

Back Into the Woods: NC Order Mandates Measures for State Employees and Encourages Businesses to Take Similar Actions

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On July 29, 2021, Governor Roy Cooper issued Executive Order No. 224 (the 'Order'), which implements additional safety measures for workers at Cabinet agencies in the state and strongly encourages private businesses and organizations to enact similar measures.

On July 27, 2021, the Centers for Disease Control and Prevention ("CDC") reversed its course on indoor face mask guidance for fully vaccinated individuals. The CDC now recommends that all fully vaccinated individuals wear a mask or face-covering in public indoor settings in areas of substantial or high transmission (determined based on county-specific data regarding the level of community transmission during a rolling seven-day period). The CDC's updated guidance also recommends that all teachers, staff, students, and school visitors wear masks indoors whether or not such individuals are fully vaccinated.

The recent Order from Governor Cooper follows the CDC's updated guidance and is designed to implement measures to address COVID-19 and related variants. As of yesterday, 55% of North Carolinians age 12 and older are fully vaccinated. However, the state has experienced a sharp decline in the weekly number of COVID-19 vaccination doses being administered. In fact, more than 18 counties in the state have reported that less than 35% of their populations are fully vaccinated. The stagnation of COVID-19 vaccinations and the recent increase in COVID-19 cases in the state, specifically, the Delta variant, prompted the issuance of this new Order from Governor Cooper.

Measures for Cabinet Employees and Members of the Public Who Enter State Facilities:

The Order focuses on the implementation of several additional measures for state workers at Cabinet agencies, such as the Departments of Administration, Commerce, Environmental Quality, and Health and Human Services, among others. The Order also requires the Office of State Human Resources ("OSHR") to issue a policy no later than August 13, 2021, that will be effective on September 1, 2021, to include requirements set out in the Governor's Order. Such requirements include, among other things:

1. That all Cabinet workers must either (a) "provide proof that they are fully vaccinated;" or (b) "be tested at least once a week for COVID-19";

2. That all Cabinet workers who are not fully vaccinated must wear face coverings or masks indoors in a "state government office, building, or facility, that is controlled by an agency that is either part of the Governor's Office or is headed by a member of the Governor's Cabinet";
3. That certain workers may request a reasonable accommodation from the proof of vaccination requirement listed above (e.g., "workers with disabilities that impair or prevent vaccination, workers who are not recommended by a physician to be vaccinated, and workers with a sincerely held religious belief, practice or observance that is inconsistent with vaccination"), and the weekly testing option may serve as a reasonable accommodation for such individuals;
4. That Cabinet workers who violate OSHR's policy, as specified by the Order, may be subject to disciplinary action, including termination.

Measures for Private Businesses, Organizations, and Schools:

The Governor's Order also strongly encourages private businesses and organizations to follow measures set out in the "*Interim Guidance for Public Facing Businesses*" that was issued by the North Carolina Department of Health and Human Services ("NCDHHS") on July 30, 2021. The interim guidance covers a myriad of topics for public-facing businesses, such as vaccination, social distancing, face coverings, cleaning, and hygiene, to name a few. Similar to the requirements for Cabinet workers, the interim guidance from NCDHHS strongly recommends, but does not require, that businesses: (a) require employees to report their vaccination status; and (b) require employees, who are unvaccinated or do not wish to disclose their vaccination status, to "participate in screening/testing programs." In addition, the interim guidance strongly recommends that businesses have all employees and visitors who are not fully vaccinated wear a mask or face covering indoors and observe social distancing guidelines unless an exception applies for the individual. The interim guidance further recommends that businesses encourage all vaccinated individuals (workers and patrons) to wear a mask or face covering indoors and observe social distance, "if they are in a county of high or substantial levels of transmission as defined by the CDC." The Order, however, identifies most areas in North Carolina as areas of substantial or high transmission.

Finally, similar to the CDC's updated guidance, the Governor's Order "recommends all teachers, staff, students, and visitors to schools wear face coverings, regardless of vaccination status."

Practical Considerations:

While the Governor's Order sets specific requirements for certain state employees as it pertains to vaccinations, testing, and face coverings, such requirements are not mandatory and only recommendations for private businesses and organizations that operate public-facing businesses. All private businesses and organizations in North Carolina will need to do their own individual assessment on whether to implement the recommendations encouraged by the Governor's Order. Considering that most areas in North Carolina are areas the CDC deems as substantial or high transmission, the most prudent approach may be to evaluate current safety practices with your legal counsel and determine the appropriate measures to implement, if any, keeping in mind that guidance from the CDC, North Carolina, and local governments is ever-changing in the COVID-19 environment.

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