COVID LAW UPDATE

SHRM GUAM BREAKFAST BRIEFING FEBRUARY 2, 2022

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DISCLAIMER

The material presented is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

TODAY'S BREAKFAST TOPICS

- I. Local Guam Covid Regulations
- II. Federal Vaccination/Testing Mandates
- III. Workplace COVID Policies
- IV. What to do if an Employee Tests Positive for COVID-19

I. LOCAL GUAM COVID REGULATIONS



What are the currently applicable Covid-19 regulations imposed on businesses by GovGuam?



79 EXECUTIVE ORDERS

EXECUTIVE ORDERS

- Executive Order No. 2022-02 Relative to Extending the Public Health Emergency
- Executive Order No. 2021-032 Realtive to Extending the Public Health Emergency
- Executive Order No. 2021-31 Relative to Lifting Social Gathering Restrictions During the Public Health Emergency
- Executive Order No. 2021-030 Relative to Extending the Public Health Emergency
- Executive Order No. 2021-029 Relative to Amending Vaccination Requirements for Certain Establishments and Activities, Limitations on Social Gatherings, and Restrictions for Incoming Travelers and Quarantine Facilities
- Executive Order No. 2021-24 Relative to relative to extending the Public Health Emergency and clarifying garnishment policy for All Rise Program
- Executive Order No. 2021-23 Relative to the Resumption of In-person Learning
- Executive Order No. 2021-21 Relative to Suspending In-Person Learning and Amending Social Gathering Restrictions
- Executive Order 2021-20: Relative to Refining Establishments Vaccination Requirements and Extending the Public Health Emergency
- Executive Order No. 2021-19: Relative to Implementing Vaccination Requirement for Certain Establishments and Activities and Limiting Social Gatherings
- Executive Order No. 2021-17: Relative to Requiring Government of Guam Executive Branch Employees Vaccinating Against COVID-19
- Executive Order No. 2021-16: Relative to Lifting Restrictions and Extending the Public Health Emergency
- Executive Order No. 2021-15 Relative to Extending the Public Health Emergency Declared to Respond to the Novel Corona Virus (COVID-19) and Amending Restrictions for Incoming Travelers
- ExecutiveOrder No. 2021-13 Relative to Amending Restrictions For Incoming Travelers and Quarantine Facilities And Other Conditions During PCOR 3
- Executive Order No. 2021-12 Relative to Extending the Public Health Emergency Declared to Respond to The Novel Coronavirus (COVID-19)
- Executive Order No. 2021-11 Relative to relative to launching the All RISE Program by expanding
 eligibility for the (Recovery Income Support and Empowerment) RISE Act
- Executive Order No. 2021-09 Relative to Extending the Public Health Emergency Declared to Respond to the Novel Coronavirus (COVID-19)

- 21.0414 SSD to Speaker Terlaje re Executive Order No. 2021-08 Relative to Further Amending Restrictions During Pandemic Condition of Readiness.
- Executive Order No. 2021-07 Relative to Extending the Public Health Emergency Declared to Respond to Novel Coronavirus (COVID-19)
- Executive Order No. 2021-05 Relative to Extending the Public Health Emergency Declared to Respond to Novel Coronavirus (COVID-19)
- Executive Order No. 2021-04 Relative to Declaring Pandemic Condition of Readiness 3
- Executive Order No. 2021-03 Relative to Extending the Public Health Emergency Declared to Respond to the Novel Coronavirus (COVID-19)
- Executive Order No. 2021-02 Relative to Declaring an Emergency Regarding the Operational State of the Child Protective Services
- Executive Order No. 2021-01 Realitive to Declaring Pandemic Condition of Readiness 2 (PCOR 2)
- (CORRECTED) Executive Order No. 2020-46 Relative to Extending the Public Health Emergency Declared to Respond to Novel Coronavrius (COVID-19)
- Executive Order No. 2020-45 Relative to Further Amending Restrictions During Pandemic Condition of Readiness 1 (PCOR 1)
- Executive Order No. 2020-44 Relative to Further Amending Restrictions on the Operation of Businesses and Activities During PCOR1.
- Executive Order No. 2020-43 Relative to Amending Restrictions on the Operation of Businesses and Activities During Pandemic Condition of Readiness 1 (PCOR 1)
- 20.1127 Executive Order No. 2020-41 Relative to Extending the Public Health Emergency Declared to Rescond to Novel Coronavirus (COVID-19) (1)
- 20.1124 SSD to Speaker re Executive Order No. 2020-40 Relative to Establishing the Small Business Rent Assistance Grant Program
- 20.1106 Executive Order No. 2020-39 Relative to Creating a Community Defense Liaison Office within the Office of the Governor, as the Successor Office of the Guam Buildon Office
- Executive Order No. 2020-38 Relative to implementation of COVID-19 Public Health Enforcement Rules and Extension of the Public Health Emergency
- Executive Order No. 2020-37 Relative to Amending Executive Order No. 2020-23 Creating the Office of Homelessness Assistance and Poverty Prevention.
- Executive Order No. 2020-36 Relative to Authorizing the Operation of Additional Businesses and Activities During Pandemic Condition of Readiness 1 (PCOR 1) (1)

Executive Orders continued

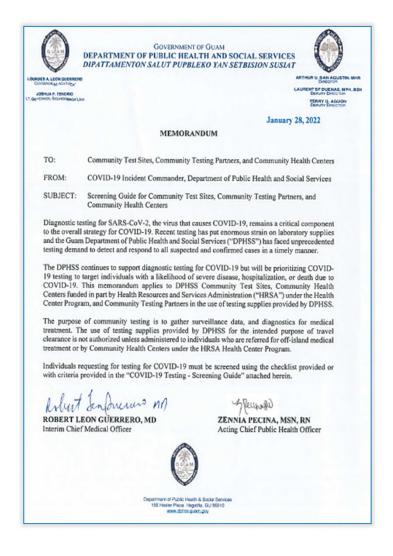
- Executive Order No. 2020-35 Relative to Providing Financial Assistance to Medical and Health Providers and Families of COVID-19 Related Fatalities
- 20.0924 Executive Order No. 2020-34 Relative to Instituting Safer-At-Home Advisory
- Executive Order No. 2020-33 Relative to the Utilization of Quarantine and Isolation to Combat the Spread of COVID-19
- Executive Order No. 2020-32 Relative to Continuing the Stav-at-Home Order with Additional Services
- Executive Order No. 2020-31 Relative to Extending the Stay-at-Home Order
- Executive Order No. 2020-30 Relative to Extending Stay-At-Home Order
- Executive Order No. 2020-29 Relative to Extending Public Health Emergency and Modified Stav-at-Home Order
- Executive Order No. 2020-28 Relative to Ordering Guam Residents to Stop the Spread of COVID-19 by Staying Home (1)
- Executive Order No. 2020-27 Relative to Declaring Pandemic Condition of Readiness (PCOR) 1
- 20.0807 EXECUTIVE ORDER NO. 2020-26 Relative to Implementation of Additional Safety Measures and Issuance of Temporary Teaching Certifications During the Public Health Emergency
- Executive Order No. 2020-25 Relative to Revised Restrictions on Entry Into Guam, and Implementing Measures to Ensure the Safe Practice of Certain Economic Activities.
- Executive Order No. 2020-24 Relative to Declaring Pandemic Condition of Readiness (PCOR) 3
- Executive Order 2020-23 Relative to Reconstituting the Interagency Council for Coordinating Homelessness
- Executive Order 2020-22 Relative to Extending the Public Health Emergency Declared to Rescond to the Novel Coronavirus Covid-19
- Executive Order 2020-20 Relative to Setting Conditions for Entry Into Guarn and Permitting Limited School Operations
- EXECUTIVE ORDER 2020-19 Relative to Addressing the Critical Shortage of PPE
- EXECUTIVE ORDER 2020-16 Relative to Launching the Guam Small Business Pandemic Assistance Grant Program
- EXECUTIVE ORDER 2020-17 Relative to Guam's Launching of the Pandemic Unemployment Assistance and Federal Pandemic Unemployment.
- Executive Order 2020-16 Relative to Allowing Additional Activities in PCOR 2
- Executive Order 2020-15 RELATIVE TO THE EXTENSION OF PRUGRAMAN SALA.PPB' AYUDON I TAOTAO, A DISASTER RELIEF PROGRAM

- Executive Order 2020-14 Relative to Declaring PCOR2
- Executive Order No. 2020-13 RELATIVE TO ENSURING REGULAR. RELIABLE. AND RELEVANT REPORTING REGARDING EXPENDITURES AUTHORIZED PURSUANT TO THE PUBLIC HEALTH EMERGENCY DECLARED TO RESPOND TO THE COVID-19 PANDEMIC
- Executive Order No. 2020-12 RELATIVE TO THE CREATION OF PRUGRAMAN SALAPPE' A YUDON I TAOTAO, A DISASTER RELIEF PROGRAM.
- Executive Order 2020-11 RELATIVE TO EXTENDING THE PUBLIC HEALTH EMERGENCY AND
 ESTABLISHING THE PANDEMIC CONDITIONS OF READINESS SYSTEM
- Executive Order 2020-10 Relative to the Reservation of Road Access For Essential Business and Activity in a Public Health Emergency
- Executive Order 2020-09 Relative to Additional Social Isolation Measures
- Executive Order 2020-08 Relative to Establishing COVID-19 Response Differential Pay
- Executive Order 2020-07 RELATIVE TO ESTABLISHING A MORATORIUM ON EVICTIONS, CLARIFYING PRICE GOUGING PROHIBITIONS, AND PROVIDING FOR TELEPHONIC PARTICIPATION IN PUBLIC MEETINGS
- Executive Order 2020-06 Relative to the Creation of COVID-19 CURE Action Team and Extension of Social Isolation Mandates
- Executive Order 2020-05 Relative to Mandatino Social Isolation. Liftino Restrictions on Health Care
 Licensure, and Clarifying Status of Non-Essential Government of Guam Operations
- Executive Order 2020-04 Relative to Responding to Confirmed Cases of Novel Coronavirus (COVID-19)
- Executive Order 2020-03 Relative to Declaring a State of Emergency to Respond to Novel Coronavirus (COVID-19)

128 DPHSS Guidance Memos

DPHSS GUIDANCE MEMOS & JOINT NEWS RELEASES

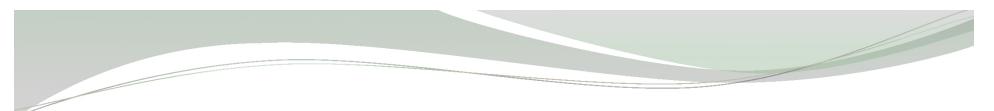
- DPHSS COVID-19 Testing Screening Guide
- DPHSS Guidance Memorandum 2021-16 Rev. 1 (AMENDMENT 01) Relative To Guidance For Clearance from Isolation and Quarantine
- DPHSS Guidance Memorandum 2020-11 Rev14 (Amendment 01) January 15, 2022.
- DPHSS Guidance Memorandum, 2021-16 Rev. 1 Relative To Guidance For Individuals Who Are Suspected or Confirmed For Having COVID-19
- DPHSS Guidance Memorandum 2022-08 Re-Amendments on Vaccination Requirements, Social Gathering Restrictions and Sports Events
- DPHSS Issues Guidance Memo 2022-07 RE: Amendments to Traditional Graduation Ceremonies.
- DPHSS issues Guidance Memo 2022-05: Relative to additional guidance relative to contact and noncontact sports events – November 24, 2021
- DPHSS Guidance Memo 2022-05: Relative to Amendments on Vaccination Requirements and Social Gathering Restrictions Relative to Executive Orders 2021-20 and 2021-29 – November 19, 2021
- DPHSS Issues Guidance Memo 2020-11 REV 14: Relative to Travel into Guam
- DPHSS Issues Guidance Memo 2022-04: Relative to Minimum Requirements for Conducting Business
 Meetings and Similar Activities of Government of Guam and Private Entities Relative to Executive
 Orders No. 2021-20 and 2021-21 November 7, 2021
- DPHSS Press Release 2022-003: COVID-19 Guidance for a Safe All Souls' Day October 14, 2021
- DPHSS Press Release 2022-002: COVID-19 Guidance for a Safe Halloween October 13, 2021
- DPHSS issues Physicians Advisory 2022-02; Relative to Multisystem Inflamatory Syndrome (MIS-C)
 Associated with COVID-19
- DPHSS Issues Guidance Memo 2021-29; Relative to Non-scholastic Organized Soorts, Training, Competition in Accordance with Executive Order Nos. 2021-19 and 2021-20
- DPHSS Issues Physicians Advisory COVID-19 VACCINATION FOR PREGNANT PEOPLE TO PREVENT SERIOUS ILLNESS, DEATHS, AND ADVERSE PREGNANCY OUTCOMES FROM COVID-19 – October 5, 2021
- DPHSS Guidance Memo 2021-27; Relative to Additional Guidance Relative to Screening Testing for In-Class Operation for K-12 Schools
- DPHSS Guidance Memo 2021-26: Relative to COVID-19 Testing, Case Investigation and Contact Tracino, Isolation, Quarantine, and Monitoring of COVID-19 Positive Individuals and Contacts in Schools – September 24, 2021
- DPHSS Issues Religious Exemption for COVID-19 Vaccination Form



DPHSS Guidance Memos continued

- DPHSS Guidance Memo 2020-38 Auth Businesses and Svcs During PCOR1 Relative to EO 2020-32 (09-18-20)
- DPHSS Directive Suspension of Constructon Work (09-11-20)
- DPHSS Guidance Memo 2020- 037 PCOR 1 Extension 09.04.2020 v1
- DPHSS GUIDANCE MEMO 2020-036 Authorized Businesses and Services During PCOR 1 Relative to Executive Order 2020-29 (08-27-20)
- DPHSS Guidance Memorandum 2020-035 Authorized Critical Businesses and Services During PCOR1 Relative to Executive Order 2020-28
- DPHSS Guidance Memo 2020-34 Authorized Critical Businesses and Services During PCOR1 Relative to Executive Order 2020-28
- DPHSS Guidance Memo 2020-33 Minimum Requirements for Funeral Services of Decedents Infected with COVID-19
- DPHSS Guidance Memo 2020-32 PCOR1 Restrictions and Requirements Relative to Executive Order
 2020-27
- UPDATED MANDATORY QUARANTINE PROTOCOL EFFECTIVE JUNE 1, 2020
- DPHSS Mandatory Quarantine Directive
- DPHSS GUIDANCE MEMO 2020-31 Prohibition of the Operation of Bars and Taverns (08-08-20)
- DPHSS GUIDANCE MEMO 2020-30 Minimum Requirements for Wake and Funeral Services (05-08-2020)
- DPHSS GUIDANCE MEMO 2020-29 PCOR3 Minimum Requirements (07-20-20)
- DPHSS Guidance Memo 2020-28 Minimum Requirements for Government of Guarn (07-09-20)
- DPHSS Guidance Memo 2020-27 Minimum Requirements for Re-opening of K-12 Schools and Institutions of Higher Education
- DPHSS Guidance Memo 2020-26 Minimum Requirements for Operations of Cosmetology Establishments
- DPHSS Guidance Memo 2020-25 Covid-19 Conditions Deemed a Public Nuisance
- DPHSS Guidance Memo 2020-24 Non-Organized-Contact Physical Activities-Sports
- DPHSS Guidance Memo 2020-23 Minimum Requirements for Bars and Taverns
- DPHSS GUIDANCE MEMO 2020-22 Min Reg for Operations of Therapeutic Massage
- DPHSS GUIDANCE MEMO 2020-21 ADDTL BUSINESSES 50 OCCUP
- DPHSS GUIDANCE MEMO 2020-20 Minimum Requirements for Operations of Childcare Facilities
- DPHSS Guidance Memorandum 2020-19 Additional Businesses and Organization Authorized to Operate During PCOR2

- DPHSS Issues Medical Exemption for COVID19 Vaccination Form
- Physicians Advisory 2021-10: Relative to Monoclonal Antibody (mAb) Distriction Theraputics Distribution System – September 24, 2021
- DPHSS Guidance Memo 2021-28: Additional Guidance Relative to Persons with a Documented
 Previous COVID-19 September 24, 2021
- DPHSS Guidance Memo 2021-24: Amendments and Further Clarification on Vaccination Requirements and Social Gathering Restrictions Relative to Executive Orders 2021-20 and 2021-21 – September 19, 2021
- DPHSS Guidance Memo 2021-23: Relative to School Resumption of In-person Leanning of Pre-K to 12 Relative to Executive Order No 2021-23 – September 19, 2021
- DPHSS Form SA-01: DECLARATION OF INDIVIDUAL ATTESTING TO COVID-19 VACCINATION TO ENTER ESTABLISHMENTS.
- DPHSS Guidance Memo 2021-21 Suspension of In-Person Learning and Amending Social Gathering Restrictions Relative to Executive Order 2021-21
- DPHSS Guidance Memo 2021-20 Refining Establishments Vaccination Requirements Relative to Executive Order 2021-20
- DPHSS Guidance Memo 2021-19 REVISION 1 Realitive to Vaccination Requirements for Establishments. Activities, and Oroanized Soorts Relative to Executive Order 2021-19
- Physicians Advisory 2021-09 Relative to Additional Dose of mRNA COVID-19 Vaccine for Moderate
 to Severely Immunocompromised, Prohibitions of Off-label Use for FDA EUA Therapies, and
 Clarification of Vaccinations for Those Inoculation with Non-FDA Authorized Vaccines.
- DPHSS GUIDANCE MEMO 2021-09 (Revision 2) Re: Additional Guidance Relative to Adopting 3 Feet
 Physical Distancing for In-Class Operations for K-12 Schools
- DPHSS GUIDANCE MEMO 2021-09 (Revision 1) Interim DPHSS Guidance Memo 2021-09 (Revision 1)
 Re; Additional Guidance Relative to Social Distancing for In-Class Operations for K-12 Schools
- DPHSS GUIDANCE MEMO 2021-18 Relative to authorized businesses and services durino Pandemic Condition of Readiness 3 (PCOR 3) as Guarn officially achieved its vaccination opal of eighty cercent (80%) of its adult population.
- DPHSS GUIDANCE MEMO 2020-11 REV, 13 Relative to Travel Quarantine in Accordance with
 Executive Order 2021-15
- DPHSS GUIDANCE MEMO 2020-11 REV.12 Relative to Travel Quarantine in Accordance with Executive Order No. 2021-13
- DPHSS GUIDANCE MEMO 2021-17 Relative to Authorized Businesses and Services During PCOR 3



Department of Public Health and Social Services COVID-19 Information web page

https://dphss.guam.gov/covid-19/

ALL INCOMING TRAVELERS TO GUAM ARE SUBJECT TO A 14-DAY QUARANTINE. CLICK FOR MORE INFORMATION.

Isolation and Quarantine – as of January 9, 2022



RECAP OF COVID REGULATIONS SINCE THE START OF THE PANDEMIC

March 2020	 Pandemic starts Public health emergency declared. First lockdown Ban on public gatherings Non-essential businesses closed Moratorium on evictions/foreclosures All schools closed
April 2020	 Ban on all social gatherings Mandatory mask wearing, social distancing, frequent cleaning of surfaces and posting of signs
June 2020	• Incoming travelers from "hotspots" required to quarantine in government facility.
July 2020	 Businesses allowed to open at 50% capacity (but no indoor dining) Schools reopened Incoming travelers with negative PCR test exempt from quarantine
August 2020	 Covid cases start to surge Second lockdown Stay at home order implemented 14 day quarantine for all incoming travelers (no testing exemption)
September 2020	 Start of re-opening the island Businesses can operate at 25% capacity (still no indoor dining) Social gatherings up to 5 people
December 2020	 Vaccines start to arrive on Guam Indoor dining allowed at 25% capacity Mask wearing, social distancing still required inside a business or outside in public areas. Individuals in private offices NOT required to mask when no other people present.

RECAP OF COVID REGULATIONS SINCE THE START (continued)

January 2021	 Schools reopened Indoor dining at 50% capacity All businesses can open at 50% capacity
February 2021	 Bars allowed at 50% capacity Moratorium on commercial evictions/foreclosures lifted Moratorium on residential partially lifted
April 2021	• Churches and restaurants allowed at 75% capacity with mask wearing, social distancing and frequent cleaning
June 2021	 No quarantine for incoming travelers with proof of vaccination Moratorium on residential evictions/foreclosures fully lifted
July 2021	 Full reopening Lifting of all capacity restrictions and social gathering restrictions Mask wearing and social distancing requirements remain
August 2021	 EO2021-17 - Mandatory vaccination or weekly testing for all Executive Branch employees EO 2021-19 - Mandatory vaccination of all restaurants, bars, clubs, and gym employees and patrons
September 2021	 A new surge in COVID cases All schools re-closed (and then re-opened 3 weeks later) Social gatherings limited to 10 persons indoors and 25 outdoors
November 2021	 Social gatherings capacity increased to 25 people indoors and 75 outdoors. Vaccination no longer required if dining at restaurant outdoors Business meetings/conferences up to 75 people allowed if all attendees are vaccinated
December 2021	• Outdoor social gatherings capacity increased to 100 people . Indoor social gatherings still 25 max.

LOCAL GUAM COVID REGULATIONS

Okay, nice recap Mike. But again what are the <u>current</u> Covid regulations imposed by GovGuam?



Executive Orders to be Aware of:

- <u>EO 2021-20</u> Imposes a vaccination requirement for "Covered Establishments" and sets forth verification protocols and exemptions
- <u>EO 2021-29</u> Exempts outdoor dining from proof of vaccination and sets social gathering limits at 25 indoors/75 outdoors
- <u>EO 2021-31</u> Increases outdoor social gathering limit to 100
- EO 2022-02 Extends public health emergency to March 2, 2022

DPHSS Guidance Memos to be Aware of:

- <u>DPHSS Memo 2021-18</u> Sets forth a list of businesses required to maintain contact logs and describes mask wearing and cleaning requirements
- <u>DPHSS Memo 2022-04</u> Describes requirements for large business meetings/conferences
- <u>DPHSS Memo 2022-08</u> Explains the vaccination requirement applicable to "Covered Establishments," the verification and exemption process, and the social gathering limitations.

COVID REGULATIONS AS OF FEB. 2, 2022 IN A NUTSHELL

- **1.** <u>No more capacity restrictions</u>. All businesses can operate at 100% capacity.
- 2. <u>Mask wearing is required almost everywhere</u>. At all places of business and all public places (indoor or outdoor)
- **3.** <u>All businesses must following safety protocols</u>. Clean/disinfect daily and maintain well-stocked cleaning and hand-washing supplies
- 4. <u>Proof of vaccination for Covered Establishments</u>.

Employees/patrons of restaurants, bars, theaters, gyms, and sporting events must provide proof of vaccination or inside service. (Employees may opt for weekly Covid testing).

5. <u>**Ban on large social gatherings**</u>. Limited to 25 people indoors and 100 people outdoors.

Which businesses must require proof of vaccination?









Proof of Vaccination is Required At All "Covered Establishments"

- 1. Restaurants/Bars
- 2. Mall food courts
- 3. Movie theaters
- 4. Concerts/shows
- 5. Bowling alleys
- 6. Boat cruises
- 7. Gyms/fitness centers/dance studios
- 8. Swimming pools
- 9. Sporting events
- 10. Bingo halls

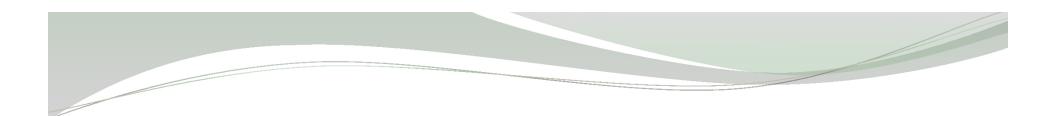
What is acceptable proof of vaccination?





Practically <u>Any</u> Form of Proof of Vaccination is Acceptable

- 1. CDC vaccination card
- 2. Documentation from a health care provider
- 3. Vaccine record from DPHSS
- 4. Photo or copy of a vaccination card
- 5. Digital/smart phone pic of a vaccination card
- 6. Printed WebIZ documentation
- 7. Any other form of proof approved by DPHSS
- 8. Self-attestation



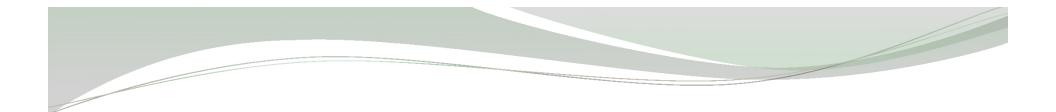
Does the employee or patron have to be fully vaccinated including the booster?



... Surprisingly, no.

Employees and patrons of restaurants/bars/theaters/gyms do <u>**not**</u> have to be fully vaccinated or have received a booster.

To satisfy the government requirement, Covered Establishments only have to obtain proof that the employee or patron has received <u>the first shot</u> of an FDA or WHO approved vaccine. That's it.



What are the exceptions to the proof of vaccination requirement?

What if an employee/patron refuses to provide proof of vaccination?

Refusal by Employee

- Employee must undergo and submit proof of a negative Covid test once weekly
- Employee can request a medical or religious exemption <u>but</u> even if_granted the employee would still have to undergo weekly Covid testing
- Vaccination requirement doesn't apply to delivery employees or employees who do not normally work on-site

Refusal by Patron

- Patron may not be served inside the establishment except for a take-out order
- A patron can be served inside if they present proof of a medical or religious exemption issued by DPHSS <u>but</u> only if the establishment determines it can serve the patron inside without undue burden

Other Covid Requirements of Covered Establishments

- Must <u>enforce mask wearing</u> by all employees/patrons except when actively eating/drinking or engaged in exercise or sports
- Must keep **records of all employees' vaccination** or exemption status
- Must **keep records of employee Covid test** results for at least 60 days
- Must <u>keep a contact log</u> of all patrons (name, contact info, date of visit) for at least 30 days
- Must **post signs viewable by prospective patrons** prior to entering the establishment alerting patrons of the vaccination requirement
- Must <u>post signs in employee break rooms</u> informing them of the vaccination requirement and how to obtain additional information about getting vaccinated

Social Gathering Restrictions

What's a "Social Gathering?"

Any meeting or gathering of <u>multiple people</u> for a common purpose where the attendees are <u>not immediate family</u> members and <u>not</u> <u>members of the same household</u>.

Meeting Rules

- 25 people max indoors
- 100 people max outdoors
- Children under 12 don't need to be vaccinated
- If all members of the same household, no vaccination required
- If not all members of the same household, everyone must be vaccinated
- <u>Special rule for business meetings/conferences</u>: Up to 75 people allowed <u>inside</u> if all are vaccinated. Businesses must keep copies of proof of vaccination. (Applies to GovGuam agencies).

II. FEDERAL VACCINE/TESTING MANDATES (MOSTLY BLOCKED)



Federal Vaccine/Testing Mandates

OSHA Emergency Temporary Standard (ETS) requiring all businesses with 100+ employees to ensure all employees are vaccinated or Covid tested weekly [*Blocked by U.S. Supreme Court on January 13, 2022*][*Withdrawn by OSHA on January 25*]

Department of Health and Human Services (HHS) Interim Final Rule requiring healthcare facilities that receive Medicare and Medicaid to ensure all employees are vaccinated [<u>Upheld by</u> <u>U.S. Supreme Court on January 13, 2022</u>]

Biden Executive Order (EO) requiring vaccination of all Federal contractors and subcontractors [*Blocked by U.S. District Court, Georgia on December 7, 2021*]

Biden Executive Order (EO) requiring vaccination of all Federal employees [<u>*Blocked*</u> by U.S. District Court, Texas on January 21, 2022]

OSHA ETS VACCINE/TESTING MANDATE

Why Was it **Blocked**?

Supreme Court's Reasoning:

- OSHA exceeded its statutory authority because Congress only authorized OSHA to regulate <u>workplace</u> dangers. Covid-19 is a universal danger not specific to the workplace.
- The ETS vaccine mandate would have impacted 84 million Americans. Decisions with "vast economic and political significance" require clear Congressional authority. Congress did not give OSHA clear authority to mandate vaccinations.



HSS RULE REQUIRING VACCINATION OF HEALTHCARE PROVIDERS

Why Was it Upheld?

Supreme Court's Reasoning:

- Congress <u>did</u> authorize the HHS to impose conditions on receipt of Medicare funds to protect the health and safety of Medicare and Medicaid patients.
- It's HHS's job to address infection problems in Medicare and Medicaid facilities.
- Vaccination requirements are normal for healthcare workers.



What about President Binden's Executive Orders?

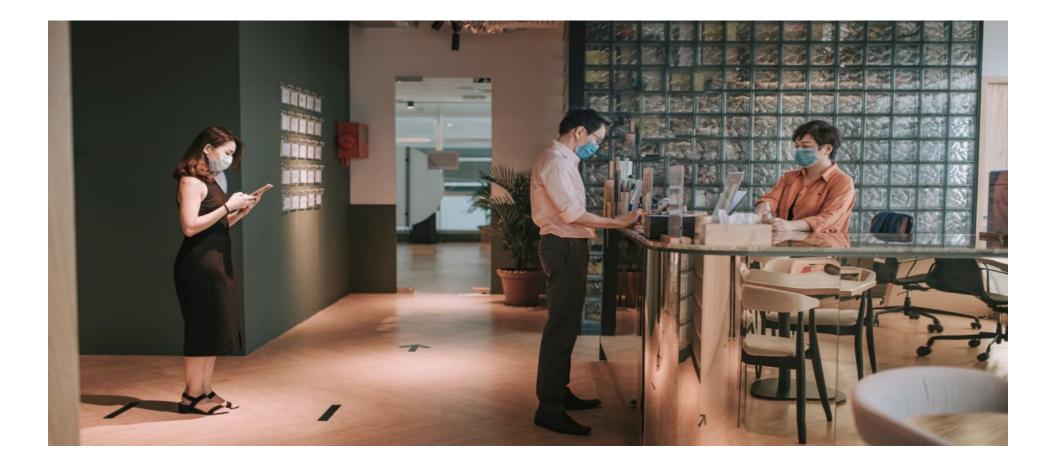
- EO mandating vaccines for federal contractors. Blocked by U.S. District Court in Georgia which held that the President exceeded his statutory authority under the Federal Procurement Act. Managing federal procurement does not include the power to require vaccinations.
- 2. EO mandating vaccines for all federal employees. Blocked by U.S. District Court in Texas which held that the President exceeded his statutory authority to regulate the conduct of executive branch employees. "Becoming vaccinated" does not constitute workplace conduct within the President's authority.

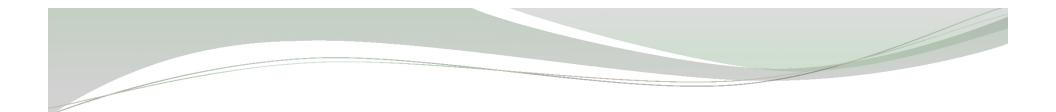
BOTTOM LINE for Guam from Federal Court Decisions:

- 1. Companies with 100+ employees no longer need to be concerned about the OSHA ETS vaccine mandate.
- 2. Employees of healthcare facilities must be fully vaccinated (both shots) -- first shot by January 27, 2022 and second shot by February 26, 2022.

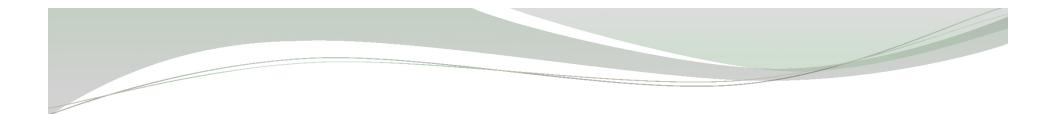
Important Note: GovGuam executive branch employees who work at healthcare facilities must comply with the much more stringent federal vaccination mandate (<u>both shots with no weekly covid test alternative</u>) and not just the GovGuam Executive Order mandate (<u>only first shot</u>; yes <u>weekly covid test alternative</u>)

III. WORKPLACE COVID POLICIES





Can a Business Require its Employees to be Vaccinated?



... YES. Requiring all employees physically entering the workplace to be fully vaccinated against Covid-19 <u>does not</u> <u>violate federal EEO laws or Guam labor laws</u>.

<u>But</u>:

In some circumstances, Title VII and the ADA require an employer to provide reasonable accommodations for employees who decline to get vaccinated due to (1) a <u>disability</u> or (2) a sincerely held <u>religious belief</u>.

Requests for Exemption Based on a <u>DISABILITY</u>

Step 1. Does the request for exemption pose a **direct threat** in the workplace? The Americans With Disabilities Act (ADA) requires that you grant the employee an exemption from the requirement unless you can demonstrate that the unvaccinated employee would pose a "**direct threat**" to the health and safety of the employee herself or others in the workplace.

This requires an <u>individualized assessment</u> BUT in most cases in the context of Covid vaccination exemption requests, the **answer to this question will be YES**. An employee with a disability who is not vaccinated would pose a direct threat to himself or others in the workplace.

Requests for Exemption Based on <u>DISABILITY</u> (Continued)

Step 2. If granting the exemption poses a direct threat in the workplace, can the employer provide a **reasonable accommodation** that would reduce or eliminate that threat **without undue hardship** to the employer?

Possible accommodations: mask wearing, staggered shifts, limiting contact with others, permitting telework, assigning employee to different workspace.

You must offer an accommodation to the employee IF it does not cause an undue hardship (significant difficulty or expense) to the business.

<u>Undue hardship determined case-by-case</u>. The outcome of this analysis will depend on factors such as the nature of the business, the type of workspace, the number of employees, and whether remote working is feasible.

Requests for Exemption Based on a <u>RELIGIOUS BELIEF</u>

[Simpler than the disability analysis]

First, <u>is the employee's request based on a **sincerely held** religious <u>belief</u>? Generally, under Title VII, an employer should assume this is the case BUT if you have an objective basis for questioning the sincerity of a particular belief, you are justified in making a limited factual inquiry and seeking additional information.</u>

Second, <u>can the employer provide a reasonable accommodation</u> <u>without undue hardship?</u> (Here "undue hardship" is defined as "more than minimal cost or burden on the employer)

Blue & Gold LLC is committed to protecting employees, customers, clients and vendors from covid-19. To meet this goal, and in consideration of guidance released by the U.S. Centers for Disease Control and Prevention and a variety of public health authorities and professional organizations, Blue & Gold is implementing a mandatory vaccination policy for its workforce.

1. All employees are required to have or obtain a covid-19 vaccination as a term and condition of employment at Blue & Gold, unless an exemption is approved.

All employees must report their vaccine status and provide approved documentation as proof of vaccination:

- All current employees must report their status no later than [Fill in the date].
- All employees who are not vaccinated have until [Fill in the date] to get fully vaccinated.
- All <u>employees who do not get vaccinated, including employees who</u> <u>receive an exemption from this policy, must submit to weekly covid</u> <u>testing at their own expense</u>. Employees who test positive must remain at home for 10 days. Such employees may work from home if their jobs permit. If their jobs do not permit working from home, such employees may use their accrued time off; otherwise, the time off will be unpaid.
- All new employees must provide proof of their vaccination status prior to the start of their employment.

This policy applies to employees regardless of whether they work on-site or remotely, unless the employee qualifies for an exemption.

Employees are considered fully vaccinated two weeks after they receive the requisite number of doses of a covid-19 vaccine. For Pfizer-BioNTech, Moderna or AstraZeneca/Oxford, this is two weeks after employees received the second dose in a two dose series. For Johnson and Johnson /Janssen, this is two weeks after employees receive a single dose. [OPTIONAL: <u>If a booster is recommended by the Department of Public Health and Social Services based on the employee's initial vaccination dates, the employee must receive the booster in order to be considered fully vaccinated.]</u>

2. All employees, regardless of whether they have previously attested to their vaccination status, must provide documentation of their vaccination. Employees' documentation must be on official forms and include the vaccination received, the number of doses received, the date each dose was administered and the name of the health care professional or clinic administering the vaccine.

The following documentation is acceptable:

- 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
- A copy of any other official documentation containing the required information.
- Digital copies, including digital photos of records are acceptable.



3. Exemptions may be granted to employees who have certain medical conditions or on the basis of a strong religious or sincerely held belief.

Determining whether an exception is legally required will include consideration of factors such as the basis for the claim; the nature of the employee's job responsibilities; and the reasonably foreseeable effects on the employer's operations, including protecting other employees and the public from covid-19.

Employees who are denied an exemption have 10 days from the date of the notice of the denial to begin receiving the vaccine and must by fully vaccinated within 30 days thereafter or submit to weekly testing at their own expense.

4. Employees may be granted a deferral to receive the vaccine if they have certain medical conditions, they're on approved FMLA or supplemental leave, they've tested positive for the covid virus or are undergoing treatment for the virus.

5. All records of vaccinations and approved exemptions will be maintained by Human Resources. Such records will not be included in employees' personnel files.

6. Violations of this policy may result in appropriate disciplinary measures, up to and including dismissal. Blue & Gold will provide the procedural rights required in its progressive discipline policy to an employee and follow its normal disciplinary processes. Employees will not be placed on administrative leave while pursuing an adverse action for refusal to be vaccinated, but will be required to follow safety protocols for employees who are not fully vaccinated when reporting to work.

IV. WHAT IF AN EMPLOYEE TESTS POSITIVE FOR COVID-19

SARS-CoV-2 Antigen Rapid Test (Self-Testing) VI NO II 20. ARS.Col.2 8

Occupational Safety and Health Administration (OSHA) Act of 1970 General Duty Clause

(a)Each employer –

shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

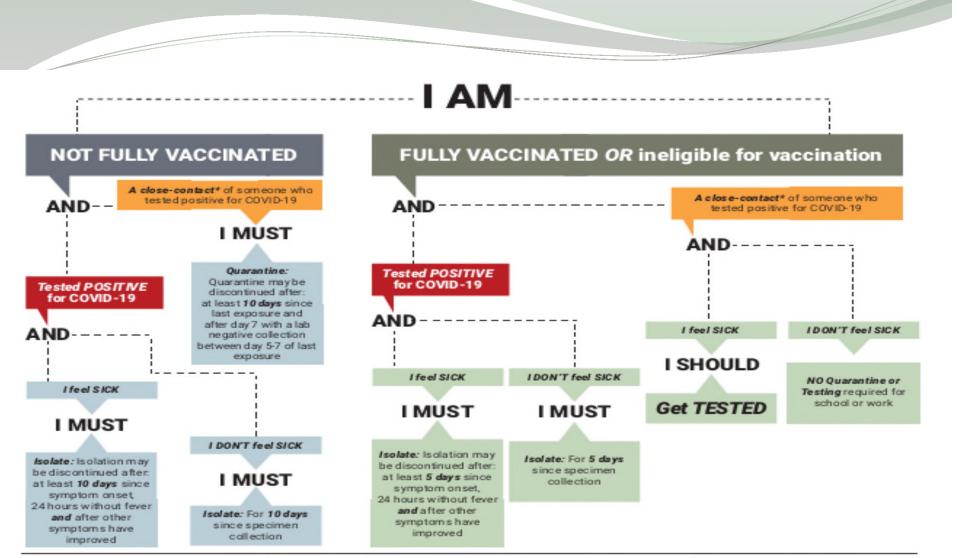
If an employee tests positive for Covid, you should <u>take action right away</u>:

- 1. Remove the employee from the workplace immediately.
- 2. Require the employee to isolate and not return to work until the employee has completed the isolation period recommended by:
 - <u>DPHSS</u>: 5 days of isolation for vaccinated 10 days of isolation for unvaccinated

or

<u>The CDC</u>: 5 days of isolation regardless of vaccination status

3. Notify co-workers who were exposed to the employee, if any, of the exposure and recommend that they be tested.

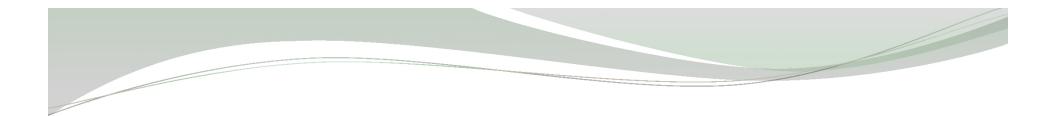


Isolation and Quarantine – issued January 28, 2022



Based on Executive Order 2021-32 and DPH55 Guidance Memo 2021-16 Rev. 1. For official guidance. CLICK HERE: https://dobse.guidan.gov/ep.content/uploads/2022/01/DPH55-GUIDANCE-MEMO-2021-16-REV 02-01-28-2022. FINAL.odf

*Close contacts are some on evelovers: less than 6 feet areay from an infected person () aboratory-confirmed or a clinic al diagnosis) for a camulative total of 15 minutes or more over a 24-hour period. For example, three individual 5-minute exposures for a total of 15 minutes. (5 ourse: cds.gov/comonavium/2019-ncov/y our-head hyguer antine-individual 5-minute.htm)



Does an Employee who gets Covid have any rights under the Americans with Disabilities Act (ADA) or Family Medical Leave Act (FMLA)?

. . . Possibly, <u>yes</u>.

"Long Covid" can be a disability under the ADA (and also under the federal Rehabilitation Act of 1973) according guidance issued last July by the U.S. DOJ and U.S. HHS guidance in July 2021.

Common symptoms of Long Covid are:

- Tiredness or fatigue
- Difficulty thinking or concentrating (sometimes called "brain fog")
- Shortness of breath or difficulty breathing
- Headache
- Dizziness on standing
- Fast-beating or pounding heart (known as heart palpitations)
- Chest pain
- Cough
- Joint or muscle pain
- Depression or anxiety
- Fever
- Loss of taste or smell

Long Covid is a disability under the ADA <u>if</u> it "substantially limits one or more major life activities" (*examples:* caring for oneself, eating, sleeping, walking, lifting, bending, breathing, concentrating, thinking, communicating, and working).

Some key points in determining whether an employee's Long Covid condition is a disability that requires accommodation:

- 1. It can be a physical or mental impairment (can be a psychological disorder such as an emotional or mental illness)
- 2. "Substantially limits" is to be construed broadly and should not demand extensive analysis.
- 3. It's not always a disability, but if it is a disability, the employee is <u>entitled to reasonable accommodation</u>.

Some Covid Symptoms Substantially Limit a Major Life Activity and Some Don't.

These Do:

- Person with Covid experiencing ongoing but intermittent multiple-day headaches, dizziness, difficulty concentrating or thinking.
- Person with Covid has shortness of breath or heart palpitations that lasts or is expected to last for several months.

These Don't:

- Person with Covid experiencing congestion, sore throat, fever, headaches which resolve within several weeks with no further symptons.
- Person is infected with Covid but is asymptomatic

Bottom Line: If the employee's Long Covid condition substantially limits a major life activity, you must go through the same interactive reasonable accommodation process under the ADA as you would with any other disability.

Possible accommodations:

- 1. Modified schedule (periodic breaks)
- 2. Reassignment to other vacant position
- 3. Job restructuring (adjustment of duties/tasks)
- 4. Leave

But only to the extent these accommodations can be done without undue hardship to the employer.

Extended Leave (paid or unpaid) is also a Form of Reasonable Accommodation

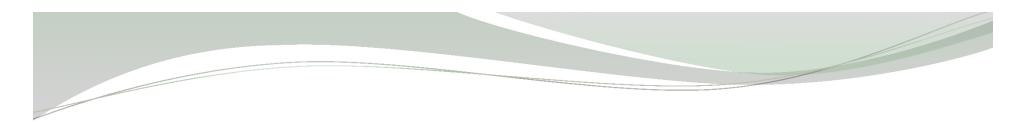
- If there's no other effective accommodation, and leave will not cause undue hardship (significant difficulty or expense), the employee must be granted leave under the ADA.
- If FMLA applies (companies with 20 or more employees), the employee gets up to 12 weeks of unpaid leave – which is not considered part of the accommodation. The accommodation would be leave beyond the FMLA leave.
- The employee must be allowed to use any accrued paid leave first and then unpaid leave.





EEOC

- Everything EEOC has issued related to COVID-19 can be found at <u>www.eeoc.gov/coronavirus</u>, including:
 - What you should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO Laws
 - <u>https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws</u>





A Wealth of Valuable Guidance regarding Covid-19 Workplace Policies is Available on the SHRM Website at the following link:

https://www.shrm.org/hr-today/news/hr-news/Pages/coronavirusresources.aspx









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