

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

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EMPLOYEE A, Federal Employee, and  
EMPLOYEE B, Federal Employee,

Plaintiffs,

v.

JOSEPH R. BIDEN in his official capacity  
as President of the United States;  
XAVIER BECERRA in his official capacity  
as Secretary of Health and Human Services;  
LLOYD J. AUSTIN III in his official  
capacity as Secretary of Defense,

Defendants.  
\_\_\_\_\_

Case No. 8:21-cv-02696

Judge Deborah Chasanow

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION AND TO PROCEED ON PSEUDONYMS  
WITH MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Fed. R. Civ. P. 65, Plaintiffs by undersigned counsel move the Court for a temporary restraining order (TRO) and preliminary injunction against Defendants' enforcement of Executive Order 14043.

When federal employees join the Civil Service, they have a right to continue to enjoy the same rights all Americans have under the Constitution. It is no exaggeration to say that at issue here is the most extreme physical intrusion on one's bodily integrity: a penetration of the skin with an injection of a foreign substance. While COVID-19 vaccines are the Government's preferred

method to stop the spread, it is not the choice for many. The President seeks to take this choice away from federal employees through harsh penalties and through an authority he simply does not possess.

The health and police power falls squarely within the powers reserved unto the States under the Tenth Amendment. As this brief will show, the States have charted a different path through the easing of restrictions, ending public health emergency declarations (even in hard-hit areas such as New York), and even a sizable minority of States outlawing COVID-19 passports altogether. Here the President stands alone. Not even Congress invoked its Necessary and Proper powers to give the President the authority to support Executive Order 14043. Congress clearly knew, and cautiously refrained, from encroaching on what is a matter traditionally and historically left to the States. *See Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

And the States are split, reflecting a deep divide in our nation on the topic of COVID-19 vaccines. As an illustration, see the Kansas City Star article, “No vaccine, no problem: Indiana recruits Chicago cops upset by COVID mandates.” Ex. A, attached to this Motion. There can be no doubt that the President and the Federal Civil Service will not be harmed by a halt to his ambitious November 8/ November 22 schedule to commence adverse action and removal against some of our nation’s finest and dedicated public servants.

There are certainly lesser restrictive alternatives available to slow the spread of COVID-19, as shown by the Commonwealth of Virginia for example, which mandates the vaccine for state employees but offers testing as an option for those who don’t want it. Ex. F attached to this Motion. Over the past year and a half, the Federal Workforce continues to function amidst the pandemic, well before the arrival of COVID-19 vaccines, thanks to the responsible use of personal protective

equipment (PPE), social distancing, temperature checks, and other safety protocols. And it will continue to do so without Executive Order 14043 and the Vaccine Mandate.

Before any permanent damage is done to Plaintiffs and others similarly situated, this matter needs to be fully fleshed out in a Court of Law.

### **MEMORANDUM OF LAW**

Injunctive relief is appropriate, as here, Plaintiffs can “establish (1) that [they] are likely to succeed on the merits, (2) that [they] are likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in [their] favor, and (4) that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs well meet this burden.

#### **I PLAINIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS AGAINST EXECUTIVE ORDER 14043 ON REQUIRING CORONAVIRUS DISEASE VACCINATION FOR FEDERAL EMPLOYEES.**

##### **A The Executive Order violates the Separation of Powers doctrine of the Tenth Amendment.**

The Tenth Amendment provides, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The power to make laws and regulations affecting health and safety falls squarely and unquestionably within State sovereignty, particularly the police power, which the States have consistently reserved to themselves since our nation’s founding. “It has always been acknowledged in American constitutional law that the states, as sovereign entities, **possess fully** what is known as the police power, except as restrained by the United States Constitution.” 16A Am. Jur. 2d Constitutional Law §230 (emphasis added). Furthermore, the States as separate sovereigns in this area may not be encroached upon, whether by Congress or a President acting unilaterally. “The states are not mere political subdivisions of the United States, and state

governments are neither reciprocal offices nor administrative agencies of the Federal Government; the Federal Constitution instead leaves to the several states a residuary and inviolable sovereignty, reserved explicitly to the states by the Constitution's Tenth Amendment, with which the Federal Government may not interfere." *Id.* §236. *See also Arizona v. United States*, 567 U.S. 387, 398 (2012) ("Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect.").

**1        The Executive Order constitutes a unilateral health law or regulation not within the enumerated powers of executive authority.**

Legislation regulating the health care choices of Plaintiffs and all other federal employees, the vast majority of which live and work in the United States, is traditionally and historically a matter of local concern. *See Jacobson v. Massachusetts*, 197 U.S. 11 (1905), where it was a state law that empowered local health authorities such as the City of Cambridge to enact a health ordinance to stop the spread of smallpox. In that case the penalty was a mere fine, far cry from the loss of livelihoods of hard-working families in the Civil Service and the associated damages to their reputations that are certain to come as a result of their terminations. Importantly, the state law of Massachusetts was just that- a law, not even a unilateral act by the state's governor. The reason for that is it is the province of the state legislatures to enact the laws and the province of the executive to execute them. An extensive search of the case law shows that it is uniformly the States that exercise the police power in pursuit of public health, 16 Am. Jur. 2d §365, and States that exercise the police power generally. *Id.* §362.

What Congress, and by extension the President through executive order, may not do, is enact laws for the accomplishment of objects not entrusted to the Federal Government. The Supreme Court in *Linder v. United States* (1925), cannot be clearer:

Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. And we accept as established doctrine that a provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power but solely to the achievement of something plainly within the power reserved to the States, is invalid and cannot be enforced.

*Linder v. United States*, 268 U.S. 5, 17 (1925).

The Court went on to affirm the longheld principle that control over the medical profession, for example, is “beyond the power of the Federal Government.” *Id.* \*at 18. Plaintiffs, federal civil service employees, one of which works 100% remotely, are accountable to State laws that are designed to protect their lives, limbs, and health.

**2      The States are actively exercising their authority pursuant to their police power in response to COVID-19.**

On June 24, 2021 the governor of New York declared an end to the state emergency. Exhibit B (from the Office of the Governor, attached to the Motion). The State of Florida, pursuant to the governor’s Executive Order 21-94, continued the state of emergency sixty days from April 27, 2021, and was not renewed. Ex. C (Executive Order 21-94). Since Florida is no longer in a state of public health emergency, a law firm advises potential clients on the return to the normal laws governing everyday life. Speaking in reference to community associations, Rosenbaum PLLC states, “your association may not avail itself of its emergency powers granted by Sections 718.1265, 719.128, or 720.316, *Florida Statutes*. The likely major impact for your association is that it may not conduct meetings exclusively through Zoom, or another electronic meeting platform.” Rosenbaum PLLC, <https://rosenbaumpllc.com/end-to-floridas-state-of-emergency-declaration/> (last accessed 25 October 2021). Maryland, the State of this District, terminated various emergency orders effective July 1, 2021. Ex. D (Order of the Governor of the State of

Maryland Number 21-06-15-01 Terminating Various Emergency Orders). This includes calling off the National Guard and rescinding the order augmenting the Emergency Medical Services Workforce. States throughout the country are all moving forward in a safe, phased-in approach to Phase 3<sup>1</sup> by reopening restaurants, malls, and most other businesses to 75% capacity and gatherings at indoor event halls to 50% capacity for up to 250 people.

Asserting their authority in the health area of their police power, States are split on the issue of vaccine passports to participate in everyday life, including employment. Prior to the vaccine rollout, certain states foresaw the present push by some for vaccine mandates and affirmatively outlawed the use of vaccine passports. *See, e.g.,* Ex. C (Florida’s executive order) making it a high priority to “protect Floridians from being required to produce a so-called vaccine passport as a condition of participating in everyday life.” Many States have either passed laws against vaccination mandates or issued executive orders from the governors making vaccination passports illegal for businesses to require them for employment purposes or for any other purpose.<sup>2</sup>

Enforcing a vaccine passport is exactly what Executive Order 14043 sets out to do, by requiring Plaintiffs and all federal employees to provide proof of vaccination to their agency employer by **November 8<sup>th</sup>** or face adverse disciplinary actions resulting in removal. *See* Cmpl. Ex. B (ECF 1). Simply put, the President is attempting to unilaterally use his office to encroach upon the States’ health lawmaking authority because none of the States in the Union have so far acted to mandate COVID-19 vaccines for their citizens in a way that was done in *Jacobson, supra*.

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<sup>1</sup> See, e.g., <https://opensafely.la.gov/>

<sup>2</sup> Alabama (by law May 24, 2021); Arizona (by executive order April 19, 2021); Arkansas (by law April 28, 2021); Florida (by law May 2021); Georgia (by executive order May 25, 2021); Idaho (by executive order April 7, 2021); Indiana (by law April 29, 2021); Iowa (by law, May 20, 2021); Michigan (bill pending as of June 2, 2021); Montana (by executive order April 13, 2021); New Hampshire (bill pending as of June 1, 2021); North Dakota (by law April 29, 2021); South Carolina (by executive order May 11, 2021); South Dakota (by executive order April 21, 2021); Teas (by executive order April 6, 2021 and by law June 7, 2021); Wyoming (by executive order May 7, 2021). **U.S. News & World Report**, June 1, 2021. <https://www.usnews.com/news/best-states/articles/which-states-have-banned-vaccine-passports#nh> (last accessed October 19, 2021).

As delegates and representatives of the People, this is by no means a green light for the Federal Government to act; rather, silence in this area is a reflection of the People's will, their best judgment on the gravity of the situation, and must be respected.

**B The Executive Order violates the Ninth Amendment and Right to Privacy.**

The Ninth Amendment provides, “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” One such right is the right to privacy, woven into the fabric of our nation since its inception. Importantly, the modern Supreme Court considers it to be one of the most closely guarded rights to this day: “We have never retreated from our recognition that any compelled intrusion into the human body implicates significant constitutionally protected privacy interests.” *Missouri v. McNeely*, 569 U.S. 141, 59 (2013). Certainly, an unwanted injection by needle through the skin calls forth the outer extreme of what constitutes any notion of a privacy right.

**1 Privacy of Bodily Integrity**

The privacy interests involved in penetrating the skin and into the veins are so particularly invasive that the Supreme Court recently held in the Search Incident to Arrest Doctrine that there is to be a clear distinction between breath tests in drunk driving stops and a blood draw for the same evidence, which henceforth requires a warrant from a judicial officer. *Birchfield v. North Dakota*, 579 U.S. \_\_\_\_ (2016). In *Missouri v. McNeely*, *supra*, Justice Sotomayor, writing for the majority, found it persuasive that a clear majority of the States placed significant restrictions on when police may obtain a blood sample despite a suspect's refusal, often limiting testing to cases involving accidents resulting in death or serious injury, or prohibit nonconsensual blood tests altogether. 133 S. Ct. \*at 1566, n.9 (state statutes catalogued). The necessary implication here is that some States, through the manifested will of their citizens, decided that *not even a warrant*

from a judge could permit the nonconsensual drawing of blood in the drunk driving context. The privacy interest at stake here is exceedingly broad.

“The right of privacy is rooted in, and exists in the ‘penumbra’ (*Griswold v. Connecticut*, 381 U.S. 479 (1965)) of, various specific constitutional provisions which have been deemed to create ‘zones of privacy,’ such as the First Amendment’s guarantee of free speech and press and the freedom of association, the Third Amendment’s prohibition of peacetime quartering of soldiers in any house without the owner’s consent, the Fourth Amendment’s prohibition of unreasonable searches and searches, the Fifth Amendment’s privilege against self-incrimination, and the Ninth Amendment’s reservation to the people of rights not enumerated in the Constitution.” 16B Am. Jur. 2d Constitutional Law §604. Courts have also stated the right of personal privacy is in part derived from Natural Law. *In re Tarrant*, 190 B.R. 704, Bankr. L. Rep. (CCH) ¶76847 (Bankr. S.D. Ga. 1995). The Right of Privacy has developed to now encompass the right to refuse medical treatment. And furthermore, “considering evolution in constitutional jurisprudence, the right to refuse vaccination must be regarded as a fundamental right demanding strict scrutiny.”<sup>3</sup> Only through a well-crafted, narrowly tailored statute could a vaccine be mandated on the citizens, but even then it is the prerogative of the States, not the Federal Government (and certainly not the President), to do it.

Since *Jacobson, supra*, the Court has developed layers of judicial scrutiny of governmental action. Strict scrutiny, first introduced in *Korematsu v. United States*, 323 U.S. 214 (1944), has come to be applied to *inter alia*, the right to refuse medical treatment. Consider how the Court distinguished the issues at stake in two cases before it, one involving assisted suicide (*Washington v. Glucksberg*, 521 U.S. 702 (1997)) and the other an express wish to forego life-prolonging

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<sup>3</sup> Am. Univ. L. Rev. Horowitz, Ben. “A Shot in the Arm: What a Modern Approach to *Jacobson v. Massachusetts* Means for Mandatory Vaccinations During a Public Health Emergency.” Vol. 60, Issue 6., p. 1749. 2011.



procedures (*Cruzan v. Missouri Department of Health*, 497 U.S. 261 (1990)). In the former, the Court held that the right to assistance in committing suicide has no history of being traditionally protected, whereas the “right to refuse unwanted medical treatment [is] so rooted in our history, tradition, and practice as to require special protection”). *Glucksberg*, 521 U.S. at 721 n. 17 (citing *Cruzan*, 497 U.S. at 278-79). Accordingly, the Court applied strict scrutiny to the *Cruzan* case and mere rational basis review in *Glucksberg*. See also Neil M. Gorsuch, *The Right to Assisted Suicide and Euthanasia*, 23 Harv. J.L. & Pub. Pol’y 599, 661 (2000) (explaining that the fundamental right to refuse medical treatment is based on common law battery and afforded the protections associated with bodily integrity and unwanted physical invasions). By requiring Plaintiffs and all others similarly situated to provide proof of vaccination no later than November 8<sup>th</sup>, on pains of losing their jobs, Executive Order 14043 is not only violating their right to refuse medical treatment but their right not to disclose their closely guarded private medical information.

## **2 Privacy of Protected Health Information**

The Government, pursuant to Executive Order 14043, has engaged in a mass collection of Personal Identifiable Information (PII) and Protected Health Information (PHI) related to vaccination status. See Cmpl., Ex. D (ECF 1). According to the Government, this information is to be collected and stored under the auspices of the Privacy Act of 1974. *Id.* However, unbeknownst to many, the stringent safeguards and requirements put in place by Congress through the Health Insurance Portability and Accountability Act (HIPAA) simply do not apply. Those requirements are reserved for hospitals and other businesses in the health care industry.

The United States has faced its share of disease outbreaks throughout its history, including in the 20<sup>th</sup> century where we dealt with the swine flu in the 1970’s and the Spanish flu during World War I. But never before has the federal government required the entire Civil Service to

provide medical records of proof of vaccination to their employing agencies. It is indeed without precedent. The Supreme Court has recognized two main aspects of the right to privacy: (1) the general law of privacy, which affords a tort action for damages resulting from an unlawful invasion of privacy; and (2) the constitutional right of privacy which protects personal privacy against unlawful government invasion. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). Aside from the Court, Congress concurs in viewing the Right to Privacy as a fundamental right. “Congress adopted the view that the right of privacy is a fundamental right protected by the Constitution”. 16B Am. Jur. 2d Constitutional Law §603. Alongside the physical invasiveness of the injections is the collection of private medical information involving the same.

These records will be presumably stored by the U.S. Government, which Plaintiffs never intended for it to have, and could be used against them *long after their federal employment* in the same way the absence of the records are being used against them now. This violates long held customs and tradition of what is acceptable in the American employer – employee relationship. Protected Health Information has always been absolutely protected from disclosure to employers throughout the history of this nation, with limited exceptions such as a note from a doctor for an excused absence. Congress even went so far so as to take the additional step of making unlawful any kind of discrimination on the basis of disability. *Cf.* Americans with Disabilities Act (ADA), signed into law in 1990. In a nation that is deeply divided on the issue of COVID-19 vaccines, this information now becomes extremely sensitive because of the prejudices that are already surfacing and will inevitably be acted upon because of the personal health care choices of Plaintiffs and others similarly situated. *See* section below, Compelling Reasons to Proceed under Pseudonyms.

Unlike HIPAA, in which the business is required to obtain the patient's written consent prior to the sharing of any private medical information (and for each instance of such), the Privacy Act of 1974 would leave the door wide open: "it may be necessary to disclose this information externally, for example to disclose information to: [...] contractors, grantees, or volunteers as necessary to perform their duties for the Federal Government." *See* Compl., Ex. D ¶3 (ECF 1).

### **3 Informed Consent**

The well-established Doctrine of Informed Consent in the doctor-patient relationship in the United States poses as a direct obstacle in the face of the Vaccine Mandate and Executive Order 14043 because the logical corollary of this doctrine is the patient's right to refuse treatment, including vaccines. The Doctrine of Informed Consent is inextricably intertwined with the common law rights of privacy, bodily integrity, and self-determination. *See* Lawrence J. Nelson, Brian P. Buggy, and Carol J. Weil, "Forced Medical Treatment of Pregnant Women: 'Compelling Each to Live as Seems Good to the Rest,'" 37 *Hastings Law Journal*, 703, 758 (1986).

### **4 Plaintiffs are presented with a false choice.**

In the balancing of the equities, it strains reason for the Government to make the argument that just as in the case of *Jacobson, supra*, Plaintiffs and all federal employees have a choice of accepting a penalty. In the case of *Jacobson*, that penalty was a \$5 fine; here it is livelihoods, professional careers, health insurance, and retirement that are at stake, a shameful betrayal of our dedicated public servants. A close review of the 3-page Executive Order<sup>4</sup> shows no alternative given for testing, temperature checks, social distancing, or other protective measures that have been working since the pandemic began *eighteen months ago*.

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<sup>4</sup> Ex. A attached to the Complaint. ECF 1.

**C The Executive Order violates Fifth Amendment due process liberty and property interests by misapplying the term “efficiency of the service” given longstanding customs of the employer-employee relationship.**

The key language touching on adverse actions for federal employees stems from 5 U.S.C. §7503 – “such cause as will promote the efficiency of the service.” The Supreme Court found this broad language was used intentionally by Congress and is to be construed in light of “longstanding principles of employer – employee relationships, like those developed in the private sector”. *Arnett v. Kennedy*, 416 U.S. 134, 160 (1974). As discussed above, despite previous pandemics, the idea of making vaccination a condition of employment for the Civil Service is without precedent. At least domestically, prior to COVID-19 vaccines being available in the U.S., it was practically unheard of in the private sector as well outside of the health care industry.

**1 Protected Property Interest**

The Fifth Amendment provides, in relevant part, “No person shall be . . . deprived of life, liberty, or property without due process of law . . .” The right to public employment is protected by the Due Process Clause against arbitrary decision making, particularly when the means used infringe on fundamental personal liberties and could have been more narrowly achieved. *See Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589 (1967) (principle still holds true even with legislation aimed at keeping subversives out of the ranks). By issuing Executive Order 14043 and directing all the department heads to comply (*see* Cmplt., Ex. C, ECF 1), the President affectively changed the goal posts on what constitutes cause for termination. *See, e.g.*, Ex. E (DoD Force Health Protection Guidance dated 18 October 2021). In so doing, he has rendered meaningless any notion of notice or an opportunity to be heard, since all those not in compliance, *due to a personal health choice*, will be summarily dismissed. Cmplt., Ex. B (ECF 1) (adverse actions to commence **November 8<sup>th</sup>**). Again, this is all taking place after Plaintiffs and other

federal employees have already demonstrated over the past eighteen months that there are other methods to successfully promote a healthy work environment amidst the pandemic.

The President's authority to prescribe regulations for the civil service is sufficiently circumscribed *to the conduct* of employees in the executive branch. 5 U.S.C. §7503 is instructive in this regard. Just after the words "promote the efficiency of the service" follows a parenthesis and the words "including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances with any one-year period or any other pattern of discourteous conduct." To read into this an authority to require the disclosure of private medical information (as Plaintiffs have neither affirmed nor denied they have taken the vaccine) or proof of vaccination as a condition of continued employment is leaps and bounds beyond Congress' intent here. In fact, it was never contemplated because it has always been generally understood that the States hold the health and police power.

Minor health rules in the workplace are a different story, as the employer – employee relationship has traditionally encompassed those, both in the public and the private sector. President Clinton, for example, signed Executive Order 13058 – Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace<sup>5</sup> on August 9, 1997. But this of course did not prevent employees from smoking outside the workplace. That is the kind of regulation properly within the President's authority; it involves no collection of sensitive private medical information and no physical intrusion into the human body. And this argument is consistent with the general tenor of 5 U.S.C. §7301 (Presidential Regulations): "The President may prescribe regulations for the conduct of employees in the executive branch."

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<sup>5</sup> <https://www.presidency.ucsb.edu/documents/executive-order-13058-protecting-federal-employees-and-the-public-from-exposure-tobacco>

## 2 Protected Liberty Interest

Aside from the recognized property interest in Plaintiffs' jobs, there exists an important liberty interest to make informed medical decisions for oneself, which is guaranteed by the due process clause. A number of courts have held that even persons confined in the state's custody have a constitutional right to refuse treatment. *See, e.g., Mackey v. Procunier*, 477 F.2d 877 (9<sup>th</sup> Cir. 1973); *Knecht v. Gillman*, 488 F.2d 1136 (8<sup>th</sup> Cir. 1973); *Scott v. Plante*, 532 F.2d 939 (3<sup>rd</sup> Cir. 1976); *Bell v. Wayne County General Hospital*, 384 F. Supp. 1085, 1100 (E.D. Mich. 1974); *Rennie v. Klein*, 462 F. Supp. 1131 (D.N.J. 1978); *Rogers v. Okin*, 478 F. Supp. 1342 (D. Mass. 1979). The court in *Davis v. Hubbard*, 506 F. Supp. 915 (N.D. Ohio 1980) puts it well: "the source of the right [to refuse medical treatment] can best be understood as substantive due process, or phrased differently, as an aspect of 'liberty' guaranteed by the due process clause." *Id.* at 929.

### **D The Executive Order violates the Separation of Powers built into the Constitution by overstepping the emergency powers of the President.**

By acting unilaterally through Executive Order 14043, the President has usurped Congress' rulemaking authority for the Government. Article I, Section 8 of the Constitution provides, Congress "shall make Rules for the Government and Regulation of the land and naval forces". A deliberate delineation was made between Rules for the Government and Regulation of the land and naval forces because of the Framers' clear intention to first, ensure Congress' control over each, and second, to allow the possibility of each being treated differently. Rules for smoking within the workplace fall squarely within the traditional employer – employee relationship and are the proper subject of an Executive Order because of their administrative nature. But to require vaccination as a condition of employment and mandate the disclosure of sensitive personal medical information to federal organizations that are not even subject to HIPAA controls is well outside the authority of the President to act alone.

When the President seeks to fundamentally alter the Rules of Government, there is a mechanism for him to do that by petitioning Congress. He is in the best position to know what is needed, and Congress is vested with the rulemaking authority. Today, the President does this through the annual State of the Union Address. As laid out in the Constitution, the President “shall from time to time give to the Congress Information of the State of the Union, and **recommend to their Consideration such Measures as he shall judge necessary and expedient.**” U.S. Const. Art. II, Section 3 (emphasis added). Notice that this includes “expedient.” Without question, the President had ample time to approach Congress in light of the pandemic. He knew the vaccines were coming; indeed, the federal workforce already adapted in many ways to COVID-19 through the use of social distancing, temperature checks, and mask wearing prior to the advent of the vaccines made widely available to the public in March 2021.

No emergency justifies the violation of any of the provisions of the U.S. Constitution. The circumstances in which the executive branch may exercise extraordinary powers under the Constitution are very narrow. *See Halperin v. Kissinger*, 606 F.2d 1192 (D.C. Cir. 1979), *cert. granted*, 446 U.S. 951 (1980). **For the President to act unilaterally, “[t]he danger must be immediate and impending, or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for.”** *Mitchell v. Harmony*, 54 U.S. 115, 134 (1851). In the instant case, Exhibits A, B, C, and D attached to this Motion all show that this is not the type of situation that admits of no delay, and some of the States hardest hit by COVID-19 have already declared an end to the public health emergency or moved into the final phase toward that end.

With supporting case law, *American Jurisprudence* legal encyclopedia speaks of how fundamental the concept of separation of powers is to our structure of government as an essential restraint on tyranny:

The principle of the separation of powers of government is fundamental to the very existence of constitutional government as established in the United States. The division of governmental powers into executive, legislative, and judicial represents probably the most important principle of government declaring and guaranteeing the liberties of the people. It prevents the exercise of autocratic power, is a matter of fundamental necessity, and is essential to the maintenance of a republican form of government. In short, this division of power provision serves to create a government structure resistant to the forces of tyranny.

16A Amer. Jur. 2<sup>nd</sup> Const. Law §247.

On the State of the Union held on April 29, 2021 before a Joint Session of Congress, the President had an opportunity to make his request for such a fundamental change to the Rules of the Government, *viz* creating a new condition of employment and continued employment for 2 Million Civil Service employees. COVID-19 vaccines were widely available at that point. Whatever discussions with Members of Congress on this topic behind the scenes<sup>6</sup> clearly resulted in Congress not acting on a Vaccine Mandate for federal employees, and the President acting unilaterally. In any case, Congress itself lacks the authority to mandate such an intrusive act for all the reasons discussed above, a conclusion to which they likely arrived.

Congress abstained from using its powers under the “Necessary and Proper” clause of Article I, Section 8 of the Constitution to make such a fundamental and drastic change to civil

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<sup>6</sup> Backroom discussions between Congress and the President are normal and routine in the lawmaking process. It is widely recognized that there exists a current standoff, for example, between Congress not wishing to act in the area of forgiving student loans and encouraging the President to act unilaterally, and the President claiming he has no authority to do so.



service employment. The President may not then turn and attempt to enact his policy preferences through executive action.

## II EXECUTIVE ORDER 14043 CANNOT WITHSTAND STRICT SCRUTINY.

Since the Court dealt with the case of *Jacobson* in 1905, different layers of judicial scrutiny have evolved when government action is in question. With the caveat that vaccine law is not federalized and, accordingly, the only precedent for a vaccine mandate would be within the context of *state* action, the principle of judicial review would likely hold true. Whether under state or federal action, the constitutional Right to Privacy is the concern. According to an article published ten years ago in the American University Law Review entitled, *A Shot in the Arm: What a Modern Approach to Jacobson v. Massachusetts Means for Mandatory Vaccinations During a Public Health Emergency*<sup>7</sup>, “An examination of modern substantive due process jurisprudence demonstrates that the right to refuse vaccination is a fundamental right.” *Id* at 1730. The notion of fundamental rights deserving strict scrutiny analysis is more or less a recent development, with “strict scrutiny” receiving its first explicit reference by the Supreme Court in 1942 in *Skinner v. Oklahoma*, 316 U.S. 535, 541, involving an Oklahoma statute requiring sterilization for certain habitual offenders.

Executive Order 14043 requiring COVID-19 vaccination for all federal employees should receive strict scrutiny analysis.

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<sup>7</sup> Horowitz, Ben (2011) “A Shot in the Arm: What a Modern Approach to *Jacobson v. Massachusetts* Means for Mandatory Vaccinations During a Public Health Emergency,” American University Law Review: Vol. 60: Iss. 6, Article 4. Available at <http://digitalcommons.wcl.american.edu/aulr/vol60/iss6/4>

**A The Executive Order fails the “least restrictive means” test.**

In order to survive the strict scrutiny test, the means employed to achieve the Government’s objective must be the least restrictive means available. Further, the “[g]overnment must show that it ‘seriously undertook to address the problem with less intrusive tools readily available to it.’” *Agudath Israel of Am.*, 983 F.3d 633 (quoting *McCullen v. Coakley*, 573 U.S. 464, 494 (2014)).

In a mere 600-word document, Executive Order 14043 makes no reference whatsoever to exploring less invasive ways of protecting the federal workforce or to the diverse work environments and locations that may benefit from tailored health safety approaches. The order relies on broad conclusory statements about vaccination and invokes federal emergency health authorities, even while the States are moving to lesser restrictions in Phase III (and some, even the hardest hit like New York and Florida, declaring an end to the emergency altogether). Conspicuously absent from the order is any proof that the means currently used by the Federal Workforce, such as temperature checks, masking, and social distancing, had failed. As an example of the absurdity resulting from this, the Department of Defense’s official memorandum dated October 18th to Senior Pentagon Leadership (Ex. E, attached) states in ¶2 of page 1 that the Vaccine Mandate is to be applied to “employees engaged in full-time telework or remote work.” Plaintiff Employee B works in a 100% remote work arrangement. The plain text of the order, and how it is being implemented by the agencies, strongly suggests that other less intrusive means to protect the Federal Workforce were simply disregarded. Executive Order 14043 is also unquestionably more restrictive than most of the States, which offer their public servants an option for periodic COVID-19 testing. *See, e.g.*, Executive Directive No. 18 of the Governor of Virginia,

effective 1 September 2021. Ex. F, attached to this Motion. Virginia has likewise declared an end to the public health emergency.<sup>8</sup>

Even aside from the fact that the States, who actually hold the health and police powers and are employing lesser restrictive alternatives to the same situation, the Government also fails to demonstrate why the President seeks to keep to his most ambitious timeframe of **November 8th and November 22nd** apparently irrespective of its implications to loyal federal workers who decline to reveal their vaccination status and have performed their jobs with less restrictive means all throughout the pandemic. This must be stopped immediately, as livelihoods and reputations are decidedly at stake, pending a proper hearing on the constitutionality.

It is the Government's burden first to prove that they are following the least restrictive means test. *See Roman Catholic Diocese of Brooklyn*, 141 S. Ct. at 67 (finding tailoring requirement unsatisfied where, *inter alia*, the challenged restriction was "much tighter than those adopted by many other jurisdictions hard-hit by the pandemic"). *See also Mast v. Fillmore Cty., Minn.*, 141 S. Ct. 2430, 2433 (2021) (Gorsuch, J., concurring) ("It is the government's burden to show this alternative won't work; not the [challenger's] to show it will."). And on this the Supreme Court is clear: the asserted justification "must be genuine, not hypothesized or invented post hoc". *United States v. Virginia*, 518 U.S. 515, 533 (1996) (emphasis added).

Finally, "[t]o meet the requirement of narrow tailoring the government must demonstrate that alternative measures imposing lesser burdens on [a fundamental right] would fail to achieve the government's interests, not simply that the chosen route was easier." *Agudath Israel of Am.*,

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<sup>8</sup> Office of the Governor. <https://www.governor.virginia.gov/executive-actions/> ("As of July 1, 2021, the State of Emergency declared in response to COVID-19 has expired and all Executive Orders imposing COVID-19 restrictions are either expired or terminated.") (Last accessed on October 26, 2021).

983 F.3d at 633. Over the past eighteen months, the various government agencies have been using personal protective equipment (PPE), maximum telework, and other proper protocols. Nowhere in the body of Executive Order 14043 is there a finding that these extensive efforts have been unsuccessful.

### **III PLAINTIFFS AND OTHERS SIMILARLY SITUATED WILL SUFFER IRREPARABLE HARM WITHOUT TEMPORARY EMERGENCY RELIEF.**

The Government is absolutely clear about its intentions with respect to the enforcement of Executive Order 14043. Both Plaintiffs' agencies within the Department of Defense and Department of Health & Human Services respectively are deriving the compliance schedule and timeframe from the Safer Federal Workforce Task Force, which receives its commission directly from the Executive Order, and which in turn is set up by the Office of Personnel Management (OPM). *See* Compl't., Ex. B (ECF 1) (excerpts from the Safer Federal Workforce Task Force website) *and see*, e.g. Ex. E, attached to this Motion (October 18<sup>th</sup> Department of Defense implementation for senior Pentagon Leadership). All of this is run through the Office of Personnel Management (OPM), which means almost every department and agency of the Federal Government is looking at the same drop-dead dates of **November 8<sup>th</sup> and November 22<sup>nd</sup>**. *See* Compl't., ¶17 (ECF 1).

The Safer Federal Workforce Task Force means for there to be “consistency across government in enforcement of this government-wide vaccination policy.” *See* Compl't., Ex. B, at p.9 (ECF 1). And, “agencies may initiate enforcement as soon as November 9<sup>th</sup>.” *Id.* at p. 10. Vaccination Attestation Forms and sensitive medical records containing type of vaccination (Pfizer, Moderna, Johnson & Johnson, etc.), health care provider providing the vaccination, and time and date of vaccination is all being collected and stored in agency-specific medical files. *Id.*

at p. 6. This is happening at present and will presumably continue until November 22<sup>nd</sup>. Simply not providing the information is treated the same as not becoming fully vaccinated, to be “in violation of a lawful order.” *Id.* at 9. The result of noncompliance is a fast-track to dismissal: 5 days of reeducation, 14-day suspension, termination or removal. *Id.* at 9. This will have the effect of tarnishing Plaintiffs’ personnel files, preventing not just any prospects of future employment in the federal government but will be taken into consideration by prospective employers.<sup>9</sup> Most importantly, it will place them out of work immediately, left to search for other equivalent positions with their unique skill sets in an economy that is grappling with the COVID-19 pandemic. In fact, Plaintiffs upon discharge for reasons of misconduct would not even be able to avail themselves of unemployment benefits.

Before all the machinery of outprocessing commences and creates all the bureaucratic entanglements that will inevitably become much harder to correct later, Plaintiffs respectfully request that this Court put an immediate halt on the ambitious November 8/November 22 deadlines given.

#### **IV THE BALANCING OF THE EQUITIES FAVORS PLAINTIFFS AND OTHERS SIMILARLY SITUATED.**

Where the governmental defendant is the party opposing relief, “balancing of the equities merges into [the court’s] consideration of the public interest.” *SAM Party of N.Y. v. Kosinski*, 987 F.3d 267, 278 (2<sup>nd</sup> Cir. 2021). First and foremost, the public interest lies in enforcing the guarantees of the Constitution. *See, e.g., Paykina ex rel. E.L. v. Lewin*, 387 F. Supp. 3d 225, 245 (N.D.N.Y. 2019) (“The public interest generally supports granting a preliminary injunction where . . . a plaintiff has established a clear likelihood of success on the merits and made a showing of

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<sup>9</sup> Civil Servants who seek other employment will have their records forever harmed by having to report that they were terminated for disciplinary actions. Most jobs ask this question in the hiring process.

irreparable harm.”). Plaintiffs and others similarly situated are faced with a choice: prove that you have taken physical injection into your body, or lose your job. The Right to Privacy is clearly implicated. There can be nothing more conceivably invasive than an injection of a foreign substance.

The balance of hardships clearly favors Plaintiffs. The President’s stated efforts are to “halt the spread of COVID-19” and promote the “efficiency of the civil service” (Cmplt., Ex. A, Section 1) (ECF 1). But the Government has not shown that efforts (e.g. mask wearing, social distancing, temperature checks, maximum telework) at stopping COVID in the workplace over the past eighteen months have failed. Such extensive efforts have included Executive Order 13991 of January 20, 2021 which established the Federal Workforce Task Force and required mask wearing. This, in conjunction with the fact that the States are charting a different path strongly suggests that this is a policy preference on the part of the President as opposed to a true exigency.

The harm to the Government by a stop to its ambitious timeline would be relatively minor compared to the *great* harm that will come to Plaintiffs and others similarly situated without this Honorable Court’s immediate intervention. The matter is important enough to be fully fleshed out before permanent, life altering adverse employment decisions are made.

**V THERE ARE COMPELLING REASONS FOR PLAINTIFFS TO PROCEED UNDER PSEUDONYMS.**

Due to the environment in public discourse and within jobs and the news outlets, and the fear of retaliation, proceeding under pseudonyms is very important for the safety and security of the Plaintiffs.

The Vaccine Mandate has caused an atmosphere of hostility inside the Federal Government workforce against those who have abstained from the vaccinations or declined to provide vaccination status. Part of a wider division forming nationwide that is becoming more and more

pronounced due to a large portion of the country abstaining from vaccination, the vaccine mandate on the federal workforce is in turn creating an environment and opportunity for intimidation of those who have made a different choice.

There are a growing number of instances of discrimination against those who have chosen to not be vaccinated, including a mother's visitation rights temporarily being revoked,<sup>10</sup> a Florida landlord refusing to renew unvaccinated tenants' leases,<sup>11</sup> and a Colorado-based health system denying organ transplants.<sup>12</sup>

Executive Order 14043 is being implemented by department heads to ascertain, collect, and record vaccination status of employees including Plaintiffs. This constitutes Protected Health Information (PHI). The Federal Government is not a covered entity subject to the stringent protections of HIPAA which prohibits healthcare providers and businesses from disclosing personally identifiable information and protected health information to anyone without the patient's consent. Without the ability to proceed anonymously, confidential medical information about Plaintiffs and Plaintiffs' positions on COVID-19 vaccines will become widely known by their peers and the public, which could become cause for discrimination on the basis of vaccination status in their current employment and future employment opportunities.

### **CONCLUSION**

For the foregoing reasons, the temporary restraining order and preliminary injunction should issue immediately. Plaintiffs should be permitted to proceed anonymously.

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<sup>10</sup> <https://www.washingtonpost.com/nation/2021/08/30/chicago-vaccine-custody-rebecca-firlit/>

<sup>11</sup> <https://www.washingtonpost.com/nation/2021/09/15/florida-landlord-requiring-covid-vaccine-proof/>

<sup>12</sup> <https://www.washingtonpost.com/health/2021/10/05/uchealth-transplant-unvaccinated/>

October 27, 2021

Respectfully submitted,

/s/ Jonathan B. Bolls  
P.O. Box 10076  
5221 Franconia Road  
Alexandria, VA 22310  
[T](703) 593-2354  
[jonathanbolls@hotmail.com](mailto:jonathanbolls@hotmail.com)

*Attorney for Plaintiffs*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of October 2021 I sent the foregoing Motion for Temporary Restraining Order and Preliminary Injunction with exhibits, by U.S. First Class Priority Mail, to the following:

President Joseph R. Biden  
The White House  
1600 Pennsylvania Ave., N.W.  
Washington, D.C. 20500

Lloyd J. Austin III  
United States Secretary of Defense  
1000 Defense  
Pentagon, Washington, D.C. 20301-1000

Xavier Becerra  
Secretary of U.S. Department of Health and Human Services  
200 Independence Ave., S.W.  
Washington, D.C. 20201

Attorney General Merrick Garland  
United States Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20500

Erek Barron  
United States Attorney  
6406 Ivy Lane Suite 800  
Greenbelt, MD 20770

Respectfully Submitted,

/s/ \_\_\_\_\_  
Jonathan Bolls

*Attorney for Plaintiffs*

# Exhibit A

# THE KANSAS CITY STAR.

NATIONAL

## No vaccine, no problem: Indiana recruits Chicago cops upset by COVID mandates

BY MITCHELL WILLETTS

UPDATED OCTOBER 20, 2021 5 11 PM

With thousands of Chicago police officers at odds with the city's new COVID-19 vaccine mandates, officials in the neighboring state of Indiana are trying to recruit disgruntled cops, some of whom are being punished for not complying.

As of Oct. 15, all of Chicago Police Department's roughly 12,000 officers are required to share their vaccination status, outlets report, and those who aren't vaccinated must get tested for COVID-19 twice weekly.

"Hey Chicago police officers, we're hiring!" an [Indiana State Police](#) spokesman said in a tweet on Thursday. "No vaccine mandate ... lower taxes, great schools, welcoming communities."

[Chicago police officers](#) who don't follow the new rules can have their pay and their powers suspended, WFLD reported. As of Tuesday, at least 21 officers have faced those consequences, police Superintendent [David Brown](#) told the outlet.

Roughly two-thirds of Chicago's officers have submitted their vaccine status into Chicago's database, Brown told the station, and 82% of those are vaccinated.

That means around 4,000 officers have not shared their vaccine status — at least not yet.

Chicago's Fraternal Order of Police has spoken out strongly against the COVID-19 mandates, clashing with city officials on the issue in a very public way, and encouraging officers not to comply, outlets report.

According to NPR, a judge has [ordered the local union president](#) — John Catanzara — to stop making statements. The city's attorney also accused Catanzara of "municipal sedition and treason."

Earlier this week, Catanzara said Chicagoans should expect "a lot less officers on the street" due to the COVID mandates, WFLD reported.

Some Indiana officials see opportunity in Chicago's contention, and they offer this promise: no vaccine, no problem.

"Welcome to Indiana," [U.S. Sen. Mike Braun](#) said in a tweet. "My office stands ready to help connect Chicago police officers to an Indiana police department that is hiring now and doesn't have a vaccine mandate."

In a statement to Fox News, Braun said [Chicago's police](#) "[deserve respect](#)" that they aren't being shown, and they won't suffer the same "government overreach" in Indiana.

"Our police do the hardest job in the world, and they deserve respect — not losing their pay or being fired for refusing to comply with a ridiculous vaccine mandate," he said.

Chicago officials point out that COVID-19 poses a serious risk to police, NPR reported.

According to the Officer Down Memorial Page, which tracks law enforcement fatalities across the U.S., 245 officers died due to COVID-19 in 2020, and 237 have died as a result this year. The number of officers killed by gunfire in 2020 and 2021 is 95, the website says.

"I wanted to make sure that our officers who are literally working their tails off every single day, risking life and limb, are absolutely able to take advantage of this lifesaving vaccine," Mayor Lori Lightfoot said.

The fight over COVID-19 mandates comes as Chicago endures a particularly violent year in crime. As of late September, there had been [602 murders and 2,688 shootings](#), McClatchy News previously reported.

# Exhibit B



**GOVERNOR**  
**KATHY HOCHUL**

**JUNE 23, 2021** | Albany, NY

## **Governor Cuomo Announces New York Ending COVID-19 State Disaster Emergency on June 24**

Statewide 7-Day Average Positivity is 0.36%—

Record Low for 26 Consecutive Days, Has Declined for 79 Consecutive Days

52,526 Vaccine Doses Administered Over Last 24 Hours

6 COVID-19 Deaths Statewide Yesterday

Governor Andrew M. Cuomo today announced that New York will end the state disaster emergency [declared on March 7, 2020](https://www.governor.ny.gov/news/novel-coronavirus-briefing-governor-cuomo-declares-state-emergency-contain-spread-virus) (<https://www.governor.ny.gov/news/novel-coronavirus-briefing-governor-cuomo-declares-state-emergency-contain-spread-virus>) to fight COVID-19. Given New York's dramatic progress against COVID-19, with the success in vaccination rates, and declining hospitalization and positivity statewide the state of emergency will expire after Thursday, June 24.

Federal CDC guidance will remain in effect, which includes masks for unvaccinated individuals, as well as all riders on public transit and in certain settings, such as health care, nursing homes, correctional facilities, and homeless shelters. State and local government health departments will still be able to ensure mask rules and other health precautions are adhered to in those settings.

Since March of 2020, a variety of actions had been taken by executive order to assist in the rapid response to the pandemic by state agencies, local governments, hospitals, and businesses by both temporarily suspending or modifying laws as well as utilizing temporary directives. Hospitals were able to add space and staffing, meetings were authorized to occur virtually, and various deadlines were extended to accommodate a changed landscape.

"New York went from one of the worst infection rates to the lowest infection rate in the country, and it was all because of the efforts of New Yorkers who were smart, united and did what they needed to do throughout this entire pandemic," **Governor Cuomo said**. "Now we're starting to write a new chapter for a post-COVID New York--the state disaster emergency is ending and we can focus on reimagining, rebuilding and renewing our state. This doesn't mean COVID is gone, we still have to get more New Yorkers vaccinated, but we are getting back on track and starting to live life once again."

## **Exhibit C**



# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER 21-94

(Emergency Management - Extension of Executive Order 20-52-COVID-19)

**WHEREAS**, on March 9, 2020, I issued Executive Order 20-52, subsequently extended, declaring a state of emergency for the entire state due to COVID-19; and

**WHEREAS**, no state of emergency declared pursuant to the Florida Emergency Management Act may continue for more than 60 days unless renewed by the Governor; and

**WHEREAS**, the impact of COVID-19 poses a continuing threat to the health, safety and welfare of the State of Florida and its residents; and

**WHEREAS**, an extension of Executive Order 20-52, as extended, is necessary to ensure Florida schools remain open for the remainder of the school year and to protect Floridians from being required to produce a so-called vaccine passport as a condition of participating in everyday life; and

**WHEREAS**, the state continues to implement budgetary response efforts to help Floridians to the greatest extent possible; and

**WHEREAS**, as Florida recovers and re-launches its economy, I am committed to providing all available resources to assist Floridians and local communities with their efforts.

**NOW, THEREFORE, I, RON DESANTIS**, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. The state of emergency declared in Executive Order 20-52, as extended by



Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, 20-316, and 21-45 will be extended for 60 days following the issuance of this order for the entire State of Florida.

Section 2. All actions taken by the Director of the Division of Emergency Management as the State Coordinating Officer with respect to this emergency before the issuance of this Executive Order are ratified, and he is directed to continue to execute the State's Comprehensive Emergency Management Plan and other response, recovery, and mitigation plans necessary to cope with the emergency.

Section 3. As Florida continues to realize a manageable trend in COVID-19 cases, over 8.5 million vaccinated individuals, a 4.7 % unemployment rate well under the national average, and state revenues improving significantly from worst-case projections during the pandemic, gaining \$4.1 billion additional projected revenue over three fiscal years from the August 2020 estimate, the state should prepare to resume non-emergency operations.

Section 4. Except as amended herein, Executive Order 20-52, extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, 20-316, and 21-45 is ratified and reaffirmed.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 27th day of April, 2021.

  
RON DESANTIS, GOVERNOR

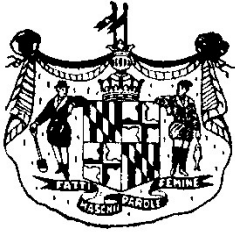
ATTEST:

  
SECRETARY OF STATE

2021 APR 27 AM 11:29  
DEPARTMENT OF STATE  
TALLAHASSEE, FL

FILED

## **Exhibit D**



**The State of Maryland**  
**Executive Department**

ORDER  
OF THE  
GOVERNOR OF THE STATE OF MARYLAND

NUMBER 21-06-15-01

TERMINATING VARIOUS EMERGENCY ORDERS

WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, and renewed on March 17, April 10, May 6, June 3, July 1, July 31, August 10, September 8, October 6, October 29, November 25, and December 23, 2020, and January 21, February 19, March 18, April 16, May 12 and June 12, 2021, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

- I. Termination of Certain Orders, Effective July 1, 2021. Each of the orders listed below in this section I shall be rescinded and of no further effect as of 12:01 a.m. on July 1, 2021:
  - a. the Order of the Governor of the State of Maryland number 21-05-14-01, entitled “Amending and Restating the Order of May 12, 2021, Requiring Use of Face Coverings in Certain Circumstances”;
  - b. the Order of the Governor of the State of Maryland, dated March 12, 2020, entitled “For the Implementation of Elevated Level II of Pandemic Flu and Other Infectious Diseases Attendance and Leave Policy for Executive Branch State Employees”;
  - c. the Order of the Governor of the State of Maryland number 20-12-17-01, entitled “Authorizing Quarantine and/or Testing of Travelers”;
  - d. the Order of the Governor of the State of Maryland number 21-05-12-02, entitled “Amending and Restating Order No. 20-05-29-01, Enabling Alternative Alcohol Services”;

- e. the Order of the Governor of the State of Maryland number 20-06-11-01, entitled “Authorizing Suspension of Alcoholic Beverage License Fees”;
- f. the Order of the Governor of the State of Maryland number 20-04-01-01, entitled “Amending and Restating Order No. 20-03-20-01 to Further Authorize Additional Telehealth Services”;
- g. the Order of the Governor of the State of Maryland number 20-04-14-01, entitled “Preserving the Supply of Necessary Drugs”;
- h. the Order of the Governor of the State of Maryland number 20-11-17-03, entitled “Implementing Alternative Correctional Detention and Supervision”;
- i. the Order of the Governor of the State of Maryland number 20-04-29-03, entitled “Prohibiting Garnishment of CARES Act Recovery Rebates”;
- j. the Order of the Governor of the State of Maryland number 21-03-15-01, entitled “Prohibiting Garnishment of American Rescue Plan Act of 2021 Rebates”;
- k. the Order of the Governor of the State of Maryland number 20-03-23-02, entitled “Initiating a Process for Authorization of Laboratories in Maryland to Develop and Perform COVID-19 Testing”;
- l. the Order of the Governor of the State of Maryland number 20-03-31-01, entitled “Adjusting the Timing of Certain Tax Deadlines and Oaths of Office”;
- m. the Order of the Governor of the State of Maryland number 20-03-31-02, entitled “Determining that Disability Services Personnel are Health Care Providers Necessary for Maryland’s Response to COVID-19”;
- n. the Order of the Governor of the State of Maryland number 2020-05-13-02, entitled “Enabling Alternative Processes for Marriage Applications and Ceremonies”;
- o. the Order of the Governor of the State of Maryland number 20-03-25-01, entitled “Amending and Restating the Order of March 13, 2020, Controlling Child Care Access”;
- p. the Order of the Governor of the State of Maryland number 21-01-28-02, entitled “Facilitating Meetings of Stockholders of Maryland Corporations and Meetings of Shareholders of Maryland Real Estate Investment Trusts by Remote Communication”;
- q. the Order of the Governor of the State of Maryland number 20-03-30-03, entitled “Enabling Municipalities to Postpone Elections”; and
- r. the Order of the Governor of the State of Maryland number 20-12-17-03, entitled “Exempting Santa Claus and His Affiliated Elves and Reindeer from Traveler Testing and Quarantine Requirements”.

- II. Termination of Certain Orders, Effective August 15, 2021. Each of the orders listed below in this section II shall be rescinded and of no further effect as of 11:59 p.m. on August 15, 2021:
- a. the Order of the Governor of the State of Maryland number 21-05-12-03, entitled “Delaying Expiration of Certain Motor Vehicle Administration Licenses, Permits, and Identification Cards”;
  - b. the Order of the Governor of the State of Maryland number 20-12-17-02, entitled “Amending and Restating the Order Dated October 16, 2020, Temporarily Prohibiting Evictions of Tenants Suffering Substantial Loss of Income Due to COVID-19, and Additionally Prohibiting Certain Repossessions, Restricting Initiation of Residential Mortgage Foreclosures, and Prohibiting Commercial Evictions”;
  - c. the Order of the Governor of the State of Maryland dated March 12, 2020, entitled “Calling the Maryland National Guard into State Active Duty”;
  - d. the Order of the Governor of the State of Maryland number 20-04-29-01, entitled “Amending and Restating the Order Dated April 5, 2020 Authorizing Various Actions Related to Nursing Homes and Other Health Care Facilities”;
  - e. the Order of the Governor of the State of Maryland number 20-05-19-01, entitled “Authorizing COVID-19 Testing by Licensed Pharmacists”;
  - f. the Order of the Governor of the State of Maryland number 20-11-17-02, entitled “Establishing Alternate Care Sites and Authorizing Regulation of Patient Care Space in Health Care Facilities”;
  - g. the Order of the Governor of the State of Maryland number 21-01-05-01, entitled “Requiring Reporting of COVID-19 Vaccine Administration”;
  - h. the Order of the Governor of the State of Maryland number 21-03-09-02, entitled “Amending and Restating the Order of March 16, 2020 Relating to Various Health Care Matters”;
  - i. the Order of the Governor of the State of Maryland number 20-03-30-02, entitled “Waiving Family Contributions for the Maryland Children’s Health Program”;
  - j. the Order of the Governor of the State of Maryland number 20-03-19-03, entitled “Augmenting the Emergency Medical Services Workforce”;
  - k. the Order of the Governor of the State of Maryland number 20-09-29-02, entitled “Permitting Video and Electronic Maryland Insurance Administration Hearings”;
  - l. the Order of the Governor of the State of Maryland number 20-09-29-01, entitled “Amending the Order of March 30, 2020, Authorizing Remote Notarizations”;
  - m. the Order of the Governor of the State of Maryland number 20-04-10-01, entitled

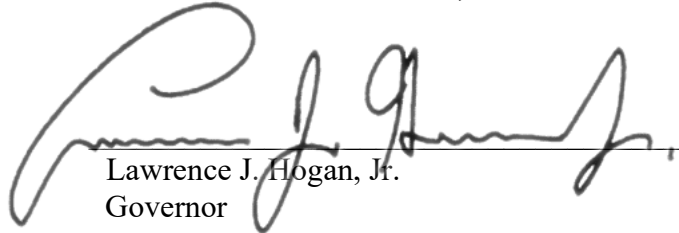
“Authorizing Remote Witnessing and Electronic Signing of Certain Documents”;  
and

- n. the Order of the Governor of the State of Maryland number 21-03-09-03, entitled “Amending and Restating the Order of June 19, 2020, Extending Certain Licenses, Permits, Registrations, and Other Governmental Authorizations, and Authorizing Suspension of Legal Time Requirements”.

III. General Provisions.

- a. This Order remains effective until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.
- b. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this Order is hereby suspended to the extent of the inconsistency.
- c. The underlined section headings in this Order are for convenience of reference only and shall not affect the interpretation of this Order.
- d. If any provision of this Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of the Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Order are severable.

ISSUED UNDER MY HAND THIS 15TH DAY OF JUNE, 2021.



Lawrence J. Hogan, Jr.  
Governor

## **Exhibit E**

## IMMEDIATE RELEASE

# **Force Health Protection Guidance (Supplement 23) Revision 1, Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification**

OCT. 18, 2021

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Today, the Department of Defense released the Force Health Protection Guidance (Supplement 23) Revision 1, which rescinds and replaces three Department of Defense memorandums and provides updated guidance for implementing additional force health protection and workplace safety measures directed by the White House Safer Federal Workforce Task Force to reduce the transmission of the virus that causes coronavirus disease 2019 (COVID-19).

As per Executive Order 14043 and guidance from the Safer Federal Workforce Task Force, DoD civilian employees are now required to be fully vaccinated by November 22, 2021, subject to exemptions as required by law. For purposes of this guidance, "DoD civilian employee," includes foreign nationals employed by DoD outside the United States, to the maximum extent possible while respecting host nation agreements and laws. It also includes DoD civilian employees who are engaged in full-time telework or remote work.

Heads of DoD Components and the Director of Administration and Management (for the Office of the Secretary of Defense Components, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, and DoD Field Activities) will publish any necessary supplemental instructions and ensure that all contract and associated funding implications are considered.

DoD Components should engage with DoD civilian employee unions as they develop supplemental guidance and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest convenience, including on a post-implementation basis.

The memorandum for Force Health Protection Guidance (Supplement 23) Revision 1 - Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification can be found [here](#).





PERSONNEL AND  
READINESS

**UNDER SECRETARY OF DEFENSE**

4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

**OCT 18 2021**

**MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP  
COMMANDERS OF THE COMBATANT COMMANDS  
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS**

**SUBJECT: Force Health Protection Guidance (Supplement 23) Revision 1 – Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification**

This memorandum rescinds and replaces references (a) and (b),<sup>1</sup> and provides updated guidance for implementing additional force health protection and workplace safety measures directed by the White House Safer Federal Workforce Task Force (reference (c)) to reduce the transmission of the virus that causes coronavirus disease 2019 (COVID-19).

In accordance with references (c), (d), and (e), DoD civilian employees are now required to be fully vaccinated by November 22, 2021, subject to exemptions as required by law. For purposes of this guidance, "DoD civilian employee," includes foreign nationals employed by DoD outside the United States, to the maximum extent possible while respecting host nation agreements and laws. It also includes DoD civilian employees who are engaged in full-time telework or remote work. Additional information about the requirements for DoD civilian employees can be found in Attachment 1.

DoD contractor personnel and official visitors must attest to being fully vaccinated and, if not fully vaccinated, present the results of a recent negative COVID-19 test as a condition of physical access to DoD buildings and DoD-leased spaces in non-DoD buildings in which official DoD business takes place (referred to jointly in this memorandum as "DoD facilities"). For purposes of this physical access requirement, "contractor personnel" are those individuals issued a credential by DoD that affords the individual recurring access to DoD facilities, classified herein as "credentialed recurring access" (CRA) (e.g., Common Access Cardholders). "Official visitors" are non-DoD individuals seeking access, one time or recurring, in association with the performance of official DoD business (e.g., to attend a meeting), but who do not have CRA. The COVID-19 vaccination status for all individuals with CRA and official onsite visitors will be determined in accordance with Attachment 2.

These vaccination and physical access requirements do not apply to personnel receiving ad hoc access to DoD facilities (e.g., delivery personnel, taxi services); to individuals who have access to the grounds of, but not the buildings on, DoD installations (e.g., contract groundskeepers, fuel delivery personnel, household goods transportation personnel); to personnel accessing DoD buildings unrelated to the performance of DoD business (e.g., residential housing); or to personnel accessing DoD facilities to receive a public benefit (e.g., commissary;

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<sup>1</sup> References are listed in Attachment 8.

exchange; public museum; air show; military medical treatment facility; Morale, Welfare, and Recreation resources).

In accordance with reference (f), Service members (members of the Armed Forces under DoD authority on Active Duty or in the Ready Reserve, including members of the National Guard) are required to be fully vaccinated against COVID-19. Service members' vaccination status will be validated utilizing their Military Service-specific Individual Medical Readiness (IMR) system. If a Service member has been vaccinated against COVID-19 outside the Military Health System, that Service member must show official proof of his or her COVID-19 vaccination status to update the IMR system. Once the applicable mandatory vaccination date has passed, COVID-19 screening testing as described in Attachment 5 is required at least weekly for Service members who are not fully vaccinated, including those who have an exemption request under review, or who are exempted from COVID-19 vaccination and are entering a DoD facility. Service members who are not on Active Duty and who also are DoD civilian employees or DoD contractor personnel must follow the applicable requirements in this memorandum for DoD civilian employees or DoD contractor personnel.

Individuals are considered fully vaccinated 2 weeks after completing the second dose of a two-dose COVID-19 vaccine or 2 weeks after receiving a single dose of a one-dose COVID-19 vaccine. Individuals must be vaccinated with vaccines that are either fully licensed or authorized for emergency use by the Food and Drug Administration (FDA) (e.g., Pfizer-BioNTech/COMIRNATY, Moderna, Johnson & Johnson/Janssen vaccines); listed for emergency use on the World Health Organization Emergency Use Listing (e.g., AstraZeneca/Oxford); or approved for use in a clinical trial vaccine for which vaccine efficacy has been independently confirmed (e.g., Novavax). Those with previous COVID-19 infection(s) or antibody test results are not considered fully vaccinated on that basis for the purposes of this memorandum.

All medical and other information collected from individuals will be maintained in a manner meeting the privacy requirements in Attachment 7.

Heads of DoD Components and the Director of Administration and Management (for the Office of the Secretary of Defense Components, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, and DoD Field Activities) will publish any necessary supplemental instructions and ensure that all contract and associated funding implications are considered.

DoD Components should engage with DoD civilian employee unions as they develop supplemental guidance and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest convenience, including on a post-implementation basis.

This memorandum and other COVID-19 guidance memoranda are centrally located at: <https://www.defense.gov/Explore/Spotlight/Coronavirus/Latest-DOD-Guidance/>.

Please direct any questions or comments to the following email address: [REDACTED]  
[REDACTED]

A handwritten signature in black ink, appearing to read 'Gilbert R. Cisneros, Jr.', with a stylized flourish at the end.

Gilbert R. Cisneros, Jr.

Attachments:

1. ATTACHMENT 1: Vaccination Requirements for DoD Civilian Employees
2. ATTACHMENT 2: Requirements for DoD Contractor Personnel, Official Onsite Visitors, and Others Seeking Access to Facilities
3. ATTACHMENT 3: DD Form 3175 – “DoD Civilian Employee Certification of Vaccination”
4. ATTACHMENT 4: DD Form 3150 – “Contractor and Visitor Certification of Vaccination”
5. ATTACHMENT 5: COVID-19 Screening Testing Requirements
6. ATTACHMENT 6: Requirements for Obtaining Self-Collection Kits and Self-Tests
7. ATTACHMENT 7: Privacy Requirements
8. ATTACHMENT 8: References

**ATTACHMENT 1**  
**Vaccination Requirements for DoD Civilian Employees**

**1. Vaccination Requirement**

- a. DoD civilian employees who are not currently fully vaccinated must meet the following deadlines, if using vaccines that are fully licensed or authorized for emergency use by the FDA, in order to be fully vaccinated by November 22, 2021:
  - i. October 11: first dose deadline (if receiving the Moderna vaccine);
  - ii. October 18: first dose deadline (if receiving the Pfizer-BioNTech/COMIRNATY vaccine);
  - iii. November 8: second dose deadline (if receiving the Moderna and PfizerBioNTech/COMIRNATY vaccines);
  - iv. November 8: first (only) dose deadline (if receiving the Johnson & Johnson/Janssen vaccine); and
  - v. If DoD civilian employees use an authorized vaccine other than those listed above, they are responsible for being fully vaccinated by November 22, 2021.
- b. DoD civilian employees who are not fully vaccinated must comply with all DoD requirements for individuals who are not fully vaccinated, including those requirements related to masking, physical distancing, and travel. Regular COVID-19 testing is not required prior to November 22, 2021. After November 22, 2021, weekly COVID-19 testing is required for those DoD civilian employees who are not fully vaccinated, including those who have medical or religious exemptions. DoD civilian employees who telework or work remotely on a full-time basis are not subject to weekly testing, but must provide a negative result from a test performed within the prior 72 hours for entry into a DoD facility.
- c. DoD civilian employees are eligible to receive the COVID-19 vaccine at any DoD vaccination site, including military medical treatment facilities. They may also opt to receive the COVID-19 vaccine at locations other than DoD vaccination sites, such as retail stores, private medical practices, and/or local and State public health department sites.
- d. New DoD civilian employees must be fully vaccinated by their entry on duty (start) date or November 22, 2021, whichever is later.
  - i. The DoD or Office of the Secretary of Defense (OSD) Component head may approve temporary exemptions in writing for up to 60 days after a DoD civilian employee's start date for urgent, mission-critical hiring needs in circumstances in which a DoD civilian employee could not have been fully vaccinated between the time the job opportunity announcement closes and the DoD civilian employee's start date. This authority may be delegated in writing to the DoD or OSD Component head's Principal Deputy (or equivalent) but no lower.

- ii. DoD Components must address the COVID-19 vaccination requirement in job opportunity announcements and tentative and final offer letters. For hiring actions currently underway, DoD Components must issue revised tentative and final offer letters. Sample language can be found in reference (g).
- e. DoD civilian employees are authorized official duty time to receive vaccination doses. For employees who are unable to receive a COVID-19 vaccination within their duty hours, regular overtime rules are applicable.
- f. DoD civilian employees are authorized administrative leave for purposes of taking a family member to get a vaccination and to recover from vaccination. Employees who experience an adverse reaction to a COVID-19 vaccination should be granted no more than 2 workdays of administrative leave for recovery associated with a single COVID-19 vaccination dose. DoD civilian employees should use the time and attendance code for “physical fitness” to record administrative leave for COVID-19 vaccination recovery time that prevents the employee from working or for taking a family member to be vaccinated for COVID-19. The type hour code is “LN” and the environmental/hazard/other code is “PF.” Non-appropriated fund employers should code administrative leave related to COVID-19 in a way that can be easily reported.

## **2. Verification of Vaccination**

- a. DoD civilian employees who have received a dose of a one-dose vaccine, or both doses of a two-dose vaccine, must provide proof of vaccination to their supervisors. For purposes of the verification requirement, “supervisor” includes authorized human resources officials. Proof of vaccination may be submitted in hard copy or in an electronic format, and the proof may be a photocopy or photograph of the vaccination record, if it legibly displays the data points to be verified by supervisors. DoD civilian employees who are not fully vaccinated must provide proof of vaccination to their supervisors upon receipt of each required dose. Acceptable proof includes:
  - i. A copy of the record of immunization from a health care provider or pharmacy;
  - ii. A copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813\_r, published on September 3, 2020);
  - iii. A copy of medical records documenting the vaccination;
  - iv. A copy of immunization records from a public health or State immunization information system; or
  - v. A copy of any other official documentation containing the data points required to be verified by the supervisor.
- b. In addition to providing proof of vaccination to their supervisors, DoD civilian employees also will complete Section A of DD Form 3175 (Attachment 3). DoD civilian employees with access to milConnect (<https://milconnect.dmdc.osd.mil/>) will complete the DD Form 3175 via milConnect; otherwise use of a hard copy<sup>2</sup> is

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<sup>2</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd3175.pdf>



acceptable. DoD civilian employees using a hard copy will provide the hard copy to their supervisor. DoD civilian employees are required to complete the DD Form 3175 even if they already completed the DD Form 3150 (Attachment 4).

- c. Upon receiving proof of vaccination, a DoD civilian employee's supervisor will verify that the information provided contains the following data points:
  - i. Type of vaccine administered
  - ii. Number of doses received
  - iii. Date(s) of administration; and
  - iv. Name of the health care professional(s) or clinic site(s) administering the vaccine(s).
- d. In addition to verifying that a DoD civilian employee's proof of vaccination includes the required data points, supervisors also will complete Section B of DD Form 3175 beginning on or about October 21, 2021 (or when activation of the form is completed for supervisor use). Supervisors with access to milConnect (<https://milconnect.dmdc.osd.mil/>) will complete the DD Form 3175 via milConnect using the DoD civilian employee's Employee Identification Number; otherwise use of a hard copy is acceptable.
- e. Supervisors will retain DoD civilian employees' proof of vaccination in accordance with their DoD Component's recordkeeping requirements for DoD civilian employee medical records and the privacy requirements contained in Attachment 7.
- f. DoD civilian employees may not be required to use their own personal equipment for the purpose of submitting proof of vaccination or DD Form 3175. DoD civilian employees who submit proof of vaccination or the DD Form 3175 in an electronic format are encouraged to use encrypted email or password protected files with DoD SAFE file transfer (<https://safe.apps.mil/>).

### **3. Enforcement of DoD Civilian Employee COVID-19 Vaccination Requirement:**

- a. DoD civilian employees who refuse to be vaccinated, or to provide proof of vaccination, are subject to disciplinary measures, up to and including removal from Federal service, unless the DoD civilian employee has received an exemption or the DoD civilian employee's timely request for an exemption is pending a decision. DoD Components should generally follow the recommended guidelines in reference (h), subject to any applicable Component policy and collective bargaining agreements.
- b. Progressive enforcement actions include, but are not limited, to:
  - i. A 5-day period of counseling and education;
  - ii. A short suspension without pay, of 14 days or less, with an appropriate notice period. Senior Executive Service members may only be suspended for more than 14 days;

- iii. Removal from Federal service for failing to follow a direct order.
- c. During notice periods, DoD civilian employees generally should not be placed on administrative leave. DoD Components should require DoD civilian employees to continue to telework or report to the worksite and follow all mitigation measures applicable to unvaccinated DoD civilian employees when reporting to the worksite.
- d. DoD Components will designate officials, at the appropriate organizational level, to handle the disciplinary process to ensure consistent application of disciplinary measures. Such officials will decide each case with due regard to the facts and circumstances of that case. DoD Components may begin enforcement action as soon as November 22, 2021, for DoD civilian employees who are not fully vaccinated and who do not have an exemption request approved or pending decision.
- e. Supervisors should contact their servicing human resources and legal offices to discuss options available to address individual situations regarding enforcement of this requirement.
- f. DoD Components are encouraged to identify an occupational health office, medical office, or other resource with whom a DoD civilian employee may consult during the period of counseling and education.

#### **4. Exemptions to DoD Civilian Employee COVID-19 Vaccination Requirement:**

DoD civilian employees may request an exemption on the basis of a medical condition or circumstance or a sincerely held religious belief, practice or observance. Exemptions will be granted in limited circumstances and only where legally required. Further guidance on processing exemptions will be forthcoming from the Under Secretary of Defense for Personnel and Readiness. In the meantime, DoD Components should take no action on any exemption requests received from DoD civilian employees.

## **ATTACHMENT 2**

### **Requirements for DoD Contractor Personnel, Official Onsite Visitors, and Others Seeking Access to Facilities**

#### **1. DoD Contractor Personnel**

- a. For DoD contractor personnel, the DoD civilian vaccination deadline of November 22, 2021, does not apply. Vaccination requirements for DoD contractor personnel will be in accordance with reference (i), as implemented by reference (j), as directed under Executive Order 14042 (reference (k)).
- b. DoD contractor personnel will complete the DD Form 3150, "Contractor and Visitor Certification of Vaccination" (Attachment 4), maintain a current completed DD Form 3150, and show it to authorized DoD personnel upon request. Failure to complete the DD Form 3150 may result in denying DoD contractor personnel access to the DoD facility to which access is sought.
- c. DoD contractor personnel who are not fully vaccinated against COVID-19 because they are not performing under a covered contract that requires COVID-19 vaccination, due to a legally required accommodation, or who decline to attest to their COVID-19 vaccination status will be subject to COVID-19 screening testing at least weekly as set forth in this guidance (Attachment 5). DoD contractor personnel who refuse required screening testing will be denied access to DoD facilities.
- d. In accordance with applicable contracts, DoD contractor personnel may be offered, but are not required to receive, COVID-19 vaccines at their DoD worksites.

#### **2. Official Onsite Visitors**

- a. Official onsite visitors will complete DD Form 3150, "Contractor and Visitor Certification of Vaccination"<sup>3</sup> (Attachment 4); and maintain a current completed DD Form 3150 and show it to authorized DoD personnel, upon request. Failure to complete the DD Form 3150 may result in denial of an official onsite visitor's access to the DoD facility to which access is sought.
- b. Official visitors who are not fully vaccinated against COVID-19, or who decline to volunteer their COVID-19 vaccination status, must show an electronic or paper copy of negative results from an FDA-authorized or approved COVID-19 test administered no earlier than 72 hours prior to their visit. If an official visitor is unable to show a negative COVID-19 test result, the visitor may be provided onsite self-testing, if available, or will be denied access to the DoD facilities to which access is sought. Service members who are not on Active Duty at the time of their official visit are subject to the requirements in this paragraph.
- c. Official visitors will follow applicable policies and procedures of both DoD and the

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<sup>3</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd3150.pdf>



Department or Agency they are visiting, if different from DoD.

**3. Others Seeking Access to Facilities**

Individuals other than official visitors seeking access to facilities located on DoD installations, but operated by other Federal departments and agencies, will follow the policies and procedures of that other department or agency.

# ATTACHMENT 3

## DD Form 3175 – “DoD Civilian Employee Certification of Vaccination”

CUI (when filled in)

DoD CIVILIAN EMPLOYEE CERTIFICATION OF VACCINATION	
<p style="text-align: center;"><b>PRIVACY ACT STATEMENT</b></p> <p><b>Authority:</b> Pursuant to 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sept. 9, 2021), DoD is authorized to collect this information. Additional authorities for the systems of records associated with this collection of information also include: E.O. 13991, Protecting the Federal Workforce and Requiring Mask-Wearing; E.O. 12196, Occupational Safety and Health Program for Federal Employees; 10 U.S.C. 113, 10 U.S.C. 136, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2672; DoD Directive 5525.21; and DoD Instruction 6200.03. Providing this information is mandatory, and DoD is authorized to impose penalties for failure to provide the information pursuant to applicable Federal personnel laws and regulations.</p> <p><b>Principal Purpose:</b> This information is being collected and maintained to implement Coronavirus Disease 2019 (COVID-19) workplace safety plans, and ensure the safety and protection of the DoD workforce, workplace, and other DoD facilities and environments, consistent with the above-referenced authorities, the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.</p> <p><b>Routine Use(s):</b> While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a person, organization or governmental entity as necessary and relevant to notify them of, respond to, or guard against a public health emergency, or other similar crisis, including to comply with laws governing the reporting of communicable disease or other laws concerning health and safety in the work environment; adjudicative bodies (e.g., the Merit System Protection Board), arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding Federal employment; contractors, grantees, experts, consultants, students, and others as necessary to perform their duties for the Federal government; or agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf.</p> <p>A complete list of routine uses may be found in the applicable System of Records Notice (SORN) associated with the collection of this information as follows: For most Federal civilian employees: OPM/GOVT-10, Employee Medical File System Records, 75 Fed. Reg. 35099 (Jun. 21, 2010), amended 80 Fed. Reg. 74815 (Nov. 30, 2015). For Federal civilian employees not covered by OPM/GOVT-10: DPR 39 DoD, DoD Personnel Accountability and Assessment System of Records, 85 Fed. Reg. 17047 (Mar. 26, 2020) (also available at <a href="https://dpcl.d.defense.gov/Portals/49/Documents/Privacy/SORNs/OSDJS/DPR-39-DoD.pdf">https://dpcl.d.defense.gov/Portals/49/Documents/Privacy/SORNs/OSDJS/DPR-39-DoD.pdf</a>).</p> <p><b>Consequences of Failure to Provide Information:</b> Providing this information is mandatory. Unless granted an exemption, all covered Federal civilian employees are required to be vaccinated against COVID-19. Employees are required to provide documentation concerning their vaccination status to their employing DoD Component. Failure to provide this information may subject you to disciplinary action, including and up to removal from Federal service.</p>	
<p><b>INSTRUCTIONS:</b> Section A of this form should be completed by DoD civilian employees only. Section B of this form should be completed by the DoD civilian employee's supervisor (or authorized human resources official). This form should be completed by DoD civilian employees only. Service members and employees of DoD contractors should not complete this form.</p>	
<p><b>SECTION A. To be completed by DoD civilian employees.</b></p>	
<p><b>1. CIVILIAN EMPLOYEE NAME (Last, First, MI):</b></p>	<p><b>2. CIVILIAN EMPLOYEE DoD ID NUMBER:</b></p>
<p><b>3. PLEASE CHECK ALL THAT COINCIDES WITH YOUR COVID-19 VACCINATION STATUS:</b></p> <p><input type="checkbox"/> 3.a. I am fully vaccinated. Individuals are considered "fully vaccinated" two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Accepted COVID-19 vaccines are those which have received a license or emergency use authorization from the U.S. Food and Drug Administration and those COVID-19 vaccines on the World Health Organization Emergency Use Listing. "Fully vaccinated" also includes circumstances in which the individual was a participant in a U.S. site clinical trial and has received all recommended doses.</p> <p><input type="checkbox"/> 3.b. I have received one or more doses, but I am not yet considered fully vaccinated (in accordance with the definition of fully vaccinated above).</p> <p><input type="checkbox"/> 3.c. I have submitted proof of vaccination to my supervisor. Proof of vaccination includes a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card, a copy of medical records documenting the vaccination, a copy of immunization records from a public health or state immunization information system, or a copy of any other official documentation. Employees may provide a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record that is clear and legible.</p> <p><input type="checkbox"/> 3.d. I have not received any vaccination doses.</p> <p><input type="checkbox"/> 3.e. I have submitted a request for an exemption from vaccination and a decision is still pending.</p> <p><input type="checkbox"/> 3.f. I have an approved exemption from vaccination.</p>	

DD FORM 3175, OCT 2021

CUI (when filled in)

Controlled by: OUSD(P&R)  
 Controlled by: ASD(HA)  
 CUI Category: HLTH, PRVCY, OPSEC  
 LDC: DL(DoD Only)

Page 1 of 2

CUI (when filled in)

<b>4. EMPLOYEE VACCINE INFORMATION</b> (Employees checking block 3.a. should skip block 4 and go to block 5):	
<b>4.a. VACCINE MANUFACTURER(S) OR VACCINE PRODUCT NAME(S):</b> <input type="checkbox"/> Pfizer-BioNTech/Comirnaty <input type="checkbox"/> Moderna <input type="checkbox"/> AstraZeneca/Oxford <input type="checkbox"/> Johnson and Johnson (J&J)/Janssen <input type="checkbox"/> Novavax <input type="checkbox"/> Other U.S. Food and Drug Administration licensed or authorized, World Health Organization Emergency Use listed vaccine or U.S. site clinical trial vaccine (provide name):	<b>4.b. DATE OF FIRST DOSE:</b>  <b>4.c. DATE OF SECOND DOSE</b> (if two-dose vaccine):  <b>4.d. DATE FULLY VACCINATED:</b>
<b>5. CERTIFICATION/KNOWLEDGE OF POSSIBLE ACTIONS FOR FALSE STATEMENTS</b>	
<input type="checkbox"/> I certify that the information I have provided on this form and the proof of vaccination documentation I have submitted is true and correct. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. 1001). I understand that making a false statement on this form could result in additional administrative action including an adverse personnel action up to and including removal from my position.	
<b>6. CIVILIAN EMPLOYEE SIGNATURE:</b>	<b>7. DATE:</b>
<b>SECTION B. To be completed by the supervisor of the DoD civilian employee completing section A (or an authorized human resources official)</b>	
<b>8. SUPERVISOR PROOF OF VACCINATION REVIEW</b> <input type="checkbox"/> 8.a. Proof of vaccination not received. <input type="checkbox"/> 8.b. Proof of vaccination received and under review. <input type="checkbox"/> 8.c. Proof of vaccination received and reviewed.	<b>9. STATUS OF VACCINATION - EXEMPTION REVIEW</b> <input type="checkbox"/> 9.a. Exemption request received and pending disposition. <input type="checkbox"/> 9.b. Exemption request received and approved. <input type="checkbox"/> 9.c. Exemption request received and denied. <input type="checkbox"/> 9.d. Exemption request not received.
<b>10. SUPERVISOR / AUTHORIZED HR OFFICIAL NAME</b> (Last, First, MI):	<b>11. SUPERVISOR / AUTHORIZED HR OFFICIAL DoD ID NUMBER:</b>
<b>12. SUPERVISOR / AUTHORIZED HR OFFICIAL SIGNATURE:</b>	<b>13. DATE:</b>

DD FORM 3175, OCT 2021

PREVIOUS EDITION IS OBSOLETE.

CUI (when filled in)

Page 2 of 2

## ATTACHMENT 4

### DD Form 3150 – “Contractor Personnel and Visitor Certification of Vaccination”

CUI (when filled in)

<b>CONTRACTOR PERSONNEL AND VISITOR CERTIFICATION OF VACCINATION</b>		OMB No. 0704-0613 Expiration 20220228
<p style="text-align: center;"><b>AGENCY DISCLOSURE NOTICE</b></p> <p>The public reporting burden for this collection of information is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, at <a href="mailto:whs.mc-alex.esd.mbx.dd-dod-informationcollections@mail.mil">whs.mc-alex.esd.mbx.dd-dod-informationcollections@mail.mil</a>. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p>		
<p style="text-align: center;"><b>PRIVACY ACT STATEMENT</b></p> <p><b>Authority:</b> DoD is authorized to collect the information on this form pursuant to Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors; E.O. 13991, Protecting the Federal Workforce and Requiring Mask-Wearing; and E.O. 12196, Occupational Safety and Health Program for Federal Employees; as well as 10 U.S.C. 113, 10 U.S.C. 136, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2672, 5 U.S.C. chapter 79, and DoD Instruction 6200.03.</p> <p><b>Principal Purpose:</b> This information is being collected to implement Coronavirus Disease 2019 (COVID-19) workplace safety plans, including DoD's COVID-19 testing programs, and to ensure the safety and protection of the DoD workforce, workplace, and other DoD facilities and environments, consistent with the above-referenced authorities, the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.</p> <p><b>Routine Use(s):</b> While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a person, organization, or governmental entity as necessary and relevant to notify them of, respond to, or guard against a public health emergency or other similar crisis, including to comply with laws governing the reporting of communicable disease or other laws concerning health and safety in the work environment; adjudicative or administrative bodies or officials when the records are relevant and necessary to an adjudicative or administrative proceeding; contractors, grantees, experts, consultants, students, and others as necessary to perform their duties for the Federal government; agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of routine uses may be found in the applicable System of Records Notice (SORN) associated with the collection of this information from contractor personnel and DoD visitors: DPR 39 DoD, DoD Personnel Accountability and Assessment System of Records, 85 Fed. Reg. 17047 (Mar. 26, 2020) (also available at <a href="https://dpcld.defense.gov/Portals/49/Documents/Privacy/SORNS/OSDJS/DPR-39-DoD.pdf">https://dpcld.defense.gov/Portals/49/Documents/Privacy/SORNS/OSDJS/DPR-39-DoD.pdf</a>).</p> <p><b>Consequences of Failure to Provide Information:</b> Providing this information is voluntary. However, if you fail to provide this information, you will be treated as not fully vaccinated for purposes of implementing safety measures, including subject to COVID-19 screening testing and/or denied access to DoD facilities. Failure to provide such information may also hinder DoD's ability to implement COVID-19 workplace safety plans, thereby increasing the health or safety risk to DoD-affiliated personnel and DoD facilities.</p>		
<p><b>INSTRUCTIONS:</b> This form should be completed by DoD contractor personnel and official visitors in accordance with current DoD Force Health Protection Guidance. DoD civilian employees should not complete this form.</p>		
1. NAME (Last, First, MI):	2. DoD ID NUMBER:	
<p><b>3. PLEASE CHECK THE BOX BELOW THAT COINCIDES WITH YOUR COVID-19 VACCINATION STATUS :</b></p> <p><input type="checkbox"/> I am fully vaccinated. Individuals are considered "fully vaccinated" two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Accepted COVID-19 vaccines are those which have received a license or emergency use authorization from the U.S. Food and Drug Administration and those COVID-19 vaccines on the World Health Organization Emergency Use Listing. "Fully vaccinated" also includes circumstances in which the individual was a participant in a U.S. site clinical trial and has received all recommended doses.</p> <p><input type="checkbox"/> I am not yet fully vaccinated, I received only one dose of an accepted two-dose COVID-19 vaccine, or I received my final dose of an accepted COVID-19 vaccine less than two weeks ago.</p> <p><input type="checkbox"/> I have not been vaccinated.</p> <p><input type="checkbox"/> I decline to respond.</p> <p>Individuals who choose not to complete the form will be assumed to be not fully vaccinated for purposes of application of the safety protocols. If you are not vaccinated due to medical or religious reasons, please check either "I have not been vaccinated" or "I decline to respond." Note that if you have already received one dose of a vaccine, but are not yet fully vaccinated, or if you received your final dose less than two weeks ago, then you will be treated as not fully vaccinated until you are at least two weeks past your final dose and resubmit your vaccination information.</p> <p><input type="checkbox"/> I certify that the information provided in this form is accurate and true to the best of my knowledge.</p> <p>I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. 1001). Checking "I decline to respond" does not constitute a false statement. I understand that making a false statement on this form could result in additional administrative action including an adverse personnel action up to and including removal from my position.</p>		
4. DATE (YYYYMMDD)	5. SIGNATURE (Full Name)	

DD FORM 3150, OCT 2021

CUI (when filled in)

Controlled by: OUSD(P&R)  
Controlled by: ASD(HA)  
CUI Category: HLTH: PRVCY, OPSEC  
LDC: DL(DoD Only)

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**ATTACHMENT 5**  
**COVID-19 Screening Testing Requirements**

1. To establish COVID-19 screening testing for individuals for whom screening testing is required, DoD Components will:
  - a. Execute the screening testing requirement with COVID-19 self-collection kits or self-tests at least weekly (depending on the type of test kit used) that can be performed primarily onsite at the installation or facility with proper supervision and documentation of testing results. If onsite COVID-19 screening testing is not feasible, as an alternative self-testing can be performed at home or in other locations (Note: these COVID-19 self-tests do not require a health care provider's clinical care order and are, therefore, considered an over-the-counter test and do not require medical support to complete). Screening testing will be conducted using an FDA-authorized or approved test; and
  - b. Procure and provide these COVID-19 self-tests and establish guidance for where and how these tests will be distributed and conducted and how results are to be reported.
    - i. DoD civilian employees are responsible for providing documentation of negative COVID-19 test results, upon receipt, to the appropriate supervisor or authorized human resources official. DoD civilian employees may not be required to use their own personal equipment for the purpose of documenting test results; offsite tests may not be used if there is not a means to document results using government equipment. The supervisor is responsible for maintaining any COVID-19 test results provided by DoD civilian employees in accordance with the privacy protection measures in Attachment 7.
    - ii. DoD contractor personnel with CRA will maintain their most recent COVID-19 test result and show such results to authorized DoD personnel upon request.
2. After COVID-19 screening testing procedures are established, the personnel identified in this memorandum as subject to screening testing are required to have a COVID-19 screening test with an FDA-authorized or approved test, and receive a negative COVID-19 screening test result for entry into a DoD facility. If the COVID-19 screening test is administered offsite, the negative result must be from a test performed within the prior 72 hours. If a COVID-19 screening test is administered onsite, the test will be administered immediately before or upon entry into the workplace.
3. DoD civilian employees and DoD contractor personnel with CRA who have positive COVID-19 screening tests will be required to remain away from the workplace in accordance with references (l) and (m). DoD civilian employees and DoD contractor personnel with CRA with positive COVID-19 screening tests will be offered, but not required to take, confirmatory laboratory-based molecular (i.e., polymerase chain reaction) testing paid for by the relevant DoD Component. Contact tracing and mitigation measures will be conducted in accordance with references (l) and (m). If the confirmatory test is negative, the individual is not considered to be COVID-19 positive and will be allowed into the workplace.

4. For DoD civilian employees, COVID-19 screening testing is expected to take no more than 1 hour of regular duty time, per test, to complete required testing as directed by the DoD Component. This includes time for travel to the testing site, time to complete testing, and time to return to work. Laboratory-based confirmatory COVID-19 testing for initial positive screening test results is expected to take no more than 2 hours of duty time. Commanders and supervisors will monitor duty time usage and keep duty time used for testing within these parameters to the extent possible.
5. DoD Components may bar DoD civilian employees who refuse required screening testing from their worksites on the installation or facility to protect the safety of others, including while adverse action is pending. While barred from their worksites on the installation or facility, such employees may be required to telework, as appropriate.

**ATTACHMENT 6**  
**Requirements for Obtaining Self-Collection Kits and Self-Tests**

COVID-19 self-tests must have Instructions for Use and FDA approval, 510(K) premarket clearance or have an FDA Emergency Use Authorization, and will be made available through the Defense Logistics Agency. DoD Components are responsible for funding required COVID-19 screening tests.

1. Cost reporting for the purchase of testing materials or reimbursement for member tests should be in accordance with reference (n).
2. Funding for COVID-19 testing – If self-collection kits or self-tests are not available:
  - a. Each DoD Component will establish procedures to reimburse Service members and DoD civilian employees for COVID-19 screening tests that require payment for purposes of meeting the screening testing requirement (e.g., if the screening test is not available through the DoD Component and must be administered by a facility who charges for the test).
  - b. For COVID-19 testing of DoD contractor personnel with CRA, DoD Components will offer, if available, COVID-19 testing similar to that offered to DoD civilian employees at the DoD Component's expense and at no cost to the contractor personnel or the contractor.



## **ATTACHMENT 7**

### **Privacy Requirements**

Medical and other information collected from individuals, including vaccination information, test results, and vaccine exemption requests, will be treated in accordance with applicable laws and policies on privacy, including the Privacy Act of 1974 and DoD Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019 (reference (o)), the Rehabilitation Act of 1973, as amended ("Rehabilitation Act"), and 5 CFR part 293, subpart E. While such information may be sensitive and is to be safeguarded as described above, it is not covered by the Health Insurance Portability and Accountability Act (HIPAA) and the associated HIPAA Rules.

Medical information obtained from DoD civilian employees, including vaccination status, will be accessible only to those persons who have a need to access the information under the Rehabilitation Act, including immediate supervisors and authorized human resources officials who must access the information to implement the guidance in this memorandum. The Rehabilitation Act's requirements on confidentiality of medical information apply whether or not a DoD civilian employee has a disability.

DoD Components are advised to consult their Component Privacy Officer and servicing legal office if there is a need to share medical information with DoD personnel other than immediate supervisors and authorized human resources officials or individuals outside of DoD.

DoD personnel will use appropriate safeguards in handling and storing DoD civilian employee medical information, including a DoD civilian employee's proof of vaccination, the DD Form 3175, and COVID-19 test results. Appropriate safeguards may include encrypting emails and electronic files, and role-based access to electronic storage environments where this information is maintained. In the event the information is maintained in paper form, supervisors and other authorized DoD personnel must ensure DoD civilian employee medical information remains confidential and is maintained separately from other personnel files, e.g., stored in a separate, sealed envelope marked as confidential DoD civilian employee medical information and maintained in locked file cabinets or a secured room. DoD Components are advised to refer to applicable internal guidance on the handling and storage of DoD civilian employee medical records, and to consult their Component Privacy Officer as needed for further guidance.



## ATTACHMENT 8

### References

- (a) Under Secretary of Defense for Personnel and Readiness Memorandum, “Force Health Protection Guidance (Supplement 23) – Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation and Screening Testing for Unvaccinated Personnel,” September 7, 2021 (hereby rescinded)
- (b) Acting Under Secretary of Defense for Personnel and Readiness Memorandum, “Administrative Leave for Coronavirus Disease 2019 Vaccination of Department of Defense Employees,” April 14, 2021 (hereby rescinded)
- (c) Safer Federal Workforce Task Force, “COVID-19 Workplace Safety: Agency Model Safety Principles,” September 13, 2021
- (d) Executive Order 14043, “Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,” September 9, 2021
- (e) Deputy Secretary of Defense Memorandum, “Mandatory Coronavirus Disease 2019 Vaccination of DoD Civilian Employees,” October 1, 2021
- (f) Secretary of Defense Memorandum, “Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members,” August 24, 2021
- (g) United States Office of Personnel Management Memorandum, “Guidance on Applying Coronavirus Disease 2019 Vaccination Requirements to New Hires – Executive Order 14043,” October 1, 2021
- (h) United States Office of Personnel Management Memorandum, “Guidance on Enforcing Coronavirus Disease 2019 Vaccination Requirement for Federal Employees – Executive Order 14043,” October 1, 2021
- (i) Safer Federal Workforce Task Force, “COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors,” September 24, 2021
- (j) Principal Director for Defense Pricing and Contracting Memorandum, “Class Deviation 2021-O0009—Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors,” October 1, 2021
- (k) Executive Order 14042, “Ensuring Adequate COVID Safety Protocols for Federal Contractors,” September 9, 2021
- (l) Acting Under Secretary of Defense for Personnel and Readiness Memorandum, “Force Health Protection Guidance (Supplement 15) Revision 2 – Department of Defense Guidance for Coronavirus Disease 2019 Laboratory Testing Services,” July 2, 2021
- (m) Acting Under Secretary of Defense for Personnel and Readiness Memorandum, “Force Health Protection Guidance (Supplement 18) – Department of Defense Guidance for Protecting All Personnel in Department of Defense Workplaces During the Coronavirus Disease 2019 Pandemic,” March 17, 2021
- (n) Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer of the Department of Defense, “DoD Response to the Novel Coronavirus – Cost Reporting Guidance,” April 13, 2020
- (o) Department of Defense Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019 (as amended)

## **Exhibit F**



# COMMONWEALTH of VIRGINIA

## Executive Department

### Executive Directive Number Eighteen (2021)

#### Ensuring a Safe Work Place

##### Importance of the Initiative

For the past 16 months, the COVID-19 pandemic has disrupted all of our lives. The Commonwealth implemented policies over this time to protect state workers, including expanding telework policies, masking, and social distancing measures. While these measures have proven effective, vaccination is the only method to protect fully against the virus.

Vaccinations are now widely available and easily accessible, and Virginia's vaccination rates are outpacing most other states. More than 73 percent of Virginia adults have received at least one shot, and 54 percent of all Virginians are fully vaccinated against the virus. Because the vaccines are safe and effective, unvaccinated Virginians account for nearly everyone who is now being hospitalized or dying from COVID-19. But the urgency to expand vaccinations further is growing, as the highly-contagious Delta variant spreads, case numbers rise again, and hospitalizations increase. In order to protect the safety of Virginia's workforce and the people we serve, it is necessary to require state employees to be vaccinated and to encourage other employers to do the same.

##### Directive

By virtue of the authority vested in me as Governor, by Article V, Sections 1 and 7 of the Constitution of Virginia, and by § 2.2-103 of the *Code of Virginia*, I direct the following:

##### A. Disclosure of Vaccine Status

All Executive Branch Employees and state contractors who enter the work place or who have public-facing work duties must disclose their vaccine status to the designated agency personnel.

##### B. Weekly Testing

Executive Branch Employees who are not fully vaccinated or who refuse to disclose their current vaccine status, according to paragraph A, must undergo weekly COVID-19 testing and disclose weekly the results of those tests to the designated agency personnel.

C. Mask Requirement

1. All Executive Branch Employees and state contractors who have not been fully vaccinated must cover their mouth and nose with a mask in accordance with the Centers for Disease Control and Prevention while indoors and conducting public business.

D. Scope

For purposes of this Directive, “Executive Branch Employees” should be construed broadly and includes but is not limited to employees in the following offices, agencies, institutions, and authorities:

- Office of the Governor;
- Office of the Lieutenant Governor;
- Secretary of the Commonwealth;
- Executive Branch Agencies;
- Institutions of Higher Education; and
- Authorities established within the Executive Branch by the *Code of Virginia* or designated under a Secretariat in the *Code of Virginia*.

This Directive does not apply to Executive Branch Employees or state contractors while they work remotely without in-person contact with other employees, the public, visitors, vendors, those in custodial care, or customers.

E. Implementation

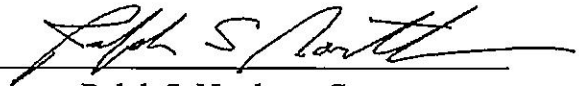
The Department of Human Resource Management shall issue policies, procedures, and guidance to implement this Directive no later than August 15, 2021. Such policies, procedures, and guidance shall address any exceptions and the availability of a process to evaluate requests related to religious objections or a disability.

**Effective Date**

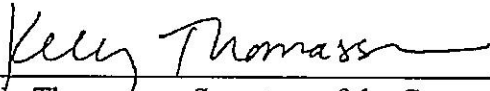
This Executive Directive shall be effective September 1, 2021 and shall remain in full force and effect until amended or rescinded by further executive action.

Given under my hand and under the Seal of the Commonwealth of Virginia this 5<sup>th</sup> day of August, 2021.



  
Ralph S. Northam, Governor

Attest:

  
Kelly Thomasson, Secretary of the Commonwealth