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**DEPARTMENT OF
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DIPATTAMENTON ATMENESTRASION

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LOURDES A. LEON GUERRERO
Governor (Maga'håga)
JOSHUA F. TENORIO
Lt. Governor (Sigundo Maga'håhi)

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08/13/21

August 13, 2021

Department of Administration Organizational Circular: 2021-025

MEMORANDUM

To: All Line Departments and Agency Heads
From: Director, Department of Administration
Subject: Requirement of Government of Guam Executive Branch Workers to Vaccinate Against COVID-19 Guidance
RE: Executive Order No. 2021-17

Buenas yan Hafa Adai! On August 6, 2021, the Governor of Guam issued Executive Order No. 2021-17, relative to requiring Government of Guam Executive Branch workers to vaccinate against COVID-19, effective August 9, 2021 (attached). All full-time and part-time employees and volunteers (herein referred to as "workers") of the executive branch line agencies, regardless of whether paid or unpaid, shall be required to be fully vaccinated with either a single shot of the Johnson & Johnson vaccine, or the two shot Pfizer, or Moderna series **no later than September 24, 2021.**

Workers who decline to receive a COVID-19 vaccination, or do not provide proof of such vaccination, are required to undergo a COVID-19 PCR or antigen test once weekly. Workers who do not get vaccinated due to medical reasons, such as a disability, or a sincerely held religious belief shall also be accommodated by undergoing a COVID-19 PCR or antigen test once weekly.

In limited circumstances, there may be workers who can neither be vaccinated nor tested on a regular basis due to medical reasons, such as a disability. In accordance with applicable law, these individuals may be asked to submit supporting documentation for any such claim of exemption. If any worker seeks to be exempted on this basis, please take note of their request and refer their request directly to the Department of Administration's Equal Employment Opportunity Specialist, Mr. Robert Taitano at 475-1123, or via email at: robert.taitano@doa.guam.gov. Please inform Mr. Taitano of your department's point of contact regarding vaccination status matters so he can coordinate his review and advise accordingly.

Employees are allowed three (3) hours of administrative leave or actual time taken, whichever is less, with pay to get their vaccine shot. Employees must provide proof of their vaccination, or testing, to their supervisor or authorizing official upon return to work.

Please inform your department/agency staff of the above-mentioned requirements and the deadline to comply. Inform them that workers who do not comply with the vaccination mandate or submit to testing, or are not otherwise exempt from the requirement to vaccinate or submit to weekly testing shall be subject to disciplinary procedures, which may include progressive disciplinary action and/or involuntary exclusion from the workplace. Be advised that disciplinary action may be taken after September 24, 2021.

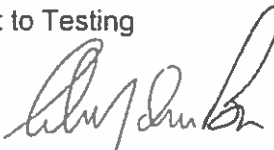
Regarding new hires, have your hiring coordinator within your department inform all new hires of requirements of the Executive Order upon selection. New hires must provide proof of vaccination, or show a negative PCR, or antigen test result within seven (7) days of the effective date of hire to your hiring coordinator.

As part of the process of complying with the Executive Order, please begin to identify workers within your department/agency of their vaccination status, and maintain your list of employees and their position titles. Please use the attached form to survey your workers. Be advised that the identification process and information collected is confidential and the vaccination status of your employees is not to be released, except upon request by competent authorities on a case-by-case basis.

In order to monitor compliance with the Executive Order, please have your Vaccination Status Coordinator submit a report of the vaccination status of your workers to our Department every Tuesday before 5:00 p.m. beginning August 24, 2021. Provide two (2) reports, one that indicates actual employees of your department and the other non-employees such as participants from work programs (i.e. Department of Labor program participants) and volunteers. Please submit your report to Administrative Officer, Ms. Carmen Astorga, via email at carmen.astorga@doa.guam.gov.

Both reports must indicate the number of workers under the following categories; do not indicate names:

1. Total number of Employees (Second report – Total number of Non-Employees)
2. Number of Fully Vaccinated
3. Number Not Yet Fully Vaccinated
4. Number that Choose to Submit to Testing
5. Number that Decline to be Vaccinated/Submit to Testing



EDWARD M. BIRN

Attachments

cc: Chief of Staff



**ISLAND OF GUAM
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EXECUTIVE ORDER NO. 2021-17

**RELATIVE TO REQUIRING GOVERNMENT OF GUAM EXECUTIVE
BRANCH WORKERS TO VACCINATE AGAINST COVID-19**

WHEREAS, on March 14, 2020, I, Lourdes A. Leon Guerrero, *I Maga'hågan Gudhan*, Governor of Guam, acting pursuant to the power provided by the Organic Act of Guam and the laws of Guam, declared a public health emergency in the island of Guam due to dangers posed by the 2019 novel coronavirus ("COVID-19"); and

WHEREAS, since declaring a public health emergency, Guam has suffered One Hundred Forty-Three (143) COVID-19 related deaths; and

WHEREAS, as of the time of this writing, over Eight Thousand Six Hundred (8,600) individuals have tested positive for COVID-19 in Guam; and

WHEREAS, at the peak of COVID-19 hospitalizations in Guam, One Hundred Two (102) individuals were hospitalized for conditions related to COVID-19; and

WHEREAS, since February 19, 2021, the island has been in Pandemic Condition of Readiness 3 ("PCOR 3"), during which most businesses and activities are permitted to operate with moderately restrictive conditions; and

WHEREAS, since June 2020, Guam has relied on the COVID Area Risk ("CAR") Score to assess the risk of COVID-19 spread, which is calculated using three main data points – effective retransmission value, test positivity rate, and new cases per 100,000 persons; and

WHEREAS, Guam's CAR Score has held below five (5) since late November 2020, and, until recently, held below 2.5 since the second week of December 2020; and

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WHEREAS, as part of the vaccination plan, the Department of Public Health and Social Services (“DPHSS”) and the Guam National Guard have led community vaccination clinics; and

WHEREAS, vaccinations have been proven highly effective in preventing individuals from contracting COVID-19 and from suffering severe symptoms if they do contract the disease, which reduces hospitalizations and deaths, and potentially reduces the risk of infection to others; and

WHEREAS, as a result of the dedicated efforts of DPHSS, the Guam National Guard, and our community and military partners, on July 29, 2021, our island achieved its goal of 80% of adult vaccinations, fortifying our island against widespread infection and severe symptoms, and, importantly, reducing the rate of hospitalizations, ensuring that our healthcare system has resources and personnel to treat COVID-19 cases resulting in hospitalizations; and

WHEREAS, having achieved our community goal of 80% adult vaccinations, with the concurrence of DPHSS, the Physicians Advisory Group and the Guam National Guard Surgeon Cell, in Executive Order No 2021-16, I ordered broad reopening of our island’s economy, removing social gathering limitations and capacity limitations at local establishments, while maintaining our mask mandate; and

WHEREAS, notwithstanding the strong effort in our community to achieve this goal, tens of thousands of individuals remain unvaccinated, which renders them still vulnerable to infection, to suffering severe symptoms once infected, and to infecting others; and

WHEREAS, notwithstanding substantial vaccinations within our community, we have experienced a recent surge in positive cases on our island, with our daily new cases averaging 17.6 and our effective retransmission value at 2.0 as of the time of this writing; and

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WHEREAS, due to the recent rise in positive cases and the effective retransmission value number, the CAR Score is calculated at 5.4 as of the time of this writing, the highest it has been in 2021; and

WHEREAS, as of the time of this writing, over Three Thousand (3,000) adults ages 60 and over, our most vulnerable population, remain unvaccinated; and

WHEREAS, unvaccinated individuals in Guam presently test positive for COVID-19 at a rate that is thirteen (13) times higher than fully vaccinated individuals; and

WHEREAS, COVID-19 cases in the United States have surged due to the prevalence of the highly infectious Delta variant, and while Guam had previously intercepted a single case of the Delta variant, it is anticipated that more cases of the Delta variant may already be present in Guam; and

WHEREAS, recent data suggests that the viral load is roughly One Thousand (1,000) times higher in people infected with the Delta variant than those infected with the original coronavirus strain; and

WHEREAS, while a period of increased positive cases is a natural and anticipated consequence of broader reopening, it is necessary that we take steps as a community to protect ourselves and each other from continued spread of this disease, particularly among our most vulnerable populations; and

WHEREAS, the risk posed to our community by exposure to the COVID-19 virus is demonstrably mitigated as the rate of vaccination in our community rises; and

WHEREAS, Title 10 Chapter 3 Section 3322(b) of the Guam Code Annotated provides that in case of an epidemic or to control a possible epidemic of a communicable disease, the Director of DPHSS may direct that the general population be vaccinated and immunized against said disease; and

WHEREAS, Title 10 Chapter 19 Section 19603 of the Guam Code Annotated provides further that during a state of public health emergency, DPHSS may exercise emergency powers over persons including vaccinating persons as protection against infectious disease and to prevent spread of contagious or possibly contagious disease; and

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WHEREAS, on May 28, 2021, the U.S. Equal Employment Opportunity Commission (“EEOC”) issued technical guidance clarifying that federal EEO laws do not prevent employers from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to reasonable accommodations as provided in Title VII of the Americans with Disabilities Act and other federal employment discrimination laws, which may require an employer to provide reasonable accommodations for employees who do not get vaccinated for COVID-19 because of a disability or a sincerely held religious belief, practice or observance; and

WHEREAS, on July 26, 2021, the U.S. Department of Veterans Affairs announced mandatory vaccinations for all Title 38 VA health care personnel working in Veterans Health Administration facilities, who visit VHA facilities, or who provide direct care to VA patients; and

WHEREAS, on July 26, 2021, the U.S. Department of Justice issued a Memorandum Opinion concluding that Section 564 of the Federal Food, Drug and Cosmetic Act permits public and private employers alike to impose the COVID-19 vaccination as a condition of employment even when the vaccine is subject to Emergency Use Authorization; and

WHEREAS, in the seminal, oft-cited case *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), the United States Supreme Court, observing that a community has the right to protect itself against disease that threatens the safety of its members, upheld mandatory vaccinations as a valid exercise of a state’s police powers, subject to specific exemptions; and

WHEREAS, the United States Supreme Court, in *Zucht v. King*, 260 U.S. 174, 176, 43 S. Ct. 24, 25, 67 L. Ed. 194 (1922), reiterated the principle stated in *Jacobson* that it is within the police power of a state to provide for compulsory vaccination; and

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WHEREAS, in *Bridges v. Houston Methodist Hosp.*, No. CV H-21-1774, 2021 WL 2399994 (S.D. Tex. June 12, 2021), the United States District Court for the Southern District of Texas issued an order, dismissing an action for wrongful termination brought by employees of a public hospital subjected to mandatory vaccinations, finding that the employee could freely choose to accept a COVID-19 vaccine or refuse and simply work elsewhere; and

WHEREAS, every U.S. jurisdiction has laws requiring students to receive certain vaccinations to attend school, subject to certain exemptions; and

WHEREAS, in *Klaassen v. Trustees of Indiana Univ.*, No. 1:21-CV-238 DRL, 2021 WL 3073926 (N.D. Ind. July 18, 2021), the United States District Court for the Northern District of Indiana, in a 70-page decision, denied a preliminary injunction to students seeking to enjoin Indiana University from mandating vaccinations (subject to exemptions) as a condition of enrollment, finding that the students had not established a likelihood of success on the merits, and specifically recognizing that the policy did not force vaccinations given that the students had alternatives to taking the vaccine, including applying for an exemption or deferral or attending another university; and

WHEREAS, in *Klaassen v. Trustees of Indiana Univ.*, the court recognized that notwithstanding Emergency Use Authorization of the U.S. COVID-19 vaccines, the FDA, prior to issuing EUAs to U.S. COVID-19 vaccines, required manufacturers to go beyond statutory safety and efficacy requirements and to consult with the FDA on non-clinical components of vaccine distribution and development as clinical trials progressed in order to attain the same level of efficacy data as the FDA would receive for full approval, enough safety data to justify providing the vaccine to healthy individuals, and confirmation of technical procedures and verification steps necessary to support full approval; and

WHEREAS, in *Klaassen v. Trustees of Indiana Univ.*, the court further acknowledged that while the 2-month timeline for the safety follow-up to receive an EUA was indeed shorter than the data of 6-month monitoring of severe adverse events after clinical trials conclude necessary for full approval, the FDA's acceptance of the 2-month follow-up was made in light of its expert assessment and experience that significant latent negative outcomes associated with vaccinations typically occur within 6 weeks of receipt of a vaccination; and

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WHEREAS, over one hundred sixty-five million Americans are fully vaccinated against COVID-19, including over one hundred thousand in Guam; and

WHEREAS, outside of anecdotal references, there is simply no substantial evidence that the COVID-19 vaccines are harmful, and to the contrary, it is beyond reasonable dispute that the vaccines reduce the risk of infection and death; and

WHEREAS, it is beyond reasonable dispute that these vaccines save lives; and

WHEREAS, employers are responsible for the safety of their employees in the workplace; and

WHEREAS, the government of Guam is the largest employer on the island; and

WHEREAS, with the concurrence and support of DPHSS, the Physicians Advisory Group, and the Guam National Guard Surgeon Cell, it is timely, necessary, and appropriate, given the availability of safe vaccines and the dangers COVID-19 continues to pose, particularly the Delta variant that is prevalent in U.S. jurisdictions, for the executive branch of the government of Guam to take the difficult but critical step of mandating COVID-19 vaccinations for its employees; and

WHEREAS, mandating vaccinations for executive branch employees will ensure the safety of our employees, particularly our frontline and front-facing employees who engage with the public; and

WHEREAS, it is important that we continue to be mindful of the reality that the COVID-19 pandemic remains a threat to our safety as a community, and that we all exercise personal judgment, and take steps as individuals towards protecting ourselves and our loved ones against this disease, including getting vaccinated; and

WHEREAS, we must encourage our friends and family, especially those with comorbidity factors, to get vaccinated, keep themselves and their loved ones safe, and do their part to help achieve herd immunity on our island; and

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WHEREAS, as our community works to recover from this global pandemic's impact on our lives, it is important to recognize that the emergency has not yet ended and that we are now, and will continue to be for some time, engaged in emergency response; and

WHEREAS, with continued practice of the basic mitigation measures of washing hands and wearing masks, we will continue to make strides towards containing the spread of COVID-19 on our island, and keeping our community safe.

NOW THEREFORE, I, LOURDES A. LEON GUERRERO, *I Maga'hågan Gudhan*, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam as amended, do hereby order:

1. MANDATORY COVID-19 VACCINATIONS FOR EXECUTIVE BRANCH WORKERS. Effective Monday, August 9, 2021, all workers of the executive branch agencies of the government of Guam shall be required to receive one of the three authorized COVID-19 vaccines. Workers shall be fully vaccinated with either a single shot of the Johnson & Johnson or the two shot Pfizer or Moderna series no later than September 24, 2021.

In the event a worker declines to receive a COVID-19 vaccination or provide proof of such vaccination, they will be required to test for COVID-19 with a PCR or antigen test once weekly. Non-exempt workers are required to vaccinate or submit to weekly testing as provided herein, or they shall be subject to disciplinary procedures, which may include disciplinary action.

- a. **Applicability.** This Section shall apply to full-time or part-time employees and volunteers of executive branch line agencies, regardless of whether paid or unpaid.
- b. **Vaccination Clinics.** Executive Branch line agencies shall coordinate with DPHSS and the Guam National Guard for the scheduling of vaccination clinics at their respective agencies. Individual workers may make personal arrangements to get vaccinated, and provide proof of vaccination to their respective agencies according to the aforementioned deadlines.
- c. **Records.** Executive branch line agencies shall, consistent with applicable privacy laws and regulations, maintain records of workers' vaccination status, declination forms, and/or testing results as applicable and provide such records to DPHSS upon request.

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2. **USE OF THE GUAM COVID ALERT APP ENCOURAGED.** All residents with smartphone capability are encouraged to download the Guam COVID Alert app, which will alert individuals who may have been exposed to another individual who has tested positive for COVID-19. The app is free, and available to download for Apple and Android devices.
3. **SEVERABILITY.** If any provision of this Executive Order or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Order that can be given effect without the invalid provision or application, and to this end, the provisions of this order are severable.
4. **PRIOR ORDERS REMAIN IN EFFECT.** All prior Executive Orders remain in full force and effect except to the extent they conflict with this Order.

SIGNED AND PROMULGATED at Hagátña, Guam, this 6th day of August, 2021.

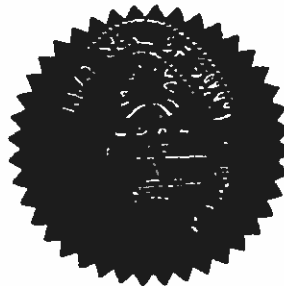
Lou Leon Guerrero

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Attested by:

Joshua F. Tenorio

JOSHUA F. TENORIO
Sigundo Maga'låhen Guåhan
Lieutenant Governor of Guam



GOVERNMENT OF GUAM

Certification of Vaccination Status

Date: _____

Department: _____ Position Title: _____

Name: _____ Signature: _____

Phone No.: _____ Email: _____

Instructions:

Please fill out the information above and checkmark your vaccination status and submit directly to your department's Vaccination Status Coordinator, _____ no later than _____. Your coordinator may be contacted at: _____, or via email at: _____. The information you provide is confidential. If you can neither be vaccinated nor tested on a regular basis due to medical reasons, such as a disability, please checkmark, "I decline to be vaccinated" and contact your coordinator to request to be considered for exemption. Your request will be forwarded to the Department of Administration's Equal Employment Opportunity Specialist for review.

If you are not fully vaccinated at the time of filling out this form, please be advised that the Coordinator will be contacting you on a weekly basis to inquire if your vaccination status has changed. We appreciate your cooperation.

I am fully vaccinated.

Employees are considered "fully vaccinated" when they have received either a single shot of the Johnson & Johnson, or the two shot Pfizer or Moderna series. Please provide proof of vaccination such as a copy of your CDC Card or from your medical provider to our department appointed Vaccination Status Coordinator: _____. Your information will be confidentially maintained.

I am not yet fully vaccinated.

I received my first dose of Pfizer or Moderna and am still pending my second dose. I am responsible for coordinating this with my supervisor and may be granted administrative leave, up to three (3) hours, for this purpose if done during working hours.

I have not been vaccinated and opt to submit to PCR or antigen testing once weekly.

I am aware that if I opt to submit to PCR or antigen testing once weekly, that I am responsible for coordinating this with my supervisor and I must utilize sick or annual leave if done during working hours.

I decline to be vaccinated and decline to be tested for COVID-19 once weekly.

I am aware that I may request to be exempted as indicated in the instructions; however, if I do not intend to seek exemption, or I am not approved for exemption and no accommodations may be made for me, I will be subject to disciplinary procedures, which may include disciplinary action.