

NEW MEXICO

STATE PERSONNEL OFFICE

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Guidance

Date: August 31, 2022
To: Cabinet Secretaries, Agency Heads, and HR Managers
From: L. Teresa Padilla, Director
Subject: Guidance on Executive Order 2022-117

1. Purpose

Executive Order 2022-117 requires State employees to comply with the operative Public Health Order issued by the New Mexico Department of Health regarding the use of masks and COVID-19 vaccinations during the course and scope of their employment. Executive Order 2022-117 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 2022-117 supersedes the Guidance on Executive Order 2022-010, issued May 2, 2022.

2. Scope

This Guidance applies to all State executive agencies and employees.

3. Definitions

"Primary Series of Vaccination": The entire recommended series of a COVID-19 vaccine approved by the Food and Drug Administration ("FDA"), including on an emergency use basis, to prevent COVID-19. An Employee will complete the primary series of vaccination two weeks after the second dose of the Pfizer-BioNTech, Moderna, or Novavax COVID-19 vaccines or two weeks after 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.

Address:

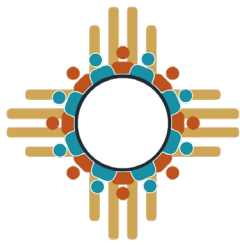
2600 Cerrillos Road
Santa Fe, NM 87505-3258

Phone:
505-476-7759

Fax:
505-476-7949

Website:

www.spo.state.nm.us



4. **Resources**

Executive Order 2022-117:

<https://cv.nmhealth.org/wp-content/uploads/2022/08/NCOV-EO-2022-117.pdf>

Operative Public Health Order:

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

Centers for Medicare & Medicaid Services (“CMS”):

<https://www.cms.gov/>

Centers for Disease Control and Prevention (“CDC”):

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html>

5. **Guidance**

This Guidance corresponds to the specific terms and directives of Executive Order 2022-117 and the operative Public Health Order.

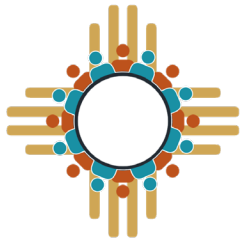
5.1 *Vaccination Strongly Encouraged.*

State employees are strongly encouraged to be fully vaccinated against COVID-19, as defined by the Center for Disease Control and Prevention, and to receive all booster doses of the COVID-19 vaccine for which they are eligible.

5.2 *Masking, Vaccination, Surveillance Testing **Not** Required; Exceptions.*

State employees are no longer subject to any masking, vaccination, or weekly surveillance testing requirements, **except**:

- a. State employees working at a facility licensed or certified by the Centers for Medicare and Medicaid Services (“CMS”), including all hospital types, long-term care facilities, nursing homes, hospice facilities and rehabilitation facilities, as well as assisted living facilities and adult day care settings, are required to adhere to all COVID-related requirements prescribed by CMS.



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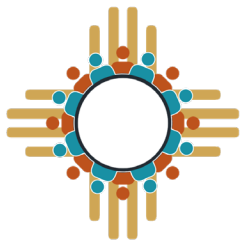
- b. State employees working in State correctional facilities who have the potential for direct or indirect exposure to inmates are required to be vaccinated against COVID-19.
 - i. For purposes of this Section 5.2(b), vaccinated means completing the Primary Series of Vaccination.
- c. State agencies 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.

5.3 Masking.

- a. State employees not required to mask under the operative Public Health Order or Section 5.2 above may still wear a mask while working if that is their personal preference.
- b. State employees required to mask under the operative Public Health Order or Section 5.2 above and who have proof of medical instruction not to wear a face mask shall submit such proof to agency Human Resources. Such proof shall trigger the agency's 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 a masking requirement, but not the actual proof of medical instruction, can be shared with the employee's supervisors to determine compliance with Executive Order 2022-117.

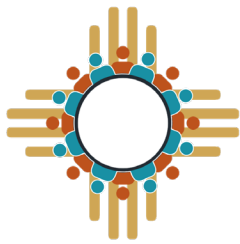
5.4 Vaccination.

- 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.



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- b. State employees who experience side effects from a COVID-19 vaccine which interfere with their ability to work 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. 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.
- d. State employees required to receive COVID-19 vaccinations under the operative Public Health Order or Section 5.2 above may be exempt from the vaccination requirement if they have a qualifying medical condition due to which immunization would endanger their health or if they are entitled under the ADA, Title VII, or any other applicable law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation.
 - i. For purposes of this Section 5.4(d), a "qualifying medical condition" means a permanent or temporary medical condition recognized by the FDA or CDC as a contra-indication to COVID-19 vaccination.
 - ii. To request a vaccination exemption due to a qualifying medical condition, State employees must provide their agency Human Resources with a statement from a physician, nurse practitioner, or medical professional licensed to practice in New Mexico stating that they qualify for the exemption and indicating the probable duration of their inability to receive the vaccine. Statements from licensed medical professionals pertaining to an employee shall be treated as confidential medical information and maintained by agency Human Resources separately from the employee's personnel file.



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- iii. To request a vaccination exemption due to a disability, State employees must provide their agency Human Resources with accommodation documentation from a physician, nurse practitioner, or medical professional licensed to practice in New Mexico stating that they have a disability that necessitates an accommodation and the probable duration of the need for the accommodation. Accommodation documentation from licensed medical professionals pertaining to an employee shall be treated as confidential medical information and maintained by agency Human Resources separately from the employee's personnel file.
- iv. To request a vaccination exemption due to a sincerely held religious belief, State employees must document that the request for an accommodation has been made and provide agency Human Resources with a statement regarding the manner in which the administration of a COVID-19 vaccine conflicts with the religious observance, practice, or belief of the individual.

An employee's exempt status, but not the supporting documentation, can be shared with the employee's supervisors to determine compliance with Executive Order 2022-117.

5.5 Discipline.

- a. Any State Employee who refuses to abide by the requirements of Executive Order 2022-117 may be subject to disciplinary action, up to and including termination, in accordance with applicable law.
- b. Any State employee who knowingly provides fraudulent Proof of COVID-19 Vaccination may be subject to discipline, up to and including dismissal.