

# MMB Policy 1446 (“Vaccine or Testing Mandate”) - Applicability to Construction Contractors and Consultants - Frequently Asked Questions

MMB Policy 1446 (the “vax/test policy”) extends the vax/test mandate to some of the state’s contractors and consultants by defining those entities as state “staff” solely for the purpose of the policy.

## General FAQ

### **Does this policy require people to attest that they are vaccinated?**

No. An individual may choose to *either* attest that they have been vaccinated or to undergo weekly testing. The Centers for Disease Control and the Minnesota Department of Health highly recommend vaccination as the best way to protect personal health and stop the spread of COVID-19.

### **Will MnDOT provide testing to contractors and consultants?**

No. Contractors and consultants must operate both the attestation and testing program for their own employees.

### **How should a MnDOT project engineer, architect, or project manager administer the policy? Can MnDOT staff ask contractor or consultant employees their vaccination status or require them to provide vaccine cards or test results?**

MnDOT employees administering covered contracts should have periodic discussions with the contractor or consultant about the status and implementation of the contractor’s or consultant’s vax/test program. This could occur at regular progress meetings. MnDOT employees should not ask for personal medical information on contractor or consultant employees and should not ask for or receive any medical documents.

## Construction Contractor Specific FAQ

### **Are any MnDOT highway or building construction contracts exempt from the requirement?**

Yes, most of these contracts are exempt from the policy. There is an exception for outdoor contracts, where mitigation measures are possible such as limited interaction with MnDOT staff or the public and social distancing. Indoor contracts are exempt if they are in areas of a building not concurrently occupied by MnDOT

staff or accessible to the public. Note that the face mask requirement still applies when social distancing cannot be maintained.

**But don't all construction contracts involve some level of interaction with MnDOT staff?**

Yes, but MMB, MnDOT, and the Department of Administration agreed this was a manageable risk with mitigation tools such as social distancing and face masks. Where possible, avoid job trailer meetings in favor of outdoor and socially-distanced "tailgate meetings".

**What MnDOT construction projects are covered by the policy?**

Some MnDOT contracts are still covered. These include indoors work in a space concurrently occupied by MnDOT employees or accessible to the public. The policy also applies to some highway construction projects, generally Design-build and CM/GC projects where contractor and state staff are co-located. In the co-located situation, MnDOT will apply the policy to those working in the co-located office, but not to field personnel on those projects.

**Does the policy apply to subcontractors or suppliers?**

The policy applies to subcontractors but not suppliers. MnDOT staff or MnDOT consultants who visit a supplier location for inspection or testing purposes must themselves comply with the vax/test mandate, as this is MnDOT work performed outside the employee's or consultant's home.

**Does the policy apply to indoor activities (for example a concrete plant) on a construction contract that is primarily outdoors?**

No. If the contract is generally exempt due to the outdoors exemption, then all the activities under the construction contract will be considered exempt – MnDOT will not single out activities that will be covered on an otherwise exempt contract (except for co-housed staff as noted above). Whenever possible, MnDOT staff should minimize time in those indoor environments and must wear facemasks.

**Does the policy apply to consultants performing inspection and project administration on a construction project?**

Yes, but only if the work is not otherwise covered by the outdoors or indoors/unoccupied exemption.

**Are MnDOT employees exempt from the policy if they work on a construction project that is outdoors or indoors/unoccupied?**

No. MnDOT employees are covered by the policy whenever performing MnDOT work outside of their home.

**Does the policy apply to state aid or local-let construction projects?**

No. The policy does not apply to state-aid or local-let construction projects. The policy does apply to MnDOT State Aid staff.

## Consultant Specific FAQ

**Does this policy apply to a consultant performing MnDOT work in its own offices?**

No.

**Does this policy apply to consultants working in a co-located office, for example as part of a Design-Build or CM/GC project?**

Yes.

**In what other circumstances does the policy apply to a consultant?**

The policy applies when a consultant is performing MnDOT work outside of their home or office, and there is more than short-term (less than 10 minutes) or infrequent contact with MDOT staff or the public. Examples would include a public engagement contract where the consultant is meeting face-to-face with the public, a relocation services contract where meeting with a property owner, or when a consultant is working on a construction project that is covered by the policy.

### What if I still have questions?

If you have questions about whether the vax/test policy applies to a certain construction or consultant contract, you can contact Jim Cownie, Ryan Gaulke, or Kyle Fisher in the Office of Chief Counsel.

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