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Navigating Virginia's First-in-the-Nation COVID-19 Workplace Safety Regulations for Businesses

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Today's Speakers



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Objectives of today's discussion

Introduce Virginia's Emergency Temporary Standard for COVID-19

Highlight key requirements for Virginia businesses

Review enforcement and penalties

Share practical advice on compliance and an example compliance roadmap

Answer your questions

Context and Introduction

No mandatory nationwide COVID-19 workplace safety standard

- OSHA's guidance voluntary
- Federal, state, and local guidance confusing, sometimes conflicting

VA's approach: "Emergency Temporary Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19," §16VAC25-220

- Mandatory and enforceable standard, effective July 27
- Applies statewide to almost all private businesses
- Expires in 6 months, but permanent standard in consideration

What about other states?

- MA adopted a temporary standard on July 23
- OR soliciting public input on a proposed standard
- 19 other "state plan" states may follow (e.g., AZ, CA, MD, NC, SC)

Virginia's Requirements vary by "exposure risk level"

This presentation focuses on "medium-risk" operations

Risk level	Definition	Example industries / settings / jobs
Very high	"High potential" for employee exposure during specific procedures to known/suspected sources of the virus, or persons known/suspected to be infected	<ul style="list-style-type: none">• Medical, postmortem, and laboratory job tasks involving:<ul style="list-style-type: none">- Aerosol-generating procedures (e.g., intubation, bronchoscopies)- Specimen handling and collection (e.g., laboratory research)
High	"High potential" for employee exposure inside 6 feet of known/suspected sources of the virus, or persons known/suspected to be infected	<ul style="list-style-type: none">• Healthcare delivery and support services• First responder services• Medical transport services• Mortuary services
Medium	"More than minimal" occupational contact inside 6 feet with persons who may be infected , but are not known/suspected to be infected	<ul style="list-style-type: none">• Retail stores, grocery stores and pharmacies• Restaurants and bars• Personal care and grooming (e.g., gyms, salons, spas)• Sports and entertainment venues• Meat processing• Commercial passenger transportation• On-campus education, daycare, afterschool programs• Manufacturing• Indoor and outdoor construction• Office workers unable to physically distance for majority of interactions
Lower	"Minimal" occupational contact with other persons (note: face coverings alone not sufficient inside 6 feet)	<ul style="list-style-type: none">• Teleworkers• Office workers who can physically distance

Key requirements of Virginia's standard

Notification and reporting

Infectious Disease Preparedness and Response Plan (P&R Plan)

Employee training

Sanitation, disinfection, and air quality

Physical distancing

Return-to-work and sick leave policies

Anti-discrimination policies

Notification and reporting

Key requirements

Reporting systems for:

- Employees experiencing symptoms
- Employees, subcontractors, and temps testing positive, who were at work within last 14 days

Notification (within 24 hrs) of:

- Your employees and those of other employers, of potential exposure
- VA Dept. of Health, of every positive case
- VA Dept. of Labor and Industry, of 3+ positive cases within 14 days

In practice

Train employees to self-assess and screen for symptoms

Establish protocols for employees to certify health status at home and at entry (e.g., daily health survey; no-contact thermometer screening; heat imaging cameras)

Develop HIPAA-compliant tracking system for suspected and positive cases

Work with building owners and co-tenants to mutually report suspected and positive cases

Infectious Disease Preparedness and Response (P&R) Plan

Key requirements

Develop a written P&R Plan (by September 25) to “consider and address”:

- Exposure risk level of each job task **and** employees’ individual risk factors
- Basic infection prevention measures to be implemented
- Prompt ID and isolation of persons known or suspected to be infected
- Contingency plan for outbreaks

Designate a person responsible for implementing the P&R Plan

- Must be “knowledgeable” in infection control principles and practices in your industry

Involve employees in development and implementation of P&R Plan

In practice

Your “knowledgeable” person need not be a medical expert – your safety or HR director may be sufficient

Assume your P&R Plan or other risk hazard analysis plan may be reviewed by VOSH

Share final P&R Plan with your employees

Employee training

Key requirements

Develop general training for employees on:

- Requirements of the new regulations
- COVID-19 symptoms, transmission, mitigation techniques
- Anti-discrimination provisions

Develop P&R Plan-specific training for employees

Complete training by:

- August 26 for general training
- September 25 for P&R Plan training

In practice

Ensure training is uniform and verifiable

- Use computer-based training where feasible, or videotape live training
- Maintain detailed records of training and certifications for all employees
- Have employees acknowledge receipt of training and maintain that documentation

Sanitation, disinfection, and air quality

Key requirements

Clean and disinfect:

- Areas known or suspected to have been infected (if feasible, wait 24 hours)
- All shared equipment, workspaces, and vehicles before reuse
- All common areas and frequently touched surfaces at the end of each shift

Employees who interact with the public must immediately clean and disinfect all surfaces contacted

Where installed, used air-handling systems that meet minimum ANSI/ASHRAE standards for your industry (see §16VAC25-220-60(B)(1))

In practice

Immediately assess air-handling systems for compliance; upgrade if necessary

Use only disinfecting products on the EPA's List N for use against SARS-CoV-2

Consider adopting touchless protocols and technologies for customer interactions



Physical distancing

Key requirements

Enforce physical distancing

- 6 feet of distance or permanent, solid floor-to-ceiling wall
- Use announcements, signage, and/or visual cues

Decrease workplace density

- E.g., telework options, staggered work shifts, curbside pick-up

Control (or close) common areas

- Set occupancy limits
- Clean and disinfect at regular intervals and between shifts
- Provide access to hand sanitizer or hand-washing facilities

When physical distancing not feasible, mandate use of face coverings or industry-specific respiratory protection and PPE

In practice

Comply with occupancy limits in any applicable executive order or order of public health emergency

Consider developing employee incentive programs to drive compliance

Return-to-work and sick leave policies

Key requirements

Adopt a symptom-based or test-based strategy for determining when symptomatic employees may return to work

Adopt a time-based or test-based strategy for determining when asymptomatic employees may return to work

Employers must implement flexible sick leave policies and train employees on the availability and terms of these policies

In practice

Encourage employee testing and reimburse testing costs

Consult medical professionals to validate symptom-based and time-based return-to-work policies

Do not rely on antibody testing

Anti-discrimination policies

Key requirements

Employers are prohibited from discharging or discriminating against employees for:

- Exercising rights under these regulations
- Voluntarily wearing their own PPE, if it does not create a greater hazard
- Raising reasonable concerns about COVID-19 infection control
 - Including publicly through any form of media/online forum

In practice

Update employee manuals on discrimination and retaliation

Train managers and supervisors to recognize and respond to complaints

Monitor employee statements on social media

Enforcement and penalties

Enforced by Virginia's Occupational Safety and Health (VOSH) Program

Civil monetary penalties

- Vary depending on the size of the workforce and nature of violation
- \$600 minimum penalty
- \$13,047 for a single violation, and per day for failure to abate
- \$130,463 for willful and repeat violations

Business closure, if necessary, to ensure employee safety

Cost of corrective measures typically not a factor in determining violations

- VOSH will consider whether your compliance “lags significantly behind” your industry
- If yes, economic infeasibility is not a defense



Compliance roadmap

High-level example for “medium-risk” operations

Immediately

Designate person(s) responsible for developing, implementing, and documenting compliance with §16VAC-25-220

Assess current state of your operations and mitigation efforts

- Do your current efforts meet CDC guidelines for your industry?
- Where are the gaps?
- Is your supply chain for PPE, hand sanitizer, and disinfecting products reliable?

Check existing air-handling system; upgrade if necessary

Review/update existing policies for consistency with other applicable federal and state laws (e.g., HIPAA, Family Medical Leave Act, ADA)

Determine when and how often to reassess your compliance program

Compliance roadmap (cont.)

High-level example for “medium-risk” operations

Immediately

By August 26

By September 25

Develop written/
computer-based/
videotaped general
training program

Certify all employees have
completed training

Determine who needs to approve
the P&R Plan

Set internal deadlines for drafting
and approvals

Involve employee representative(s)
in development of P&R Plan

Develop written/ computer-based/
videotaped training for all
employees on P&R Plan



Key takeaways

Complying with CDC guidelines is important, but may not be sufficient

- CDC guidelines you follow must offer equal or greater protection
- Actual compliance in practice – not simply on paper – is required
- Assess your current policies and procedures and close the gaps

General duty clause always applies

VOSH enforcement scope is unclear for now, but be prepared to provide written documentation of compliance

We can help!

WBD's services include:

- Gap analysis of your existing compliance program
- Policy drafting / updating
- Employee trainings required under the new standard
- Defense of investigations and enforcement actions
- Counseling on liability issues (e.g., employment practices, healthcare privacy issues, third-party liability)

WBD's COVID-19 Task Force Resource Page

- womblebonddickinson.com/us/navigating-covid19-legal

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