



State of North Carolina

ROY COOPER
GOVERNOR

May 4, 2022

EXECUTIVE ORDER NO. 257

ESTABLISHING AN INCENTIVE PROGRAM TO ENCOURAGE STATE EMPLOYEES TO RECEIVE THEIR COVID-19 BOOSTER SHOT

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 to provide for the health, safety, and welfare of residents and visitors located in North Carolina; 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, 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, 169-177, 180-181, 183-185, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, 228-232, 234, 236, 238-240, 244-245, 252-253, and 256; and

WHEREAS, COVID-19 continues to infect 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, there have been more than two million six hundred fifty-nine thousand (2,659,000) cases of COVID-19 in North Carolina, and more than twenty-three thousand four hundred (23,400) people in North Carolina have died from the disease; and

WHEREAS, currently, community burden of COVID-19 is relatively low in almost all North Carolina counties, but COVID-19 has repeatedly shown the ability to mutate into new variants and produce new waves of cases from existing variants; and

WHEREAS, as a result, it is prudent for North Carolina residents and employers to take steps that will build resilience against future COVID-19 infections; and

COVID-19 Vaccinations and Booster Shots in North Carolina

WHEREAS, a COVID-19 booster shot is a subsequent dose of vaccination administered to enhance or restore protection against COVID-19, which may have waned over time after a primary series vaccination; and

WHEREAS, rigorous clinical trials have demonstrated that the FDA-authorized and approved COVID-19 vaccinations and booster shots are safe and effective in protecting individuals against severe illness, hospitalization, and death; and

WHEREAS, the U.S. Centers for Disease Control and Prevention (the “CDC”) currently recommends that everyone age twelve (12) and above stay “up-to-date” on their COVID-19 vaccinations by receiving booster shots, when eligible; and

WHEREAS, COVID-19 vaccines for those age five (5) and older and COVID-19 booster shots for those age twelve (12) and older are widely available at no cost to all eligible North Carolinians, and all eligible North Carolinians are strongly encouraged to get vaccinated; and

WHEREAS, people who are vaccinated and boosted are less likely to become severely ill and die from COVID-19, and this not only benefits them, but benefits their employers by reducing lost sick time and employee death; and

WHEREAS, state employees who become infected with COVID-19 and are not vaccinated and boosted have a significantly greater chance of needing medical treatment and hospitalization than those who are vaccinated and boosted, which results in higher costs to the State Health Plan and taxpayers; and

WHEREAS, for these reasons, it is reasonable for Cabinet Agencies to encourage their employees to be vaccinated and receive booster shots, since they will protect the health of state workers, protect the health of people in state facilities, and reduce lost work time due to illness; and

WHEREAS, therefore, employees of Cabinet Agencies will—for the duration and under the terms of this Executive Order and any policy issued under this Executive Order—be eligible to receive an additional day of paid leave if they receive or have received a booster shot; and

Statutory Authority and Determinations

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 the Office of State Human Resources (“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

WHEREAS, pursuant to N.C. Gen. Stat. § 126-4, the Commission has established that “[a]dministration of the leave program within the scope of established policy shall be the responsibility of the agency head,” 25 N.C. Admin. Code 01E .0101; and

WHEREAS, pursuant to N.C. Gen. Stat. § 126-4, the Commission has established that in the case of a communicable disease emergency lasting longer than 30 days, state leave provisions

“shall be reviewed and either terminated, revised or renewed,” so that “[t]he agency head shall determine the appropriate course of action in consultation with the Governor’s Office and the State Budget Director,” 25 N.C. Admin. Code 01N .0408(a); and

WHEREAS, pursuant to N.C. Gen. Stat. § 126-4, the Commission has also established that during a communicable disease emergency, “[t]he agency head is authorized to offer competitive salaries for the duration of the emergency” and “assign employees where they are most needed and compensate them accordingly for the duration of the emergency,” 25 N.C. Admin. Code 01N .0410(c)-(d); and

WHEREAS, the North Carolina General Assembly, the Commission, and agency heads have previously authorized a number of specific incentive programs for workplace health, including paid time off for smallpox vaccinations, donating blood or bone marrow, donating organs, lactation support, or utilizing the Employee Assistance Program for mental health and wellness; and

WHEREAS, three years ago, the undersigned established a significant workplace health program at Cabinet Agencies by issuing Executive Order No. 95, 33 N.C. Reg. 2346-2349 (May 23, 2019), which provides paid parental leave to eligible agency employees; and

WHEREAS, the terms of paid parental leave were detailed in a Cabinet Agency policy issued by OSHR and, for non-cabinet agencies wishing to participate, by a pilot program policy issued by the Commission; and

WHEREAS, like the paid parental leave program, the terms of this vaccination and booster incentive may be detailed in an OSHR policy or Commission policy; and

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 any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of departments, offices, and agencies of the state in response to the emergency; 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; and

WHEREAS, the dangers posed by COVID-19, and the need for resilience against COVID-19, will continue after the COVID-19 State of Emergency ends, and as a result, the workplace health incentive program established under this Executive Order will continue past the termination of that State of Emergency, pursuant to the non-emergency sources of authority described above.

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. Management-Approved Leave for Boosted Employees.

It shall be the policy of the Office of the Governor and Cabinet Agencies, as defined herein, to provide eight (8) hours of fully paid leave to an Eligible State Employee who has provided the agency with documentation of receiving a First Booster for COVID-19.

The undersigned directs and authorizes the Director of OSHR, on behalf of Cabinet Agency heads, to issue a Policy consistent with this Executive Order. The Policy may establish further details to implement this Executive Order. The Policy may be amended in the future based on changes in North Carolina COVID-19 conditions, the emergence of new variants, scientific or public health developments, or the needs of the state and after consultation with the Office of the Governor and NCDHHS. Any changes to the Policy may be made without amendment to this or any other Executive Order.

Section 2. Details of Leave.

- a. **Applicability to Cabinet Agency Employees.** The policy and the benefits specified therein shall apply only to Cabinet Agencies. All other state agencies are encouraged to voluntarily adopt similar policies to incentivize individuals to obtain their First Booster.
- b. **Definitions.** For purposes of this Executive Order, the following terms have the following meanings:
 - i. **Cabinet Agencies** — Those agencies that are part of the Governor’s Office or are headed by members of the Governor’s Cabinet.
 - ii. **Designated Person** — A person designated by Human Resources to collect documents under the Policy, treat them confidentially, provide them to Human Resources, and (if applicable) return them to the employee.
 - iii. **Eligible State Employee** — A full-time, part-time (half-time or more), permanent, probationary, or time-limited employee of a Cabinet Agency or other agency participating in this incentive program. Temporary employees, part-time employees who work less than half-time, interns, and contractors shall not be eligible for Supplemental Leave, though they are encouraged to obtain their booster shots when eligible.
 - iv. **First Booster** — The first subsequent dose of vaccination administered to enhance or restore protection against COVID-19 which may have waned over time after a primary series vaccination. For most individuals, the primary series of vaccination is a two-dose series of an mRNA COVID-19 vaccine (Pfizer-BioNTech and Moderna) or a single dose of Janssen COVID-19 Vaccine.
 - v. **Policy** — The policy that the undersigned directed to be issued in Section 1 of this Executive Order.
 - vi. **Supplemental Leave** — Leave provided under the terms of this policy.
- c. **Documentation of First Booster.** In order to qualify for Supplemental Leave, eligible employees must submit documentation of having obtained their First Booster to the agency’s Human Resources staff or to a Designated Person. To be eligible, the employee must provide this documentation on or before August 31, 2022. The First Booster may have been administered before or after the date of this Executive Order. The documentation shall meet all requirements stated in this Executive Order and in the Policy. All medical records provided to the agency shall be kept confidential.
- d. **Amount of Leave.** Eligible State Employees who provide this documentation shall be awarded eight (8) hours of Supplemental Leave. Part-time employees, if eligible, will receive a prorated amount based on their number of hours compared to a full-time schedule.
- e. **Use of Leave.** The Supplemental Leave shall be subject to the same restrictions established in the Commission rules for Other Management Approved Leave and the Commission’s Other Management Approved Leave Policy. Supplemental Leave may be taken by an employee only upon authorization by the employee’s supervisor, and supervisors may ask employees to take their leave at different times to ensure that there is no impact to agency services. The Policy will establish the date when Supplemental Leave can begin to be used; this date will be as soon as reasonably possible for the

Supplemental Leave to be coded and made available. Any unused Supplemental Leave will be forfeited on March 31, 2023, unless the Policy extends this date.

- f. No Cash Value. Supplemental Leave shall have no cash value. Employees will not be paid for unused Supplemental Leave upon separation from their employment.

Section 3. Miscellaneous.

- a. This Executive Order does not apply to counties, municipalities, political subdivisions, local government agencies, or private entities.
- b. State entities other than Cabinet Agencies are encouraged but not required to follow this Executive Order.

Section 4. 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.

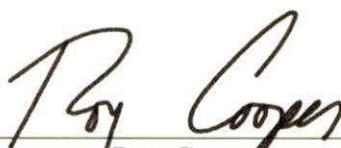
Section 5. Distribution.

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. Effective Date.

This Executive Order is effective immediately. Except as set forth expressly above, this Executive Order shall remain in effect through March 31, 2023, unless rescinded or replaced with a superseding Executive Order, provided, however, that OSHR and participating agencies may continue to implement the Policy, and may modify the Policy per the terms of this Executive Order, following the termination or expiration of this Executive Order and the termination or expiration of the State of Emergency.

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 4th day of May in the year of our Lord two thousand and twenty-two.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

