

# The Brief

## A Legal Quick Hit Overview

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### COVID-19 Workplace Safety Regulations for Businesses

On July 15, Virginia became the first state to adopt workplace safety regulations to address COVID-19, both to help curtail the spread of the virus and to drive sustained economic recovery throughout the Commonwealth. Other states have adopted, or are considering, similar COVID-19 workplace safety regulations. So what do employers need to do if they operate in Virginia? What states have taken similar action? And what should companies do to get their organizations ready for what may come to their state?

#### National Context

- No mandatory nationwide COVID-19 workplace safety standard.
- Virginia's first-in-the nation approach went into effect July 27 & is mandatory and enforceable. It expires in six months, but a permanent standard may follow.
- Massachusetts adopted a temporary standard, and Oregon is close to finalizing its own plan.

#### Virginia Requirements Vary by Exposure Level

- Very High—Medical/laboratory jobs involving aerosol-generating procedures or specimen collection.
- High—Other medical & lab workers, as well as first responders, mortuary services.
- Medium—Retail, restaurants, manufacturing, education, many offices. Involves more than minimal contact w/ potentially infected individuals, but not known infections.
- Low—Employees who can work remotely. Minimal occupational contact with potential COVID-19 cases.

#### Notification & Reporting

- Triggered by employees experiencing symptoms, or employees temps/contractors at work in past 14 days testing positive.
- Must notify employees, other employers (if temp/contractor), VA Dept. of Health (all cases), VA Dept. of Labor & Industry (if 3+ cases in 14 days).

### Speakers



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- Best Practices:
  - Train employees to self-monitor for symptoms.
  - Establish protocols for employees to certify health status at home and upon entry.
  - Develop HIPAA-compliant tracking system for suspected and positive cases.
  - Work w/ building owners & co-tenants to mutually report suspected & positive cases.

### **Infectious Disease Preparedness & Response (P&R) Plan**

- Develop a written plan to consider & address:
  - Exposure risk level of each job & employees' individual risk factors;
  - Infection protection measures to be implemented;
  - Prompt ID & isolation of possible cases;
  - Contingency plan for outbreaks.
- Designate a person responsible for the P&R plan. Should be a "knowledgeable" person, but not necessarily a medical professional, e.g. Safety or HR director may suffice.
- Involve employees in development & implementation.
- Assume plan may be reviewed by VA Occupational Safety & Health Program (VOSH).
- Share final plan with employees.

### **Employee Training**

- 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.
- Ensure training is uniform. Use computer-based training where feasible, or videotape live training. Maintain detailed training/certification records, and have employees acknowledge receipt of training.

### **Sanitation, Disinfection & Air Quality**

- Clean & disinfect:
  - All shared workspaces & equipment before reuse;
  - Common areas at end of each shift;
  - Suspected infected areas;
  - Areas contacted by the public.
- Use ANSI/ASHRAE-compliant HVAC.
- Use only EPA List N products for COVID-19 disinfection.
- Consider adopting touchless protocols/tech for consumer interactions.

### **Physical Distancing**

- Enforce 6 ft. minimum & post signs, visual cues, etc.
- Decrease workplace density via staggered shifts, teleworking, curbside service, etc.
- Close or control common areas, setting occupancy limits. Also, ensure hand washing/sanitizing is available and clean common areas frequently.
- Mandate masks and/or industry-specific PPE, if physical distancing isn't possible.
- Consider employee incentives to drive compliance.

## Return-to-Work & Sick Leave Policies

- Adopt a symptom- or test-based strategy to determine when symptomatic employees may return to work.
- Adopt a time- or test-based strategy to determine when asymptomatic employees may return to work.
- Implement flexible sick leave & inform employees.
- Encourage employee testing & reimburse for tests.
- Consult medical professionals to validate return-to-work policies.
- Do not rely on antibody testing.

## Anti-Discrimination Policies

- Employers are prohibited from 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 in media/online forums.
- Update employee manuals on discrimination/retaliation.
- Train managers to respond to complaints.
- Monitor employee statements on social media.

## Enforcement & Penalties

- Enforced by VOSH.
- Civil monetary penalties depend on size of workforce & nature of violation, but \$600 minimum, \$13,047 for single violation (and per day) for failure to abate; \$130,463 for willful, repeat violations.
- Business closure, if necessary, to ensure employee safety.
- Economic infeasibility is not a defense; cost of corrective measures typically not a factor in determining penalties.

## Key Takeaways

- Complying with CDC guidelines is important but may not be sufficient.
- Actual compliance in practice, not just on paper, is required.
- Assess your current policies and procedures to close the gap.
- General duty clause always applies.
- VOSH enforcement scope is still developing, but be prepared to provide written documentation of compliance.

“The Brief” provides Compliance and Ethics Network members with a brief overview of highlights and key points covered in the monthly Legal Quick Hit. The full recording of this presentation can be found on the ACC website [www.acc.com](http://www.acc.com).