



**STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
DIRECTOR'S OFFICE**

515 E. Musser Street, Suite 300 | Carson City, Nevada 89701
Phone: (775) 684-0299 | admin.nv.gov | Fax: (775) 684-0298

MEMORANDUM

May 7, 2021

TO: All Directors

FROM: Laura E. Freed, Director
Department of Administration

SUBJECT: **Guidance on Opening State Offices to the Public by June 1, 2021**

As you know, the State will be transferring responsibility for COVID-19 mitigation management to the counties effective May 1, 2021. As part of that effort, the Governor's Office encourages all department directors and their leadership teams to think critically about what steps to take to re-open all state buildings to in-person business no later than June 1, 2021. To assist with that, the Department of Administration offers guidance based on questions received from various departments. You may wish to reference the Department of Administration's previous memoranda on COVID-19 issues, which can be found on our website.

<https://admin.nv.gov/Policy-Directives/>

First, department leadership should actively encourage vaccination and continued testing for symptomatic employees. Paid administrative leave is available for vaccination and for the side effects of vaccination, but the paid administrative leave is capped at four hours. Thereafter, employees must use sick leave for vaccination or side effects of vaccination. Please have your supervisors and agency pay clerks check timesheets to ensure that the correct reason code is used when employees claim COVID administrative leave, and that employees adhere to this limit.

Second, all departments should implement a COVID-19 prevention program per OSHA guidance, which can be found here:

<https://www.osha.gov/coronavirus/safework#roles-employers-workers>

Since many departments have adapted to remote work, staggered shifts, physical distancing while in the office, and nonporous barriers between employees, your department's COVID-19

prevention plan likely will not be very different than how you currently operate. Opening state buildings to public foot traffic does not necessarily mean requiring all employees to return to the office, it simply means having staff in place to handle the in-person business that your department gets. If telework continues to be productive for your staff, it should be continued, even as more staff are fully vaccinated and feel comfortable returning to the office. However, please remember that the U.S. Centers for Disease Control and Prevention (CDC) has not updated its guidance for businesses yet, and so the following precautions should be taken:

- Employees must wear masks when not in closed offices by themselves, including in the restrooms, kitchen areas, elevators, stairwells, and corridors.
- Staff should maintain six feet of social distancing whenever possible, including distancing for in-person customers as space permits.
- Agencies should continue use of nonporous physical barriers between employee workstations.
- Teleworking is still encouraged wherever feasible and productive.

Frequently Asked Questions

1. *If the Governor's goal is 100% capacity for all businesses by June 1, does that mean state agency personnel all need to return to the office and we must also be at 100% capacity?*

As noted above, the Governor's goal is for state offices to be open to in-person business transactions by June 1 in some form. This does not necessarily mean that all employees must come back to the office. Departments should conduct due diligence before requiring employees to return to the office full-time, including evaluating the possibility of variations of permanent telework. If telework has been productive for an agency during the pandemic, it may be advisable to continue telework as a fundamental shift in the business model.

2. *If most of my office/division/department is vaccinated, can I request that all employees return to work?*

As the Governor has noted previously, vaccination for employees is not a prerequisite to returning to the office. Also, departments can always discontinue the use of teleworking, since pursuant to current law and regulation, there is no express or implied right to work remotely. However, departments must have a telework policy in place that best suits the department's needs. Additionally, as noted above, the CDC has not updated its guidance for workplaces and still recommends 6-foot social distancing and masking for offices, though the counties' individual plans may differ. State offices will continue to follow CDC guidance wherever practicable. Lastly, teleworking may be a reasonable accommodation under the ADA for persons with a disability if teleworking enables them to perform all of the essential functions of their position.

3. *Are departments prohibited from asking employees if they have been vaccinated? Is requiring proof of vaccination permissible?*

According to U.S. Equal Employment Opportunity Commission's guidance, employers may ask if employees have been vaccinated, but it is not wise to ask anything beyond that yes/no question. Additional questions may elicit protected information about an employee's medical condition(s), which employers are not generally permitted to ask about.

Employers may require proof of vaccination, showing the date of vaccination, but it is best practice to inform employees that they should not provide any additional medical history or family history information, to avoid any violations of the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964, or the Genetic Information Nondiscrimination Act (GINA).

Employees' proof of vaccination should be kept confidential and requested/maintained only by each agency's HR department.

4. *What should I do if an employee indicates they are unable to get a COVID-19 vaccination due to disability or religious belief?*

The ADA allows an employer to have a qualification standard that includes a requirement that an individual shall not pose a direct threat to the health or safety of others in the workplace. As such, for individuals who cannot get a COVID-19 vaccine due to a disability or demonstrated religious belief, the employer should work with the employee to identify a reasonable, effective accommodation that will enable them to perform all of the essential functions of their position. Telework should be considered as a reasonable accommodation.

Religious exemptions also call for reasonable accommodation unless it would pose an undue hardship on the employer under Title VII of having more than a de minimis cost or burden on the employer. Again, telework should be considered as a reasonable accommodation for a religious exemption.

5. *If an unvaccinated employee contracts COVID-19 after refusing vaccination, is that employee still eligible for paid COVID administrative leave?*

Agencies are reminded that certain employees have medical conditions that prevent them from getting a vaccine. Effective June 1, 2021, any employee that contracts COVID-19 should be able to furnish evidence of having begun or completed vaccination. If an employee has not been vaccinated, that employee should furnish a doctor's affirmation of having a medical condition that prevents vaccination. If an employee is unable to do so or has confirmed to an appointing authority that they did not seek vaccination and will not do so, then the employee will be required to use sick leave, and not be eligible for paid administrative leave.

6. *How should we handle positive COVID cases within offices after reopening? Should the office close to in-person business for some period of time?*

Positive COVID-19 cases among staff should continue to be handled as they have been.

Employees experiencing symptoms should be sent home immediately and should obtain a COVID-19 test. Any unvaccinated personnel should also obtain testing if warranted. Please refer to the guidance provided by the Division of Human Resource Management on February 19, 2021, regarding exposure to COVID-19 by those who have been vaccinated. <https://admin.nv.gov/uploadedFiles/adminnvgov/content/Documents/HR03-21.pdf>

Closing offices to in-person business should be made on a case-by-case basis at the discretion of the appointing authority, depending on the severity of an outbreak.

7. *Are in-person meetings allowed? Is social distancing required in state offices?*

In-person meetings are permissible if all CDC safety guidelines are followed. However, virtual meetings are strongly encouraged, particularly for larger gatherings.

As noted previously, the CDC still recommends social distancing in offices, and this should be maintained wherever possible.

8. *How should agencies handle visitors who refuse to wear a mask?*

Agencies must post conspicuous signage all at public entrances that face coverings are required to enter. Agency personnel may ask patrons to leave for not complying with the statewide mask mandate. Agencies with large amounts of foot traffic may have security personnel and may wish to ask security staff to assist with removing noncompliant members of the public, and agencies without security personnel are encouraged to contact law enforcement if members of the public become disruptive to state business.

9. *Do offices with substantial foot traffic have to increase cleaning frequency?*

It is encouraged to increase cleaning frequency in publicly accessible areas once state buildings are reopened to in-person business, and all departments are encouraged to consider whether they require more frequent janitorial support as part of their COVID-19 prevention program.

10. *Will nonessential department travel be resuming soon?*

All Agency Memorandum 2020-15 was published by the Governor's Finance Office and remains in effect because in the current fiscal year, the state's budget remains significantly constrained. Out of state or out of country travel will continue to be evaluated on a case-by-case basis by the Governor's Office. When the Governor's Office deems it necessary, a memorandum will be issued to rescind the current policy.

11. *Will COVID-19 paid administrative leave be available for continued Distance Learning or Daycare?*

Departments will recall that a guidance memo was issued on August 27, 2020 with an

update/clarification memo provided on September 8, 2020 that specified that for non-essential employees, the Governor's Office authorized an hourly total equivalent to 15 weeks of paid administrative leave for distance learning and care for school-age and non-school-age children who require care and supervision. Additional support programs are being contemplated by the Governor's Office for daycare and elder care, since the Governor's Office recognizes that not all facilities have reopened. However, due to the gradual return to in-person instruction in K-12 schools as well as daycare facilities resuming operations, it is expected that the need for this benefit will be reduced. Once the previously designated hourly equivalent of 15 weeks has been exhausted, there will not be any further paid COVID-19 administrative leave for distance learning or childcare purposes. Agencies should work with employees who have distance learning and family care obligations as they design office reopening plans.

If there are other questions from departments, please route them to either your Governor's Office liaison or the Department of Administration and we will work with you to answer them. As always, we appreciate your patience and flexibility as we work together to move forward out of the acute pandemic emergency phase, and into a different way of continuing to work for the people of Nevada.