

Virginia Adopts Workplace Safety and Health Standards for COVID-19

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Virginia has become the first state in the nation to implement workplace safety and health standards for COVID-19. On July 15, 2020, the state Safety and Health Codes Board adopted [§ 16VAC25-220](#), an “Emergency Temporary Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19” (the “Temporary Standard”). The Temporary Standard is designed to supplement and enhance existing Virginia Occupational Safety and Health (“VOSH”) laws, rules, and regulations that may apply to the prevention and control of COVID-19 in the workplace. Virginia initiated these standards because the Occupational Safety and Health Administration (“OSHA”), the federal agency responsible for workplace safety, has thus far refused to make its own extensive recommendations mandatory. Not surprisingly, the Virginia standards borrow heavily from existing OSHA guidance in most areas.

Under the Temporary Standard, Virginia employers are required to assess their workplaces for hazards that could expose employees to COVID-19; categorize their job functions into those that constitute very high, high, medium, or lower risk of exposure; and create policies and procedures that (i) address employees who have symptoms of or test positive for COVID-19, and (ii) provide for physical distancing in the workplace and cleaning and sanitizing of the workplace. Many employers also will be required to create an infectious disease preparedness and response plan, and train their employees on safety procedures.

The Temporary Standard went into effect on July 27, 2020, and will expire on the earlier of six months from that date, upon expiration of Virginia’s State of Emergency, or when superseded by a permanent standard, unless repealed by the Safety and Health Codes Board. Employers must meet the Temporary Standard’s training requirements by August 26, 2020, and have required infectious disease preparedness and response plans in place by September 25, 2020.

Mandatory Requirements for All Employers

Physical Workspace

Employers must take precautions to protect employees within the physical workplace, including taking steps to ensure physical distancing (at least six feet) between employees. Employers should develop policies and procedures to decrease work density, use signs

and announcements to promote physical distancing, and follow Governor Northam's executive orders on occupancy limits.

Employers should close or, if that is not possible, control access to, common areas, breakrooms, lunchrooms, and similar spaces. They should post signs limiting occupancy of these spaces, enforce occupancy limits, and regularly clean and disinfect common surfaces.

Employers must continue to comply with the VOSH sanitation standards applicable to their industry. In addition, employers must immediately clean and disinfect surfaces in locations where employees interact with customers, consultants, members of the public, or other third parties. At a minimum, common areas should be cleaned and disinfected at the end of each shift, and employees should have ready access to cleaners and disinfectants, as well as handwashing stations or hand sanitizer.

Employees with COVID-19

All employers must develop policies and procedures to allow employees to report symptoms of COVID-19. Employees known or suspected to be infected with COVID-19 must be barred from the workplace.

What happens if an employee tests positive for COVID-19? While an employer does not have to conduct contact tracing, it does have notification requirements. The employer must notify: (a) within 24 hours of discovery of possible exposure, employees who may have been exposed; (b) other employers whose employees were present at the worksite within 14 days since the positive test; (c) the building or facility owner; (d) within 24 hours of the identification of the positive case, the Virginia Department of Health; and (e) the Virginia Department of Labor and Industry ("VDOLI"), if three or more employees test positive within a 14-day period. Notifications to other employees, other employers, and building or facility owners must be done in a way that maintains confidentiality of the identity of the person known to be infected with COVID-19.

Employers must have policies and procedures to permit the return to work of employees known or suspected to be infected with COVID-19. In order for such a person to return to work, employers must adopt a symptom-based or test-based strategy to return to work employees with symptoms of COVID-19, and a time-based or test-based strategy for asymptomatic employees. Under the symptom-based strategy, an employee may return to work if at least three days (72 hours) have passed since recovery, plus at least 10 days have passed since the symptoms first appeared. The test-based strategy requires the employee to have at least two consecutive negative diagnostic tests, taken at least 24 hours apart, as well as no fever and improvement in respiratory symptoms. Using a time-based strategy, at least 10 days must pass since an employee's first positive COVID-19 test before returning to work.

Workplace Assessment and Job Categorization

Employers must conduct a workplace assessment of the hazards that potentially expose employees to COVID-19. As part of that assessment, employers must categorize the

positions within their company as very high, high, medium, or lower risk for contraction of COVID-19. Categorization will depend on the specifics of each individual job, taking into account:

- the duties and tasks required,
- the work environment,
- the number of people typically present,
- the distance between employees,
- the duration and frequency of exposure to other employees,
- the types of hazards encountered,
- the amount of contact with contaminated surfaces,
- whether the job requires use of shared work vehicles or public transportation, and
- similar information.

Very High or High Risk Jobs

Employers that include jobs in the very high or high risk categories must adopt a series of engineering, administrative, and work practice controls to minimize the risk of COVID-19. Engineering controls include utilizing appropriate air-handling systems and installing physical barriers to separate workers wherever possible. Health care employers must take particular steps, such as placing hospitalized patients with COVID-19 in airborne infection isolation rooms and using such rooms when performing aerosol-generating procedures on patients with known or suspected COVID-19. Health care employers must also follow Biosafety Level 3 procedures when handling specimens from patients with known or suspected COVID-19. Finally, autopsy suites or similar isolation facilities must be used to perform post-mortem procedures on persons with known or suspected COVID-19.

Under the Temporary Standard, employers must prescreen or survey every employee for COVID-19 symptoms prior to the start of each work shift, limit non-employee access where possible, and enforce occupancy limits to building premises. Employers must offer enhanced medical monitoring of employees during COVID-19 outbreaks and provide psychological and behavioral support to address employee stress.

Wherever feasible, employers should implement flexible worksites (for example, by allowing teleworking), adopt flexible work schedules (such as staggered shifts or alternating weeks in the office), increase physical distancing between employees, implement flexible meeting and travel options, deliver services remotely, and deliver products through curbside pickup.

With respect to personal protective equipment (“PPE”), employers must assess the workplace to determine whether and what PPE is necessary, provide appropriate PPE to their employees and customers, communicate their selection decision to employees, and provide PPE that properly fits each employee. Upon completing this hazard assessment, employers must provide a written certification identifying the workplace evaluated, the person certifying that the evaluation has been performed, and the date of the hazard assessment.

In health care settings, employers must provide hand sanitizer. When in contact with or inside six feet of patients or other persons known to be or suspected of being infected with COVID-19, employees should be provided with and wear gloves, a gown, a face shield or goggles, and a respirator.

Medium Risk Jobs

The requirements for medium risk jobs are not as onerous as those for very high or high risk jobs, but employers must still ensure appropriate air-handling systems are in place. Where feasible, prescreen or survey every employee for COVID-19 symptoms before each shift, provide face coverings to non-employees suspected of having COVID-19, implement flexible worksites and work schedules, increase physical distancing to at least six feet (and require employees to wear face coverings where this is not possible or if they are in customer-facing positions), install physical barriers, implement flexible meeting and travel options, deliver services remotely, and deliver products through curbside pickup.

These employers must also conduct a hazard assessment, select appropriate PPE for their workforce, and verify the hazard assessment through a written certification.

Infectious Disease Preparedness and Response Plan

Employers with hazards or job tasks classified as (a) very high and high, or (b) medium with at least eleven employees, must also have an infectious disease preparedness and response plan. At a minimum, the plan must:

1. designate and identify the person responsible for administering the plan;
2. involve employees in its development and implementation;
3. consider and address the level of COVID-19 in the community and workplace and the level of risk associated with jobs at the workplace;
4. create contingency plans for situations that may arise due to outbreaks;
5. identify infection prevention practices to be implemented; and
6. identify any guidelines from the Centers for Disease Control and Prevention (“CDC”) that are applicable.

Mandatory Training

If an employer has any employees in very high, high, and/or medium risk categories, it must train all of its employees on the risks of COVID-19 and the employer’s plans to address such situations. Employers with employees in lower risk positions must provide such information to employees upon exposure to hazards.

The mandatory training must, at minimum, address and/or identify:

1. the requirements of the Temporary Standard;
2. the mandatory and non-mandatory guidelines from CDC and VOSH that the employer intends to comply with in lieu of the Temporary Standard;
3. the characteristics and methods of transmission of COVID-19;

4. the signs and symptoms of COVID-19;
5. risk factors of suffering severe COVID-19 illness with underlying health conditions;
6. awareness of the possibility of asymptomatic and pre-symptomatic spread of COVID-19;
7. safe and healthy work practices, such as appropriate use of PPE;
8. the prohibition of discrimination against employees, as discussed below; and
9. the employer's infectious disease preparedness and response plan.

Employers must certify compliance with this training mandate through written certification.

Prohibition Against Discrimination

The Temporary Standard prohibits discrimination against any employee because the employee (i) exercises his or her rights under this rule, (ii) provides and wears his or her own PPE (to the extent the employer does not provide PPE), or (iii) raises a reasonable concern about infection control at the workplace.

What Employers Should Do Now

Since Governor Northam signed Executive Orders [61](#), [62](#), [65](#), and [67](#), easing temporary restrictions due to COVID-19, employers in all industries have been working diligently to determine how to reopen and/or expand operations safely. The Temporary Standard provides employers with requirements for doing so.

To comply with the Temporary Standard, Virginia employers should:

1. conduct a workplace assessment to determine the hazards present with respect to COVID-19, what physical barriers can and should be installed, and what PPE is necessary for employees and third parties entering the workplace;
2. categorize workers into very high, high, medium, and lower risk positions to determine which health and safety standards are applicable to the workplace;
3. complete a written certification verifying that a hazard assessment has been completed;
4. create and publish policies and procedures concerning (i) the reporting of COVID-19 symptoms, (ii) the exclusion of employees with known or suspected COVID-19 from the workplace, and (iii) the specific methods for returning infected or exposed employees to work at the proper time;
5. for those employers with employees in the very high, high, or medium risk categories, create an infectious disease preparedness and response plan; and
6. design a training plan and train employees on COVID-19 preparedness and response.

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