

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0178-21_

SPONSOR: Eugene Tso

TITLE: An Action Relating to an Emergency and the Navajo Nation Council; Enacting COVID-19 Vaccination Requirements for all Navajo Nation Government Employees; Urging all Navajo Nation-Owned Enterprises/Authorities/Corporations and Schools, Businesses and other Entities Operating Within the Navajo Nation to Promptly Adopt COVID-19 Vaccination Requirements

Date posted: August 25, 2021 at 9:30PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0178-21

DATE: August 25, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; ENACTING COVID-19 VACCINATION REQUIREMENTS FOR ALL NAVAJO NATION GOVERNMENT EMPLOYEES; URGING ALL NAVAJO NATION-OWNED ENTERPRISES/AUTHORITIES/CORPORATIONS AND SCHOOLS, BUSINESSES AND OTHER ENTITIES OPERATING WITHIN THE NAVAJO NATION TO PROMPTLY ADOPT COVID-19 VACCINATION REQUIRMENTS

PURPOSE: This resolution, if adopted, will enact COVID-19 vaccination requirements for all Navajo Nation government employees and will urge Navajo Nation owned enterprises/authorities/corporations, schools, businesses and other entities operating within the Navajo Nation to promptly adopt COVID-19 vaccination requirements.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

RESOLUTION OF THE NAVAJO NATION COUNCIL
24TH NAVAJO NATION COUNCIL—Third Year, 2021

INTRODUCED BY

0178-21

(Prime Sponsor)



TRACKING NO.

AN ACTION

RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL;
ENACTING COVID-19 VACCINATION REQUIREMENTS FOR ALL NAVAJO
NATION GOVERNMENT EMPLOYEES; URGING ALL NAVAJO NATION-
OWNED ENTERPRISES/AUTHORITIES/CORPORATIONS AND SCHOOLS,
BUSINESSES AND OTHER ENTITIES OPERATING WITHIN THE NAVAJO
NATION TO PROMPTLY ADOPT COVID-19 VACCINATION REQUIRMENTS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. Pursuant to 2 N.N.C. § 164(A)(16) “[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council.”
- B. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).

SECTION TWO. FINDINGS

- 2 A. On January 30, 2020, the World Health Organization issued a Public Health
3 Emergency of International Concern and declared the novel coronavirus (COVID-19)
4 outbreak and pandemic.
- 5 B. On March 11, 2020, the Navajo Nation Commission on Emergency Management,
6 with the concurrence of the Navajo Nation President, declared a Public Health State
7 of Emergency on the Navajo Nation in response to the spread of the COVID-19. *See*
8 CEM-20-03-11.
- 9 C. Since declaring the Public Health State of Emergency, the Navajo Nation has issued
10 more than fifty (50) Public Health Emergency Orders to prevent the spread of
11 COVID-19, including stay at home orders and daily curfews for the Navajo Nation.
12 The Public Health Emergency Orders are available for review at
13 <https://www.ndoh.navajo-nsn.gov/COVID-19/News-Update>.
- 14 D. The Navajo Nation exercised its inherent sovereign powers to pass numerous
15 emergency legislations relating to the spread of COVID-19 on the Navajo Nation,
16 including, but not limited to, the closure of Navajo Nation roads to visitors and
17 tourists, the closure of government offices except for essential workers, closure of
18 schools, and reducing Chapter meeting quorums, to ensure the protection and well-
19 being of Navajo Nation citizens. *See, e.g.,* CMA-09-20, CN-90-20, CMA-14-20,
20 CMA-16-20, and CAP-19-20.
- 21 E. In late 2020, the U.S. Food and Drug Administration (“FDA”) recognized the
22 COVID-19 vaccines as a critical tool to address the pandemic and issued an
23 emergency use authorization under federal law for the vaccines’ use against COVID-
24 19.
- 25 F. Like the FDA, the Navajo Nation has recognized that the COVID-19 vaccines are a
26 critical tool in the fight to mitigate the spread of the virus and that the virus transmits
27 more freely and mutates into more transmissible and/or deadly variants through
28 unvaccinated individuals. In short, adult individuals that do not receive the COVID-
29 19 vaccine place the entire Navajo populace at risk of unnecessary infection.
- 30

- 1 G. The Center for Disease Control (“CDC”) is monitoring the current notable variants
2 within the United States (B.1.1.7 (Alpha), B.1.351 (Beta), P.1 (Gamma), and
3 B.1.617.2 (Delta)), and has observed that some of the emerging variants spread more
4 easily and quickly than the original virus.
- 5 H. The CDC reports that credible studies suggest that the currently authorized vaccines
6 are effective against the transmissions of the COVID-19 virus, as well as the variants
7 to a less degree. Center for Disease Control and Prevention, *Science Brief: COVID-19*
8 *Vaccines and Vaccination*, National center for Immunization and Respiratory
9 Diseases (NCIRD, Division of Viral Diseases (July 27, 2021) available at:
10 [https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-](https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html)
11 [people.html](https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html)
- 12 I. On June 18, 2021, the Navajo Department of Health reported the first confirmed case
13 of the SARS-CoV-2 (COVID-19) Delta variant, also referred to as the B.1.617.2
14 variant, from a COVID-19 test sample. The Navajo Nation continues to see an
15 increase in Delta variants across the Navajo Nation.
- 16 J. As of August 18, 2021, the Navajo Nation Department of Health has confirmed that
17 31,997 Navajo Nation residents have tested positive with COVID-19 and that 1,390
18 Navajo members have deceased due to COVID-19.: *See* [https://www.ndoh.navajo-](https://www.ndoh.navajon-sn.gov/COVID-19/Data)
19 [nsn.gov/COVID-19/Data](https://www.ndoh.navajon-sn.gov/COVID-19/Data). The Navajo Nation continues to see new cases confirmed
20 weekly and expects to see a significant rise in COVID-19 cases with the highly
21 transmissible Delta variant.
- 22 K. As of August 23, 2021, the FDA approved Pfizer-BioNTech COVID-19 vaccine as
23 the first preventative vaccine against COVID-19. The FDA is an agency within the
24 U.S. Department of Health and Human Services which protects the public health by
25 assuring the safety, effectiveness, and security of human and veterinary drugs,
26 vaccines and other biological products for human use, and medical devices.
- 27 L. In general, people are considered fully vaccinated: 2 weeks after their second dose in
28 a 2-dose series, such as the Pfizer or Moderna vaccines, or 2 weeks after a single-dose
29 vaccine, such as Johnson & Johnson’s Janssen vaccine.
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- 1 M. The Navajo Nation Employee Benefits Program provides 100% coverage for
2 COVID-19 vaccination and testing.
- 3 N. Navajo Nation employees may test for COVID-19 at any location listed in the
4 following link provided by the Navajo Nation Department of Health:
5 <https://www.ndoh.navajo-nsn.gov/COVID-19/COVID-19-Testing>
- 6 O. Navajo Nation employees may receive COVID-19 vaccinations at any location listed
7 in the following link provided by the Navajo Department of Health:
8 <https://www.ndoh.navajo-nsn.gov/COVID-19/COVID-19-Vaccine>
- 9 P. On August 20, 2021, the President of the Navajo Nation issued Executive Order No.
10 007-2021 mandating COVID-19 vaccinations for Navajo Nation employees.
- 11 Q. The Navajo Nation has continuously asserted its inherent sovereignty in self-
12 government throughout its history since time immemorial, through its language,
13 culture, value system, and legal heritage based on Diné fundamental law.
- 14 R. Diné Traditional Law teaches that the leaders elected will communicate with the
15 people for guidance; leaders who will use their experience and wisdom to always act
16 in the best interest of the people; and leaders who will also ensure the rights and
17 freedoms of the generations yet to come... 1 N.N.C. § 203(A).
- 18 S. Pursuant to Diné Traditional Law, the Navajo Nation Council (Aláají' Naat'áji
19 Naat'ááh and Aláají' Naat'áji Ndaanit'áii or Naat'aanii) shall enact policies and laws
20 (Diné bibeehaz'áanii) in harmony with Diné bi beenahaz'áanii to address the
21 immediate and future needs... (1 N.N.C. § 203(D)).
- 22 T. The Navajo Nation hereby finds that further spread of COVID-19 within the exterior
23 boundaries of the Navajo Nation poses a threat to the health, safety, and wellbeing of
24 all Navajo Nation citizens and residents.
- 25 U. The Navajo Nation hereby finds it in the best interest of the Navajo Nation to require
26 all Navajo Nation government employees to become vaccinated, and for Navajo
27 Nation-owned enterprises/authorities/corporations, as well as schools, businesses, and
28 other entities operating within the Navajo Nation to promptly adopt COVID-19
29 vaccination requirements.
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1 **SECTION THREE. ESTABLISHING THE COVID-19 VACCINATION**
2 **REQUIREMENT FOR ALL NAVAJO NATION GOVERNMENT EMPLOYEES**

3 A. Leadership of the Navajo Nation is exceptionally concerned about the danger of
4 COVID-19 which can cause severe respiratory illness and even death and hereby
5 enacts and establishes vaccination requirements for the health, safety and wellbeing
6 of Navajo Nation employees and the general public within the Navajo Nation.

7 B. The Navajo Nation hereby establishes the requirements that:

8 1. All employees of the Navajo Nation Legislative, Executive and Judicial Branches,
9 as well as employees of all Navajo Nation chapters, including employees of Local
10 Governance Act (“LGA”) certified chapters, be fully vaccinated against COVID-
11 19; and

12 2. Employees who are not fully vaccinated, for any reason, against COVID-19 are
13 required to provide documentation to their supervisor that the employee has tested
14 negative for COVID-19 every fourteen days after the effective date of this
15 legislation.

16 C. As used herein, a person is “fully vaccinated” two (2) weeks after the second dose in
17 a 2-dose series, such as the Pfizer or Moderna vaccines; or two (2) weeks after a
18 single-dose vaccine, such as Johnson & Johnson’s Janssen vaccine.

19 D. Acceptable documentation showing that the employee has tested negative for
20 COVID-19 shall include medical provider statement, testing facility test results, or a
21 written self-certified statement indicating the date and facility of the testing.

22 E. Violations of the requirements set forth herein shall be “just cause” for disciplinary
23 measures under the Navajo Preference in Employment Act.

24 F. Navajo Nation employees shall ensure compliance with these requirements within
25 forty-five (45) days after implementation of the COVID-19 vaccination requirements.

26 G. Navajo Nation employees shall continue to adhere to Public Health Emergency
27 Orders issued by the Navajo Nation Department of Health.

28 H. The Navajo Nation government shall ensure, consistent with the Navajo Nation
29 Privacy Act and applicable federal law, that any documentation related to vaccination
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1 status or test results are not disclosed to individuals other than those necessary to
2 ensure compliance with this enactment.

- 3 I. The COVID-19 vaccination requirements set forth herein supersede any previous orders,
4 departmental level policies, and other directives to the extent they are in conflict.

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6 **SECTION FOUR. URGING VACCINATION REQUIREMENTS FOR ALL**
7 **ENTITIES OPERATING ON THE NAVAJO NATION**

8 In an effort to protect the Navajo populace and for the health, safety and well-being of the
9 general public, the Navajo Nation hereby urges all Navajo Nation-owned
10 enterprises/authorities/corporations, schools, businesses, and other entities operating
11 within the Navajo Nation to promptly adopt and enforce COVID-19 vaccination
12 requirements for their respective employees.

13
14 **SECTION FIVE. AMENDMENT**

15 The Health, Education and Human Services, upon the recommendation of the Navajo
16 Nation Department of Health, may amend the requirements set forth herein.

17
18 **SECTION SIX. DIRECTIVE**

- 19 A. These requirements shall be incorporated into the personal policies manual applicable to
20 each Branch and Chapter, and the Branch or Chapter shall amend their manuals within 30
21 days of the enactment of this resolution to reflect these requirements without the need for
22 additional approval by the Health Education and Human Services Committee or other
23 oversight committee.
- 24 B. The Navajo Nation Department of Health is authorized to issue further guidance to
25 implement the vaccine requirements set out herein.

26
27 **SECTION SEVEN. EFFECTIVE DATE**

28 The COVID-19 vaccination and testing requirements enacted herein shall become
29 effective forty-five (45) days after enactment of this legislation pursuant to 2 N.N.C. §
30 221(B).

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SECTION EIGHT. SAVINGS CLAUSE

Should any provision of this legislation, be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those amendments that are not determined invalid shall remain the law of the Nation.