version
Aug. 13, 2021	First version
Aug. 27, 2021 (Version 1.1)	<p>Several minor adjustments:</p> <ul style="list-style-type: none"> <li>• In Section 6, added more information about No-Cost Community Testing Events, which are completely free to the person being tested.</li> <li>• In Section 6, text has been updated about compensating test-taking time for FLSA-subject employees.</li> <li>• In Section 7, clarified that if a local emergency order contains exceptions for governmental operations, then the Face Covering requirements of this Policy, rather than the local emergency order, will apply.</li> <li>• Section 8 has been updated to specify that Workers do not need to be tested, but must wear Face Coverings if the Workers have submitted proof of Full Vaccination, but are waiting on HR to review that proof.</li> <li>• Section 9 has been updated to reflect that laboratories may, with consent, provide test results directly to the state agency.</li> <li>• Section 9 has been updated to reflect that in the statewide vendor system, employees will be asked (to the best of their ability) to indicate whether a test result was positive, negative, or inconclusive, and HR staff may use sampling on test results.</li> <li>• Clarified text about how the Policy applies to contractors, and moved it from a footnote into Section 15 of the main text.</li> </ul>
Mar. 1, 2022, effective Mar. 7, 2022 (Version 2.0)	<ul style="list-style-type: none"> <li>• Updated Section 1, the discussion of the pandemic and public health guidance.</li> <li>• In Sections 3 and 14, clarified the Policy provisions concerning application of the Policy to people who are on days off or who are working from home.</li> <li>• In Section 5, updated materials on isolation and quarantine to point to most recent CDC and DHHS recommendations.</li> <li>• In Sections 6 and 9, authorized Workers to meet the testing requirements in this Policy by using at-home rapid tests.</li> <li>• In Section 7, modified policy on Face Coverings to provide that starting on March 7, 2022, Face Coverings are generally not required in Participating Agency facilities. However, Face Coverings may be required by the agency head in certain higher-risk situations.</li> </ul>
May 6, 2022, effective May 9, 2022 (Version 3.0)	<ul style="list-style-type: none"> <li>• Added a Section prior to the Introduction removing the required weekly testing component of the policy for Workers who have not submitted proof of Full Vaccination, effective May 9, 2022. Clarified that agency heads may, in their discretion, elect to continue weekly testing for some or all Workers at the</li> </ul>



Note: Provisions addressing weekly testing apply only to those Participating Agencies that elect to continue weekly testing, and apply only to the Workers identified by those Participating Agencies as needing to test.

	<p>Participating Agency who work in settings that the agency head determines, in their discretion, to be high-risk. Clarified that the terms of the Policy addressing weekly testing apply only to those Participating Agencies and covered Workers at those agencies that elect to continue weekly testing or that reinstate weekly testing if discontinued at any point.</p> <ul style="list-style-type: none"><li>• Updated Section 1, the discussion of the pandemic and testing trends among Workers who are not Fully Vaccinated.</li><li>• Made other clarifying edits throughout to conform with the change in policy noted above.</li></ul>
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