State of North Carolina

ROY COOPER
GOVERNOR

January 27, 2021

EXECUTIVE ORDER NO. 191

EXTENDING ASSISTANCE FOR NORTH CAROLINIANS AT RISK OF EVICTION AND EXTENDING PROCESSES TO EXPEDITE PAYMENT OF UNEMPLOYMENT INSURANCE CLAIMS

The COVID-19 Public Health Emergency

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165 and 169-177, 180-181, 183-185, and 188-190; and

WHEREAS, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to advance the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

WHEREAS, on September 30, 2020, the undersigned issued Executive Order No. 169, which transitioned the state into Phase 3 of its COVID-19 response; and

WHEREAS, concerning trends then led the undersigned to implement further public health measures, including a more protective numerical limit on indoor gatherings, requiring Face Coverings in additional settings, requiring night-time closure to the public for certain businesses and activities, and directing that all North Carolinians stay at home, with exceptions, between the hours of 10:00 pm and 5:00 am every day; and

WHEREAS, these provisions are now part of Executive Order No. 181, as extended by Executive Order Nos. 188 and 189 (the "Modified Stay at Home Order"); and

WHEREAS, over recent days in North Carolina, due to the measures taken to-date by the undersigned and due to the resilience and persistence of all North Carolinians, there have been modest improvements in some of the state's key COVID-19 metrics, relative to recent weeks; and

WHEREAS, specifically, as of the date of this Executive Order, the state is experiencing a sustained leveling of COVID-19 daily diagnoses, and a sustained slight decline in the percent of total COVID-19 tests that are positives and the number of COVID-19-associated hospitalizations relative to its peak a few weeks earlier; and

WHEREAS, despite these modest and recent improvements to certain of the state's key COVID-19 metrics relative to recent weeks, COVID-19 remains a serious threat to North Carolina communities, as evidenced by the fact that between January 3, 2021 and January 16, 2021, ninety-nine of North Carolina's one hundred counties were experiencing "substantial (orange)" or "critical (red)" COVID-19 community spread, according to the County Alert System developed by the North Carolina Department of Health and Human Services ("NCDHHS"), which evaluates a county's COVID-19 case counts, percent positives, and hospital capacity; and

WHEREAS, despite the modest and recent improvements to certain of the state's key COVID-19 metrics relative to recent weeks, the number of daily COVID-19 cases, the percent of total COVID-19 tests that are positive, the number of COVID-19 associated hospitalizations, and the number of daily deaths attributable to COVID-19 remain at troublingly elevated levels; and

WHEREAS, while the recent changes to the above metrics may provide cause for optimism in the ongoing battle against the virus, the impacts of a new variant of COVID-19, recently detected in North Carolina, remain yet unseen; and

WHEREAS, COVID-19 continues to extract an unprecedented toll on human life in North Carolina; and

WHEREAS, more than seven hundred thirty-three thousand (733,000) people in North Carolina have had COVID-19, and more than eight thousand nine hundred (8,900) people in North Carolina have died from the disease; and

WHEREAS, in light of the continuing dangers posed by COVID-19, it remains necessary to continue the measures of the residential evictions moratorium to protect the lives of North Carolinians, and to avoid further strain on the state's health care system capacity and other health care resources across the state; and

Residential Eviction Protection in North Carolina; the Centers for Disease Control and Prevention Order; and Executive Order No. 171

WHEREAS, in addition to its public health consequences, the economic effects of the COVID-19 pandemic continue to broadly impact residential tenants across the country and in the state of North Carolina, many of whom have been unable to timely or fully make their rent payments, thereby facing the risk of eviction; and

WHEREAS, residential evictions remove people from their homes, where they are safest during the COVID-19 pandemic, which therefore increases the risk that such people will contract and spread COVID-19; and

WHEREAS, many residential evictions leave people homeless, where they are at heightened risk of contracting and spreading COVID-19 either through unsheltered living situations or through relocation to homeless shelters or other congregate living situations, where they face enhanced risk of contracting COVID-19; and

WHEREAS, in recognition of the public health threat posed by residential evictions during the pandemic, the Centers for Disease Control and Prevention issued an order, pursuant to 42

U.S.C. § 264 of the Public Health Act and 42 C.F.R. § 70.2, and titled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," temporarily halting certain residential evictions nationwide, beginning on September 4, 2020 (the "CDC Order"); and

WHEREAS, on December 27, 2020, the President signed the Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020), which extends the CDC Order through January 31, 2021; and

WHEREAS, at the request of the President, on January 20, 2021 the CDC issued a media statement from Director Rochelle Walensky, announcing that the CDC would extend its order until at least March 31, 2021; and

WHEREAS, to reaffirm and clarify the protections established by the CDC Order and to ensure accurate and consistent application of the CDC Order across the state, the undersigned issued Executive Order No. 171 to further protect North Carolinians at risk of eviction, from October 30, 2020 through the CDC Order's original termination date of December 31, 2020; and

WHEREAS, the undersigned, with the concurrence of the Council of State, issued Executive Order No. 184, which extended Executive Order No. 171 through January 31, 2021; and

WHEREAS, the CDC Order and Executive Order No. 171 do not block evictions of residential tenants for reasons other than nonpayment of rent, interest, late fees, or penalties; and

WHEREAS, the CDC Order and Executive Order No. 171 do not relieve any residential tenant from the obligation to pay rent, make housing payments, or comply with any other obligation that the tenant may have under a tenancy, lease or contract, and these orders do not protect tenants from eviction for reasons of criminal activity, threatening the health or safety of other tenants, or violating building codes or other ordinances; and

WHEREAS, to ensure the effective execution of the CDC Order, Executive Order No. 171 requires, among other measures, that a landlord provide his or her tenant with a copy of the declaration form required under the CDC Order (the "Declaration") prior to commencing an eviction action and provide the court with a copy of that Declaration; and

WHEREAS, Executive Order No. 171 provides for the modification of residential leases to effectuate certain procedures in the event a tenant's Declaration is filed with the court, and in the event the landlord decides to contest that Declaration; and

WHEREAS, Executive Order No. 171 also extends certain protections to individuals applying for assistance through the statewide Housing Opportunities and Prevention of Evictions Program ("HOPE Program") who have met the eligibility criteria for assistance under that program but who have not yet received protection from eviction by way of the final stage of that program; and

Need to Extend Executive Order No. 171

WHEREAS, according to the United States Census Bureau's Household Pulse Survey ("Pulse Survey") released on January 6, 2021, from data collected December 9, 2020 through December 21, 2020, nearly 89.7 million adults reported that their household found it somewhat difficult or very difficult to cover usual expenses, including rent or mortgage, food, car payments, medical expenses, or student loans; and

WHEREAS, data from the Pulse Survey shows that an estimated 10.1 million adult renters reported that they were not caught up on rent; and

WHEREAS, according to the Center on Budget and Policy Priorities' analysis of the Pulse Survey, the hardship is particularly more taxing on families with children, in that 45 percent of adults with children reported difficulties covering usual household expenses and 26 percent of adults with children reported that they are not caught up on last month's rent; and

WHEREAS, many North Carolina households are experiencing the economic hardships felt nationwide; and

WHEREAS, for example, since the HOPE program became effective in North Carolina, over 41,000 individuals have applied, and of those, 34,300 individuals have received an award through the program, underscoring the significant need for rental assistance and eviction protection across the state during the pandemic; and

WHEREAS, studies indicate that the spread of COVID-19 rises as a result of residential evictions, which cause people to have to leave their homes and have more contact with others; and

WHEREAS, according to the Pulse Survey data, collected from December 9, 2020 through December 21, 2020, in North Carolina an estimated 277,388 adults in rental housing reported that they are not caught up on rent; and

WHEREAS, according to the Pulse Survey data, collected from December 9, 2020 through December 21, 2020, in North Carolina an estimated 2.7 million adults reported difficulty in covering usual household expenses; and

WHEREAS, continuing eviction protections is necessary to prevent additional COVID-19 cases and deaths; and

WHEREAS, the undersigned's administration recognizes that eviction moratoria are not only effective public health measures to control the spread of COVID-19, but that they can also have significant impacts on the economic and socioeconomic realities of many North Carolinians; and

WHEREAS, in light of the extension of the CDC Order nationwide, the troubling COVID-19 metrics across the state, and the need for North Carolinians to have a safe and stable place to live during the duration of the Modified Stay at Home Order, the undersigned finds it reasonable and necessary to continue the protections of Executive Order No. 171 under this Executive Order to protect the neediest North Carolinians from housing loss and housing insecurity; and

WHEREAS, the restrictions on evictions extended in this Executive Order shall extend only during the term set out in Executive Order No. 171, as extended by this Executive Order; and

Expediting Processing of Unemployment Insurance Claims

WHEREAS, on March 17, 2020, with the concurrence of the Council of State, the undersigned issued Executive Order No. 118, which broadened unemployment insurance benefits availability in response to COVID-19; and

WHEREAS, since that date, the Division of Employment Security ("Division") has received over 3,268,000 claims; and

WHEREAS, to timely process this unprecedented volume of claims, the Division must explore all measures available to expedite the claims process and get relief to North Carolinians; and

WHEREAS, N.C. Gen. Stat. § 96-15(a1) provides a mechanism, in the case of partial unemployment, for employers to submit claims on behalf of their employees through the use of an automated process (the "attached claim" process); and

WHEREAS, the attached claim process is ordinarily available only for six (6) weeks of benefits, is ordinarily available for use with respect to an employee only once during a benefit year, is ordinarily available only for an employer which has a positive credit balance in its account, and ordinarily is available only for an employer which immediately pays the Division of Employment Security an amount equal to the full cost of unemployment benefits payable to the employee at the time the claim is filed; and

WHEREAS, to coordinate with the additional unemployment benefits authorized by the federal government during the emergency, the undersigned determined that expanding availability of the attached claim process would allow more employers to submit claims for their employees, leading to faster automated processing and unemployment insurance funds arriving sooner in the hands of North Carolinians in need; and

WHEREAS, on April 9, 2020, the undersigned issued Executive Order No. 131, which provided in part that if the North Carolina Department of Commerce determined that it would significantly speed the processing of unemployment insurance claims and ease the administrative burden on the Division of Employment Security, said Division could delay the enforcement of the requirements of N.C. Gen. Stat. § 96-15(a1) to the extent necessary to expedite the distribution of unemployment insurance benefits; and

WHEREAS, on May 2, 2020, in Session Law 2020-3, the North Carolina General Assembly enacted N.C. Gen. Stat. § 96-14.15, which was consistent with the attached claim process changes found in Executive Order No. 131; and

WHEREAS, Session Law 2020-3 provided that N.C. Gen. Stat. § 96-14.15 would automatically expire at the end of the State of Emergency or on December 31, 2020, whichever came first; and

WHEREAS, on December 27, 2020, the President signed H.R. 133, providing for the continuation of additional unemployment insurance benefits into the first quarter of 2021; and

WHEREAS, on December 30, 2020, the undersigned, with concurrence of the Council of State, issued Executive Order No. 184, which authorized the North Carolina Department of Commerce to delay enforcement of the attached claim process if necessary to assist in processing unemployment insurance claims through January 31, 2021; and

WHEREAS, in light of the additional unemployment insurance benefits now authorized by the President for 2021, and in light of the continued and unprecedented number of unemployment insurance claims, the advantages gained by allowing employers to file attached claims for their employees without the restrictions imposed by N.C. Gen. Stat. § 96-15(a1) continue to be meaningful and provide for distribution in a more timely manner; and

WHEREAS, the undersigned has therefore determined that to cooperate and coordinate with the President's extension of benefits into 2021, to allow the General Assembly time to consider whether to extend N.C. Gen. Stat. § 96-14.15 into 2021, and in order to continue expediting the processing of unemployment insurance claims, the measures in Executive Order No. 131 on expediting unemployment insurance claims" should be reissued for unemployment insurance claims filed for periods beginning on or after December 31, 2020; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4), the undersigned is authorized to "cooperate and coordinate" with the President of the United States and the heads of department and other agencies of the federal government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of political subdivisions, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article"; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(3), the undersigned may take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(2), the undersigned, with the concurrence of the Council of State, may establish a system of economic controls over all resources, materials, and services, including shelter and rents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) further authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State on those provisions of this Executive Order requiring concurrence consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority set forth above and in Executive Order Nos. 171 and 184, **IT IS ORDERED:**

Section 1. Extension of Executive Order No. 171 - Assisting North Carolinians at Risk of Eviction.

Executive Order No. 171, as amended by Executive Order No. 184, shall remain in effect through and including March 31, 2021. The effective date provision of Executive Order No. 171 is amended to continue in effect through the above-listed date.

Section 2. Extension of Executive Order No. 184 - Extending Assistance for North Carolinians at Risk of Eviction and Reinstating Processes to Expedite Payment of Unemployment Insurance Claims.

Executive Order No. 184 shall remain in effect through and including March 31, 2021. The effective date provisions of Executive Order No. 184 are amended to continue in effect through the above-listed date. For avoidance of doubt, Section 2(D) of Executive Order No. 184 shall be amended and restated as follows:

"This Section of this Executive Order is effective December 31, 2020, and shall remain in effect through and including March 31, 2021, unless repealed, replaced, or rescinded by another Executive Order, or unless a law is passed that codifies this Executive Order. An Executive Order rescinding the Declaration of the State of Emergency shall automatically rescind this Section."

Section 3. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 4. Savings Clause and Interpretation.

A. If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

B. The protections stated in this Executive Order are independent from the requirements of the CDC Order and shall be in force regardless of any repeal, recission, amendment, or administrative interpretation of the CDC Order. If any court without jurisdiction over the State of North Carolina enjoins or otherwise blocks or modifies the CDC Order, in whole or in part, this Executive Order shall continue to apply, and this Executive Order shall continue to provide the protections listed in the CDC Order.

Section 5. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 6. Enforcement.

A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 7. Effective Date.

Unless otherwise expressly stated herein or in another Executive Order, this Executive Order shall be in effect at the beginning of the day on January 31, 2021 and remain in effect through and including March 31, 2021, unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 27th day of January in the year of our Lord two thousand and twenty-one.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State