

PETITION FOR RULEMAKING

Rule-making Coordinator
N.C. Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

Pursuant to N. C. Gen. Stat. §§ 150B-20 and 150B-21.1A, the undersigned Petitioners, Episcopal Farmworker Ministry, North Carolina State AFL-CIO, NC Raise Up/ Fight for \$15 and a Union, the Hispanic Liaison of Chatham County/ El Vinculo Hispano, Western North Carolina Workers' Center and the North Carolina State Conference of the NAACP, petition and request that the North Carolina Department of Labor (hereafter "NCDOL" or "Department") adopt the proposed Rule attached to this petition as Exhibit A; or, in the alternative, the Department grant the Petition for Rulemaking and initiate rule-making proceedings, as allowed by N. C. Gen. Stat. § 150B-20(c).

I. Introduction

Workers throughout North Carolina, from all industries, age groups, and across racial and ethnic lines, are not safe at work because of the lack of enforceable COVID-19 workplace requirements. As of September 20, 2020, NCDOL has closed nearly 1,000 formal workplace health and safety complaints related to COVID-19, from employees who did not think their employers were taking adequate steps to protect them¹. Of that total, NCDOL only opened investigations on six occasions – in each case because there was an NCDOL regulation implicated in addition to the COVID-19 related concerns². For all other cases, NCDOL simply wrote to the employer to notify them of the complaint and encourage them to comply with

¹ Occupational Safety and Health Administration COVID-19 Complaint Data, compiled through September 20, 2020. <https://www.osha.gov/foia/archived-covid-19-data>

² *Id.*

voluntary guidance from the Centers for Disease Control (“CDC”), the federal Occupational Safety and Health Administration (“OSHA”), or NCDOL. Only nursing homes, day cares, and congregate living settings are required to report cases of COVID-19,³ but it is clear that workers are getting sick and dying from COVID-19 that they contracted at work. The current voluntary guidance for workplaces is not sufficient.

Petitioners are organizations in North Carolina which seek to protect and advance the rights of North Carolina’s workers to a safe and healthy working environment. Since March 2020, they have worked to connect their members and constituents to resources, assisted them with filing NCDOL complaints, led calls for action by state and federal leaders, drafted letters to state leaders, held press conferences, and organized workers to advocate for themselves. Many of them have also had to mourn the death of workers who lost their lives to COVID-19. They are calling on NCDOL to put an end to the dangerous conditions and exercise its power to engage in rulemaking.

The Episcopal Farmworker Ministry (“EFWM”) seeks to minister to farmworkers through direct services, development and support of programs that work towards the empowerment of farmworkers, and by advocating for systemic change of agricultural policy at local and state levels. Their mission is to respond to the physical, emotional, and spiritual needs of migrant and seasonal farmworkers and their families. During the pandemic, EFWM has served its community by providing food, personal protective equipment, cleaning supplies, and mental health services to agricultural workers. In addition, they have provided direct financial support to agricultural workers impacted by COVID-19, including payments to workers who did not get

³ Lynn Bonner, Chip Alexander and Adam Wagner, *Most NC businesses don’t have to report outbreaks as COVID-19 cases rise*. The News & Observer, June 15, 2020. <https://www.newsobserver.com/news/local/article243546057.html> (attached hereto as Exhibit B).

paid for time they were required to quarantine, workers who lost their jobs or had their hours reduced, and payments to relatives of workers who have been hospitalized or died as a result of contracting COVID-19 at work.

NC Raise Up/ Fight for \$15 and a Union (“NC Raise Up”) believes that people who work hard for a living should make enough to support themselves, their families and their neighborhood and should be treated with dignity and respect. They advocate for just compensation and dignified treatment for fast-food workers and other low wage workers. NC Raise Up has been helping members file complaints with the NCDOL about the lack of COVID precautions taken by fast food employers. Members have complained that when coworkers get sick, they are not informed, and their workplaces are not adequately cleaned. NCDOL has not taken action against of the employers in response to any of their complaints.

The North Carolina State AFL-CIO is the largest association of unions of working people in North Carolina, representing over a hundred thousand members. They work together for good jobs, safe workplaces, workers’ rights, consumer protections, and quality public services on behalf of ALL working people. Since the start of the pandemic, the NC AFL-CIO has been calling for emergency standards to protect essential workers.

Western North Carolina Workers’ Center builds power among immigrant workers in western North Carolina through education, organizing and direct action to promote worker justice. They have been in continuous communication with workers about their concerns about working during a pandemic through their worker leadership circles. They have also distributed \$118,000 in financial support to immigrant workers across western North Carolina, including to the families of three workers who died after contracting COVID-19 at the local poultry processing plant, Case Farms.

The Hispanic Liaison of Chatham County / El Vinculo Hispano (“EVH”), a non-profit organization serving Chatham, Lee, Alamance and Randolph counties’ Hispanic community, has a particular interest in an emergency rule from NCDOL to protect the community it serves. Many of EVH’s Latinx clients work in food processing, including at Mountaire, Pilgrim’s Pride and Tyson poultry processing plants located in Siler City and Sanford, as well as in the service and construction industries, and have been deemed “essential” labor force by state and federal government officials. Due to the working conditions in these industries, EVH’s clients are at an increased risk for contracting COVID-19. Hundreds of poultry workers and their family members in EVH’s region have been infected; a few have died from COVID-19. These workers are being subjected to dangerous working conditions without adequate personal protective equipment, social distancing, COVID-19 prevention information and leave time necessary to ensure a safe workplace.

The North Carolina Conference of the NAACP (NC-NAACP) is North Carolina’s branch of the nation’s oldest and largest civil rights organization. It is the second largest state conference of the NAACP in the United States. For over 70 years, NC-NAACP has pursued its mission to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and discrimination. The organization has followed a variety of strategies to carry out this goal, including litigation and direct advocacy on behalf of workers’ rights and economic justice.

The workers represented by Petitioners, North Carolinians who risk their lives to go to work each day, deserve more protection. It is not too late to act. NCDOL should exercise its power to adopt an emergency rule to stop the continued spread of coronavirus among North Carolina workers.

II. Petition for Rulemaking

NCDOL has the statutory authority to enforce the Occupational Safety and Health Act of North Carolina (“OSHANC”). N.C. Gen. Stat. § 95-126(b)(2)(m). The North Carolina General Assembly declared in legislative findings when enacting OSHANC that “the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial,” and that “the prevention of these injuries and illnesses is an important objective of the government of this State.” N.C. Gen. Stat. § 95-126(b)(1). The General Assembly further declared that it was its “purpose and policy through the exercise of its powers to ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources: a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment” and “e. [b]y providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience.” N.C. Gen. Stat. §§ 95-126(b)(2)(a) and (e).

To further those ends, the North Carolina Commissioner of Labor (“Commissioner”) is statutorily authorized to develop occupational safety and health standards. N.C. Gen. Stat. § 95-126(c). The Commissioner also has the statutory authority “to secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State,” N.C. Gen. Stat. § 94-4(4), and to take action in the courts to enforce such laws. N.C. Gen. Stat. § 95-13. Despite the clear dangers to the health and safety of employees posed by the COVID-19 pandemic, as described in Section III, the Department has not adopted or amended health and safety standards to protect North Carolina

workers. The Department has issued guidance on worker protections *See* <https://www.labor.nc.gov/coronavirus-disease-2019-covid-19> and <https://www.labor.nc.gov/documents/temporary-guidance-migrant-housing-covid-19-impacted-workers>. The CDC and federal OSHA have also issued voluntary guidance for businesses and employers to protect employees from COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> and <https://www.osha.gov/SLTC/covid-19/>. However, neither federal nor NC OSHA has issued mandatory rules to keep employees safe from COVID.

Since the COVID-19 pandemic began impacting North Carolina, Governor Cooper has issued a series of Executive Orders designed to protect residents from infection and slow the spread of the virus. Many of those Executive Orders have included protections that protect workers, including:

[Executive Order 116](#) (March 10, 2020) – authorized restrictions on the travel of state employees

[Executive Order 117](#) (March 14, 2020) – closed all public schools

[Executive Order 118](#) (March 14, 2020) – closed restaurants and bars for dine-in service

[Executive Order 120](#) (March 23, 2020) – closed entertainment facilities without a retail or dining component and personal care and grooming businesses, restricted visitors to long term care facilities, continued the closure of public schools

[Executive Order 131](#) (April 9, 2020) – imposed additional social distancing, cleaning and disinfecting requirements in retail establishments, restricted occupancy, and encouraged face coverings, hand hygiene, protective barriers, and other measures to protect retail workers; required screening at skilled nursing facilities, the end of communal dining and group activities, and other measures to protect workers at these facilities

[Executive Order 141](#) (May 20, 2020) – required workers in personal care, grooming, and tattoo businesses to wear cloth face coverings

[Executive Order 147](#) (June 24, 2020) – required customers and employees to wear face coverings in retail establishments, restaurants, personal care, grooming, tattoo, child care facilities and camps, state government, in transportation, and in manufacturing, construction, agriculture, meat or poultry processing plants, and long term care facilities where workers may be within six feet

of another person. Required health care facilities to follow the Centers for Disease Control's face covering requirements.

However, the Commissioner has made it clear that NCDOL is not willing to enforce workplace requirements contained in an Executive Order. Furthermore, NCDOL's position is that it lacks authority under the current regulations to issue citations related to violations of CDC and OSHA guidance to protect workers. When Governor Cooper shared a draft Executive Order with NCDOL which would have created requirements for employers of agricultural workers and meat processing workers, Commissioner Berry wrote to Governor Cooper opposing the release of that Executive Order because of NCDOL's asserted lack of authority.⁴ Therefore, it is necessary that NCDOL adopt new protections through rulemaking in order to effectively protect employees from the spread of COVID-19.

Compelling local conditions, as described in Section IV, make the issuance of such rules in North Carolina both urgent and necessary to protect employee health and safety. Pursuant to N.C. Gen. Stat. § 150B-20, the Petitioners request that Respondent grant and approve the Petition for Rulemaking and initiate rulemaking proceedings consistent with this Petition and pursuant to N.C. Gen. Stat. § 150B-20(c).

III. Documentation Submitted in Support of Petition

In accordance with NCAC § 13 NCAC 01B .0102, Petitioners submit the following information and documentation:

- (1) A draft of the proposed rule (which is incorporated by reference herein and attached as Exhibit A);

⁴ Aaron Sánchez-Guerra, *After Cooper backs down on executive order, NC worker advocates push for protection*, The News & Observer, Sept. 18, 2020, <https://www.newsobserver.com/news/coronavirus/article245838835.html> (attached hereto as Exhibit C)

- (2) A statement of the reasons for adoption of the proposed rule and supporting documentation;
- (3) A statement of the effect of the proposed rule on existing rules and local government, and the proposed rule's economic impact; and
- (4) The names and addresses of the Petitioners.

IV. Reasons for Adoption of the Proposed Rule

More than 3,000 North Carolinians have died of COVID-19, and the North Carolina Department of Health and Human Services counts nearly 220,000⁵ lab-confirmed cases since the start of the pandemic. Many of the state's workers, including those who provide the critical services in healthcare and food production on which everyone relies, face dire health and safety hazards in the workplace. As a result, workplace safety complaints have spiked; about 80 percent of workplace safety complaints in North Carolina are related to COVID-19.⁶

The workplace safety complaints on record, however, do not tell the whole story. Persons working onsite in their workplace report high levels of fear of contracting COVID-19, particularly Black, Latinx, and low-income workers.⁷ Unfortunately, many workers stay silent about workplace COVID-19 hazards out of a reasonable fear of retaliation by their employers. In a recent study, one in eight workers reported that their employer may have retaliated against them or another worker for raising concerns about working conditions related to COVID-19. The same study found that 56 percent of those going to work did so even though they believed they

⁵ NC DHHS COVID-19 North Carolina Dashboard, as of October 5, 2020, <https://covid19.ncdhhs.gov/dashboard>

⁶ Alex Shabad, *80% of workplace safety complaints are COVID-19 related in NC*, WCNC, Jul. 6, 2020, <https://www.wcnc.com/article/news/80-of-workplace-safety-complaints-are-covid-19-related-in-nc/275-9c82a8bb-4de2-45d0-90f2-d1254498ffd0>

⁷ Economic Policy Institute, *A majority of workers are fearful of coronavirus infections at work, especially Black, Hispanic, and low- and middle-income workers*, June 16, 2020, <https://www.epi.org/publication/covid-risks-and-hazard-pay/>.

were seriously risking their health or that of a family member.⁸ Because workers are afraid to report COVID-19 hazards in the workplace, workplace hazards are likely underreported, and the threat to North Carolinians is even greater than that suggested by the available data. In addition, Petitioners report that workers are reluctant to file complaints related to COVID-19 with NCDOL because they know that NCDOL will do nothing in response.

The danger of COVID-19 infection is especially high for North Carolina workers who provide essential services in healthcare, agriculture, and poultry and meat processing. One month into the state of emergency, there had already been over 1,250 cases and two deaths from COVID-19 in North Carolina's farms and meatpacking plants.⁹ The workforce in these industries is disproportionately workers of color.¹⁰ Workers there are underpaid, lack health benefits, and have few worksite protections.¹¹ And due to systemic inequalities leading to inadequate access to health care, workers of color are already at increased risk of serious complications should they become infected with COVID-19.¹²

Healthcare. Governor Roy Cooper has declared that health care professionals are “integral to ensuring the state is best situated to respond to and mitigate the threat posed by

⁸ Irene Tung & Laura Padin, *Silenced about COVID-19 in the workplace*, National Employment Law Project, Jun. 10, 2020, <https://www.nelp.org/publication/silenced-covid-19-workplace/>

⁹ Leah Douglas, *Mapping Covid-19 outbreaks in the food system*, Apr. 22, 2020, <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>

¹⁰ Elise Gould & Valerie Wilson, *Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality*, Jun. 1, 2020, <https://www.epi.org/publication/black-workers-covid/>; Celine McNicholas & Margaret Poydock, *Who are essential workers? A comprehensive look at their wages, demographics, and unionization rates*, May 19, 2020, <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>; North Carolina Justice Center, *Sick: Millions of North Carolina workers left out of paid sick days protections and COVID-19 spreads*, Apr. 2020, <https://www.ncjustice.org/wp-content/uploads/2020/04/NCJC-BRIEF-WRP-Paid-Sick-Days-4-2020.pdf>

¹¹ North Carolina Justice Center, *Sick: Millions of North Carolina workers left out of paid sick days protections as COVID-19 spreads*, Apr. 2020, *id.*

¹² See Executive Order No. 143, *Addressing the Disproportionate Impact of COVID-19 on Communities of Color*, Jun. 4, 2020, <https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf>

COVID-19.”¹³ Nevertheless, as COVID-19 cases surge, health care workers continue to face life-threatening conditions. As of September 15, 2020, the North Carolina Department of Health and Human Services (“NC DHHS”) reported hundreds of COVID-19 cases among staff in nursing homes facing ongoing outbreaks.¹⁴ Nationwide, over 900 health workers are estimated to have died of COVID-19. That number includes doctors, nurses, and paramedics, as well as crucial support staff such as hospital custodians, administrators, and nursing home workers, who put their own lives at risk during the pandemic to care for others. The early data indicates that dozens who have died were unable to access adequate personal protective equipment, and at least 35 succumbed after federal work-safety officials received safety complaints about their workplaces.¹⁵ Early tallies also suggest that the majority of the deaths were among people of color, and many were immigrants.¹⁶

Agriculture. It is impossible to know exactly how many agricultural workers have gotten sick so far because NC DHHS is not sharing this information. However, as of nearly three months ago, COVID-19 outbreaks had already occurred at over 30 North Carolina farms spread over 25 counties.¹⁷ The risk of infection is particularly high in migrant labor camps, as shared sleeping quarters, kitchens, and bathrooms make it nearly impossible to practice social

¹³ Executive Order No. 116, *Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19*, Mar. 10, 2020, <https://files.nc.gov/governor/documents/files/EO116-SOE-COVID-19.pdf>

¹⁴ North Carolina Department of Health and Human Services, *COVID-19 Ongoing Outbreaks in Congregate Living Settings: Updated September 15, 2020*, Sept. 15, 2020, <https://files.nc.gov/covid/documents/dashboard/Weekly-COVID19-Ongoing-Outbreaks.pdf>

¹⁵ Danielle Renwick & Shoshana Dubnow, *Exclusive: Over 900 workers have died of COVID-19. And the toll is rising.*, The Guardian & Kaiser Health News, Aug. 11, 2020, <https://khn.org/news/exclusive-over-900-health-workers-have-died-of-covid-19-and-the-toll-is-rising/>

¹⁶ See *id.*

¹⁷ Aaron Sánchez-Guerra, *NC not doing enough to protect immigrant farmworkers from coronavirus, advocates say*, The News & Observer, Jul. 3, 2020, <https://www.newsobserver.com/news/business/article243878327.html> (attached hereto as Exhibit D)

distancing.¹⁸ Once infected, farmworkers face barriers to testing and follow-up care. Some employers are refusing to provide transportation for workers to get tested and/or get medical care, and outreach workers have not been able to get medical providers to conduct large-scale testing in migrant labor camps.¹⁹ Some hospitals and health departments are refusing to test farmworkers, even when they are identified as being on the NC DHHS priority list due to their congregate living settings.²⁰ As a result, some workers have had to travel to other counties in order to get tested.²¹ Workers have been turned away from hospitals when seeking testing after 5:00 p.m. when most community clinics in rural areas are closed.²² Tests can cost as much as \$350, which is unaffordable to farmworkers, and a lack of interpretation creates a barrier to both diagnosis and follow-up.²³ When workers are able to get tested, some hospitals and health departments are not asking patients about the type of work they do or their housing, likely leading to an undercount of infected farmworkers.²⁴ Compounding these issues, farmworkers are reluctant to report systems or get tested.²⁵ Many workers cannot afford to lose even a day's worth of income, and they fear causing trouble for their employer and inviting retaliation if a reported infection triggers a requirement for a large portion of the labor camp to be isolated.²⁶

Poultry and meat processing. North Carolina's meat and poultry processing plants have seen more than 800 confirmed cases of COVID-19, with outbreaks in at least 19 plants. In a

¹⁸ Aaron Sánchez-Guerra, Victoria Bouloubasis, & Paola Jaramillo, *Coronavirus poses a threat to a major NC food producer: the immigrant farmworker*, The News & Observer, Apr. 8, 2020, <https://www.newsobserver.com/news/coronavirus/article241444926.html>

¹⁹ Farmworker Advocacy Network letter to Governor Cooper and Secretary Cohen, Jun. 16, 2020, <https://ncfan.org/2020/a-letter-to-gov-cooper/>

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

recent study, counties with or near meatpacking plants were found to have almost twice the rate of known COVID-19 infections as the national average.²⁷ The conditions in North Carolina's poultry and meat processing plants exacerbate the risks of workers contracting COVID-19: close proximity on the production line and in breakrooms, cold and humidity, infrequent breaks, and lack of access to personal protective equipment. Most workers do not have paid sick time or adequate healthcare, most do not have health insurance, and after years earning low wages, they have little reserves to enable them to leave steady employment.²⁸ Poultry and meat processing workers in North Carolina have to work, no matter the risks. Many North Carolina poultry and meat processing plants claim that they have plans for keeping workers safe against the spread of COVID-19. However, workers on the ground are reporting otherwise.²⁹ Simply put, North Carolina poultry workers are afraid to be at work now because they fear getting sick and getting members of their families and communities sick.³⁰ They face an impossible choice: between losing their income or risking their lives.

In light of the substantial risk to workers throughout North Carolina, particularly in healthcare, agriculture, and poultry and meat processing, the proposed rule does not unduly burden interstate commerce. The proposed rule appropriately balances the tremendous benefit of preventing widespread infection in North Carolina workplaces with the incidental impact on

²⁷ Sarah Graddy, Soren Rundquist, & Bill Walker, *Investigation: Counties with meatpacking plants report twice the national average rate of COVID-19 infections*, Environmental Working Group, May 14, 2020, <https://www.ewg.org/news-and-analysis/2020/05/ewg-map-counties-meatpacking-plants-report-twice-national-average-rate>.

²⁸ Farmworker Advocacy Network letter to Governor Cooper, May 8, 2020, https://www.ncjustice.org/wp-content/uploads/2020/05/WRP_Poultry-and-Meat-processing-letter-5.8.20.pdf?eType=EmailBlastContent&cId=35aea54f-6572-492c-bfe8-6e9197828068; Oxfam America, *Lives on the Line: The Human Cost of Cheap Chicken*, Oct. 26, 2015, https://s3.amazonaws.com/oxfam-us/www/static/media/files/Lives_on_the_Line_Full_Report_Final.pdf.

²⁹ Farmworker Advocacy Network letter to Governor Cooper, May 8, 2020, https://www.ncjustice.org/wp-content/uploads/2020/05/WRP_Poultry-and-Meat-processing-letter-5.8.20.pdf?eType=EmailBlastContent&cId=35aea54f-6572-492c-bfe8-6e9197828068.

³⁰ *Id.*

interstate commerce.³¹ This is especially true in light of Governor Cooper’s declaration that “COVID-19 has caused and will continue to cause substantial economic disruption in North Carolina, including disruptions to employees and employers.”³²

V. Statement of the Effect of the Proposed Rule on Existing Rules and Local Government, and the Proposed Rule’s Economic Impact

Since the Department has not adopted any rules, policies or procedures, there is no effect on existing rules. The proposed rule would not require local government to carry out additional or modified responsibilities nor would it increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government. 13 NCAC § 01B.0102(4); N.C. Gen. Stat. §§ 150B-21(c)(1)-(2). Local governments in North Carolina have been severely impacted by COVID-19. With the majority of those surveyed expecting General Fund shortfalls in FY21, county and municipal governments are planning for reduced staffing, closing of facilities, increased taxes, and reducing capital expenditures.³³ The proposed rule would likely have a positive impact on the revenues of local government, in that a lower number of COVID infections should lead to increased retail spending, lower unemployment, and less reliance on local government relief efforts such as eviction prevention funds or food distribution. N.C.G.S. § 150B-21(c)(3). The proposed rule would not have a substantial economic impact as set forth in N.C.G.S. 150B-21.4(b1). If NCDOL actually investigated complaints related to the new rule,

³¹ See *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970) (balancing “legitimate local public interest” against incidental effects on interstate commerce); *Brown v. Hovatter*, 561 F.3d 357, 367 (4th Cir. 2009) (the “incidental burden on interstate commerce is not excessive and is justified by the very real benefits of protecting the public health, safety, and welfare”).

³² Executive Order No. 131, *Establishing Additional Policies for Retail Establishments, Further Risk Mitigation Measures at Long Term Care Facilities, and New Processes to Expedite Payment of Unemployment Insurance Claims*, Apr. 9, 2020, <https://files.nc.gov/governor/documents/files/EO131-Retail-Long-Term-Care-Unemployment-Insurance.pdf>.

³³ The COVID-19 Crisis and How Local North Carolina Governments are Budgeting for It, April 28, 2020, <https://deathandtaxes.sog.unc.edu/the-covid-19-crisis-and-how-north-carolina-local-governments-are-budgeting-for-it/>.

there would be costs associated with the time and expense of the investigations. However, if the investigations resulted in changed employer practices that reduced the incidence of COVID in a particular workplace, that could also result in enhanced revenue for that business and enhanced local economic activity.

VI. Name and Address of the Petitioners

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Petitioners, NC State AFL-CIO, Episcopal Farmworker Ministry, Western
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NC Raise Up/ Fight for \$15 and a Union, and the NC Conference of the NAACP,
submit this Petition through their undersigned attorneys.

This the 12th day of October, 2020.

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Exhibit A

Section 1. Purpose, Scope and Applicability

- (a) This emergency temporary standard is designed to establish requirements for employers to assess the risk of, prepare for, control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.
- (b) This standard shall apply to every employer, employee and place of employment in North Carolina within the jurisdiction of the North Carolina OSHA.
- (c) This standard is designed to supplement and enhance existing NC OSHA laws, rules, regulations and standards applicable directly or indirectly to COVID-19 disease-related hazards such as, but not limited to, those dealing with personal protective equipment (“PPE”), respiratory protective equipment, non-medical masks, and sanitation. Should this standard conflict with an existing NC OSHA rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- (d) This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable NC executive order or order of public health emergency.
- (e) This emergency temporary standard shall take immediate effect upon adoption.

Section 2. Definitions

- (a) “Administrative Control” means any procedure which significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.
- (b) “Agricultural employment”, “migrant”, “migrant housing”, and “operator” all have the definitions provided in the Migrant Housing Act of North Carolina, N.C.G.S. § 95-223.
- (c) “Airborne infection isolation room (AIIR)”, formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide negative pressure in the room (so that air flows under the door gap into the room); and an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); and direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.
- (d) “Asymptomatic” means a person who does not have symptoms

- (e) “Building/facility owner” means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.
- (f) “Business” means all businesses that maintain any level of authority, responsibility, or control for locations where work is being performed, which may include, but is not limited to, businesses, facility owners and/or operators, staffing and temporary labor agencies, and public entities.
- (g) “CDC” means the Centers for Disease Control and Prevention.
- (h) “Cleaning” means the removal of dirt and impurities, including germs, from surfaces.¹
- (i) “COVID-19” means Coronavirus Disease 2019, which is a respiratory disease caused by the SARS-CoV-2 virus.
- (j) “COVID-exposed” means that, in the last 14 days, someone has had close contact (within 6 feet for at least 15 minutes) with someone diagnosed with COVID-19.
- (k) “COVID-positive” means that someone has tested positive for COVID-19.
- (l) “COVID-symptomatic” means that someone either (a) has been diagnosed with COVID-19 by a health care provider, but has not yet tested positive, or (b) has any of the following symptoms of COVID-19:
- Fever of 100.4 degrees or above; or
 - Chills; or
 - Shortness of breath or difficulty breathing; or
 - New cough;
 - A new loss of taste or smell; or
 - Any other clinically recognized symptoms.

A person is no longer COVID-symptomatic if the person has tested negative for COVID-19 or if a physician has found that the person does not have COVID-19.

- (m) “Department” means the North Carolina Department of Labor.

¹ Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection. See <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.

- (n) “Disinfecting” means using chemicals approved for use against SARS-CoV-2, for example EPA-registered disinfectants,² to kill germs on surfaces.³
- (o) “Employee” means an employee of an employer who is employed in a business of his employer. Reference to the term “employee” in this standard also includes, but is not limited to, temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with North Carolina occupational safety and health laws, standards, regulations, and court rulings.
- (p) “Employer” means an individual or entity that suffers or permits a person to work, and shall include contracting for the services of a person. More than one entity may be the “employer.”
- (q) “Engineering control” means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.
- (r) “Face mask” or “non-medical mask” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to potentially contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth).⁴
- (s) “Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from droplets or splashes.
- (t) “Feasible” means capable of being done.⁵
- (u) “Hand sanitizer” means alcohol-based hand sanitizer that is at least 60 percent alcohol or 70 percent isopropanol.
- (v) “Health care and emergency response employee or worker” means any person whom a health care and emergency response employer suffers or permits to work, and shall include independent contractors and persons performing work for a health care and emergency response employer through a temporary services or staffing agency.

² <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

³ Disinfecting does not necessarily clean dirty surfaces or remove germs. But killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

⁴ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

⁵ See *American Textile Manufacturers Institute, Inc. v. Donovan (Cotton Dust)*, 19. 452 U.S. 490, 509 (1981).

- (w) “Health care and emergency response employer” means employers, both public and private, of: health care and long-term care sector workers, including nursing home and home health care workers and assisted living facility workers; paramedic and emergency medical services workers, including such services provided by firefighters and other emergency responders; corrections, detention, or secure treatment facility workers; and mortuary and laboratory workers.
- (x) “Known to be infected with the SARS-CoV-2 virus” means a person, whether symptomatic or asymptomatic, who has tested positive for SARS-CoV-2 and the employer knew or with reasonable diligence should have known that the person has tested positive for SARS-CoV-2.
- (y) “Labor Union” means an organization of workers joined to protect their common interests and improve their working conditions.
- (z) “Meatpacking employers” includes employers engaged in the slaughtering, rendering, refining, processing, and preparing meat and meat by-products (e.g. beef, pork, poultry, seafood).
- (aa) “Personal protective equipment” means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.
- (bb) “Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.
- (cc) “Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be: 1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or 2. Loose-fitting, such as hoods or helmets that cover the head completely. There are two major classes of respirators: 1. Air-purifying, which remove contaminants from the air; and 2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.

- (dd) “SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV. The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).
- (ee) “Surgical/medical procedure mask” means a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. It protects others from the wearer’s respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment, but is not considered respiratory protection equipment under North Carolina occupational safety and health laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).
- (ff) “Suspected to be infected with SARS-CoV-2 virus” means a person that has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2 and no alternative diagnosis has been made (e.g., tested positive for influenza).
- (gg) “Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.
- (hh) “Work practice control” means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to SARS-CoV-2 virus and COVID-19 disease related workplace 7.17.2020 Page | 14 hazards and job tasks through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
- (ii) “Worker” means any person whom an employer or business suffers or permits to work, and shall include independent contractors, and persons performing work for an employer or business through a temporary services or staffing agency.

Section 3. Protecting Workers from COVID-19

(a) Mandatory Requirements for All Employers and Businesses.

(1) Written Assessment:

- A. All employers and businesses that require workers to leave their homes or residences for work must perform an assessment to determine which hazards and job tasks can potentially expose employees to the SARS-CoV-2 virus or

COVID19 disease and necessitate the use of personal protective equipment (PPE) and administrative, work practice and/or engineering controls. The employer or business shall provide for worker and labor union involvement in the assessment process.

- B. The employer or business shall verify that the SARS-CoV-2 virus and COVID-19 disease workplace assessment described in subdivision (a)(1)(A) has been performed through a written certification that identifies the workplace evaluated, the person certifying that the evaluation has been performed, and the date(s) of the hazard assessment. The document must be identified as a certification of hazard assessment.

(2) COVID-19 Preparedness and Response Plan

- A. After performing the hazard assessment discussed in 1(A) above, all employers shall develop a COVID-19 preparedness and response plan. The plan shall:
 - 1. Identify the name(s) or title(s) of the person(s) responsible for administering the plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.
 - 2. Provide for employee involvement in development and implementation of the plan.
 - 3. Using the assessment described in (A)(1)(a) consider and address the level(s) of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to and job tasks employees perform at those sites. Such considerations shall include:
 - i. Where, how and to what sources of the SARS-CoV-2 virus or COVID-19 disease might employees be exposed at work, including:
 - 1. The general public, customers, other employees, patients, and other persons;
 - 2. Known or suspected to be infected with SARS-CoV-2 virus persons or those at particularly high risk of COVID-19 infection (e.g., local, state, national and international travelers who have visited locations with ongoing COVID-19 community transmission, healthcare employees who have had unprotected exposures to known or

suspected to be infected with SARS-CoV-2 virus persons); and

3. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present exposure risk.
 4. Consider contingency or emergency plans for situations that may arise as a result of outbreaks, or worker shortages.
 5. Identify basic infection prevention measures to be implemented for employees, customers, visitors, and the general public.
 6. Provide for the prompt identification and isolation of known or suspected to be infected with the SARS-CoV-2 virus employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.
 7. Address infectious disease preparedness and response with outside businesses, including but not limited to, subcontractors that enter the place of employment, businesses that provide or contract for temporary employees to the employer, as well as other persons accessing the place of employment to comply with the requirements of this rule and the employer's plan.
 8. Ensure compliance with mandatory requirements of any applicable North Carolina executive orders related to SARS-CoV-2 virus or COVID-19 disease.
- B. The plan must be provided to all workers in a language they understand and made readily available to workers, labor unions, and customers, whether via website, internal network, or by hard copy.
- C. Designate one or more managers or executives to implement, monitor, and report on the COVID-19 control strategies developed under Section 2(a). At least one designee must remain on-site at all times when workers are present on site. A designee must also be responsible for receiving, investigating and responding to reports of possible and confirmed COVID cases, and COVID-19 related complaints regarding unsafe working conditions.

(3) Personal Protective Equipment (PPE):

- A. After performing the assessment described in subdivision (a)(1)(A), the employer shall:

1. Except as otherwise required in the standard, identify and require each worker use the types of PPE that will protect the worker from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;
 2. Clearly communicate PPE requirements to each worker in a language the worker understands; and,
 3. Ensure that each worker is wearing PPE that properly fits them.
- B. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-CoV-2 virus or COVID-19 disease, the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employees.
- C. If required by §1910.134 or the hazard assessment conducted in section (a)1(A.) The employer shall implement a respiratory protection program in accordance with §1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required to use a respirator

(4) Face Masks:

- A. If the hazard assessment does not reveal that a higher level of PPE is necessary, employers are required to provide workers with face masks free of charge in sufficient quantity such that they do not need to launder face masks more than once per week. Employers shall require workers to wear face masks at all times when at the facility, except when removal is necessary to eat or drink.
- B. All businesses shall require customers in grocery stores, retail operations, recreational facilities, and pharmacies to wear face masks. All customers in restaurants and other businesses selling food or drink to be consumed on the premises shall be required by the business to wear face masks except when eating and drinking.
- C. Nothing in this section shall require the use of a face mask by any worker whose health or safety would be jeopardized by the use of a face mask due to a documented medical condition. Nothing in this section shall negate an employer's obligations to comply with personal protective equipment standards applicable to its industry.
- D. Businesses shall provide face coverings to on-site third parties, including visitors, clients, or vendors performing business-related or other official functions.

(5) Administrative and Work Practice Controls:

- A. Where feasible, employers shall implement telework and other flexible work arrangements (e.g., implementing flexible meeting and travel options, use telephone or video conferencing instead of in-person meetings, postpone non-essential meetings or events);
- B. If teleworking is not feasible, the employer shall ensure that workers are able to maintain physical distance of six (6) feet between workers, and between workers and other persons of the general public during non-break times. This may require the employer to make changes such as:
 - 1. staggering shifts;
 - 2. providing drive-through options;
 - 3. limits to the number of customers on site;
 - 4. deliver services remotely (e.g. phone, video, or web);
 - 5. deliver products through curbside pick-up or delivery;
 - 6. reduce processing capacity or modify the processing for production lines; and
 - 7. install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.
- C. The employer shall ensure that workers are able to maintain physical distance of six feet between themselves and other individuals before and after beginning work and during break times by staggering breaks, staggering meal times and staggering arrival and departure time.
- D. Employers shall ensure that employees observe physical distancing while on the job and during paid breaks on employer or business property, including through policies and procedures that:
 - 1. Use verbal announcements, signage, plastic barriers or visual cues to promote physical distancing;
 - 2. Limit non-worker access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure.

- E. Employers may designate, reconfigure, and alternate usage of common spaces where employees congregate, including lunch and break rooms, locker rooms, near time clocks, etc., to limit access and ensure physical distancing by meeting the following conditions:
 - 1. Clearly posting the policy limiting the occupancy of the space and requirements for physical distancing, hand washing/hand sanitizing, and cleaning and disinfecting of shared surfaces at the entrance(s) of the designated common area or room;
 - 2. Limiting occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit;
 - 3. Providing for cleaning and disinfecting of the common of the common areas or rooms at regular intervals throughout the day, and between shifts of employees using the same common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies);
 - 4. Providing workers hand washing facilities and hand sanitizer where feasible. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.
- F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry.

(6) Hand Sanitizing, Hand Washing, and Gloves:

- A. Workers must have easy access and permission to wash their hands with soap and water frequently – especially before and after breaks or meals. If a worker requests a break to wash his or her hands and is denied, it will be presumed that the employer is not in compliance with this provision.
- B. Where feasible, employers must provide hand sanitizers that are readily available in multiple locations in the workplace, and workers must have easy access and permission to use sanitizer.
- C. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities.

- D. Employers must ensure that supplies in restrooms, portable toilets, and handwashing/sanitizing stations are regularly monitored and continually stocked.
- E. Employers shall provide tissues or towels for coughing and sneezing.
- F. Employers shall provide no-touch trash bins.
- G. Gloves shall be provided by employers to workers who request them.
- H. Employers shall ensure that workers regularly wash and/or sanitize their hands, in particular when entering and exiting the business and before and after eating or drinking, using tobacco products, using restroom facilities, and using devices, tools, and equipment used by other workers.
- I. Employers shall instruct workers to avoid touching their faces as much as possible.

(7) Regular Cleaning and Disinfection:

- A. Employers must routinely clean and disinfect all areas, such as offices, bathrooms, locker and changing rooms, and common areas. Employers must clean and disinfect regularly all frequently touched surfaces in the workplace, such as workstations, touchscreens, telephones, barriers, handrails, doorknobs, countertops, and bathroom surfaces.
- B. Electronic devices (e.g., light switches, circuit-breakers) shall not be cleaned and disinfected with a liquid agent. Employers should consider covering electronic devices with a poly-covering that allows the user to manipulate the device without touching the switch, and change out the poly-covering frequently. Electronic devices must be sanitized only when disconnected from the power source and sanitized in accordance with the listing/labeling requirements.
- C. Where feasible, employers must assign a designated user/operator for each station, machine, or piece of equipment as opposed to allowing several users/operators to share stations, machines, or pieces of equipment. If stations, machines, or pieces of equipment must be shared, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one worker to another.
- D. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, personal protective equipment, etc.).

- (8) Ventilation. Employers must ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace. Employers must ensure that appropriate air-handling systems:
- A. Are maintained in accordance with the manufacturer's instructions, and
 - B. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.
- (9) Community drinking stations and water fountains must not be available unless protocols are implemented to ensure frequent sanitation between users. Touchless water-filling stations may still be provided.
- (10) Self-Reporting: Employers and businesses shall develop and implement policies and procedures for workers to report when they are experiencing symptoms consistent with COVID-19 and no alternative diagnosis has been made (e.g., tested positive for influenza).
- A. Such workers shall be designated by the employer as "suspected to be infected with SARS-CoV-2 virus." Employers and businesses shall not permit workers or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work.
 - B. Nothing in this standard shall prohibit an employer from permitting a worker known or suspected to be infected with SARS-CoV-2 virus from engaging in teleworking or other form of offsite work that would not result in potentially exposing other people to the SARS-CoV-2 virus.
 - C. Employers shall discuss with subcontractors and companies that provide contract or temporary employees the importance of employees or other persons who are known or suspected to be infected with the SARS-CoV-2 virus staying home. Known or suspected to be infected with the SARS-CoV-2 virus subcontractor, contract, or temporary employees shall not report or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their known or suspected to be infected with the SARS-CoV-2 virus employees to report to or be allowed to remain at work or on a job site until cleared for return to work.

(11) Screening: Employers shall screen all workers at the beginning of their shifts as follows:

- A. Set up an outdoor location to perform symptom screening in a manner that allows for social distancing and proper hygiene. Ensure barriers are in place to prevent anyone from bypassing the screening.
- B. Screeners must wear appropriate personal protective equipment (PPE). There should be at least six (6) feet between the screener and the worker being screened. If the screener needs to be within six (6) feet of a worker, the screener should wear gloves, a gown, face shield, and a surgical/medical procedure mask.
- C. Check for fever (100.4 degrees or above).
- D. Ask, or allow workers to report via paper or phone application, if they have been in contact with anyone who has tested positive for COVID-19 within the past fourteen (14) days; and/or are experiencing fever, a new or worsening cough, shortness of breath, sore throat, a new loss of taste or smell, nausea or vomiting, or diarrhea.
- E. If the worker has a fever of 100.4 degrees or above and/or answers yes to the questions in subdivisions (a)(11)(D), the employer should not allow the worker to enter the workplace until they have self-isolated at home for thirteen (13) days, including three (3) days fever-free and feeling well or until they receive a negative COVID test, whichever is sooner. .
- F. Employers must affirmatively inform workers of their right to receive paid leave and that they will not be discharged, disciplined or retaliated against for reporting an exposure, reporting symptoms, or testing positive for COVID-19.
- G. Remind workers to report to their supervisor immediately if they get sick during a shift.

(12) Confirmed Cases of COVID-19: In the event of a confirmed case of COVID-19 in the workplace, all employers and businesses must comply with the following requirements.

- A. If a worker is confirmed or suspected to have COVID-19, the worker must self-isolate at home for thirteen (13) days, including three (3) days fever-free and feeling well or until the worker receives a negative COVID test, whichever is sooner.
- B. COVID-exposed workers who are asymptomatic should be encouraged to self-isolate for ten days or until they receive a negative COVID test,

whichever is sooner. They should be permitted to work only in consultation with the local health department.

- C. If there is an outbreak at a workplace, which is defined as two or more cases within fourteen days, the employer must coordinate with NCDHHS to ensure that all workers on all shifts at the facility are given the opportunity for on-site COVID-19 testing.
- D. To the extent permitted by law, including HIPAA (Health Insurance Portability and Accountability Act), employers shall establish a reasonable system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees present at the place of employment within the previous 14 days from the date of the positive test, and the employer shall notify:
 - 1. Its own employees who may have been exposed, within 24 hours of discovery of their possible exposure, while keeping confidential the identity of the known to be infected with SARS-CoV-2 virus person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and state laws and regulations. Every week, employers with twenty-five or more employees shall post in an area where all workers can see the number of confirmed COVID-19 infections among workers;
 - 2. Other employers whose employees were present at the work site during the same time period;
 - 3. The building facility owner. The building/facility owner will require all employer tenants to notify them of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This will allow them to take the necessary steps to sanitize the common areas of the building. In addition, the building/facility owner will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located. The identity of the individual will be kept confidential in accordance with the requirements of the ADA and other applicable federal and state laws and regulations;
 - 4. The North Carolina Departments of Health and Human Services and Labor and the county Department of Health within 24 hours of the discovery of a positive case and include in the notification the industry, worker's occupation, and, for agricultural workers, the type of housing the worker lives in;

5. Deep Cleaning and Disinfection: If a worker is confirmed to have COVID-19, the employer shall close off workplace areas visited by the ill person, open outside doors and windows and use ventilating fans to increase circulation in the area. After 24 hours or as long as practical, the employer shall conduct cleaning and disinfection as directed by CDC Cleaning and Disinfection for Community Facilities guidelines;
6. Employers shall ensure employee access to their own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry.

(13) Isolation and Quarantine.

- A. Whenever a medical provider or public health official recommends isolation or quarantine, whether as a result of contact tracing or otherwise, the affected worker(s) must be reassigned duties that do not involve in-person contact with other workers or the public. Such reassignment must continue until the need for isolation no longer exists, based on guidance from the employee's medical provider or from the involved public health officials.
- B. To the degree reassignment to other duties is not possible, the employer must allow workers to use leave to which they are entitled under the Families First Coronavirus Response Act (FFCRA). If the employer is not covered by the FFCRA or has previously opted out of the paid sick leave provisions, or if the employee has already used their FFCRA paid leave, then the employer must provide up to two weeks of paid reassignment leave in addition to whatever benefits to which the worker would otherwise be entitled (such leave will be provided at 40 hours per week for full-time employees and on a pro-rata basis for part-time employees, at the worker's regular rate of pay).

(14) Employers must modify any incentive programs that penalize employees for missing work because they are sick so that workers are not discouraged from staying away from the workplace while sick.

(15) Communication and Training: All Employers must comply with the following requirements regarding communication and training.

- A. Employers must provide ongoing job-specific COVID-19 training aligned with current CDC guidance to existing and new workers that covers, at a minimum:
 1. The requirements of this standard;
 2. The characteristics and methods of transmission of the SARS-CoV-2 virus;

3. The symptoms of the COVID-19 disease;
 4. Risk factors of severe COVID-19 illness with underlying health conditions;
 5. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
 6. Workplace infection-control practices, including but not limited to physical distancing, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;
 7. The proper use of personal protective equipment, including:
 - i. When PPE is required;
 - ii. What PPE is required;
 - iii. How to properly don, doff, adjust and wear PPE;
 - iv. The limitations of PPE; and
 - v. The proper care, maintenance, useful life, and disposal of PPE.
 8. The employer's COVID-19 Preparedness Plan;
 9. How to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19;
 10. How and to whom to report unsafe working conditions related to the SARS-CoV-2 virus, as well as the protocol for responding to such reports; and
 11. The anti-retaliation and anti-discrimination provisions of Section 4 of this rule.
- B. Employers must present any communication or training on COVID-19 infection control practices in the primary languages common in the worker population.
- C. Employers must place posters in the workplace in the languages common in the worker population that encourage social distancing, proper use of personal protective equipment, staying home when sick, cough and sneeze etiquette, and proper hand hygiene practices. Posters shall include the information listed in subdivision (a)(15)(A) of this Section. Posters must be written in the languages common in the worker population. If there is evidence of low literacy in the worker population, posters must account for this limitation.

- D. For the purposes of this Rule, and consistent with multi-employer work-sites, work being performed and/or work-sited may have more than one business with authority, responsibility or control (e.g. building operator and cleaning services contractor), all of which maintain joint responsibility for ensuring the proper implementation and execution of the COVID-19 Preparedness Plan.

(b) Additional Requirements for Health Care and Emergency Response Employers.

(1) Administrative and Work Practice Controls

- A. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting workers;
- B. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face coverings; and
- C. In addition to COVID-19 prescreening or surveying prior to the commencement of each shift, offer enhanced medical monitoring of employees during COVID-19 outbreaks (e.g., automatically reminding healthcare workers to self-assess for symptoms, screening at the end of shifts, etc.).
- D. To the extent feasible, ensure that psychological and behavioral support is available to address COVID-19 related worker stress at no cost to the worker.

(2) Engineering Controls

- A. Ensure appropriate air-handling systems:
 - 1. Are installed and maintained in accordance with manufacturer's instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected to be infected with the SARS-CoV-2 virus, and
 - 2. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019 a, 2019b) which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.

- B. Hospitalized patients who are known or suspected to be infected with the SARS-CoV2 virus shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
1. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected to be infected with the SARS-CoV-2 virus.
 2. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected to be infected with the SARS-CoV-2 virus persons at the time of their death.
 3. Use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-1112 “Biosafety in Microbiological and Biomedical Laboratories” (Dec. 2009), which is hereby incorporated by reference, when handling specimens from known or suspected to be infected with the SARS-CoV-2 virus patients or persons.
- C. Unless contraindicated by a hazard assessment and equipment selection requirements, workers in health care and first response shall be provided with and wear gloves, a gown, a face shield or goggles, and a NIOSH certified respirator compliant with §1910.134 when in contact with or inside six feet of patients or other persons known to be, or suspected to be, infected with SARS-CoV-2. Where indicated by the hazard assessment and equipment selection requirements in subdivision (a)(3)(B), such workers shall also be provided with and wear a surgical/medical procedure mask compliant with §1910.134. Gowns shall be large enough to cover the areas requiring protection.

(c) Additional Requirements for Agricultural Employers and Migrant Housing Providers.

(1) Required Testing.

A. All migrant housing operators must

1. Provide testing for any housing resident with symptoms or suspected of COVID-19;
2. Provide testing for all newly arriving residents within 48 hours after arrival unless the resident has already been tested in the 72

hours before arrival;

3. House newly arriving residents in a separate living unit from current residents for 14 days after arrival;
 4. If separate living units are not available, newly arriving residents shall be required to wear a cloth face covering at all times during the first 14 days after arrival, except when eating, drinking, sleeping, or performing personal hygiene activities or if the resident cannot medically tolerate a face covering;
 5. Provide a second test to newly arriving residents 10-14 days after arrival;
 6. Conduct temperature checks of residents at least once a day;
 7. provide testing for any resident registering a fever of 100.4 degrees Fahrenheit or higher.
- B. Employers must cooperate with local health departments to provide for regular testing of all workers by allowing workers paid time off for testing, coordinating with health departments and clinics to schedule a plan testing events at times and locations that are convenient to the workers, and affirmatively stating that workers will not be retaliated against if the test positive.

(2) Transportation

- A. Transport workers in vehicles that allow workers to sit at least six feet apart and/or maintain partitions in between the various workers inside the vehicle.
- B. Clean and disinfect work-vehicles in accordance with an established sanitation schedule, including in between the use of each worker or work crew, and before and after each use. Schedule the trips in order to accommodate and allow ample time for cleaning and disinfection of seats and high touch surfaces in between trips.
- C. Avoid recirculating the air within the vehicle while transporting passengers. Use the vehicle's ventilation system to exchange fresh-air in from outside the vehicle. Lower the vehicle's windows as often as possible.

(3) Housing.

- A. Provide at least two washable face coverings at no charge to each resident of the housing.

- B. Separate beds by at least six feet or more in all directions and arrange the beds in head to toe sleeping arrangements. Only one person should be permitted to sleep in a bed or bunk bed. This provision does not apply to family members who live in their own family unit of the employer provided housing.
- C. If they do not already exist, install partitions between each toilet and between each shower stall.
- D. Provide separate housing for each of the following groups: : residents who are COVID-positive, residents who are COVID-symptomatic but who are awaiting test results, residents who are asymptomatic but COVID-exposed, and residents who are healthy and are not COVID-exposed. If COVID-exposed residents who are asymptomatic reside in a one-family housing unit or in a family living unit that is part of a multifamily unit and can effectively isolate themselves within the unit it is not necessary to provide them with separate housing.
- E. Separate housing means, at a minimum, separate sleeping areas. Separate bathing, toileting and eating facilities should be provided where feasible. If it is not feasible to provide separate bathing, toileting and eating facilities, the housing operators must create schedules for when each group can use those facilities.
- F. COVID-exposed residents should be housed separately for fourteen days after the last known exposure to someone who is COVID positive or until the COVID-exposed resident receives a negative test, whichever is sooner.
- G. If there is no separate space available on-site to provide separate housing as specified in (c)(3)(D) above, the housing operator must coordinate with the local health department and NCDHHS for alternative housing off-site.
- H. Ensure regular ventilation of rooms (e.g., by opening screened windows to let the outside to let fresh air circulate).
- I. Ensure that anyone who delivers food and water to isolated residents is equipped with appropriate PPE.
- J. Within 24 hours of a resident becoming symptomatic, arrange for that person to be evaluated by a medical provider through the local health department or federally qualified health center and for all residents to be tested for COVID-19.
- K. Attempt to collect emergency contact numbers for each worker.
- L. Ensure that camp employees and residents have access to the phone number of the local health department. "Camp superintendents" (or those providing the

housing) are required to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease. (29 CFR 1910.142(l)(1)). Additionally, camp owners and operators must ensure that the name, phone number, and email address of the camp superintendents is posted prominently in a central location.

- M. Conspicuously post workers' housing address in a central location to ensure that workers will be able to call a 911 operator if needed.
- N. Conspicuously post the phone number for the North Carolina Coronavirus hotline and include on the posting a statement that if workers would like to make a CONFIDENTIAL complaint about unsafe working or employer provided living conditions, they may call the hotline number.
- O. Adopt any additional infection control measures consistent with guidance issued by the Department of Health and Human Services ("DHHS").
- P. NCDOL-ASH must use best efforts to conduct outreach visits to each migrant labor camp certified under the NC Migrant Housing Act within 20 working days of occupant arrival to review the rules issued pursuant to this order and any relevant DHHS guidance.

Section 4. Refusal to Work Under Dangerous Conditions

- (a) A worker shall have the right to refuse to work under conditions that the worker reasonably believes may expose that worker, other workers or the public to an unreasonable risk of illness or exposure to the SARS-CoV-2 virus or an individual with the COVID-19 disease.
- (b) An employer shall not retaliate or take adverse action against a worker for a refusal to work if, upon receiving reasonable notice, the employer refuses to correct conditions that may expose that worker to an unreasonable risk of illness or exposure to the SARS-CoV-2 virus or an individual with the COVID-19 disease.
- (c) A worker who has refused to work under conditions that may expose that worker to an unreasonable risk of illness or exposure to the SARS-CoV-2 virus or an individual with the COVID-19 disease, and who has not been reassigned to other work by the employer, shall: (a) retain a right to continued employment; and (b) continue to receive pay for the worker's regular hours until the condition has been remedied.
- (d) If an employer or other person takes adverse action against a worker or other person within 90 days of the worker or person's engagement or attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of REDA.

Section 5. Enforcement

- (a) Administrative Enforcement. Either on its own initiative or after receiving a complaint, the Department shall have the authority to inspect workplaces, and to subpoena records and witnesses. Where an employer does not comply with any of them, the Department shall order relief as authorized in this Section.
- (b) Other Government Enforcement. The attorney general, a district attorney, or a city or county attorney may also enforce the requirements of this Rule, acting in the public interest, including the need to deter future violations. Such law enforcement agencies may inspect workplaces and subpoena records and witnesses and, where they determine that a violation has occurred, may bring a civil action seeking:
 - 1. An injunction to order compliance with the requirements of this Rule and to restrain continued violations, including through a stop-work order or business closure;
 - 2. Payment by the employer of reasonable costs, disbursements, and attorney's fees; and/or
 - 3. Civil penalties payable to the state of not less than \$100 per day per worker affected by any noncompliance with the provisions of this chapter.
- (c) Qui tam enforcement. The relief specified in subdivision (b) of this section may be recovered through a civil action brought on behalf of the Department in a court of competent jurisdiction by a whistleblower, defined herein as a worker, contractor, or employee of a contractor of the employer, or by a representative nonprofit or labor organization designated by said person, pursuant to the following procedures:
 - 1. The whistleblower shall give written notice to the Department of the specific provisions of this Rule alleged to have been violated. The whistleblower or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Department within 30 days.
 - 2. The right to bring an action under this section shall not be impaired by any private contract. A public enforcement action shall be tried promptly, without regard to concurrent adjudication of private claims.

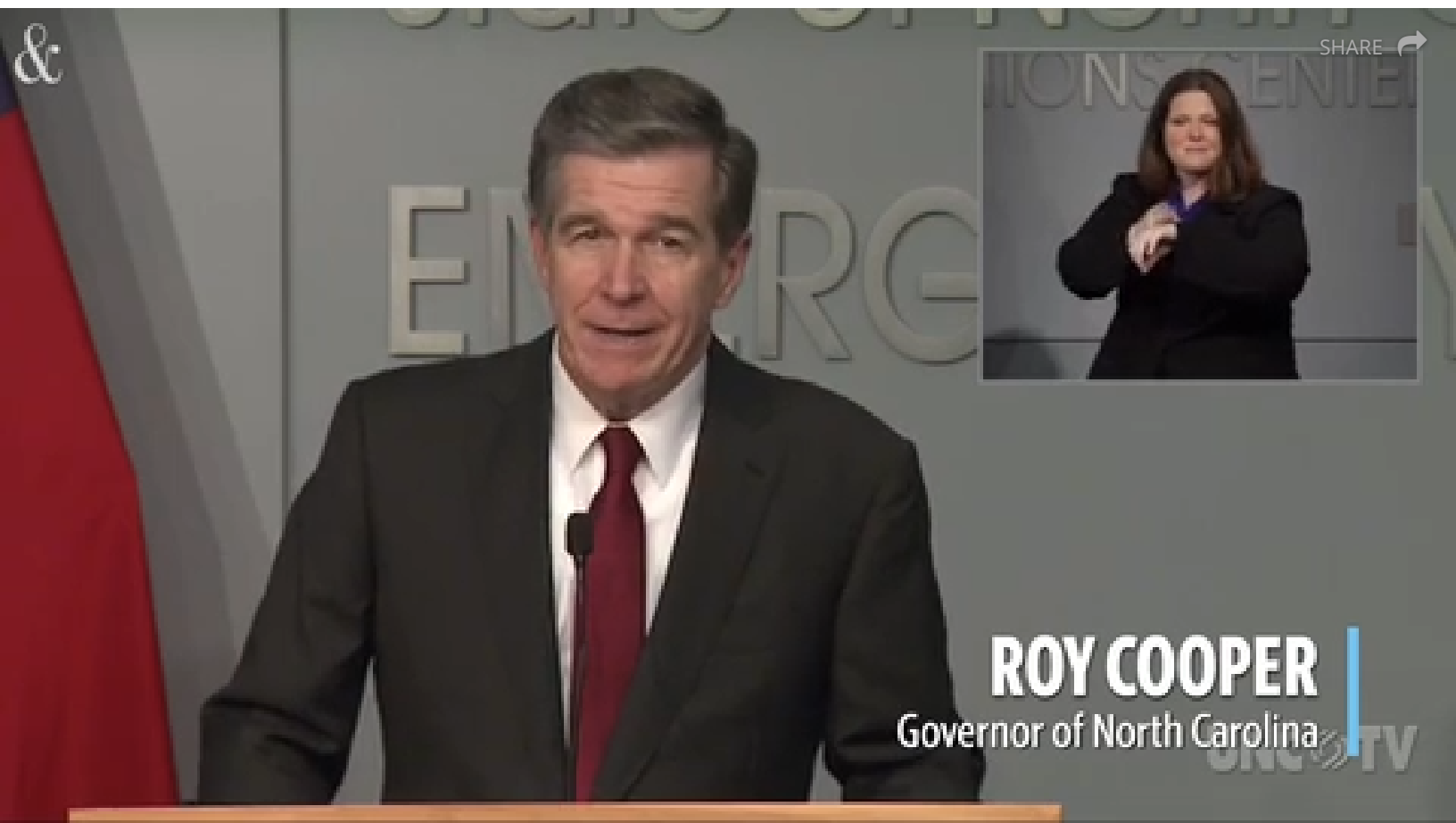
Exhibit B

LOCAL

Most NC businesses don't have to report outbreaks as COVID-19 cases rise

BY LYNN BONNER, CHIP ALEXANDER, AND ADAM WAGNER

JUNE 15, 2020 03:31 PM, UPDATED JUNE 15, 2020 05:38 PM



ROY COOPER
Governor of North Carolina

North Carolina Gov. Roy Cooper said he and Vice President Pence talked about getting federal help to increase COVID-19 coronavirus testing as the state sees an increase in cases and hospitalizations. Cooper spoke to reporters on June 15, 2020. BY WUNC-TV



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04:13

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Gov. Roy Cooper said Monday he spoke to Vice President Mike Pence about the state's climbing coronavirus infections and the need for testing.


The state's Department of Health and Human Services "is pushing assistance to local health departments, especially in the counties experiencing the highest growth — Alamance, Duplin, Durham, Forsyth, Guilford, Johnston, Lee, Mecklenburg and Wake are of particular concern," Cooper said Monday in a press briefing.

Cooper said he and Pence talked last weekend about increased testing, especially in those counties.


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"just because of our age."



DONNA MARIE, NORTH CAROLINA



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While hospitals have enough beds for COVID-19 patients, "that can change really quickly," Cooper said. The state is monitoring hospital capacity.

Sunday marked the second-highest increase in new cases, at 1,443. The highest was 1,768, the number of new cases announced Friday.

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Infections have been climbing since mid-May, and crowds have been gathering at race tracks, at protests, and in lines for restaurants.

“That kind of behavior in crowds really worries the health experts and epidemiologists and why we continue to tell people to avoid being in crowds if you can,” Cooper said Monday.

Cooper said he would announce early next week whether the state would continue to loosen restrictions on businesses and leisure activities that were meant to curb viral spread.

“We believe we can get a handle on this,” he said. “Let’s pull together so we can continue to move forward in easing restrictions.”

Cooper, who entered the press briefing wearing a mask, also said he is working to determine if the state should mandate the use of face coverings.

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COVID-19 OUTBREAK REPORTING

Only certain businesses are required to report outbreaks: congregate living facilities, day care centers, and schools.

Other businesses are encouraged to report outbreaks to local health offices, DHHS Secretary Dr. Mandy Cohen said in Monday’s press briefing.

“We work very closely with our local health departments to try to understand how the virus is spreading across our state,” she said. “We’ve talked many times of how we track those outbreaks. ... But those outbreaks are not consistently reported. There are only a few required by law — congregate living settings, childcare and others — that are required to report to us.

“So we will often do the detective work through our tracing, or an entity may proactively identify themselves and say, hey, we have a number of cases in the setting and the local health department will work with us and help us understand what to do next.

”Those are good. We want folks to get in touch with your local health department if you are seeing more than two cases, which is an outbreak, or five, which is a cluster.

“We want to make sure people are taking the proper protocols, whether that’s additional deep cleaning or temporary closure or what have you that needs to be done in order to make sure we don’t see further viral spreads.”

Cohen said businesses are encouraged to follow all the precautions laid out in “all the very detailed guidance” being provided.

“And if you do see the virus spreading in your place of business please do call the local health department,” she said.



North Carolina Gov. Roy Cooper says health experts are looking into mandatory cloth masks as the state grapples with increased COVID-19 cases. Cooper said June 15, 2020, that he will announce next week whether NC will continue to loosen restrictions. BY WUNC-TV

RESTAURANT, NURSING HOME CONNECTION

Cohen said it was important to connect restaurant crowds to infections in long-term care facilities. More virus circulating in communities means that people who work in long-term care facilities can bring the virus back to their workplaces, she said.

Nursing homes have been hit particularly hard by COVID-19. As of Friday afternoon, there were 3,961 cases associated with nursing homes and 589 deaths.

The state plans universal testing of all nursing home residents and staff, not just those homes where people have tested positive.

More than 45,100 people in the state have had lab-confirmed cases of coronavirus infections, the state Department of Health and Human Services reported Monday.

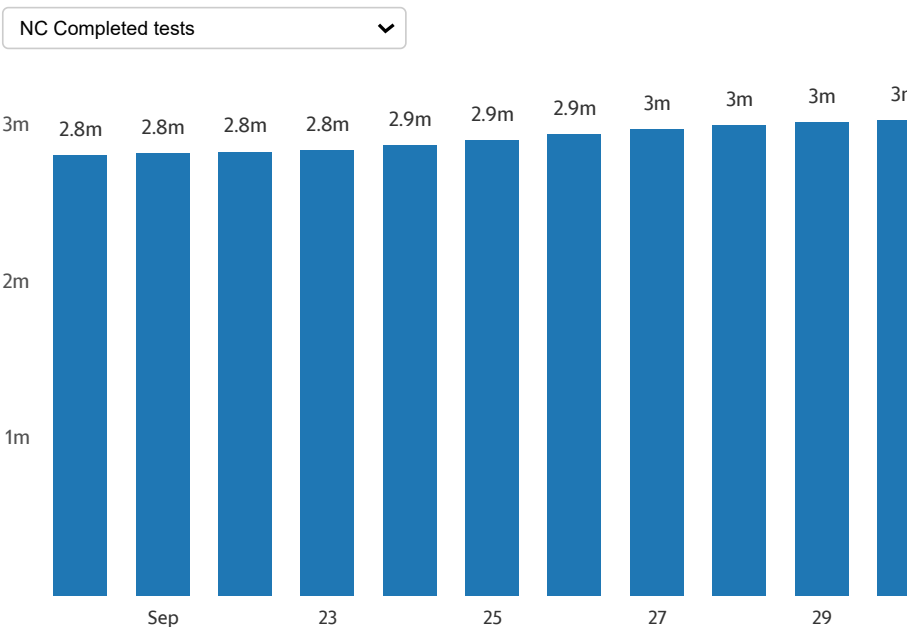
There were 983 newly reported cases Monday, and 797 patients hospitalized with 73% of hospitals reporting.

The 1,443 new cases reported Sunday marked the second-highest increase in new cases — the highest was 1,768 announced Friday. The NC DHHS reported Monday that 29,219 people in North Carolina are presumed recovered from coronavirus infections.

Forecast models complied by the Centers for Disease Control and Prevention predict that North Carolina is one of six states were [COVID-19 deaths are expected to jump between June 8 and July 4](#), McClatchy News reported. DHHS reported 1,118 COVID-19 deaths Monday since the first in March.

NC CORONAVIRUS TESTING

The chart below show the change in the number of tests each day, the number of new cases each day and how they compare. Select variables from the dropdown menu for more information.



Orange County commissioners weigh light industry, warehouse, research campus at I40, Old NC 86 near Hillsborough. Davis Road won't be a key exit from the site.

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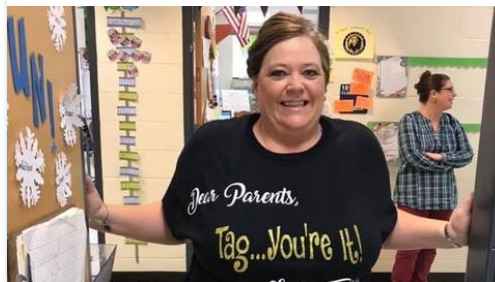
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Gov. Roy Cooper removes his mask to begin a briefing on North Carolina's coronavirus pandemic response Monday, Jun. 15, 2020, at the N.C. Emergency Operations Center in Raleigh, N.C. CASEY TOTH CTOTH@NEWSOBSERVER.COM

LYNN BONNER

✉ 919-829-4821

Lynn Bonner is a longtime News & Observer reporter who has covered politics and state government. She now covers environmental issues and health care.

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BY TAMMY GRUBB

OCTOBER 07, 2020 08:36 AM

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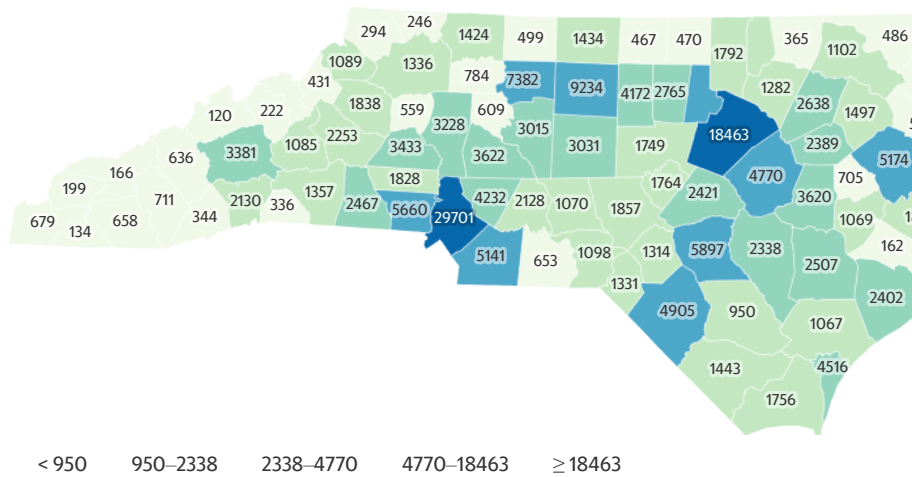
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NC CORONAVIRUS CASES

Number of reported coronavirus cases by county as reported by NC DHHS. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus.

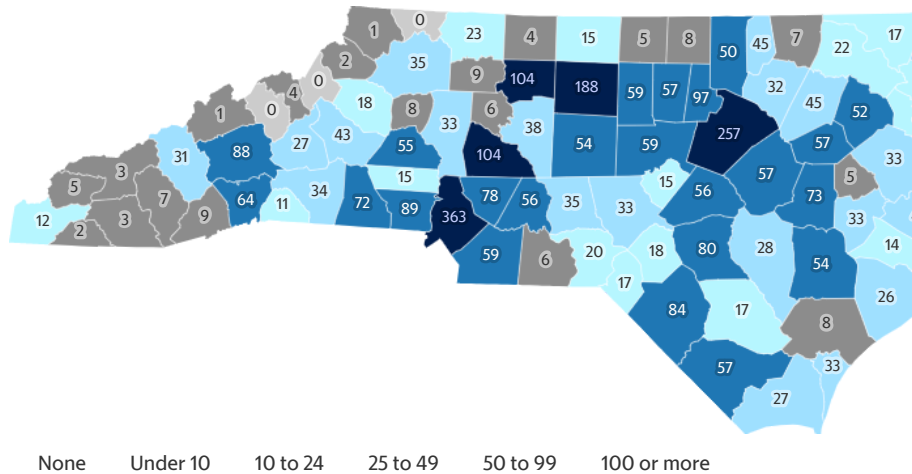


Case totals for the following counties include state and federal prisons where positive tests have been reported: Granville, Greene, Halifax, Hertford, Johnston, Pasquotank, Wayne.

Map: David Raynor • [Get the data](#)

NC CORONAVIRUS DEATHS

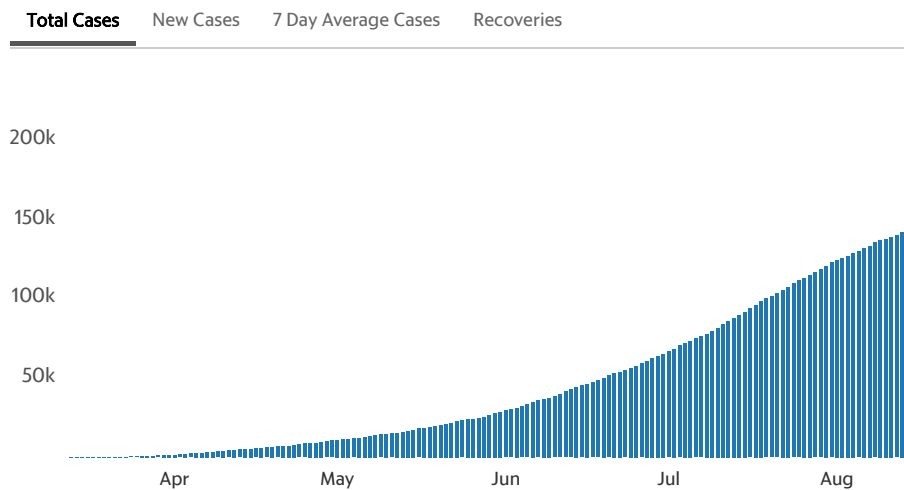
Number of reported deaths due to COVID-19 by county as reported by NC DHHS.



Map: David Raynor • [Get the data](#)

CORONAVIRUS CASES BY DAY

"Total Cases" shows the cumulative number of positive cases from molecular and antigen tests. "New Cases" shows the number of new cases by day. "7-Day Rolling Average" shows a 7-day average of new cases in order to account for the lag-time of how cases are reported by county health departments to the state. On Sept. 25, the state Department of Health and Human Services started including the cases and deaths diagnosed via antigen tests and the number of antigen tests completed. The spike of more than 6,140 cases over one day on Sept. 25 reflect a one-time addition of new information as the state backfilled data through May 20, when the first antigen positive case was reported, a DHHS spokesperson said. We flatten the curve by reducing the number of new cases per day.



Data is from the NC DHHS daily updates. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus. The number of recovered patients is reported each Monday by DHHS.

Chart: David Raynor • [Get the data](#)

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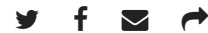
Exhibit C

CORONAVIRUS

After Cooper backs down on executive order, NC worker advocates push for protection

BY AARON SÁNCHEZ-GUERRA

SEPTEMBER 18, 2020 04:50 PM, UPDATED SEPTEMBER 18, 2020 08:00 PM



Marisela Martinez shares her experience taking a contract position as a housekeeper near the start of the pandemic at Mountaire Farms, a poultry processing plant, at their location in Siler City, N.C., and later testing positive for COVID-19. BY **CASEY TOTH** ✉

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04:05

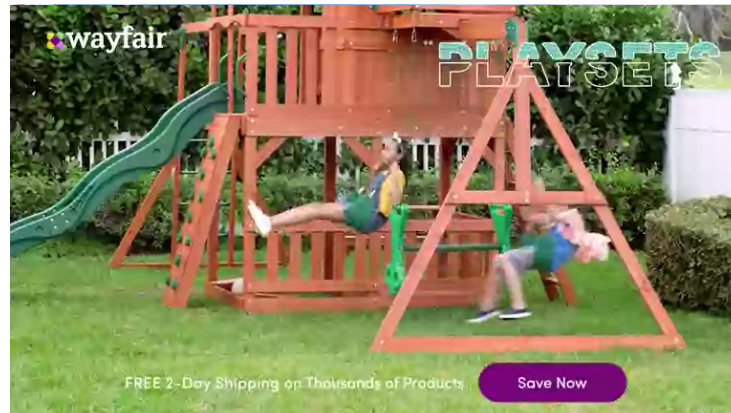
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After Gov. Roy Cooper stopped short of issuing an executive order to protect the agricultural workforce on fields and in meat processing plants in the COVID-19 pandemic, several organizations on Friday turned their demands to the North Carolina Department of Labor.

After initially telling Latino advocacy groups he would issue an executive order, [Cooper quietly backed out](#), telling members of the Farmworker Advocacy Network that opposition from state labor and agriculture officials would harm his ability to enforce the order.

In a Friday afternoon conference held virtually, farmworker advocacy groups including the North Carolina Justice Center, the AFL-CIO, NC Raise Up/Fight for \$15, Rural Advancement Foundation International (RAFI-USA), Student Action for Farmworkers and the Episcopal Farmworker Ministry demanded that N.C. Department of Labor Commissioner Cherie Berry, a Republican, issue an Emergency Infectious Disease Standard to protect largely Latino immigrant essential workers, [who have been hit disproportionately hard](#) by the pandemic.

TOP ARTICLES



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“Far too many of North Carolina’s essential workers are working in unsafe conditions to keep the state’s economy running in the midst of the COVID-19 pandemic,” the organizations said in a joint press release. “These workers, while deemed essential, have been too often forced to work without adequate personal protective equipment, in crowded and poorly ventilated conditions, and without wellness checks.”



Workers at Mountaire Farms, a poultry processing plant, line up outside a truck displaying the logo of Examinetix, whose website advertises the service of onsite mobile health screenings, on Monday, Aug. 3, 2020, in Siler City, N.C. Casey Toth CTOTH@NEWSOBSERVER.COM

Coronavirus: Latest news

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An Emergency Infectious Disease Standard, or Emergency Temporary Standard, is a set of mandatory infection control requirements that employers must implement. The AFL-CIO urged the Occupational Safety and Health Administration (OSHA) to issue the order in March.

OSHA denied this request and the [AFL-CIO sued to compel](#) the agency to issue a standard. It [voiced support for a bill in Congress](#) that would require OSHA to issue it. As of July, courts have upheld OSHA's decision not to, according to the Laborers' Health and Safety Fund of North America.

Such a standard [was issued in Virginia](#) on July 15 by its Department of Labor and approved by its governor.

"In times of crisis, we need leaders and leadership requires a moral compass, which means that we actually have to care for our fellow human beings," said Rev. Fred

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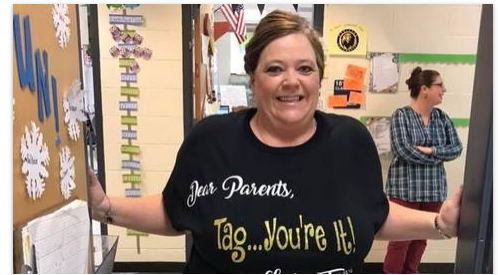
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UPDATED OCTOBER 06, 2020 10:41 PM



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UPDATED OCTOBER 06, 2020 09:28 PM



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AARON SÁNCHEZ-GUERRA

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Aaron Sánchez-Guerra is the business and real estate reporter for The News & Observer and The Herald-Sun. He previously worked at WLRN Public Media in Miami and as a freelance journalist in Raleigh and Charlotte covering the Latino population. He is a graduate of North Carolina State University, a native Spanish speaker and was born in Mexico.

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CORONAVIRUS

UNC research center is one of the leaders in the race to find a COVID-19 vaccine

BY HANNAH TOWEY *UNC MEDIA HUB*

OCTOBER 07, 2020 08:00 AM



Infectious disease specialists at the University of North Carolina at Chapel Hill are among the leaders in the race toward a vaccine for COVID-19.

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Clarkson, the Spanish language ministry coordinator of the Episcopal Diocese of East Carolina.

“Secondly, we also need clarity — there is no dichotomy between the economy and people’s lives. Dead people don’t support economies, living people do,” Clarkson said. “Also, there isn’t a segmentation. If certain people get sick, eventually we will all get sick.”

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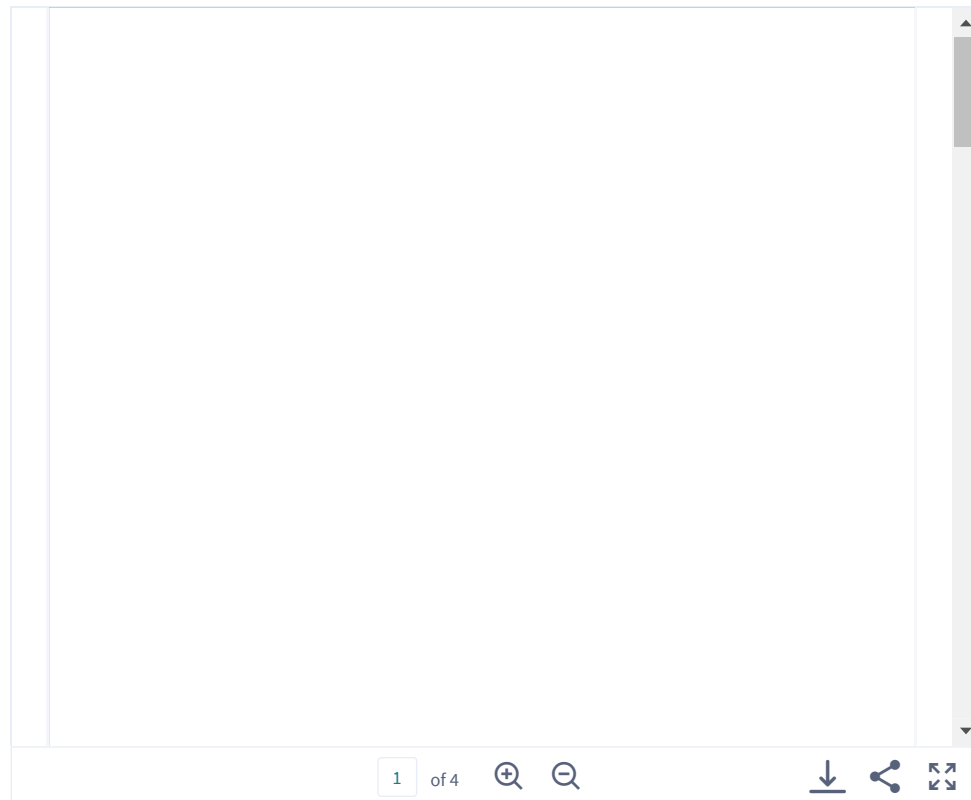
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DEPARTMENT OF LABOR RESPONSE

In response to a request for comment, the department directed The N&O to its previously provided letter from Berry to Cooper opposing his executive order for worker protections.

“This EO, as currently drafted, represents overregulation of industries that are already facing tremendous hardship and that, in general, have shown a willingness to voluntarily comply with CDC guidance to protect their workers,” Berry wrote in late August. “Above all, the EO appears to overreach the Governor’s power by creating new legal requirements and implying that the NCDOL will enforce standards that exceed existing authority.”

[Commissioner Berry Letter - Governor Cooper - 083120](#) by [Aaron Sánchez-Guerra](#) on Scribd



Berry noted that while the NCDOL can be more stringent than federal safety standards, it “has chosen not to adopt more certain standards” regarding seasonal immigrant farmworkers’ temporary labor camps.

Berry also said in the letter that the implementation of the executive order “appears to violate the Separation of Powers Clause of the NC Constitution” because it does not allow public comment.

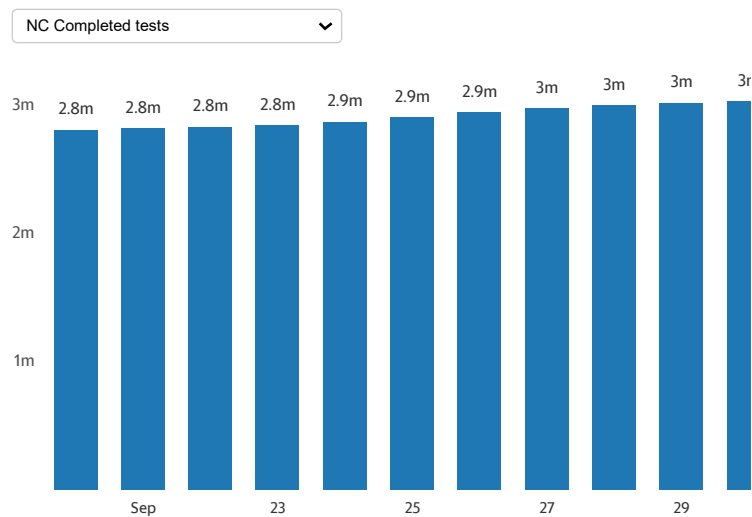
Worker safety guidance was issued by the Centers for Disease Control and Prevention (CDC) and the state Department of Health and Human Services, but no mandatory safety requirements across essential workplaces like meatpacking plants and produce fields were issued.

As of August, [cases across meatpacking plants](#) in the state rose past 3,000 in more than 37 clusters in at least 20 counties, according to state health officials. They also report that outbreaks in immigrant farmworker housing camps have topped 1,700.

“A refusal to move forward with a comprehensive rule is an act of gross negligence that unnecessarily puts the lives of workers and their families at risk. Worker safety should be the NC DOL’s top priority in the midst of this devastating global pandemic,” the advocacy groups’ statement said.

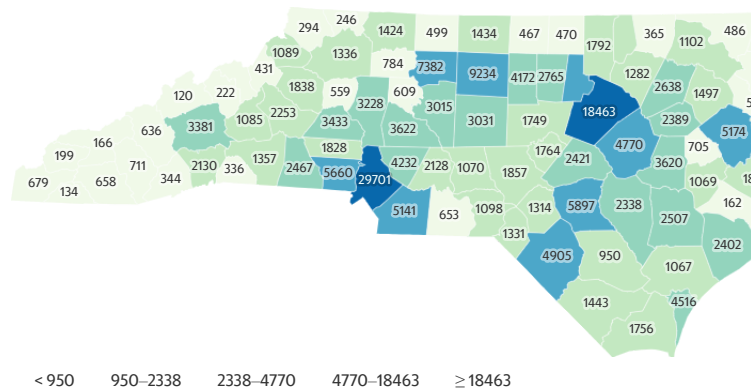
NC CORONAVIRUS TESTING

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NC CORONAVIRUS CASES

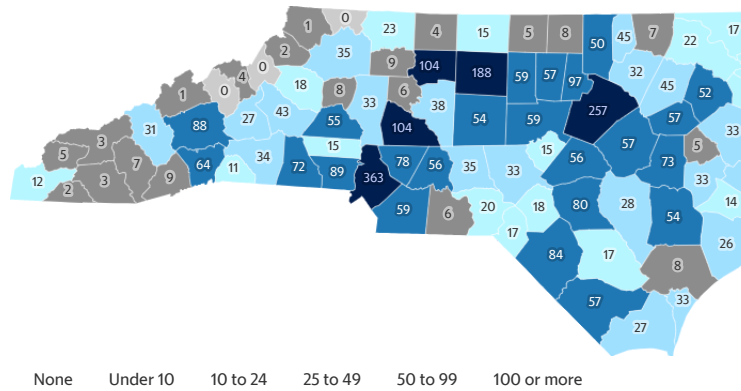
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NC CORONAVIRUS DEATHS

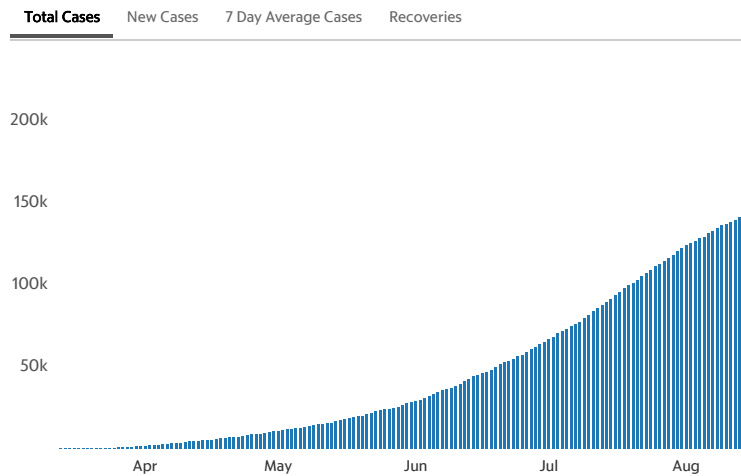
Number of reported deaths due to COVID-19 by county as reported by NC DHHS.



Map: David Raynor • [Get the data](#)

CORONAVIRUS CASES BY DAY

"Total Cases" shows the cumulative number of positive cases from molecular and antigen tests. "New Cases" shows the number of new cases by day. "7-Day Rolling Average" shows a 7-day average of new cases in order to account for the lag-time of how cases are reported by county health departments to the state. On Sept. 25, the state Department of Health and Human Services started including the cases and deaths diagnosed via antigen tests and the number of antigen tests completed. The spike of more than 6,140 cases over one day on Sept. 25 reflect a one-time addition of new information as the state backfilled data through May 20, when the first antigen positive case was reported, a DHHS spokesperson said. We flatten the curve by reducing the number of new cases per day.



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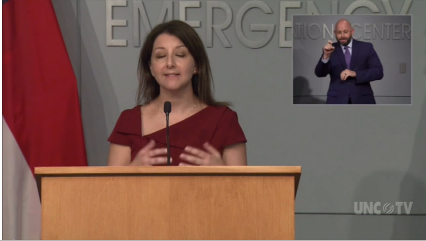
POLITICS-GOVERNMENT

After pushback from officials, Cooper halts executive order to protect agricultural workers

SEPTEMBER 10, 2020 6:00 AM



Exhibit D



NC seeing pockets of higher COVID infection rates in agricultural areas

Dr. Mandy Cohen talks pockets of higher rates of COVID infection pockets in agricultural areas of eastern N.C., as well as higher rates in the Latinx communities. BY WUNC-TV

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BUSINESS

NC not doing enough to protect immigrant farmworkers from coronavirus, advocates say

BY AARON SÁNCHEZ-GUERRA

JULY 03, 2020 06:45 AM, UPDATED JULY 03, 2020 10:07 AM



Dr. Mandy Cohen talks pockets of higher rates of COVID infection pockets in agricultural areas of eastern N.C., as well as higher rates in the Latinx communities. BY WUNC-TV



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Reported coronavirus cases are rising among seasonal farmworkers living in migrant worker housing, a group setting like nursing homes that the state is watching.

On Tuesday, 128 new COVID-19 cases across four farms were reported through June, according to the N.C. Department of Health and Human Services.



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" As a cancer survivor, I'm angry that Senator Tillis voted to drive up my health cos



DONNA MARIE, NORTH CAROLINA



SKIP AD

Six farms had active outbreaks in June compared to five active outbreaks reported in May. DHHS defines an outbreak as more than two cases but is only reporting them at facilities with at least 10 residents.

The cases reported are among seasonal immigrant farmworkers from Mexico who come to work in the United States on a temporary visa and live in grower-provided housing. Other infected workers who live in private residences not on farm property are not included in the count, and no one knows how many farmworkers have tested positive overall.

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The [Farmworker Advocacy Network](#), a statewide coalition, says its members think there are outbreaks at over 30 farms in 25 counties. They want the state to provide more information than the congregate living facility report.

Though it published them at first, DHHS removed the names of farms from the May report and replaced them with road names of where the migrant worker housing with outbreaks was located, according to a spokesperson.

BLADEN COUNTY FARM OUTBREAKS

In Bladen County in southeastern North Carolina, the state reported that [Sweet Berry Farms](#) had 13 cases on June 16.

The farm's website depicts workers packing blueberries and out in the fields in the town of Ivanhoe. The farm did not return phone calls and emails requesting comment from The N&O.



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The N.C. Department of Labor reports on its website that the farm requested at least 500 seasonal immigrant workers this season, but it doesn't say how many arrived.

Sleepy Creek Farms in the town of Harrells in Bladen County first reported two cases in late May, then 54 cases on June 12.

Sleepy Creek Farms employs and houses around 200 seasonal farmworkers, in addition to roughly 50 year-round workers who live off the farm, said Yusef Ewais, the farm's human relations coordinator, in an interview.

"We would communicate with [workers] daily to check how they're feeling and to gauge the timeframe of when they got sick," Ewais said.

The majority of the infected were seasonal workers, who use an agricultural H-2A visa to come to the U.S. to work temporarily. Most have completed their quarantine in their barracks housing and recovered. However, two were hospitalized and are in stable condition, said Ewais.

The positive cases were discovered first in mid-May, he said. The farm partnered with Goshen Medical Center clinic to test its employees, quarantining asymptomatic workers and testing the symptomatic ones first.



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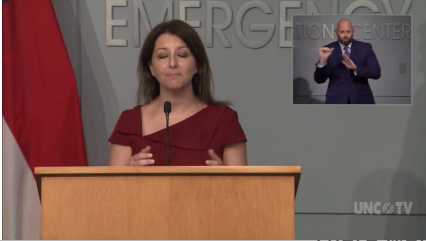


The Episcopal Farmworker Ministry, based in Harnett County, serving seasonal farmworkers at Sleepy Creek Farms in Bladen County with needed groceries in April 18. A coronavirus outbreak had not yet been reported at the farm. *COURTESY OF THE EPISCOPAL FARMWORKER MINISTRY*

“Because they were in our housing and live on our property we were able to not spread it within the community,” said Ewais.

The outbreak caused “some production hiccups,” he added. The farm’s website says they currently harvest approximately 700 acres of blueberries.

Angie Santibañez, director for the farmworker health program Manos Unidas, told The N&O it sent staff members to the farm to provide medicine and disinfectants to sick workers, as well as health education in Spanish. It also teamed with the Migrant Education Program in the Bladen County Schools to provide food assistance.



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There were two or three sick workers then, the outbreak had barely started,” Tapia said in Spanish. “I’m thinking that they spread it among each other since. There’s a lot of workers there.”

Her organization contacted the symptomatic workers through video calls to teach them health care and safety.

Pope & Son Farms in Clinton declined to comment on the five COVID-19 cases it reported.

According to Tapia, the N.C. Farmworkers Project was able to visit the sick workers there last month to provide medication and other supplies. Four have recovered, but one worker has been hospitalized. The farm houses over 100 workers.

“The grower at the farm has cooperated with us and was who contacted us,” said Tapia. “The logistics behind testing all of the workers there are difficult.”

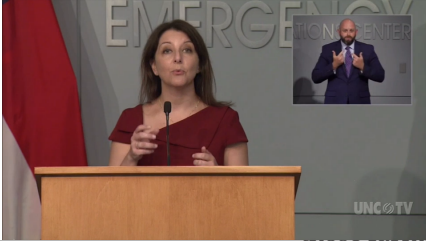
Many farm workers in general don’t want to be tested, Tapia said, because they don’t want to risk losing work if they test positive or suffer the stigma of someone thinking they might be positive.

OTHER COUNTIES

On July 2 DHHS updated its report to include an outbreak at a farm in Wayne County in the town of Seven Springs east of Johnston County. The N.C. Department of Labor lists Mack L. Grady Farms as requesting immigrant farmworkers in that town. The N&O could not find contact information for the farm online.

A second outbreak was reported in Hyde County near the Pamlico Sound at an address linked to Mattamuskeet Seafood, a blue crab and oyster processing plant in the town of Swan Quarter.

The plant’s Facebook page shows an image of various women in a plant shelling crabs next to each other. The owners of the plant could not be reached by phone by



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Cohen pointed to existing guidelines in place but did not elaborate on what the state is doing now to to protect agricultural workers, whom The N&O has reported are [especially vulnerable in the pandemic](#).

In [an academic article](#) in the Journal of Agriculture, Food Systems, and Community Development, authors Lariza Garzón of the Episcopal Farmworker Ministry and Andrew R. Smolski, a scholar at N.C. State University, criticized the state's provided data.

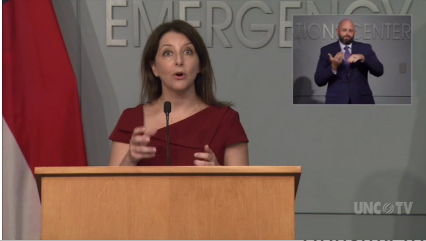
“According to our current understanding, NCDHHS only reports outbreaks, defined as two or more cases in a congregate living facility and only in migrant labor camps with more than 10 occupants,” the article reads. “That is problematic, because of 1,877 migrant labor camps in the state, 1,011 are certified for fewer than 10 occupants. Thus, current reports most likely underestimate the current level of COVID-19 in farmworker communities.”

Since the start of the pandemic, the Farmworker Advocacy Network has written three letters to Gov. Roy Cooper calling on him to protect agricultural workers, including those in meat processing plants.

In a June 16 letter to Cooper and Cohen, they wrote that “During the two months between when we sent our letter and you responded, thousands of farmworkers arrived in North Carolina and outbreaks started happening at migrant labor camps.”

The following week, FAN members met with Cooper's office and DHHS to talk about potential steps to protect farmworkers through executive orders, according to Lariza Garzón of the Episcopal Farmworker Ministry, a member organization of FAN.

In their [letter to the state](#), FAN' cited concerns about accessible and free testing for workers, a lack of information, the fear of virus testing to avoid potentially losing work, and hurricane protection plans.



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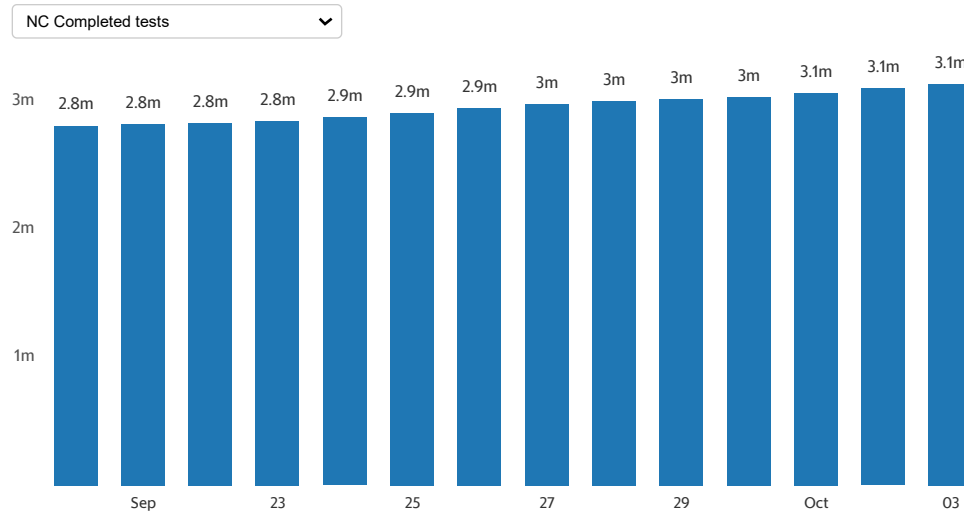


Housing for workers has been substandard on average for a long time and must be changed throughout the agricultural system or else “we are going to keep having issues not just with pandemics, but also other disasters and emergencies such as hurricanes,” said Garzón.

“This issue is systemic,” she said. “We need to think about systemic solutions.”

NC CORONAVIRUS TESTING

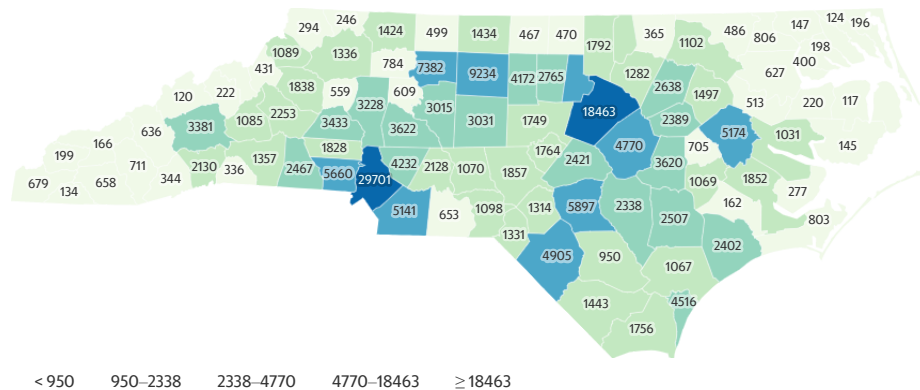
The chart below show the change in the number of tests each day, the number of new cases each day and how they compare. Select variables from the dropdown menu for more information.



Source: N&O analysis of NC DHHS data • [Get the data](#)

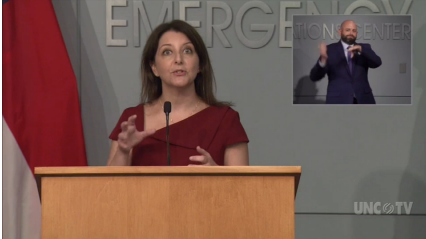
NC CORONAVIRUS CASES

Number of reported coronavirus cases by county as reported by NC DHHS. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus.



Case totals for the following counties include state and federal prisons where positive tests have been reported: Granville, Greene, Halifax, Hertford, Johnston, Pasquotank, Wayne.

Map: David Raynor • [Get the data](#)

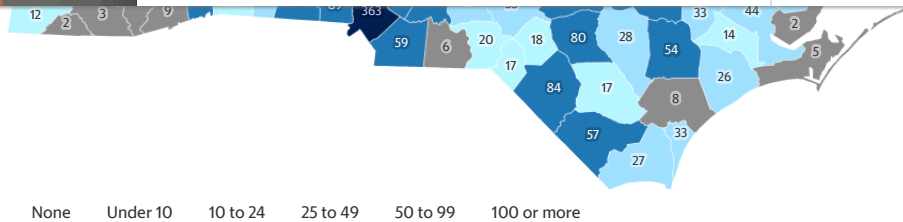


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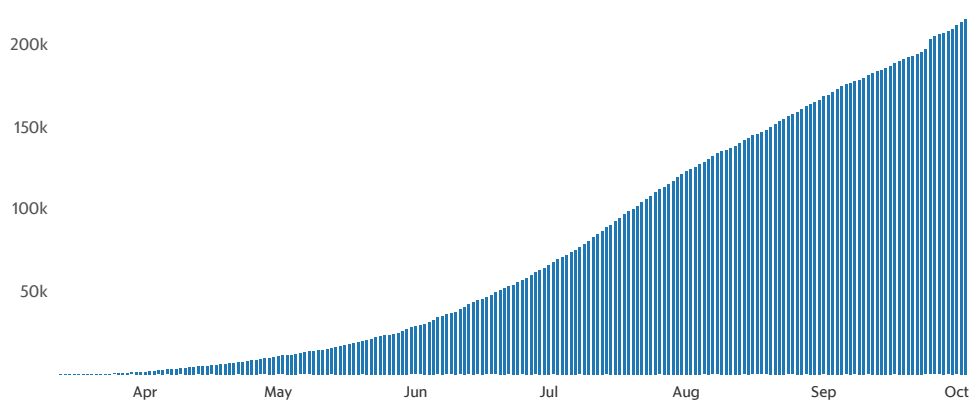


Map: David Raynor • [Get the data](#)

CORONAVIRUS CASES BY DAY

"Total Cases" shows the cumulative number of positive cases from molecular and antigen tests. "New Cases" shows the number of new cases by day. "7-Day Rolling Average" shows a 7-day average of new cases in order to account for the lag-time of how cases are reported by county health departments to the state. On Sept. 25, the state Department of Health and Human Services started including the cases and deaths diagnosed via antigen tests and the number of antigen tests completed. The spike of more than 6,140 cases over one day on Sept. 25 reflect a one-time addition of new information as the state backfilled data through May 20, when the first antigen positive case was reported, a DHHS spokesperson said. We flatten the curve by reducing the number of new cases per day.

Total Cases New Cases 7 Day Average Cases Recoveries



Data is from the NC DHHS daily updates. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus. The number of recovered patients is reported each Monday by DHHS.

Chart: David Raynor • [Get the data](#)

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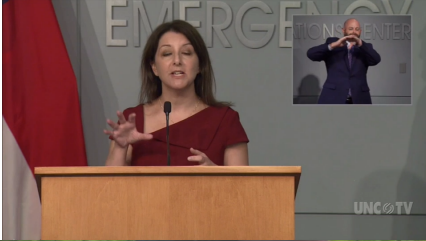
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Seasonal farmworkers pick strawberries at Porter Farms & Nursery where 14 workers tested positive for COVID-19 last month, on Thursday, May 14, 2020, in Raleigh, N.C. The North Carolina Department of Health and Human Services has reported 46 coronavirus cases across personnel in four produce farms in the state during the strawberry season. CASEY TOTH@NEWSOBSERVER.COM



AARON SÁNCHEZ-GUERRA

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Aaron Sánchez-Guerra is the business and real estate reporter for The News & Observer and The Herald-Sun. He previously worked at WLRN Public Media in Miami and as a freelance journalist in Raleigh and Charlotte covering the Latino population. He is a graduate of North Carolina State University, a native Spanish speaker and was born in Mexico.

[COMMENTS](#)



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2 scientists win Nobel chemistry prize for gene-editing tool

BY DAVID KEYTON, CHRISTINA LARSON AND FRANK JORDANS ASSOCIATED PRESS
OCTOBER 07, 2020 10:11 AM



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