

From: Committee on Rules 36GL <cor@guamlegislature.org>
Sent: Monday, August 9, 2021 2:29 PM
To: Clerks; Rennae Meno
Cc: Speaker Therese M. Terlaje
Subject: Messages and Communications for Doc. No. 36GL-21-0955*.
Attachments: 36GL-21-0955.pdf

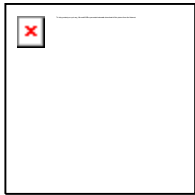
Håfa Adai Clerks,

Please see attached M&C Doc. No. 36GL-21-0955 for processing:

36GL-21-0955	EXECUTIVE ORDER NO. 2021-17: Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19*.	Office of the Governor of Guam

Electronic and Hard Copy received.

Si Yu'os Ma'åse',



COMMITTEE ON RULES

Vice Speaker Tina Rose Muña Barnes
36th Guam Legislature
I Mina'trentai Sais Na Liheslaturan Guåhan
163 Chalan Santo Papa Hågatña Guam 96910
Email: cor@guamlegislature.org

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----- Forwarded message -----

From: **Speaker Therese M. Terlaje** <speaker@guamlegislature.org>
Date: Mon, Aug 9, 2021 at 1:06 PM
Subject: Fwd: Messages and Communications for 36GL-21-0955
To: Legislative Secretary Amanda Shelton <officeofsenatorshelton@guamlegislature.org>, Committee on Rules 36GL <cor@guamlegislature.org>

Håfa Adai,

Please see attached M&C Doc. No. 36GL-21-0955.

36GL-21-0955	EXECUTIVE ORDER NO. 2021-17: Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19.*	Office of the Governor of Guam
36GL-21-0955	EXECUTIVE ORDER NO. 2021-17: Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19. (Hand Delivered Hard Copy).	Office of the Governor of Guam

Si Yu'os Ma'åse',

Maria Abante
Legislative Assistant

Office of Speaker Therese M. Terlaje
Committee on Health, Land, Justice and Culture

I Mina'trentai Sais na Liheslaturan Guåhan

36th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

T: (671) 472-3586 F: (671) 989-3590 Email: speaker@guamlegislature.org

website: www.senatorterlaje.com

----- Forwarded message -----

From: **Speaker Therese M. Terlaje** <speaker@guamlegislature.org>

Date: Fri, Aug 6, 2021 at 7:26 PM

Subject: Messages and Communications for 36GL-21-0955

To: Legislative Secretary Amanda Shelton <officeofsenatorshelton@guamlegislature.org>, Committee on Rules 36GL <cor@guamlegislature.org>

Håfa Adai,

Please see attached M&C Doc. No. 36GL-21-0955.

36GL-21-0955	EXECUTIVE ORDER NO. 2021-17: Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19.*	Office of the Governor of Guam
36GL-21-0955	EXECUTIVE ORDER NO. 2021-17: Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19. (Hand Delivered Hard Copy).	Office of the Governor of Guam

Si Yu'os Ma'åse',

Maria Abante
Legislative Assistant

Office of Speaker Therese M. Terlaje
Committee on Health, Land, Justice and Culture

I Mina'trentai Sais na Liheslaturan Guåhan

36th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

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T: (671) 472-3586 F: (671) 989-3590 Email: speaker@guamlegislature.org

website: www.senatorterlaje.com

----- Forwarded message -----

From: **Brianne LG Dunstan** <brianne.dunstan@guam.gov>

Date: Fri, Aug 6, 2021 at 5:37 PM

Subject: Executive Order 2021-17_Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19

To: Speaker Therese M. Terlaje <speaker@guamlegislature.org>

Cc: Gov. Lourdes A. Leon Guerrero <governor@guam.gov>, Lieutenant Governor <lt.governor@guam.gov>, Guam Compiler of Laws <guamcompiler@gmail.com>, Geraldine A. Cepeda (Compiler) <gcepeda@guamcourts.org>, Lisa Ibanez (Compiler Asst.) <libanez@guamsupremecourt.com>, Sophia Diaz <sophia.diaz@guam.gov>, Leslie Travis <leslie.travis@guam.gov>, June M.C. Borja <june.borja@guam.gov>, Jon Junior Calvo <jon.calvo@guam.gov>, Alice Taijeron <alice.taijeron@guam.gov>, Eliza G. Dames <eliza.dames@guam.gov>, Shamra L.A. Chargualaf <shamra.chargualaf@guam.gov>, Josephine C. Cepeda <josephine.cepeda@guam.gov>, Kathleen C. Cepeda <kathleen.cepeda@guam.gov>, Richard B. Arroyo <richard.arroyo@guam.gov>, Rhea Chang <rhea.chang@guam.gov>, Bertha Duenas <bertha.duenas@guam.gov>, Stephanie G. Flores <stephanie.flores@guam.gov>, Michael D. Weakley <michael.weakley@guam.gov>, <pmbblas@ggrf.com>, Krystal Paco-San Agustin <krystal.paco@guam.gov>, Jennifer Louise Dulla <jennifer.dulla@guam.gov>, Rikki Orsini <rikki.orsini@guam.gov>, Logan Reyes <logan.reyes@guam.gov>, Jessica Cruz <jessica.cruz@guam.gov>

Hafa Adai Madame Speaker,

Please find attached letter from Legal Counsel Sophia Santos Diaz *with enclosed* Executive Order No. 2021-17 signed on August 6, 2021.

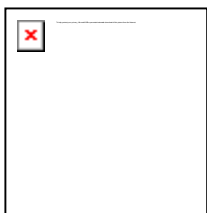
- **EXECUTIVE ORDER NO. 2021-17: Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19**

A hard copy will be transmitted to your office.

Thank you.

Respectfully

--



Brianne LG Dunstan
Unisifan I Maga'hagan Guåhan
Office of the Governor of Guam
Office of Legal Counsel
513 West Marine Corps Drive
Ricardo J. Bordallo Governor's Complex
Hagåtña, Guam 96910
Office: 671.473.1118
brianne.dunstan@guam.gov



Speaker Therese M. Terlaje <speaker@guamlegislature.org>

Executive Order 2021-17 Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19

Fri, Aug 6, 2021 at 5:36 PM

Brianne LG Dunstan <brianne.dunstan@guam.gov>

To: "Speaker Therese M. Terlaje" <speaker@guamlegislature.org>

Cc: "Gov. Lourdes A. Leon Guerrero" <governor@guam.gov>, Lieutenant Governor <lt.governor@guam.gov>, Guam Compiler of Laws <guamcompiler@gmail.com>, "Geraldine A. Cepeda (Compiler)" <gcedepeda@guamcourts.org>, "Lisa Ibanez (Compiler Asst.)" <libanez@guamsupremecourt.com>, Sophia Diaz <sophia.diaz@guam.gov>, Leslie Travis <leslie.travis@guam.gov>, "June M.C. Borja" <june.borja@guam.gov>, Jon Junior Calvo <jon.calvo@guam.gov>, Alice Taijeron <alice.taijeron@guam.gov>, "Eliza G. Dames" <eliza.dames@guam.gov>, "Shamra L.A. Chargualaf" <shamra.chargualaf@guam.gov>, "Josephine C. Cepeda" <josephine.cepada@guam.gov>, "Kathleen C. Cepeda" <kathleen.cepada@guam.gov>, "Richard B. Arroyo" <richard.arroyo@guam.gov>, Rhea Chang <rhea.chang@guam.gov>, Bertha Duenas <bertha.duenas@guam.gov>, "Stephanie G. Flores" <stephanie.flores@guam.gov>, "Michael D. Weakley" <michael.weakley@guam.gov>, pmbias@ggrf.com, Krystal Paco-San Agustin <krystal.paco@guam.gov>, Jennifer Louise Dulla <jennifer.dulla@guam.gov>, Rikki Orsini <rikki.orsini@guam.gov>, Logan Reyes <logan.reyes@guam.gov>, Jessica Cruz <jessica.cruz@guam.gov>

Hafa Adai Madame Speaker,

Please find attached letter from Legal Counsel Sophia Santos Diaz *with enclosed* Executive Order No. 2021-17 signed on August 6, 2021.

- **EXECUTIVE ORDER NO. 2021-17: Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19**

A hard copy will be transmitted to your office.

Thank you.

Respectfully

36GL-21-0955
OFFICE OF THE SPEAKER
THERESE M. TERLAJE

08-06-2021

Time: 5:36 pm

Received:



Brianne LG Dunstan

Unisifan I Maga'hågan Guåhan

Office of the Governor of Guam

Office of Legal Counsel

513 West Marine Corps Drive

Ricardo J. Bordallo Governor's Complex

Hagåtña, Guam 96910

Office: 671.473.1118

brianne.dunstan@guam.gov

COMMITTEE ON RULES
RECEIVED:

August 9, 2021

8:00 A.M.

EO 2021-17 Relative to Requiring Government of Guam Executive Branch Workers to Vaccinate Against COVID-19.pdf
370K

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LI. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Via Hand Delivery
and E-mail: speaker@guamlegislature.org

August 6, 2021

HONORABLE THERESE M. TERLAJE

Speaker

I Mina'trentai Sais Na Liheslaturan Guåhan

36th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

RE: Executive Order No. 2021-17

Hafa Adai Madame Speaker:

Pursuant to Public Law 34-16, transmitted herewith is the following Executive Order:

**EXECUTIVE ORDER NO. 2021-17:
RELATIVE TO REQUIRING GOVERNMENT OF GUAM EXECUTIVE BRANCH
WORKERS TO VACCINATE AGAINST COVID-19**

Thank you.

Senseremente,

Handwritten signature of Sophia Santos Diaz in blue ink.

SOPHIA SANTOS DIAZ

Legal Counsel

Enclosure: Executive Order No. 2021-17

cc via email: *Maga'hågan Guåhan*
Sigundo Maga'låhen Guåhan
Hon. F. Philip Carbullido, Chief Justice of Guam
Compiler of Law
Central Files
Cabinet Members

RICARDO J. BORDALLO GOVERNOR'S COMPLEX
513 W. Marine Corps Drive Hagåtña, Guam 96910
governor.guam.gov | (671) 472-8931



**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

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 Guåhan*, 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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**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

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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HAGÁTÑA, GUAM 96932
U.S.A.**

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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**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

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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**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

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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**ISLAND OF GUAM
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HAGÁTÑA, GUAM 96932
U.S.A.**

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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**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

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 Guåhan*, 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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ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.

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**.

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

Attested by:

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



LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HĀGAN GUĀHAN
OFFICE OF THE GOVERNOR OF GUAM

Via Hand Delivery
and E-mail: speaker@guamlegislature.org

August 6, 2021

HONORABLE THERESE M. TERLAJE
Speaker
I Mina'trentai Sais Na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Doc Type: 36GL-21-0955
OFFICE OF THE SPEAKER
THERESE M. TERLAJE

~~08~~ 06 2021

Time: 6:09 pm

Received: [Signature]

RE: Executive Order No. 2021-17

Hafa Adai Madame Speaker:

Pursuant to Public Law 34-16, transmitted herewith is the following Executive Order:

**EXECUTIVE ORDER NO. 2021-17:
RELATIVE TO REQUIRING GOVERNMENT OF GUAM EXECUTIVE BRANCH
WORKERS TO VACCINATE AGAINST COVID-19**

Thank you.

Senseremente,

SOPHIA SANTOS DIAZ
Legal Counsel

COMMITTEE ON RULES

RECEIVED:

August 9, 2021

8:00 A.M.

Enclosure: Executive Order No. 2021-17

cc via email: *Maga'hāgan Guåhan*
Sigundo Maga'lāhen Guåhan
Hon. F. Philip Carbullido, Chief Justice of Guam
Compiler of Law
Central Files
Cabinet Members

RICARDO J. BORDALLO GOVERNOR'S COMPLEX
513 W. Marine Corps Drive Hagåtña, Guam 96910
governor.guam.gov | (671) 472-8931



**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

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 Guåhan*, 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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ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.

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 Guåhan*, 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 Hagåtña, Guam, this 6th day of August, 2021.

A handwritten signature in black ink that reads "Lourdes A. Leon Guerrero".

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

Attested by:

A handwritten signature in black ink that reads "Joshua F. Tenorio".

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

