

**APPALACHIAN STATE UNIVERSITY
OFFICE OF GENERAL COUNSEL
MEMORANDUM**

TO: Faculty and Staff

FROM: Paul Meggett, General Counsel

DATE: August 26, 2021

SUBJECT: Campus COVID Response Concerning Vaccination Status

Please print and post this memorandum for individuals in your unit who do not have regular access to e-mail.

On March 10, 2020, Governor Roy Cooper declared a State of Emergency in North Carolina beginning the coordination of the state's response to protect its residents from COVID-19. Since then, every state entity and every state employee has been challenged with traversing an evolving landscape of rules and restrictions. Naturally, in the face of a deadly global pandemic, people want answers, they want consistency, they want comfort, and perhaps most of all, they want an end to the crisis. Our App State community is no different. As we have navigated rules and restrictions handed down by federal, state, and local public health authorities, as well as from the UNC System, sometimes it has been difficult to know what you, as an employee, have been able to do and what you are restricted from doing.

Recently, confusion among App State employees has surfaced concerning what, if anything, you may ask of someone else concerning their vaccination status and whether, in the absence of that information, someone may be declined access to campus resources or services.

App State employees:

- **shall not ask another employee, student, or visitor their vaccination status.** While anyone may voluntarily provide their vaccination status to another, you may not ask another person or otherwise require that someone provide you with that information under the guise that their response can be "voluntary." The University legally may seek your vaccination status as an employee, and is doing so through a confidential attestation process. You are not authorized to make further inquiry of individuals as doing so potentially implicates health privacy laws and employment laws that could create liability for the University;
- **shall be subject to regular COVID-19 testing and other requirements if you do not provide vaccination information** through the confidential attestation process. This is a campus health and safety requirement, and your failure to participate in testing when requested undermines the University's COVID response, potentially creating liability;
- **shall not condition anyone's access to classrooms or other spaces on their vaccination status.** Doing so potentially implicates various antidiscrimination laws, thereby creating potential liability for Appalachian. If you have concerns about your individual health and safety, I strongly encourage you to get vaccinated, if possible, and in any event to wear a face covering, continue to social distance, as appropriate, and to wash your hands. Currently, face coverings are required in all indoor campus locations for faculty, staff, students, and visitors, regardless of vaccination status; and
- **shall not create "local" rules or procedures (e.g., at a classroom, departmental, or college level) that differ from the broader rules adopted at the campus level.** A lack of consistent rules

breeds confusion, undermines the University's health and safety protocols, and potentially creates liability for App State.

App State has adopted rules intended to adhere to the public health and safety guidelines provided by the relevant public health authorities, while also ensuring that the University complies with applicable laws and regulations. When employees don't follow the rules set by the campus, it increases the University's liability exposure, which can lead to unwanted consequences.

Any employee who does not adhere to campus health and safety rules:

- **will not be covered under the Defense of State Employees Act** in the event a legal claim is filed in relation to your conduct;
- **potentially will have personal liability** for such conduct in the event of a claim; and
- **will be subject to disciplinary action** for violation of campus health and safety protocols.

As a matter of campus health and safety, risk management, legal and regulatory compliance, and just good campus citizenship, I strongly encourage everyone to follow the campus rules and engage one another with respect and civility because we are all going through this pandemic together.

For the latest information about App State's COVID response, please visit: www.appstate.edu/coronavirus/updates/. Thank you.