

# Frequently Asked Questions

**Last Updated: 11/2/2021**

## **Q. Where can I find the Eighth Public Health Order (PHO)?**

A. Access to the Public Health Order: [EIGHTH AMENDED PUBLIC HEALTH ORDER 20-38](#).

## **Q. Who is subject to the vaccination requirements in the PHO?**

A. All State Contractors who have employees who enter a State Facility are subject to the PHO. A State Facility includes executive branch agencies and institutions of higher education. Judicial and Legislative branches are encouraged to adopt the Executive branch policy, but are not required to do so.

## **Q. Who is responsible to notify contractors of the Public Health Order?**

A. All executive branch agencies including institutions of higher education subject to this PHO are responsible for providing notice to their contractors; contractors may receive multiple notices from different State Agencies and Institutions of Higher Education. The Public Health Order is lawful and enforceable and is not dependent on notice.

## **Q. Are contractors responsible for paying for tests and will they be able to bill this expense back to the Agency?**

A. The State has set up an existing network of free testing sites, the State will not reimburse or pay for any COVID-19 testing expenses by State Contractors that are subject to this Public Health Order.

## **Q. Can Contractor employees use over-the-counter rapid antigen tests, or are they required to have a record of a Polymerase Chain Reaction (PCR) test?**

A. PCR testing is preferred by the State but it is not mandated in the PHO.

## **Q. What are the acceptable ways State Contractors can certify that their employees are vaccinated?**

A. On or before November 10, 2021 State Contractors must complete and submit the Certification of COVID-19 Vaccination form back to the Governmental Entity. Contractors who do business with multiple Governmental Entities must submit the form back to each Governmental Entity. The State may require an update to this certification form in 2022.

## **Q. Are any exemptions allowed for religious or medical reasons?**

A. Yes, the PHO provides for an employer approved medical or religious exemption. However, that employee must still participate in twice weekly COVID-19 testing in order to enter a State Facility.

## **Q. Is the State allowing extensions or exemptions from the PHO?**

A. No, the PHO defines the applicable requirements for State Contractor and State Contractor Workers. Exemptions for the Order and/or deadline extensions are not allowed.

**Q. How does a Contractor Employee obtain a medical or religious exemption?**

A. The PHO requires that the individual employees submit their medical or religious exemption requests directly to their employer. Employers should be creating their own policies for receipt and review of those medical and/or religious exemption requests and informing their employees of their determination of that medical or religious exemption.

**Q. How do State Contractor employees show proof of medical or religious exemptions to the Agency if requested to do so while at a State Facility?**

A. The State Contractor will need to keep track of their employee who they have approved an exemption for and the employees would need to participate in COVID-19 testing. The contractor shall identify all contractor employees by name who require access to State Facilities. The Governmental Entity may request a copy of the list of contractor's employees who have been vaccinated or have a religious or medical exemption. Contractor employees should carry documentation of the approved exemption and documentation of twice weekly COVID-19 testing.

**Q. What is the consequence for a State Contractor that is non-compliant with the PHO or an Agency requests for proof of vaccination or testing status?**

A. The state contractor would be noncompliant and enforcement remedies would be put into place as provided for in the PHO. State Agencies may exercise remedies available under the contract. \*\*During the meeting on 11.3.2021 the State said they would work on language agencies can use if a State Contractor is non-compliant.

**Q. How can I, as a contractor, certify that my employees with access to State Facilities are vaccinated, have an approved exemption, and are participating in twice weekly testing?**

A. Each State Contractor subject to this PHO must decide how they will verify how their workers are vaccinated, exempt, or complying with testing requirements. Disciplinary action is one of the consequences State Contractors may choose to impose in order to gain compliance, which is the goal of the PHO. State Contractors should work with their human resources partners to request, verify, and maintain vaccination, exemption and testing, and un-vaccination and testing information.

**Q. Do State Contractors have to maintain a list of their employees by name that need access to State Facilities to the State Agency and keep it updated?**

A. Yes, State Contractors shall certify that all their employees who enter State Facility property are fully vaccinated, exempt and testing or unvaccinated, and testing State Contractors shall maintain documentation to substantiate their

certification. The State may ask State Contractors to verify their certification by reviewing the list of employees to ensure they are fully vaccinated.

**Q. Can State Contractor employees be stopped and asked to show proof of compliance?**

A. State contractors are required to maintain this information for their employees and provide agencies with their attestations concerning the vaccination or testing status of all of their employees.

**Q. If a State Contractor comes onto State property (i.e state wildlife area in a remote area, garbage collection, fueling services, snow removal etc.), does not have contact with the public or state employees, and does not enter a building, does this PHO apply?**

A. The intent of the PHO is to capture anyone entering into an enclosed structure, a State building with the purpose of providing services or goods. The PHO would not apply in these cases.

**Q. If an unvaccinated contractor only comes onto State property once a year, for example, a kickoff meeting, would they only need to test twice weekly that week or throughout the entire contract?**

A. Twice weekly testing is required throughout the contract term for every individual who will at any point be entering a state facility.

**Q. Regarding an institution of higher education campus, is the entire campus considered a State Facility or just an individual building?**

A. The intent of the PHO is to capture anyone entering into an enclosed structure, a State building with the purpose of providing services or goods. The PHO would not apply if the contractor only had access to the outdoor portions of a campus.

**Q. Does this PHO cover common space in buildings where the State is only leasing a portion of the building?**

A. This PHO does not apply to common areas (i.e. lobbies, elevators, restrooms) of partially leased buildings in which the State has offices and shares that communal space with other businesses.

**Q. For the purpose of the PHO, do DNR's State Park Visitor Centers, State Park shade shelters and State Park vaulted toilets qualify as a State Facility?**

A. State Park Visitor Centers are State Facilities and are subject to this PHO. Shade shelters and vaulted toilets do not qualify as State Facilities under the PHO.

**Q. DNR has a number of concessionaires who operate on State-owned lands but in buildings owned by the concessionaire. For example, a State Park might have an arrangement whereby a concessionaire has installed a building adjacent to a lake from which the concessionaire rents paddle boards to the public. Are these**

**concessionary buildings on State Property considered a State Facility for the purpose of this PHO?**

A. No, concessionary buildings and stands are not considered State Facilities under the PHO.

**Q. Are official function events in a rented space (i.e. hotels) subject to the contractor vaccination requirements?**

A. No, these locations are not State Facilities.

**Q. Who is responsible for collecting certification documentation from Contractors?**

A. The Agency is responsible for collecting certification documentation. It is recommended that the documentation be saved in each contract file as part of the official contract file. There is not a central repository for certification documentation.

**Q. Who is responsible to ensure that Contractor's employees are in compliance with the PHO?**

A. It is the Contractor's responsibility to ensure that their employees are in compliance with the PHO. Contractor's shall certify that they are in compliance and show proof upon request by an Agency. The Contractor is responsible for maintaining a list of their employees by name who require access to State Facilities.

**Q. Do Contractors with multiple contracts across the State have to send in a certification form for each of their contracts?**

A. Yes, Contractors must certify for each Agency separately. Agencies have no knowledge of what Contractors are entering another Agencies' State Facilities.

**Q. What are the repercussions if a State Agency misses a few contractors and/or fails to get all the certifications?**

A. The State Agency and/or the contractor would be in violation of the PHO.

**Q. Does the PHO apply to the police, fire, and EMT services?**

A. No, this PHO is for Contractors and not Emergency Service Providers.

**Q. How does the PHO affect volunteers, the public, board members, grantees and third parties who are not contractors?**

A. The PHO only applies to State Contractors. A visitor, volunteer, board member, grantee, or third party entering a State Facility would not be subject to this PHO. These individuals would need to comply with the requirements of the Agency they are visiting.

**Q. Does the PHO consider individuals or entities that make donations of goods at a State Facility a State Contractor or a State Contractor Worker?**

A. No, the PHO does not cover individuals or companies donating goods to the State.

**Q. Does the PHO apply to janitorial services provided by the Landlord pursuant to a lease agreement?**

A. Yes, Landlords and their subcontractors are considered State Contractors under the PHO including janitorial services that may be provided to the entire lease building including other tenants, not just the State.

**Q. Are individuals who attend Public Meetings and events at State Facilities subject to this PHO?**

A. No, this PHO only applies to State Contractors. It does not apply to volunteers or individuals who are not State Contractors or State Contractor employees.

**Q. How does the PHO affect students?**

A. Students are not State Contractors pursuant to the PHO so it does not apply to them.

**Q. Should Agencies amend current agreements with Contractors to include the requirements of the PHO?**

A. No, the requirements of the PHO are legally enforceable and are independent of any agreement. Further, the Colorado Special Provisions included in State Contracts requires that Contractor "shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices."

**Q. Can Agencies send the DPA provided notice letter to Contractors without an individual name and address and contract number?**

A. Yes, Agencies may communicate this information to their Contractors as they determine is best for their Agency.

**Q. If an Agency leases space in an office building that is not owned by the State, is that office considered a State Facility?**

A. Yes, a State Facility includes leased space.

**Q. Does the PHO apply to a State Facility under Construction?**

A. The PHO does not apply where the State Facility is under construction. The PHO does apply during the renovation of an existing State Facility.

**Q. For demolition or site work at an undeveloped State Facility, is there a point in the construction project, prior to acceptance that the structure qualifies as a "State Facility."**

A. The undeveloped site becomes subject to the PHO upon acceptance of a Certificate of Occupancy.

**Q. Does the PHO apply to vendors that have a Purchase Order with the State?**

A. Yes, the PHO applies to State Contractors which are all entities or persons that have entered into or accepted a State Contract to transact business with the State, as well as entities or persons that have one or more employees, agents or subcontractors who provide services in or deliver goods to a State Facility or to a client, resident, patient, or youth residing in a State Facility.

**Q. Does the PHO apply to contractors who enter a State Facility that are not on a Purchase Order (short-term, small projects less than \$5K)?**

A. Yes, the PHO applies to all companies providing goods or services to the State and that enter property of a State Facility regardless of the form of the agreement including a contract, purchase order, or commercial card.

**Q. Are delivery companies such as Amazon, USPS, FedEx, etc.. covered by this PHO?**

A. The intent of the PHO is to capture any State Contractor who enters a State Facility. Residential State Facilities have a heightened standard of scrutiny, the intent is broadly written. If the delivery company does not have a contract with the State Agency, the PHO requirements do not apply.

**Q. Are there conditions such as emergencies where agencies can make exceptions when there are exigent circumstances like a roof leak and/or when there is no patient or employee contact or when contact is incidental (less than 15 minutes and people are masked)?**

A. Access by emergency responders such as law enforcement or emergency medical services do not require compliance with the PHO as they are not State Contractors. Similarly, access under an authorized Emergency Procurement to protect public health and safety outside of what is contemplated in a contract with a State Contractor, such as to immediately address a harmful building maintenance issue, would not require compliance with the PHO. However, if the State Contractor had the work as part of its scope of work, then compliance for State Contractor workers is required.

**Q. The Governor's Office of Information Technology (OIT) contracts on behalf of agencies and may not have information about contract workers that are working onsite at agencies. Is the agency responsible for obtaining the certification or is that the responsibility of OIT as the party named on the contract?**

A. The Agency listed as the Party on the contract is the Agency responsible for obtaining the certification.

**Q. Does this Public Health Order only apply to contractors that have signed a State Contract?**

A. No, the Public Health Order applies to all companies providing goods or services to the State and that physically enter a State Facility regardless of the form of the agreement including a contract, purchase order, or commercial card.

**Q. How can tenants that operate in a State facility and that provide services to citizens in a rural area where testing sites are 25 plus miles away and only operate one day a week comply with the PHO that requires testing twice a week?**

A. In this situation, the State Agency should require testing that is available in the area, in this case, once a week, and further work with other partners, including CDPHE, to see if additional testing services are available.