



# State of North Carolina

**ROY COOPER**  
GOVERNOR

March 1, 2022

## EXECUTIVE ORDER NO. 253

### EXTENDING AND AMENDING THE VACCINE VERIFICATION POLICY FOR CABINET AGENCY EMPLOYEES TO REFLECT IMPROVING COVID-19 METRICS

**WHEREAS**, on March 10, 2020, the undersigned issued Executive Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

**WHEREAS**, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

**WHEREAS**, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

**WHEREAS**, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

**WHEREAS**, on February 18, 2022, the President indicated that the national emergency relating to COVID-19 would remain in effect due to the virus's persistent threat to public health; and

**WHEREAS**, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, 228-232, 234, 236, 238-240, 244-245, and 252; and

**WHEREAS**, more than two million five hundred ninety thousand (2,590,000) people in North Carolina have had COVID-19, and over twenty-two thousand six hundred (22,600) people in North Carolina have died from the disease; and

**WHEREAS**, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

**WHEREAS**, the State of Emergency allows North Carolina to provide increased regulatory flexibility to the North Carolina Department of Health and Human Services ("NCDHHS") and health care facilities, which allows health care providers to expand their capacity to treat patients and assist with vaccination efforts and respond to any spikes in the spread of the disease; and

**WHEREAS**, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to advance the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

#### Measures to Protect Against COVID-19

**WHEREAS**, unvaccinated people pose a risk not only to themselves, but to people who are immunocompromised and to children who are too young to be vaccinated; and

**WHEREAS**, it remains critical that North Carolinians exercise personal responsibility to protect themselves and their friends and neighbors from the spread of COVID-19, including by obtaining the free and widely available COVID-19 vaccines; and

**WHEREAS**, the undersigned and the Secretary of NCDHHS have implemented measures to ensure that COVID-19 testing and vaccination administration are accessible to as many North Carolinians as possible, and the undersigned has determined that these measures should continue; and

**WHEREAS**, on August 13, 2021, at the undersigned's direction under Executive Order No. 224, the Office of State Human Resources ("OSHR") issued a policy (as such Policy may be amended, the "Policy") on face coverings and on weekly testing of employees who are not yet fully vaccinated; and

**WHEREAS**, the Policy requires, among other measures, that Cabinet agency workers show they are either fully vaccinated, or that they have been recently tested for COVID-19; and

**WHEREAS**, Executive Order No. 224 instructed OSHR to amend the Policy as needed, and it was updated on August 27, 2021; and

**WHEREAS**, since the Policy's adoption, the percentage of state employees who are fully vaccinated has increased by more than twelve percent (12%); in addition, the weekly testing component of the Policy has succeeded in identifying over four thousand cases of COVID-19 among unvaccinated Cabinet agency workers; and

**WHEREAS**, the undersigned, in consultation with NCDHHS, has determined that the requirements of the Policy directing vaccination or regular testing in lieu of vaccination should remain in place to protect the health and safety of state workers and guests of state facilities; and

**WHEREAS**, the undersigned encourages public and private employers to adopt the same protections for state employees and the public; and

#### Current Metrics: Updates to the Policy

**WHEREAS**, as of the date of this Executive Order, COVID-19 metrics continue to improve across the state; and

**WHEREAS**, specifically, the daily number of newly diagnosed cases, the number of COVID-19-associated hospitalizations, and the number of positive tests as a percentage of all tests, and the number of emergency room visits for COVID-19-like illnesses have all declined, relative to the most recent peak in January 2022; and

**WHEREAS**, North Carolinians now have a wider array of tools, compared to at the onset of the pandemic, to mitigate the spread of the virus, including vaccines and boosters and treatments for those with severe disease; and

**WHEREAS**, COVID-19 vaccines are widely available at no cost to all eligible North Carolinians age five (5) and older who wish to receive one, and all eligible North Carolinians are strongly encouraged to get vaccinated; and

**WHEREAS**, in light of improving trends and the availability of vaccines and treatment, NCDHHS recently announced that it will modify its public health guidance, effective March 7, 2022, on face coverings, among other public-health measures; and

**WHEREAS**, accordingly, the undersigned desires to direct OSHR to update the Policy to lift the requirement to wear face coverings, except in high-risk settings; and

**WHEREAS**, the undersigned has indicated that local governments and local school districts should consider moving to adopt mask-optional policies in low-risk settings; and

**WHEREAS**, public health experts advise that face coverings should continue to be worn by those who are at high-risk of severe illness, those who are not up-to-date on their vaccinations, and those who live in, work in, or visit certain high-risk settings, such as long term care facilities, correctional facilities, homeless shelters, and health care facilities; and

**WHEREAS**, accordingly, the undersigned desires to direct OSHR to update the Policy to enable the heads of Cabinet agencies to require face-coverings in those settings determined to be high-risk; and

**WHEREAS**, all Cabinet agency workers should feel welcome to continue to wear face coverings, even if no longer required to do so; and

**WHEREAS**, the Policy has also been issued under N.C. Gen. Stat. § 143B-10(j)(3), which is the statute empowering department heads and the Director of OSHR to issue agency policies which reflect internal management procedures within the department, and therefore, OSHR has the authority to modify, and may modify, the provisions of the Policy, in consultation with NCDHHS, not only during the pendency of this Executive Order, but also after this Executive Order's expiration or termination; and

**WHEREAS**, this Executive Order supersedes Executive Orders Nos. 224, 238 and 244; and

#### Statutory Authority and Determinations

**WHEREAS**, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate Gubernatorially vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken

implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes the prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the undersigned may amend or rescind the prohibitions and restrictions imposed by local authorities; and

**WHEREAS**, pursuant to Article III of the Constitution of North Carolina and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 147-12, the Governor has the authority and the duty to supervise the official conduct of all executive and ministerial officers; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 143B-10(j)(3), the head of each principal state department and the Director of OSHR may adopt policies, consistent with law and with rules established by the Governor and with rules of the State Human Resources Commission ("Commission"), which reflect internal management procedures within each department, including policies governing the conduct of employees of the department; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 126-4, the Commission shall establish state human resources policies and rules subject to approval of the Governor, and pursuant to this statute, the Commission has issued a Communicable Disease Emergency Policy and rules that require social distancing policies, including administrative and engineering controls, that shall be implemented immediately upon orders from the Governor.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

**Section 1. OSHR Shall Update the Policy on Face Coverings and on Vaccination or Testing.**

As of the effective date of this Executive Order, this Executive Order supersedes Executive Orders No. 224, 238, and 244. For avoidance of doubt, this Executive Order is not retroactive and does not invalidate actions taken under Executive Orders Nos. 224, 238, 244, or the Policy.

OSHR shall continue to implement, and Cabinet agencies shall continue to follow, the Policy. For the version of the Policy effective March 7, 2022, OSHR is directed to:

- (a) Make face coverings generally optional in Cabinet agencies, but allow agency heads in their discretion to continue to require face coverings in settings that they determine 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.
- (b) Continue the vaccination-or-testing policy, while allowing at-home rapid tests to satisfy the Policy's testing requirement.

OSHR is delegated the authority to amend or rescind the Policy in the future based on changes in North Carolina COVID-19 conditions, the emergence of new variants, or scientific developments, and after consultation with the Office of the Governor and NCDHHS. Any such changes to the Policy may be made without amendment to this or any other Executive Order.

## **Section 2. Effect on Local Emergency Management Orders.**

- 2.1. **Local Government Flexibility.** The impact of COVID-19 has been and will likely continue to be different in different parts of North Carolina. As such, counties and cities may deem it necessary to adopt ordinances and issue state of emergency declarations which impose restrictions or prohibitions to the extent authorized under North Carolina law, such as on the activity of people and businesses, to a greater degree than in this Executive Order. To that end, nothing herein, except where specifically stated below in Subsection 2.2-2.4, is intended to limit or prohibit counties and cities in North Carolina from enacting ordinances and issuing state of emergency declarations which impose greater restrictions or prohibitions to the extent authorized under North Carolina law.
- 2.2. **Local Restrictions Cannot Restrict State or Federal Government Operations.** Notwithstanding Subsection 2.1 above, no county or city ordinance or declaration shall have the effect of restricting or prohibiting governmental operations of the state or the United States.
- 2.3. **Local Restrictions Cannot Prevent COVID-19 Testing.** To ensure that COVID-19 testing is available to the maximum extent possible, and to create certainty and uniformity across the state for businesses and operations that are providing this valuable testing, the undersigned specifically prohibits all local prohibitions and restrictions that would prevent or restrict businesses or operations from providing COVID-19 testing or would prevent or restrict businesses or operations from advertising COVID-19 testing services that they are providing to the public. This preemption includes, but is not limited to, building permits, signage restrictions, and zoning requirements. However, the preemption provided by this Section is available only to COVID-19 testing sites that are operated in accordance with state and federal law and in cooperation with the NCDHHS or a local public health department.
- 2.4. **Local Restrictions Cannot Prevent COVID-19 Vaccine Administration.** To ensure that COVID-19 vaccines are available to the maximum extent possible, and to create certainty and uniformity across the state for businesses and operations that are providing this valuable service, the undersigned specifically prohibits all local prohibitions and restrictions that would prevent or restrict businesses or operations from providing COVID-19 vaccines or would prevent or restrict businesses or operations from advertising COVID-19 vaccines that they are providing to the public. This preemption includes, but is not limited to, building permits, signage restrictions and zoning requirements. However, the preemption provided by this Section is available only to COVID-19 vaccination sites that are operated in accordance with state and federal law and in cooperation with the NCDHHS or a local public health department.

## **Section 3. No Private Right of Action.**

This Executive Order 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.

**Section 4. Savings Clause.**

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

**Section 5. Distribution.**

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.


**Section 6. Enforcement.**

- 6.1. Except where otherwise specified herein and pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.
- 6.2. A violation of Section 2 of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d) and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A. Local governments are specifically authorized and encouraged to adopt ordinances that provide law enforcement officials with flexibility to use civil, rather than criminal, penalties to enforce violations of this Executive Order. A violation of Section 1 of this Executive Order shall be enforceable only through disciplinary action for workers.
- 6.3. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

**Section 7. Effective Date.**

This Executive Order is effective March 1, 2022, at 5:00 pm. This Executive Order shall remain in effect through May 5, 2022, at 5:00 pm, unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order, provided that the termination of the State of Emergency declared in Executive Order No. 116 or the termination or expiration of this Executive Order shall not impact the continuation of the Policy directed in Section 1 herein and the direction to Cabinet agencies to follow the Policy.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 1<sup>st</sup> day of March in the year of our Lord two thousand and twenty-two.

  
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Roy Cooper  
Governor

ATTEST:

  
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Elaine F. Marshall  
Secretary of State

