



# New Mexico State Personnel Board

## State Personnel Office

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### Guidance

Date: May 2, 2022

To: Cabinet Secretaries, Agency Heads, and HR Managers

From: Ricky Serna, Acting Director

Subject: Guidance on Executive Order 2022-010

#### 1. Purpose.

Executive Order 2022-010 requires certain State employees to wear masks or face coverings during the course and scope of their employment, in accordance with the operative Public Health Order. In addition, it requires State employees to provide proof of a COVID-19 test every week if they are not up to date on their COVID-19 vaccinations or if they are unwilling or unable to provide proof of vaccination, with limited exceptions.

Executive Order 2022-010 also directs the State Personnel Office to provide State agencies with guidance on the implementation and administration of the Order.

This Guidance on Executive Order 2022-010 supersedes the Guidance on Executive Order 2021-046, issued July 30, 2021; the revised Guidance on Executive Order 2021-046, issued August 30, 2021; the Guidance on Executive Order 2021-057, issued October 21, 2021; and the Guidance on Executive Order 2021-066, issued December 10, 2021.

#### 2. Scope

This Guidance on Executive Order 2022-010 applies to all State agencies and employees.

### 3. Definitions

**“Booster Dose”**: The first additional dose of Pfizer-BioNTech or Moderna COVID-19 vaccine for an individual who has completed a primary series of Pfizer-BioNTech, Moderna, or Johnson & Johnson Janssen COVID-19 vaccination.

**“Fully Vaccinated”**: Two weeks after an individual has completed the primary series of vaccination with a vaccine approved by the Food and Drug Administration (FDA), including on an emergency use basis, to prevent COVID-19. An individual will be fully vaccinated two weeks after the second dose of the Pfizer-BioNTech or Moderna COVID-19 vaccines or two weeks after single-dose Johnson & Johnson’s Janssen COVID-19 vaccine.

**“Eligible for Booster Dose”**: All individuals 18 years of age and older are eligible to receive a Booster Dose five months after an individual’s primary series of vaccination with Pfizer-BioNTech or Moderna COVID-19 vaccines or two months after an individual’s primary series of vaccination with Johnson & Johnson’s Janssen COVID-19 vaccine.

**“Partially Vaccinated”**: An individual who has started, but not completed, their primary series of vaccination.

**“Primary Series of Vaccination”**: The first and second doses of the Pfizer-BioNTech or Moderna COVID-19 vaccines or the first dose of Johnson & Johnson’s Janssen COVID-19 vaccine.

**“Proof of COVID-19 Vaccination”**: Proof of COVID-19 vaccination in the form of a CDC vaccine card or a vaccine record from the New Mexico Statewide Immunization Information System, which indicates the name of the vaccine recipient, the date(s) the vaccine(s) were received, and which COVID-19 vaccine(s) were received.

**“Proof of COVID-19 Test”**: The result of a viral test (antigen or polymerase chain reaction (PCR)) for COVID-19, which indicates whether the test was positive or negative for COVID-19, submitted together with the name of the individual tested and the date the test was administered. A viral test includes an FDA-approved rapid viral test. (An antibody test does not meet this definition.)

**“Up to Date on COVID-19 Vaccinations”**: An individual is Up to Date on COVID-19 Vaccinations if they are Eligible for a Booster and have received a Booster Dose or if they are not yet Eligible for a Booster but are Fully Vaccinated. An individual is not Up to Date on COVID-19 Vaccinations if they are not Fully Vaccinated, are Partially Vaccinated, or if they are Eligible for a Booster but have not yet received a Booster Dose.

#### 4. **Resources**

Executive Order 2021-062:

<https://www.governor.state.nm.us/wp-content/uploads/2021/11/Executive-Order-2021-062.pdf>

Executive Order 2022-010:

<https://www.governor.state.nm.us/wp-content/uploads/2022/03/Executive-Order-2022-010.pdf>

Food and Drug Administration (FDA), *Coronavirus (COVID-19) Update: FDA Expands Eligibility for COVID-19 Vaccine Boosters:*

<https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-expands-eligibility-covid-19-vaccine-boosters>

FDA, *In Vitro Diagnostics EUAs – Antigen Diagnostic Tests for SARA-CoV-2:*

<https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/in-vitro-diagnostics-euas-antigen-diagnostic-tests-sars-cov-2>

Operative Public Health Order:

<https://cv.nmhealth.org/public-health-orders-and-executive-orders/>

New Mexico Statewide Immunization Information System:

[https://nmsiis.health.state.nm.us/webiznet\\_nm\\_public/Application/PublicPortal](https://nmsiis.health.state.nm.us/webiznet_nm_public/Application/PublicPortal)

New Mexico Department of Health Test Sites:

<https://cv.nmhealth.org/public-health-screening-and-testing>

Vault Health:

<https://learn.vaulthealth.com/nm>

#### 5. **Guidance**

This Guidance corresponds to the specific directives of Executive Order 2022-010 and the operative Public Health Order.

##### 5.1 *Masking.*

- a. State employees, regardless of COVID-19 vaccination status, must wear face masks or multilayer cloth face-coverings when working in public hospitals, profit or nonprofit private hospitals, general hospitals, special hospital nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the New Mexico State Veterans' Home, and community homes, except when eating or drinking or when employees provides adequate proof that they have been instructed otherwise by a bona fide healthcare provider.

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- b. State employees with proof of medical instruction not to wear a face mask shall submit such proof to agency Human Resources. Such proof shall trigger the ADA Reasonable Accommodation process, shall be treated as confidential medical information, and shall be maintained by agency Human Resources separately from employee personnel files. A State employee's exempt status from the face mask requirement, but not the actual proof of medical instruction, can be shared with the employee's supervisors to determine compliance with Executive Order 2022-010.
- c. State employees not required to wear a mask under the operative Public Health Order may still wear a mask while working if that is their personal preference.
- d. State agencies may require certain employees not identified above to mask while performing their job duties in State buildings, facilities, and indoor field work locations, but only when there is a legitimate business reason and only with the advance permission of the State Personnel Director.

## *5.2 Vaccination and Vaccination Tracking.*

- a. State employees may request, and shall receive, up to four hours of administrative leave to receive each COVID-19 vaccine. For leave beyond four hours, employees may use accrued leave or compensatory time or may request leave without pay.
- b. State employees who experience side effects from a COVID-19 vaccine which interfere with their ability to work or telework may request leave to recover. Employees who request leave for recovery purposes must provide Proof of COVID-19 Vaccination to agency Human Resources and shall receive up to one day of administrative leave to recover from the side effects of each COVID-19 vaccine they receive. Recovery leave shall only be available the calendar day immediately following an employee's COVID-19 vaccine. For recovery leave beyond one day, employees may use accrued leave or compensatory time or may request leave without pay.
- c. All State employees who are Fully Vaccinated and are willing and able to share their vaccination status shall submit their Proof of COVID-19 Vaccination to agency Human Resources. Any employee who fails to submit Proof of COVID-19 Vaccination showing they are Fully Vaccinated shall be considered not Up to Date on COVID-19 Vaccinations.

- d. All State employees who receive a Booster Dose and are willing and able to share their vaccination status shall submit Proof of COVID-19 Vaccination to agency Human Resources. Any employee who fails to submit Proof of COVID-19 Vaccination showing they have received a Booster Dose as of February 17 2022, or as of the twenty-eighth day after becoming Eligible for a Booster, shall be considered not Up to Date on COVID-19 Vaccinations.
- e. Each State agency Human Resources Division shall be responsible for developing and implementing its own process for collecting employees' Proof of COVID-19 Vaccination.
- f. All State agencies shall utilize the COVID-19 Vaccination and Testing Tracking function in SHARE HCM ("SHARE Tracking System") to maintain their employees' COVID-19 vaccination data.
- g. State agencies shall enter into the SHARE Tracking System the COVID-19 vaccination data of all employees who provide Proof of COVID-19 Vaccination, including the type of vaccine(s) each employee received and the specific date(s) the employee received each vaccine, within three business days of receiving such Proof of COVID-19 Vaccination.
- h. A State employee's Proof of COVID-19 Vaccination shall be treated as confidential medical information and shall be maintained by agency Human Resources separately from the employee's personnel file and/or maintained confidentially in SHARE.
- i. A State employee's vaccination status, but not the actual Proof of COVID-19 Vaccination, can be shared with the employee's supervisors to determine compliance with Executive Order 2022-010.

### *5.3 Testing and Testing Tracking.*

- a. State employees who are unwilling or unable to provide Proof of COVID-19 Vaccination must take a viral COVID-19 test every week, between Saturday and Friday.
- b. State employees who are not Fully Vaccinated must take a viral COVID-19 test every week, between Saturday and Friday. This applies to State employees who are Partially Vaccinated.
- c. State employees who are Eligible for a Booster but have not received a Booster Dose by February 17, 2022, or within four weeks of becoming Eligible for a Booster, must take a viral COVID-19 test every week between Saturday and Friday, beginning Saturday, February 19, 2022.

- d. These testing requirements apply to all State employees, including those with approved telework arrangements.
- e. State employees required to take a COVID-19 test weekly under this Section 5.3 must provide their Proof of COVID-19 Test to agency Human Resources no later than 5:00 p.m. each Wednesday following each Saturday-Friday testing period.
- f. Employees shall make every effort to test during regular working hours at their normal worksite or telework location. If an employee needs to leave their normal worksite or telework location to test during regular working hours, they must obtain advance approval from their supervisor. Employees shall use the COVID-19 Testing Time Reporting Code (TRC) "CVTST" when testing pursuant to Executive Order 2022-010.
- g. State employees required to take a COVID-19 test weekly under this Section 5.3 and who are on pre-approved leave (including but not limited to annual leave, sick leave, Family and Medical Leave Act leave, and Paid Parental Leave) are excused from the testing requirement during their leave, except such employees must provide Proof of COVID-19 Test no later than 5:00 p.m. on the Wednesday before any work week during which they will be returning to work for any amount of time, **even if that Wednesday is during their leave**. The goal is to have employees resume testing the week **before** they return to work. State employees who are on COVID-19-Related Conditions Leave or administrative leave pending investigation or disciplinary action for failure to comply with a COVID-19-related Executive Order or Public Health Order must comply with the testing requirement during the entirety of their leave. Employees shall use the COVID-19 Testing TRC "CVTST" when testing pursuant to Executive Order 2022-010.
- h. Each State agency Human Resources Division shall be responsible for developing and implementing its own process for collecting employees' Proof of COVID-19 Test records.
- i. All State agencies shall utilize the SHARE Tracking System to maintain their employees' COVID-19 testing data.
- j. State employees' Proof of COVID-19 Test records shall be treated as confidential medical information and shall be maintained by agency Human Resources separately from employee personnel files and/or maintained confidentially in SHARE.

- k. Any State employee who tests positive for COVID-19 shall NOT report to work at any State building, facility, or fieldwork location, shall notify their supervisor immediately, and shall follow the isolation instructions prescribed by their agency's COVID-19 Mitigation, Self-Screening, and Reporting Policy and Procedure or by the New Mexico Department of Health, whichever requires a longer isolation period.
- l. State employees who test positive for COVID-19 shall be exempt from the testing requirement of this Section 5.3 and Executive Order 2022-010 for a period of 90 days following the date of their positive COVID-19 test result.

#### 5.4 *Discipline.*

- a. Employees who refuse to abide by the requirements of Executive Order 2022-010 may be subject to disciplinary action, up to and including termination, in accordance with applicable law.
- b. Any State employee who fails to wear a face mask or multilayer cloth face-covering as directed by Section 5.1 herein and Executive Order 2022-010 shall be directed to put on a face mask or cloth-face covering immediately and may be subject to discipline, up to and including dismissal.
- c. Any State employee who fails to provide Proof of COVID-19 Test every week as directed by Section 5.3 herein and Executive Order 2022-010 shall be directed to test immediately and may be subject to discipline, up to and including dismissal.
- d. Any State employee who knowingly provides fraudulent Proof of COVID-19 Vaccination or Proof of COVID-19 Test may be subject to discipline, up to and including dismissal.