

VIRGINIA'S DEPARTMENT OF LABOR AND INDUSTRY ENACTS COVID-RELATED WORKPLACE SAFETY STANDARDS

REQUIREMENTS FOR EMPLOYERS AND WHAT EMPLOYERS SHOULD DO NOW UNDER § 16VAC25-220

On July 15, 2020, Virginia became the first state in the country to adopt an Emergency Standard for COVID-Related Workplace Safety, which applies to all employers in the Commonwealth.

The regulations require employers to analyze their worksites and the tasks that each employee performs, in order to effectively categorize the COVID-related risks inherent in those workplaces and/or tasks. Once the categorization of risk is made, employers will then be required to abide by various requirements for each level of risk.

These New Standards are In Effect. Many of the mandates in this emergency standard mirror existing guidance from the federal OSHA and CDC. However, **failing to follow the Virginia standard where it is more expansive than CDC guidelines may result in an enforcement action and possible penalties for noncompliance.**

CATEGORIZATION OF RISKS

In the new standard, DOLI has asked that employers assess their risk level as "very high", "high", "medium" or "lower". DOLI acknowledges that, within a workplace, there may be various risk categories based on the hazards and job tasks in place.

Analyzing these job risks will include looking at the following factors:

- Tasks being undertaken;
- The known or suspected presence of COVID-19 or of a person with COVID-19;
- The potential exposure to the airborne transmission (including droplets or airborne droplet nuclei) of COVID-19;
- The number of employees in relation to the work area;
- The working distance between employees;
- The duration and frequency of employee exposure through close contact with employees and others;
- Whether employees are regularly engaged in sharing transportation; and,
- The Exposure Risk Level(s) of a workplace will dictate what steps an employer must take to protect its employees.

THIS ARTICLE SUMMARIZES THE FOLLOWING:

- Categorization of Risks
- Definition of Risk Categories
- Requirements for All Employers, Regardless of Risk Category
- Additional Requirements for Employers with Higher Risk Categories

DEFINITION OF RISK CATEGORIES

- **"Very high"** exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the COVID virus (e.g., laboratory samples) or persons known or suspected to be infected with the COVID virus, including, but not limited to, during specific medical, postmortem, or laboratory procedures.
- **"High"** exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of COVID, or persons known or suspected to be infected with the COVID virus.
- **"Medium"** exposure risk hazards or job tasks are those in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with COVID, but who are not known or suspected to be infected with the COVID virus.
- **"Lower"** exposure risk hazards or job tasks are those that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with COVID. Employees in this category have minimal contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal contact through the implementation of safety controls,



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REQUIREMENTS FOR ALL EMPLOYERS, REGARDLESS OF RISK CATEGORY

In all circumstances, no matter the Exposure Risk Level, Virginia employers will have to:

1. Assess the workplace for hazards and job tasks that potentially can expose employees to COVID-19. Employers shall classify each job task performed by employees into one of the Exposure Risk Levels;
2. Inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19;
3. Develop and implement policies and procedures for employees to report when they experience symptoms consistent with COVID-19;
4. Make sure that employees and others known or suspected to have COVID-19 are not allowed to work at a work site (Telework is still permitted);
5. Ensure that sick leave policies, including the Families First Coronavirus Response Act, are in place and that employees are aware of these policies;
6. Work with subcontractors or temporary placement employers to ensure that any of their workers suspected or confirmed to have COVID-19 must leave work and must stay at home until they are cleared to return to work;
7. To the extent permitted by law, including HIPAA, employers must establish a system to receive positive tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected of having COVID-19) who worked at the place of employment within the 14 days prior to the positive test and notifying, within 24 hours of discovery of the positive test, its employees and others who were present on the worksite and the building/facility owner when the employer has a reasonable belief that such employees or others may have been exposed;
8. Within 24 hours, the employer must notify the Virginia Department of Health of a positive test; and; if three or more employees test positive within a 14-day period, the employer must notify the Virginia Department of Labor and Industry;
9. Ensure that employees have access to their own COVID-19-related exposure and medical records in accordance with industry-specific standards;
10. Develop and implement return to work policies and procedures for employees known or suspected to have COVID-19;
11. Develop and implement return to work policies and procedures for employees known to be infected with COVID-19 and who are asymptomatic. Employers may not require employees to pay for the cost of COVID-19 testing for return to work determinations;
12. Ensure that employees observe social distancing while on the job and during paid breaks on the employer's property, including policies and procedures that use verbal announcements, signage and visual cues to promote social distancing, and decrease worksite density (an employer's compliance with occupancy limits in an executive order or public health emergency order will constitute compliance with these requirements);
13. Ensure that access to common areas, break areas, or lunchrooms is closed or controlled;
14. If two or more employees are in a vehicle for work purposes, or if employees cannot socially distance in the workplace, ensure that all respiratory and personal protective equipment (PPE) standards applicable to the industry are adhered to; and,
15. Adhere to the Virginia Occupational Safety and Health standards for cleaning and disinfecting the workplace based on applicable industry standards.

ADDITIONAL REQUIREMENTS FOR EMPLOYERS WITH HIGHER RISK CATEGORIES

In addition to the general requirements summarized above, employers with hazards or job tasks that are classified as "very high," "high," or "medium" **AND 11 or more employees** may face additional requirements, including:

- Appropriate ventilation and air-handling system;
- Installing physical barriers;
- Limiting non-employee access;
- Offer enhanced medical monitoring of employees;
- Provide employees with job-specific training on preventing the transmission of COVID;
- Providing and requiring face coverings;
- Providing and requiring other PPE identified during the employer's hazard assessment (such as respirators); and,
- **Creating a written infectious disease preparedness and response plan; and,**
- **Deliver COVID-19 employee training.**