



# State of North Carolina

**ROY COOPER**  
GOVERNOR

November 29, 2021

## EXECUTIVE ORDER NO. 238

### FURTHER EXTENDING MEASURES TO FACILITATE VACCINE ADMINISTRATION, COVID-19 TESTING, AND THE VACCINE VERIFICATION POLICY FOR CABINET AGENCIES

**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 ("Declaration of a State of Emergency"); 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**, 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, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, 228-232, 234, and 236; and

**WHEREAS**, more than one million five hundred thirty-two thousand two hundred (1,532,200) people in North Carolina have had COVID-19, and over eighteen thousand seven hundred (18,700) 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, among other flexibilities afforded to the state, address the COVID-19 pandemic, 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 to respond to any spikes in 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

*Current Metrics*

**WHEREAS**, as COVID-19 has continued to be spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed; and

**WHEREAS**, the Delta variant of COVID-19 is more transmissible than the original COVID-19 virus; and

**WHEREAS**, because the Delta variant is more contagious than the original virus or other current COVID-19 variants, it quickly became the most common kind of COVID-19 in North Carolina during summer 2021, and now, the Delta variant makes up more than ninety-five percent (95%) of all new COVID-19 cases in North Carolina; and

**WHEREAS**, the Delta variant's growing dominance, coupled with its increased transmissibility, led to a significant increase in the number of COVID-19 cases and hospitalizations in summer and early fall 2021, particularly among the unvaccinated; and

**WHEREAS**, new variants of the virus continue to develop, including, most recently, the Omicron variant, which has been labeled a "variant of concern" by the World Health Organization, and which has a greater risk of transmissibility than the original COVID-19 variant, according to preliminary evidence; and

**WHEREAS**, the state's COVID-19 metrics, including cases and hospitalizations, experienced a period of prolonged decline in fall 2021, due in part to the increasing percentage of North Carolinians who have become fully vaccinated and the availability of booster vaccines to certain adult populations; however, the decline in COVID-19 metrics has plateaued, with instances of recent increase; and

**WHEREAS**, the state's public health experts have expressed concerns that the state could see an increase in COVID-19 cases and associated hospitalizations over the winter as is seen with other respiratory viruses; and

**WHEREAS**, although the Delta variant represents a severe threat to the unvaccinated, being vaccinated greatly reduces the chance of being infected by the Delta variant, and being vaccinated greatly reduces the risk that anyone who does contract the Delta variant becomes severely ill, requires hospitalization, or dies; and

*Extension of Certain Provisions of Executive Order No. 224*

**WHEREAS**, Executive Order No. 224 promotes COVID-19 testing and vaccine administration by preempting local regulations that may prevent such activity; and

**WHEREAS**, in light of the need to continue testing and vaccination efforts, the undersigned, at the recommendation of NCDHHS, has determined that the above-referenced measures of Executive Order No. 224 should be extended through January 5, 2022; and

**WHEREAS**, in Executive Order No. 224, the undersigned determined that Cabinet agency workers should be required to show either that they are fully vaccinated or that they have recently tested for COVID-19, and directed the Office of State Human Resources ("OSHR") to issue a policy to implement the proof-of-vaccination and testing requirements; and

**WHEREAS**, on August 13, 2021, OSHR issued the Requirements for COVID-19 Testing and Face Coverings as an Alternative to Proof of Full Vaccination policy, and this policy, as updated on August 27, 2021, took effect on September 1, 2021; and

**WHEREAS**, as of the date of this Executive Order, seventy-six percent (76%) of Cabinet agency employees have been vaccinated, which reflects an increase in the vaccination percentage of this population of eleven percent (11%) since the implementation of the OSHR policy; and

**WHEREAS**, to protect the health and safety of state employees and the general public, Cabinet agencies should continue to implement this policy for the effective period of this Executive Order; and

**WHEREAS**, the undersigned continues to encourage all state and local government agencies, school systems, and private businesses and organizations, at a minimum, to adopt the same protections for state employees and the public as those directed under Executive Order No. 224; and

*Statutory Determinations and Authority*

**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-19.30(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), during a Gubernatorially declared State of Emergency, the undersigned has the power to “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 this Article”; 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. § 143B-10(j)(3), the head of each principal state department and the Director of the Office of State Human Resources 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, and for the reasons and pursuant to the authority set forth above and in Executive Order Nos. 224 and 229, **IT IS ORDERED**:

**Section 1. Further Extension of Certain Provisions of Executive Order No. 224.**

Sections 2.3, 2.4, 3, and 8 of Executive Order No. 224 are hereby extended through January 5, 2022, unless repealed, replaced, or rescinded by another applicable Executive Order.

**Section 2. Continuation of Policies Established under Executive Order No. 224.**

Throughout the effective period of this Executive Order, Cabinet agencies are directed to continue to implement the policy issued under Sections 4.1 and 4.2 of Executive Order No. 224, requiring workers to either be fully vaccinated or be tested for COVID-19 each week. Workers will be required to directly or indirectly provide proof of vaccination or test results, as applicable, to the Cabinet agency where they work.

**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 to 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. Distribution.**

The undersigned hereby orders 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 State of North Carolina; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

**Section 5. 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 6. Effective Date.**

This Executive Order is effective November 29, 2021, at 5:00 p.m. This Executive Order shall remain in effect through January 5, 2022, unless repealed, rescinded, or replaced by another applicable Executive Order. An Executive Order rescinding the Declaration of State of Emergency will automatically rescind this Executive Order.

**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 29<sup>th</sup> day of November in the year of our Lord two thousand and twenty-one.

  
\_\_\_\_\_  
Roy Cooper  
Governor

**ATTEST:**

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

