

VIRGINIA'S EMERGENCY
TEMPORARY STANDARD:

*WHAT EMPLOYERS NEED TO KNOW
ABOUT COVID-19 PROCEDURES
IN THE WORKPLACE*

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- > On July 15, 2020, the Virginia Department of Labor & Industry (VDOLI) became the first state in the country to adopt an **Emergency Standard** governing employers' obligations to employees during the COVID-19 pandemic.
- > On July 27, 2020, the Emergency Standard took effect in Virginia.
- > Virginia employers will not have to do training with their employees on infectious disease preparedness and response plans until 60 days after the Emergency Standard is adopted (end of September 2020).
- > Virginia employers will need to comply with the Emergency Standard and, in some cases, revise policies and procedures for dealing with their workforces as soon as possible or potentially face VDOLI enforcement actions.

EMERGENCY STANDARD'S KEY POINTS:



1. “Designed to establish requirements for employers to control, prevent, and mitigate the spread of [COVID-19] to and among employees and employers.” *16 VAC 25-220-10(A)*.
2. Attempts to reach these goals by having employers classify the risk in the workplace for catching or spreading COVID-19 (Exposure Risk Level).
3. Four Exposure Risk Levels:
 - Very High
 - High
 - Medium
 - Lower

EMERGENCY STANDARD'S KEY POINTS:



- > There are various risk categories based on the hazards and job tasks in place, including whether the work is inside or outside.
- > These job risks and hazards include:
 - job tasks being undertaken;
 - known or suspected presence of COVID-19 or of a person with COVID-19
 - potential exposure to the airborne transmission (including droplets or airborne droplet nuclei) of COVID-19;
 - number of employees in relation to the work area, the working distance between employees; and
 - duration and frequency of employee exposure through close contact with other employees and persons and whether employees are often engaged in employer-sponsored sharing of transportation.
- > The Exposure Risk Level(s) of a workplace will dictate what steps an employer must take to protect its employees.

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

- 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;
- Inform employees of the methods to self-monitor for signs and symptoms of COVID-19 and encourage them to do so;
- Serological testing may not be used by employers in making decisions as to whether employees who have tested positive for COVID-19 or are suspected to be infected are allowed to return to work;
- Develop and implement policies and procedures for employees to report when they experience symptoms consistent with COVID-19, and no alternative diagnosis has been made. In such circumstances, the employer must designate the employee as "suspected to be infected with SARS-CoV-2 virus"

> **In all circumstances, no matter the Exposure Risk Level, Virginia employers will have to: (*cont.*)**

- Make sure that employees and others known or suspected to have COVID-19 are not allowed to report or remain at work or on a work site (including a customer site) until they are cleared to return to work or the job site in person;
- Ensure that sick leave policies, including the Families First Coronavirus Response Act, are in place and that employees are aware of these policies;
- Instruct all subcontractors and companies that provide the employer with contract or temporary labor 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 and that the contracting companies must adopt non-punitive sick leave policies;

> **In all circumstances, no matter the Exposure Risk Level, Virginia employers will have to: (*cont.*)**

- **Reporting Obligations.** 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;
 - Also 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.

> **In all circumstances, no matter the Exposure Risk Level, Virginia employers will have to: (*cont.*)**

- Ensure that employees have access to their own COVID-19-related exposure and medical records in accordance with industry-specific standards;
- **Return to Work Requirements** - Develop and implement return to work policies and procedures for employees known or suspected to have COVID-19 using either a symptom-based or test-based strategy based on local healthcare and testing circumstances:
 - In the circumstance of a symptom-based strategy, a known or suspected employee must be excluded from work until at least three days have passed from recovery, which is defined as a resolution of a fever without the use of fever-reducing medications and the improvement in respiratory symptoms, and at least 10 days have passed since the symptoms first appeared;

> **In all circumstances, no matter the Exposure Risk Level, Virginia employers will have to: (*cont.*)**

- In the circumstance of a test-based strategy, a known or suspected employee must be excluded from work until resolution of a fever without the use of fever-reducing medications, the improvement in respiratory symptoms; and negative results of an FDA Emergency Use COVID-19 test from two respiratory specimens taken more than 24 hours apart;
- If a known or suspected COVID-19 employee refuses to be tested, then the employer will comply with the Emergency Regulation by using the symptom-based strategy before permitting an employee to return to work; and
- Employers may not require employees to pay for the cost of COVID-19 testing for return to work determinations.

> **In all circumstances, no matter the Exposure Risk Level, Virginia employers will have to: (*cont.*)**

- Develop and implement return to work policies and procedures for employees known to be infected with COVID-19 and who are asymptomatic using either a symptom-based or test-based strategy based on local healthcare and testing circumstances:
 - A time-based strategy will exclude an employee from returning to work until at least 10 days have passed since the date of the employee's first positive test, assuming that the employee has not developed symptoms;
 - A test-based strategy excludes the employee from returning to work until negative results of an FDA Emergency Use COVID-19 test from two respiratory specimens taken more than 24 hours apart;
 - If a known or suspected COVID-19 employee refuses to be tested, then the employer will comply with the Emergency Regulation by using the symptom-based strategy before permitting an employee to return to work; and
 - Employers may not require employees to pay for the cost of COVID-19 testing for return to work determinations.

> **In all circumstances, no matter the Exposure Risk Level, Virginia employers will have to: (*cont.*)**

- 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, limit access to certain areas and observe occupancy limits set forth in any Executive Orders;
- Ensure that access to common areas, break areas, or lunchrooms is closed or controlled;
- Ensure compliance with the mandatory requirements of any applicable executive orders or order of public health emergency;
- Ensure that, if two or more employees are in a vehicle for work purposes, all respiratory and personal protective equipment (PPE) standards applicable to the industry are adhered to;

> In all circumstances, no matter the Exposure Risk Level, Virginia employers will have to: (*cont.*)

- If employees cannot socially distance in the workplace, ensure that respiratory and PPE standards for the industry are adhered to;
- Requests by an employee not to wear PPE must be handled in accordance with applicable federal and state standards; and
- Employers must adhere to the Virginia Occupational Safety and Health standards for cleaning and disinfecting the workplace based on applicable industry standards.

> In addition to rules that all employers must follow, there are additional requirements that employers must follow for each of the **Exposure Risk Levels**.

– Very High Exposure Risk Levels:

- Apply to those job tasks or places of employment with high potential for employee exposure to known or suspected sources of COVID-19 or exposure to persons known or suspected to be infected with COVID-19. Jobs in this category include but are not limited to specific medical, postmortem, and laboratory procedures.

– High Exposure Risk Levels:

- Apply to those job tasks or places of employment with high potential for COVID-19 exposure inside of six feet of known or suspected sources of COVID-19 or exposure to persons known or suspected to be infected with COVID-19. These jobs include many healthcare jobs, medical transport services, first responders and mortuary services.

- > With the Very High and High Exposure Risk Levels, in addition to the standard employer obligations set forth above, such employers must:
 - Engage in engineering controls such as appropriate air handling systems;
 - In healthcare environments, ensure that hospitalized patients with known or suspected COVID-19 are placed in an airborne infection isolation room (AIIR);
 - Use AIIR rooms when available for performing aerosol-generating procedures for patients with or suspected of having COVID-19;
 - Use of autopsy suites for any postmortem activities;
 - Use special precautions associated with Biosafety Level 3, as defined by the U.S. Department of Health and Human Services, when handling specimens from persons known or suspected to be infected with SARS-CoV-2 virus;
 - Install to the extent possible, physical barriers to stop the spread of COVID-19;



> Adopt administrative and work practice controls including:

- Work shift prescreening of employees;
- In a healthcare facility, following guidelines for identifying and isolating infected persons;
- Limiting non-employee access to the workplace and adhering to occupancy limits in any applicable executive order or order of public health;
- Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at a healthcare facility and the use of disposable face coverings;
- Offer enhanced medical monitoring of employees during COVID-19 outbreaks;
- Provide employees with job-specific education and training on preventing the transmission of COVID-19;
- Ensuring psychological and behavioral support to address employee stress at no cost to the employee;

EXPOSURE RISK LEVELS



- Providing appropriate hand sanitizers to employees in accordance with specific industry standards;
 - Providing face coverings to non-employees suspected of having COVID-19; and
 - Posting appropriate signage and social distancing guidelines and other flexible work arrangements.
- > In accordance with specific industry standards and based on the employer's assessment of workplace risks, provide employees with PPE and communicate with the employee about how to use the PPE;
- > Develop and implement a written Infectious Disease Preparedness and Response Plan, including the Emergency Regulation's requirements for inclusion in the plan, and designating the person responsible for administering the plan;

EXPOSURE RISK LEVELS

- > Implementation of a respiratory protection plan for employees required to use a respirator;
- > All employees characterized as very high or high risk must be provided with and wear gloves, a gown, a face shield or goggles and a respirator when in contact with or inside six feet of patients or other persons known or suspected of being infected with SARS-CoV-2; and
- > Provide employee training to all employees on the requirements of the Emergency Regulation, the characteristics and methods of transmission of COVID-19, the symptoms of COVID-19, awareness that pre-symptomatic and asymptomatic individuals may spread COVID-19, the safety practices in place for the workplace, PPE, the Infectious Disease and Preparedness Plan, and the anti-discrimination provisions of the Emergency Regulation. Such training must begin 30 days after the adoption of Emergency Standard .



> Medium Exposure Risk Levels:

- Apply to those job tasks or places of employment that are not classified as Very High or High exposure risk and that require more than minimal occupational contact inside of six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but are not known or suspected to be infected with the SARS-CoV-2 virus.
- These types of employers include, but are not limited to:
 - Poultry, meat, and seafood processing
 - Agricultural and hand labor
 - Transportation services
 - Educational settings
 - Day care and after school settings
 - Bars and restaurants
 - Grocery
 - Drug/pharmacy
 - Convenience stores
 - Food banks
 - Manufacturing settings
 - Indoor and outdoor construction settings
 - Correctional and juvenile detention centers
 - Work performed in customer settings
 - Retail stores
 - Call centers
 - Package processing centers
 - Veterinary settings
 - Personal care businesses and gyms
 - Exercise facilities
 - Spas
 - Entertainment facilities



- > In addition to the standard employer obligations set forth above, such Medium Exposure Risk Level employers must:
 - Implement engineering controls that are in accordance with the manufacturer’s instructions if there are installed air-handling systems and with ANSI and ASHRAE standards;
- > Practice administrative and work practice controls such as, but not limited to:
 - Prior to the commencement of each work shift, prescreen and survey employees to ensure that each covered employee does not have signs or symptoms of COVID-19;
 - Provide face coverings for non-employees suspected of having COVID-19;
 - Implement flexible worksites and work hours;
 - Increase social distancing for employees and customers to six feet;
 - To the extent possible, install physical barriers where it will help mitigate the spread of COVID-19;

EXPOSURE RISK LEVELS



- Implement flexible meeting and travel options;
 - Deliver services remotely and deliver products through curbside or pick-up delivery; and
 - If employees cannot physically distance, require the use of face coverings and supply face coverings to those employees in customer facing jobs.
- > Assess the workplace to determine if COVID-19 hazards necessitate the use of PPE, involve employees and any union representatives in the selection of the PPE, select such PPE to be used, advise employees and any union representatives of the selected PPE, and have employees use such PPE;
- > Verify through a written certification that a workplace hazard assessment has been performed and the date the assessment was performed, and the certification must be identified as such; and

EXPOSURE RISK LEVELS

- > In those circumstances where the employer has 11 or more employees, develop and implement an Infectious Disease Plan that complies with the Emergency Regulation requirements set forth above in the Very High and High Exposure Risk Level section.

> Lower Exposure Risk Levels:

- Apply to those job tasks or places of employment that are not classified as Very High, High or Medium exposure risk and that do not require contact within six feet with persons known or suspected to be, or who may be, infected with SARS CoV-2, nor contact inside of six feet with other employees, other persons, or the general public. In addition, exposure to COVID-19 can be limited by the implementation of engineering, administrative and work practice controls such as:
 - Installation of floor to ceiling physical barriers;
 - Telecommuting;
 - Staggered work shifts;
 - Remote delivery services;
 - Mandatory physical distancing; and
 - Employee use of face coverings where close contact with coworkers, customers or other persons is required.

> **Emergency Standard Conclusion:**

1. Provides that to the extent that an employer actually complies with the mandatory and non-mandatory CDC guidelines to mitigate SARS CoV-2 virus and COVID-19 disease related hazards addressed by the emergency standard, the employer will be deemed to have complied with the Emergency Standard, as long as the CDC recommendation provides equivalent or greater protection than the Emergency Standard.
2. Contains anti-discrimination provisions that prohibit employers from discharging or discriminating against an employee because the employee has exercised rights under the Emergency Standard on behalf of himself or herself or other employees.
3. Employers cannot discharge or in any way discriminate against any employee who voluntarily provides and wears his or her own PPE.
4. Employers cannot discharge or otherwise discriminate against any employee who raises a reasonable concern about infection control related to COVID-19 with the employer, the employer's agent, other employees, a government agency, or who discloses such a reasonable concern to the public through print, online, social or any other media.

> **Emergency Standard Conclusion: (*cont.*)**

5. Emergency Standard must be acted on by all Virginia employers. Such employers should take steps now to comply.
6. Came into effect on July 27, 2020, and will remain in place for six months or until superseded by a permanent standard, whichever comes first.

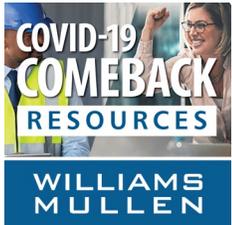


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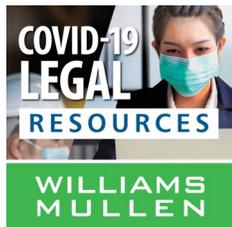
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