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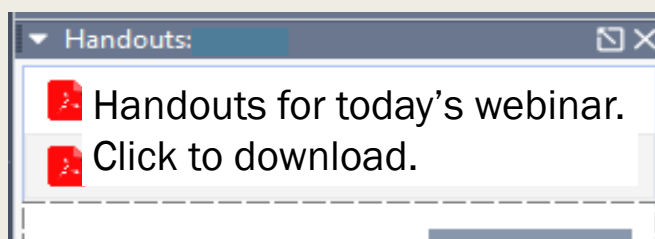
Disclaimer

- Karen Gregory RN is an employee of Total Medical Compliance.
- This does not serve as legal or medical advice.

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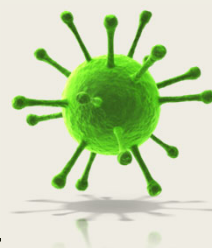
Good to Know

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Objectives



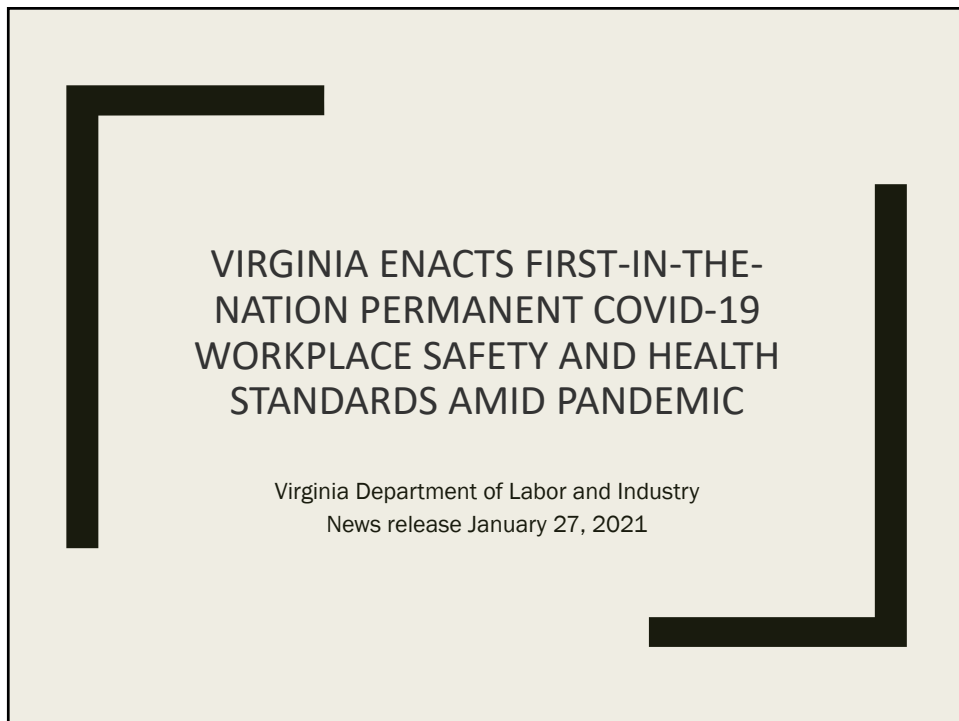
At the end of this session, the attendee will:

- Describe the training requirements of this standard.
- Identify the hazard level of their workplace.
- Describe the requirements of the written Infectious Disease Preparedness and Response Plan.


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Effective Dates

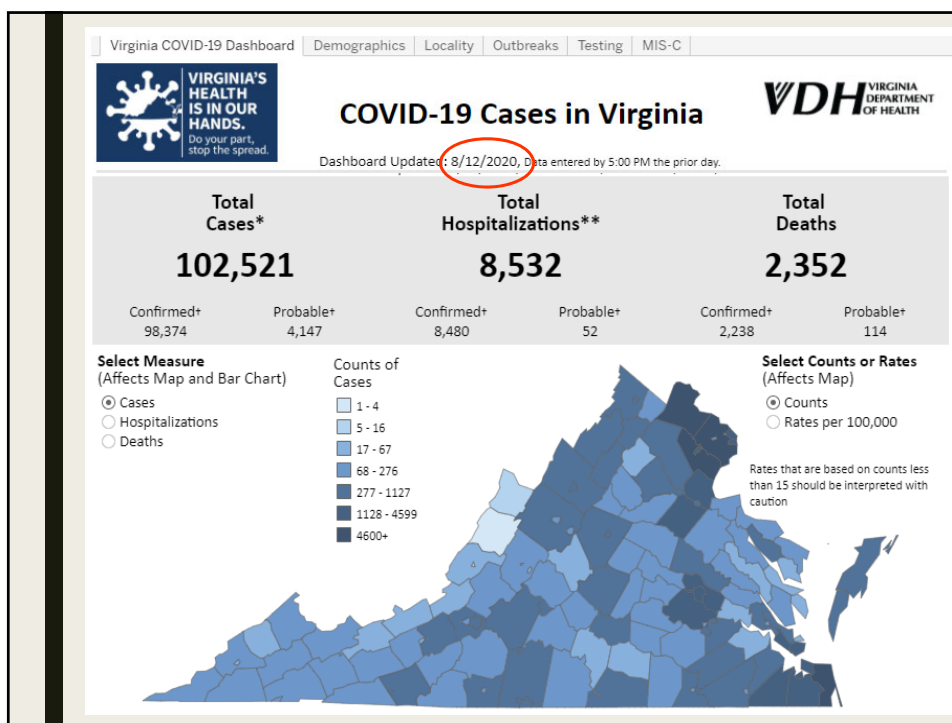
- The requirements for 16VAC25-220-70 [Infection disease preparedness and response plan] shall take effect on **March 26, 2021.**²
- The training requirements in 16VAC25-220-80 shall take effect on **March 26, 2021.**

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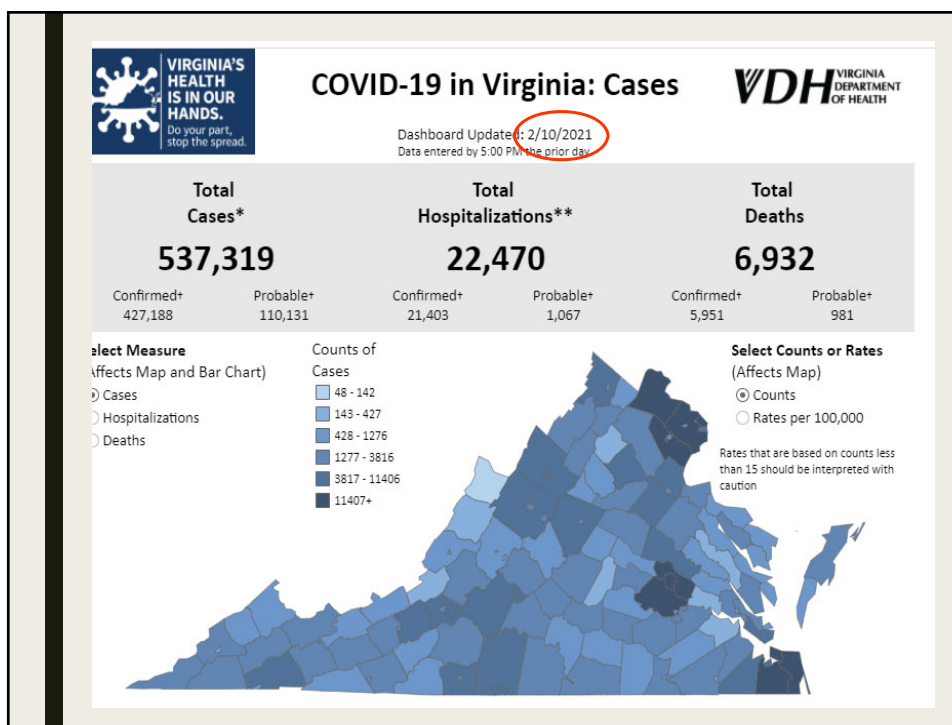
Permanent?

- Within **fourteen (14) days of the expiration of the Governor's COVID-19 State of Emergency and Commissioner of Health's COVID-19 Declaration of Public Emergency,** the Virginia Safety and Health Codes Board shall notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine **whether there is a continued need for the standard.**³

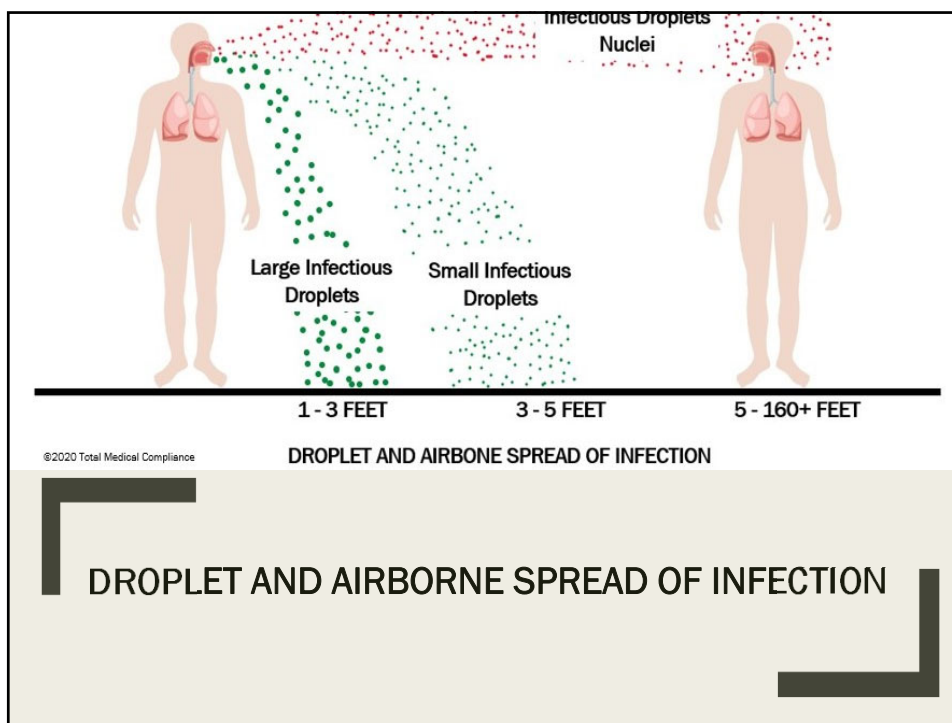
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Definition of Close Contact

- Someone who was within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period* starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to test specimen collection) until the time the patient is isolated.

<https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact>

Community Transmission



- Asymptomatic and pre-symptomatic transmission
 - *Reduce facility risk*
 - *Hospital capacity*
- Source Control Mask
 - *Workers*
 - *Visitors*
 - *Patients*
 - *Cloth or disposable*

Local health department
directory

[Virginia Health
Department](#)

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>

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Requirements of the Standard



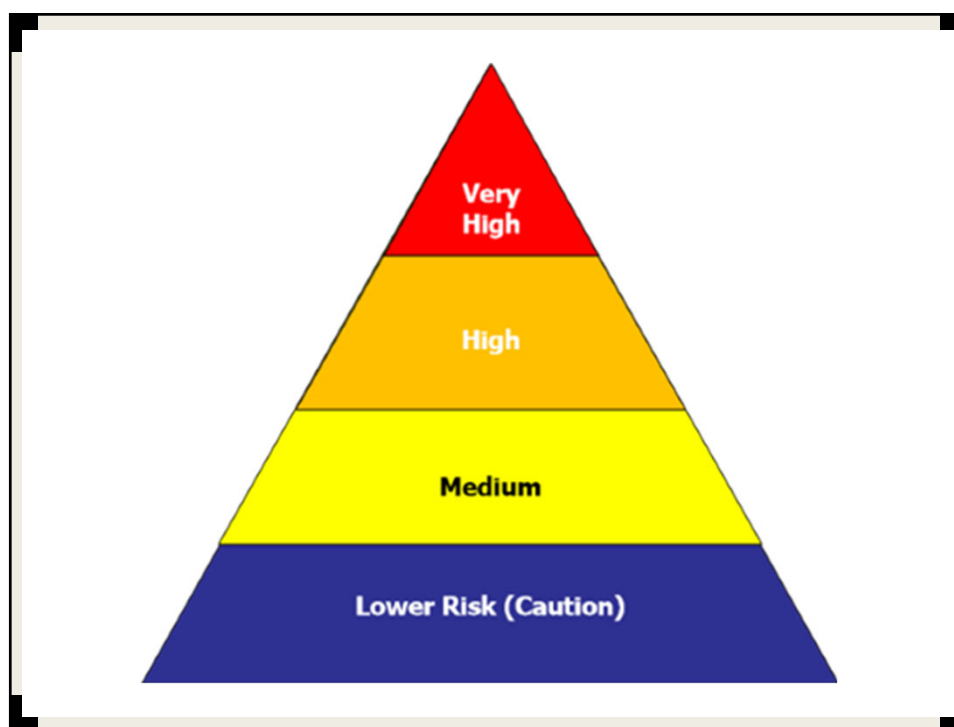
- Hazard assessment
- Policies and procedures
 - *Employee reporting of indication(s) of illness*
 - *Work restriction policies*
- Notifications
 - *Potential exposures to workers*
 - *Virginia Department of Health*
 - *Virginia Department of Labor and Industry (DOLI)*
- Social/Physical Distancing and personal protective equipment (PPE)
- Written Infectious Disease Preparedness and Response Plan
- Training

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Scope and Application

- Every employer, employee, and place of employment in the Commonwealth Virginia within the jurisdiction of Virginia Occupational and Health Program (VOSH)
- Supports existing safety laws, rules, regulations and standards
- CDC Guidelines
 - *Seen as a good faith effort in any enforcement hearing*
 - *Considered to meet the standard if the action(s) provide equivalent or greater protection*
- Safety measures based on exposure risk level
 - *Very high*
 - *High*
 - *Medium*
 - *Lower*

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Very High Exposure Risk

- Potential for exposure to known or suspected sources of the virus (laboratory samples) or to persons who may be infected
 - *Specific medical/dental procedures*
 - *Aerosol generating procedures (intubation, cough induction procedures, bronchoscopies, some dental procedures, specimen collection)*
 - *Collecting or handling specimens*
 - *Autopsy*

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High Exposure Risk

- Potential for exposure to known or suspected sources of the virus (laboratory samples) or to persons who may be infected that are not considered “very high risk”
 - *Delivery of healthcare and support services in a hospital environment*
 - *Delivery of healthcare services (physical/mental), support services, wellness, non-medical support services, physical assistance*
 - *First responders and medical transport*
 - *Mortuary services*

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Medium Exposure Risk

- Not otherwise classified as high or very high risk and require more than minimal occupational contact inside six feet with other employees, persons, or the general public, who MAY be infected with the virus, but are not suspected or known to be infected
 - *Day care, schools, universities*
 - *Grocery stores, pharmacies*
 - *Retail stores*
 - *Administrative staff in healthcare environments that might be high or very high risk*

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Lower Exposure Risk

- Minimal occupational contact within six feet of other employees or other individuals or the ability to achieve minimal contact through engineering, administrative and work practice controls
 - *Floor to ceiling physical barriers, which are impermeable and cannot be displaced. (Convenience store with only one person working)*
 - *Telecommuting*
 - *Delivery services that allow employee to maintain six-feet distance from another person*

NOTE: Cannot use face coverings for contact inside the six-foot requirement to qualify as lower risk exposure

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REQUIREMENTS REGARDLESS OF RISK

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- Workplace assessment for hazards and job tasks that put an employee at risk
 - *Very high, high, medium, lower*
- Inform employees of the methods and encourage all employees to self-monitor for indication of the virus if there was a possible exposure or signs of infection
- Allow telework or other forms of work isolation
- Ensure sick leave policies are flexible and align with public health guidance (CDC)
- Process for employees to report indication of infection when alternate diagnosis has not been made such as influenza
- Employees or other persons that are known to be infected with the virus, the employer must:
 - *Restrict the employee from the workplace or leave if symptoms begin during the workday*
 - *Have employee cleared for return to work*
- Ensure subcontractors and companies providing contract or temporary workers are following the required practices

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Mandatory Physical Distancing

- Verbal announcements, signage, or visual cues
- Decrease worksite density by limiting non-employee access and restrict access to certain areas
- Access to common areas, breakrooms, lunchrooms should be limited, or areas are to be closed
 - *Post limited occupancy, physical distancing, hand hygiene, cleaning and disinfection process*
 - *Employer must monitor and enforce the occupancy limit*
 - *Employees must clean and disinfect, or the employer may set up a routine cleaning schedule*
 - *Hand hygiene options must be available*
- When physical distancing is not possible for **workers are low risk**, respiratory protection and PPE must be provided.

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Use of Face Shields

In situations where a face covering cannot be worn due to medical contraindications, employers shall provide, and employees shall wear either:

- a. *A face shield that wraps around the sides of the wearer's face and extends below the chin; or*
- b. *A hooded face shield.*

To the extent feasible, employees wearing face shields:

- Observe physical distancing requirements in this standard.
- Wash their hands before and after removing the face shield and avoid touching their eyes, nose, and mouth when removing it.
- Use disposable face shields once and disposed of according to manufacturer instructions.
- Clean and disinfect reusable face shields after each use according to manufacturer instructions.

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Reporting COVID – 19 Illness

- Establish a system to receives reports of positive COVID-19 tests who were present in the workplace 2 days prior (or positive test if asymptomatic) and up to 10 days after a positive test.
 - Employees
 - Subcontractors
 - Contract or temporary employees
- Notify any exposed individual within 24 hours keeping confidential the name of the infected person.
- Notify building or facility owner: necessary for decontamination of common areas.
- Workers have access to exposure and testing records.

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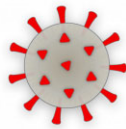
Notification of Agencies

- Within 24 hours of becoming aware, report to the Virginia Department of Health (VDH) when the work site has had two or more confirmed cases of COVID-19 of its own employees present within a 14-day period
- Notify Virginia Department of Labor and Industry (DOLI) within 24 hours for three or more employees with positive test results in the past 14 days.

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Report A Positive Coronavirus Case, Workplace Fatality, Or Severe Injury



Reporting COVID-19 positive cases: [16 VAC 25-220.B.7.e](#) of the Final Standard provides that "The employer shall notify the Virginia Department of Labor and Industry (DOLI) within 24 hours of the discovery of **three (3) or more employees** present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period."

COVID-19 case reports must be filed through the Virginia Department of Health's (VDH) [online reporting portal](#). By using this portal, these case reports will ensure VDH and DOLI reporting compliance. The new online reporting portal allows employers to submit up to 10 Covid-19 positive cases.

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

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Notifications to the Virginia Department of Health (VDH), [16VAC25-220-40.B.7.d](#)

Employers shall report to VDH within 24 hours of the discovery of **two or more** of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

After the initial report of outbreak (two or more cases), employers shall continue to report all cases to VDH until the local health department notifies the business that the outbreak has been closed.

After the outbreak is closed, subsequent identification of two or more cases of COVID-19 during a declared emergency shall be reported, as above.

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

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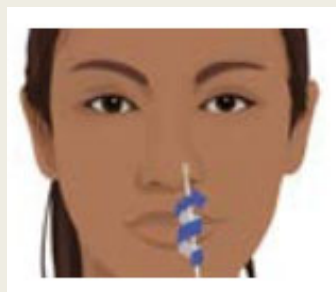
Return to Work

- Symptomatic worker:
 - *Fever free (less than 100.0 F) for at least 24 hours, without fever reducing medications*
 - *Respiratory symptoms have improved, such as cough and shortness of breath*
 - *At least 10 days have passed since symptoms first appeared.*
- Consult with infectious disease expert for those who are severely immunocompromised or who experienced severe illness to determine a safe return to work date.
- Asymptomatic COVID-19 positive worker:
 - *10 days after their first positive RT-PCR test*
- Antibody testing cannot be used:
 - *Make decisions about return to work for employees known or suspected to be infected with the virus*
 - *Make decisions regarding grouping, residing in or being admitted to congregate settings (schools, dormitories)*

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COVID -1 9 Tests

- Molecular (RT-PCR) tests that detect the virus's genetic material
- Antigen tests that detect specific proteins on the surface of the virus.
- Samples are typically collected with a nasal or throat swab, or saliva collected by spitting into a tube.



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Sanitation and Disinfecting

- Routine cleaning schedule of all common spaces and shared tools
 - End of each shift for common spaces
 - **When multiple shifts are worked then at least every 12 hours**
 - After use of tools or workspaces prior to transfer to another employee
- Access to disinfectants included in [EPA List N](#)
 - Non-EPA registered disinfectants that otherwise meet the EPA criteria for use against the virus (Not included in healthcare recommendations)
- After interaction with customers or others immediate disinfection of surfaces must occur
- **Areas of the workplace where person with COVID-19 infected individual**
 - **Clean and disinfect**
 - **Close area for 24 hours if feasible prior to disinfection**
- Immediate access to hand hygiene products (fire hazard)

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Multiple Workers Sharing Vehicle

1. Eliminate the need for employees to share work vehicles.
2. Provide access to fresh air ventilation (e.g., windows). Do not recirculate cabin air.
3. When physical distancing cannot be maintained, establish procedures to maximize separation between employees during travel (e.g., setting occupancy limits, sitting in alternate seats, etc.).
4. When no other alternatives are available, employees shall be provided with respiratory protection, such as an N95 filtering face piece respirator.



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Specific Requirements Very High and High Risk

- Appropriate air-handling systems are installed and maintained
- Hospitalized COVID-19 patients: Airborne Infection Isolation Room (AIIR)
- Aerosol generating procedures on suspect or confirm COVID-19 patients performed in an AIIR
- Diagnostic laboratories conducting routine medical testing and environmental specimen testing for COVID-19 do not to operate at Biosafety Level 3
- Physical barriers such as sneeze guards



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Administrative and Work Practice Controls

- Employee and visitor monitoring (temperature and symptoms)
- Source Control
 - *Compliance with occupancy limits*
 - *Flexible work schedules*
 - *Increased physical distancing*
- Signage
 - *Respiratory Hygiene/Cough Etiquette*
 - *COVID-19 symptoms and reporting*
- Job specific training
- Psychological and emotional support at no cost to employees
- Hand hygiene products readily available
- Address travel and meeting options that reduce face to face meetings

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Air Handling Systems Work with HVAC Specialist

Where feasible and within the design parameters of the system, are utilized as follows:

- (1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open);
- (2) In ground transportation settings, use natural ventilation to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission to employees, and when environmental conditions and transportation safety and health requirements allow;
- (3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;
- (4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

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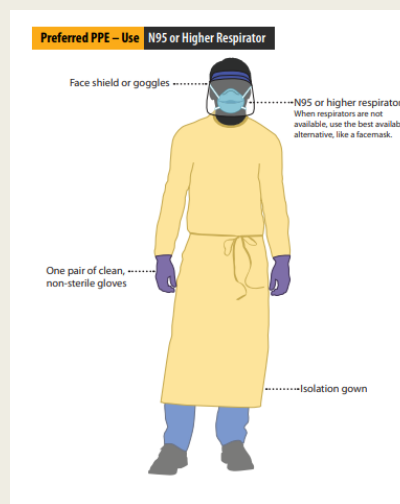
Air Handling Systems Work with HVAC Specialist

- (1) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;
- (2) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);
- (3) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;
- (4) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass; and
- (5) Check filters to ensure they are within service life and appropriately installed.

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Personal Protective Equipment

- Workplace assessment
 - Based on task performed
 - Written certification of completion
- Gowns, gloves, face shield or goggles, mask
- N95 respirators for suspect or positive COVID-19 patients
 - Written respiratory protection program
 - Medical evaluation and fit testing
- Training



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Enforcement

- Notwithstanding anything to the contrary in this standard, no enforcement action shall be brought against an employer or institution for failure to provide PPE required by this standard, if such PPE is not readily available on commercially reasonable terms, and the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms.
- The Department of Labor and Industry shall consult with the Virginia Department of Health as to the ready availability of PPE on commercially reasonable terms and, in the event there are limited supplies of PPE, whether such supplies are being allocated to high risk or very high risk workplaces.¹

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Obtaining PPE

The Virginia Emergency Support Team (VEST) has coordinated with Amazon to ensure organizations on the frontlines of the COVID-19 response in the Commonwealth can purchase critically needed personal protective equipment (PPE) through Amazon Business on a prioritized basis. This opportunity is available to hospitals, health clinics, doctor's offices, and other medical care providers. In order to participate in this program, a business must first sign up on Amazon Business. As with many other supply chain routes, PPE supplies through Amazon are limited depending on current demand and inbound shipments. Nevertheless, this option can serve as a prioritized source of PPE for Virginia's medical providers that are experiencing disruptions in their normal supply chain. The link to sign up can be accessed using this url: <https://business.amazon.com/en/work-with-us/healthcare/covid-19-supplies>.

There is another source for PPE that brings Virginia businesses together to both source and obtain PPE. The Virginia Manufacturer's Association has partnered with Virginia businesses to create a website that serves as a clearinghouse for businesses seeking PPE. That site can be found at <https://www.mcclungcompanies.com/>.

Project N95 is the National Clearinghouse for critical personal protective equipment (PPE) and medical supplies.

The **eVA COVID-19 emergency vendor list** is available to find vendors who may be able to fill orders.

<https://www.vdh.virginia.gov/coronavirus/health-professionals/infection-prevention/>

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Specific Requirements Medium Risk

- Similar to very high and high risk
- Should not need N95 respirator or higher

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Infectious Disease Preparedness and Response Plan

- Written plan and training
- Very high- and high-risk employers
- Medium risk employers with 11 or more employees
- Plan created with employee input and includes:
 - *Administrator of the plan*
 - *Levels of risk based on job tasks and site*
 - *Where, how, and to what sources of the virus might employees be exposed*
 - *Risk factors that may lead to risk of severe illness if exposed*
 - *Engineering, work practice controls and PPE*
 - *Contingency operations as a result of outbreaks*
 - *Basic infection control practices*
 - *CDC Recommendations*

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Contingency Plan

- Increased rates of employee absenteeism (an understaffed business can be at greater risk for accidents);
- The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination and substitution, engineering controls, administrative and work practice controls, and personal protective equipment (e.g., respirators, surgical/medical procedure masks, etc.);
- Options for conducting essential operations in a safe and healthy manner with a reduced workforce; and
- Interrupted supply chains or delayed deliveries of safety and health related products and services essential to business operations.

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Discrimination or Dismissal Not Allowed

- Employee exercised rights related to safety in this standard
- Voluntarily provides and wears their own PPE, including a respirator, face shield, gown, gloves or face covering if not provided by the employer.
- Face covering must not create a greater hazard for the employee or create a serious hazard for other employees.
- Raises a concern about infection control
 - Employer, other employees, government agency
 - Public: print, online, social or other media
- Refusing to do work or enter a location where the employee does not feel safe.

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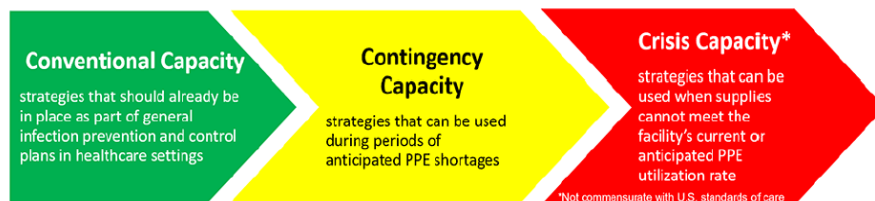
Training Very High, High, Medium Risk

- March 26, 2021 general training compliance date
- Infectious Disease Plan
- Hazards and characteristics and SARS-CoV-2
- Infection control strategies
 - Hand hygiene
 - PPE
 - Source control and screening
 - Cleaning and disinfection
- Anti-discrimination provisions
- Written certification record

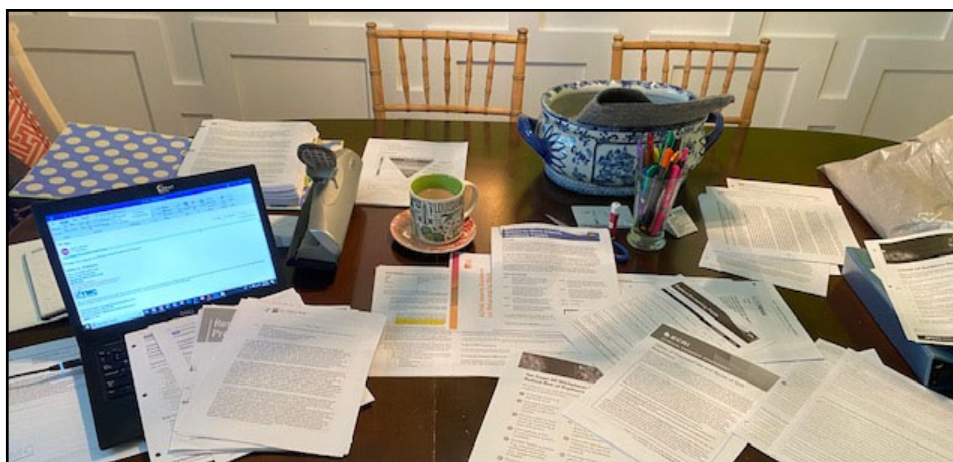
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PPE Optimization

- Strategies to extend PPE usage during periods when supplies are not available and no other options are available for protection, as long as the extended use of the PPE does not pose any increased risk of exposure.
- The training to extend PPE usage shall include the conditions of extended PPE use, inspection criteria of the PPE to determine whether it can or cannot be used for an extended period, and safe storage requirements for PPE used for an extended period



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HOW TO COMPLY

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Compliance

- Develop and implement a written plan, or
- Update existing plan
- Train workers
- Observe compliance and provide feedback

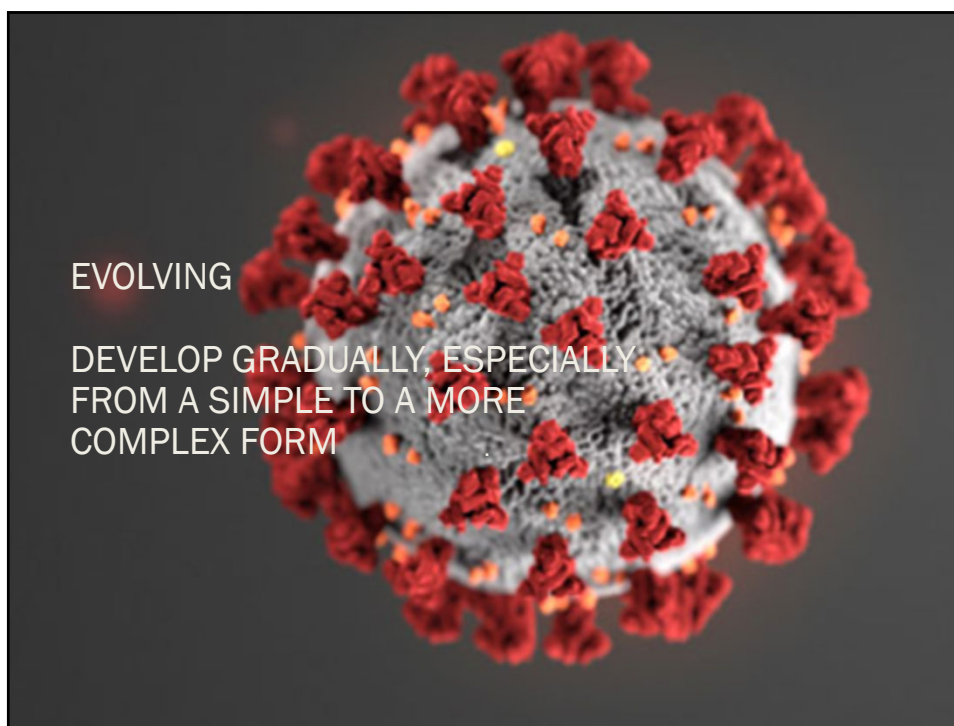


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Q and A

- Implementation of CDC guidance, if it is equivalent to this standard. demonstrates a good faith effort towards compliance.
 - *Must be able to show documentation of the CDC guidance you are following*
- You are not required to perform contact tracing.
- Standard applies to temporary employees and staffing agencies.
- The employer must cover the cost of COVID -1 9 testing if they require the worker to be tested.
- VA supports the 14 day quarantine standard.
- Household contact exposure – quarantine may last up to 24 days.

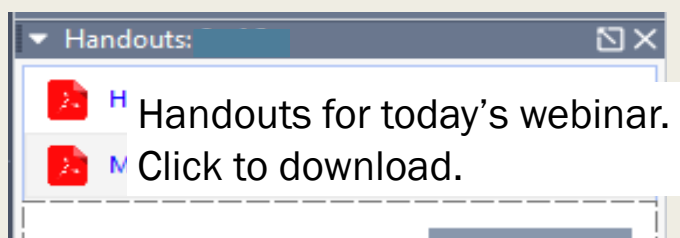
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Thank you!

Karen Gregory, RN
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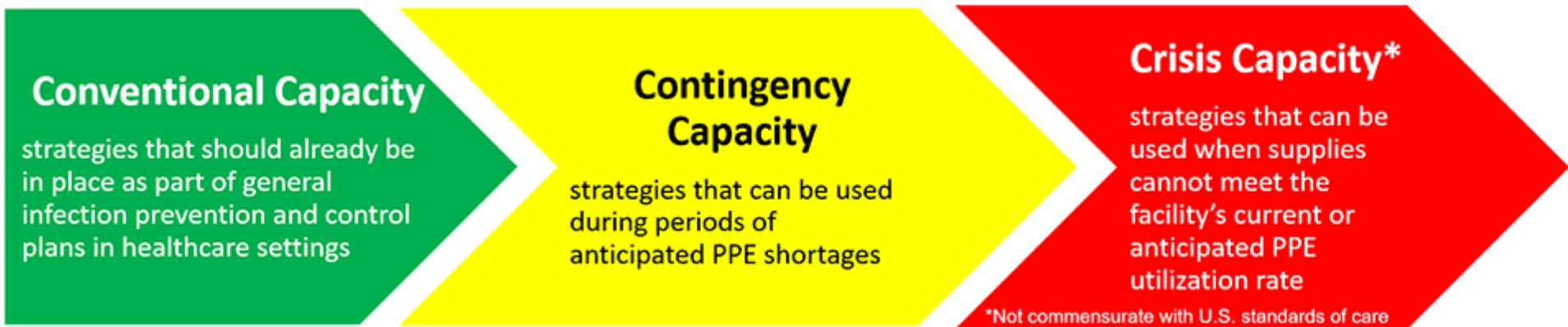


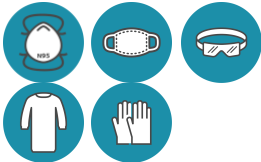

Summary for Healthcare Facilities: Strategies for

COVID-19

This quick reference summarizes [CDC’s strategies to optimize personal protective equipment \(PPE\)](#) supplies in healthcare settings and provides links to CDC’s full guidance documents on optimizing supplies which provide additional strategies and details. These strategies offer a continuum of options using the framework of surge capacity when PPE supplies are stressed, running low, or absent. When using these strategies, healthcare facilities should:

- Consider these options and **implement them sequentially**
- Understand their current PPE inventory, supply chain, and [utilization rate](#)
- Train healthcare personnel on PPE use and have them demonstrate competency with donning and doffing any PPE ensemble that is used to perform job responsibilities
- Once PPE availability returns to normal, promptly resume conventional practices

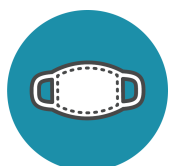


PPE Type	Conventional	Contingency	Crisis
All PPE 	<ul style="list-style-type: none">• Use physical barriers and other engineering controls• Limit number of patients going to hospital or outpatient settings• Use telemedicine whenever possible• Limit all HCP not directly involved in patient care• Limit face-to-face HCP encounters with patients• Limit visitors to the facility to those essential for patients’ physical or emotional well-being• Cohort patients and/or HCP	<ul style="list-style-type: none">• Selectively cancel elective and non-urgent procedures and appointments for which PPE is typically used by HCP• Decrease length of hospital stay for medically stable patients with an infectious diagnosis for whom PPE use is recommended during their care	<ul style="list-style-type: none">• Cancel all elective and non-urgent procedures and appointments for which PPE is typically used by HCP
N95 Respirators	<ul style="list-style-type: none">• Implement just-in-time fit testing	<ul style="list-style-type: none">• Temporarily suspend annual fit testing 	<ul style="list-style-type: none">• Use respirators beyond the



- Limit respirators during training
 - Implement qualitative fit testing
 - Use alternatives to N95 respirators such as other [filtering facepiece respirators](#), [elastomeric respirators](#), and [powered air purifying respirators](#)
 - [Additional guidance](#)
- Use N95 respirators beyond the manufacturer-designated shelf life for training and fit testing
 - [Extend the use](#) of N95 respirators by wearing the same N95 for repeated close contact encounters with several different patients
 - [Additional guidance on contingency capacity strategies](#)
- [manufacturer designated shelf life](#) for healthcare delivery
 - Use respirators approved under [standards used in other countries](#)
 - Implement [limited re-use](#) of N95 respirators. During times of crisis, it may be needed to practice limited re-use on top of extended use
 - Use additional respirators [beyond the manufacturer-designated shelf life](#) that have not been evaluated by NIOSH
 - Prioritize the use of N95 respirators and facemasks by activity
 - [Additional guidance on crisis capacity strategies](#)
 - [Additional guidance on re-use](#)

Facemasks




- Use facemasks according to product labeling and local, state, and federal requirements
 - In healthcare settings, facemasks are used by HCP as 1) PPE to protect their nose and mouth from exposure to splashes, sprays, splatter, and respiratory secretions (e.g., for patients on Droplet Precautions) and 2) source control to cover their mouth and nose to prevent spread of respiratory secretions when they are talking, sneezing, or coughing.
 - [Additional guidance](#)
- Remove facemasks from facility entrances and other public areas
 - Implement extended use of facemasks as PPE
 - Restrict facemasks for use only by HCP when needed as PPE. Patients and HCP requiring **only** source control may use a cloth mask
 - [Additional guidance](#)
- Use facemasks beyond the manufacturer-designated shelf life during patient care activities
 - Implement limited re-use of facemasks with extended use
 - Prioritize facemasks for HCP for selected activities such as essential surgeries, activities where splashes and sprays are anticipated, and contact with an infectious patient, for whom facemask use is recommended

When no respirators or facemasks are available:

- Use a face shield that covers the entire

Gowns



- Use [isolation gown alternatives](#) that offer equivalent or higher protection including reusable (i.e., washable) gowns
 - *Note:* In general, CDC does not recommend the use of more than one isolation gown at a time when providing care to confirmed or suspected COVID-19 patients
 - [Additional guidance](#)
- Consider the use of [coveralls](#)
 - Use gowns beyond the manufacturer-designated shelf life for training
 - Use [gowns or coveralls conforming to international standards](#)
 - [Additional guidance](#)
- Extend the use of isolation gowns
 - Prioritize gowns for activities where splashes and sprays are anticipated, during high-contact patient care, and for patients colonized or infected with [emerging highly-resistant organisms](#) 
 - Consider using gown alternatives that have not been evaluated as effective
 - Re-use of isolation gowns is not recommended (risks of transmission among HCP and patients likely outweigh any potential benefits)
 - [Additional guidance](#)

Eye Protection



- Use eye protection according to product labeling and local, state, and federal requirements
 - Shift eye protection supplies from disposable to re-usable devices
 - [Additional guidance](#)
- Extend the use of eye protection
 - [Additional guidance](#)
- Use eye protection devices beyond the manufacturer-designated shelf life
 - Prioritize eye protection for activities where splashes and sprays are anticipated or prolonged face-to-face or close contact with a potentially infectious patient is unavoidable
 - Consider using safety glasses that cover the sides of eyes
 - [Additional guidance](#)

Gloves

- Continue providing patient care as in usual infection control practice
- Use gloves past their manufacturer-
- Use gloves past their manufacturer-designated shelf life



- *Note:* CDC does not recommend double gloves when providing care to suspected or confirmed COVID-19 patients.
 - [Additional guidance](#)
- designated shelf life for training activities
 - Use gloves conforming to other U.S. and international standards
 - [Additional guidance](#)
- for healthcare delivery
 - Consider non-healthcare glove alternatives
 - Extend the use of disposable medical gloves
 - [Additional guidance](#)

Last Updated Dec. 29, 2020

16VAC25-220-30. Definitions.

The following definitions were revised.

"Disinfecting" means using chemicals approved for use against SARS-CoV-2 virus, for example EPA-registered disinfectants, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2 virus, to kill germs on surfaces. The process of disinfecting does not necessarily clean dirty surfaces or remove germs, but killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

"Face covering" means an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape, and shall not be made of material that makes it hard to breathe, such as vinyl. A face covering is not a surgical/medical procedure mask or respirator.

"Face shield" means a form of personal protective equipment made of transparent, impermeable materials primarily used for eye protection from droplets or splashes for the person wearing it. A face shield is not a substitute for a face covering, surgical/medical procedure mask, or respirator.

"Minimal occupational contact" means no or very limited, brief, and infrequent contact with employees or other persons at the place of employment. Examples include, but are not limited to, remote work (i.e., those working from home); employees with no more than brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet); health care employees providing only telemedicine services; a long-distance truck driver.

"Physical distancing" also called "social distancing" means a person keeping space between himself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least six feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall (e.g., an office setting) constitutes one form of physical distancing from an employee or other person stationed on the other side of the wall, provided that six feet of travel distance is maintained from others around the edges or sides of the wall as well.

"Severely immunocompromised" means a seriously weakened immune system that lowers the body's ability to fight infection and may increase the risk of getting severely sick from SARS-CoV-2, from being on chemotherapy for cancer, being within one year out from receiving a hematopoietic stem cell or solid organ transplant, untreated HIV infection with CD4 T lymphocyte count less than 200, combined primary immunodeficiency disorder, and receipt of prednisone greater than 20mg per day for more than 14 days. The degree of immunocompromise is determined by the treating provider, and preventive actions are tailored to each individual and situation.

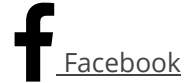
"Signs of COVID-19" are medical conditions that can be objectively observed and may include fever, trouble breathing or shortness of breath, cough, vomiting, new confusion, bluish lips or face, etc.

"Symptoms of COVID-19" are medical conditions that are subjective to the person and not observable to others and may include chills, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, nausea, congestion or runny nose, or diarrhea, etc



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Final COVID-19 Standard – Frequently Asked Questions

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

16 VAC 25-220, Final Permanent Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19.

Reporting COVID-19 positive cases: **16 VAC 25-220.B.7.e** (<https://www.doli.virginia.gov/wp-content/uploads/2021/01/Final-Standard-for-Infectious-Disease-Prevention-of-the-Virus-That-Causes-COVID-19-16-VAC25-220-1.27.2021.pdf>) of the Final Standard provides that “The employer shall notify the Virginia Department of Labor and Industry (DOLI) within 24 hours of the discovery of **three (3) or more employees** present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.”

COVID-19 case reports must be filed through the Virginia Department of Health’s (VDH) [online reporting portal \(https://redcap.link/DOLI_VDH_COVID_report\)](https://redcap.link/DOLI_VDH_COVID_report). By using this portal, these case reports will ensure VDH and DOLI reporting compliance. The new online reporting portal allows employers to submit up to 10 Covid-19 positive cases.

IMPORTANT NOTICE:

[Translate »](#)

Effective January 27, 2021, in accordance with the Virginia Department of Labor and Industry's Virginia Occupational Safety and Health program Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19, 16VAC25-220-40.B.7.d and -40.B.7.e:

Notifications to the Virginia Department of Health (VDH), 16VAC25-220-40.B.7.d

Employers shall report to VDH within 24 hours of the discovery of **two or more** of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

After the initial report of outbreak (two or more cases), employers shall continue to report all cases to VDH until the local health department notifies the business that the outbreak has been closed.

After the outbreak is closed, subsequent identification of two or more cases of COVID-19 during a declared emergency shall be reported, as above.

Notifications to the Department of Labor and Industry (DOLI), 16VAC25-220-40.B.7.e

Employers shall report to DOLI within 24 hours of the discovery of **three or more** of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

A reported positive SARS-CoV-2 test does not need to be reported more than once and will not be used for the purpose of identifying more than one grouping of three or more cases, or more than one 14-day period.

Frequently Asked Questions

On January 13, 2021, the Virginia Safety and Health Codes Board adopted a Final Permanent Standard ("standard") pursuant to Va. Code §40.1-22(6a) addressing occupational exposure to the SARS-CoV-2 Virus That Causes COVID-19, 16 VAC 25-220.

- The standard was published in the Richmond Times Dispatch on January 27, 2021 and took effect on the same day.
- The requirements for 16VAC25-220-70 shall take effect on March 26, 2021.
- The training requirements in 16VAC25-220-80 shall take effect on March 26, 2021.
- The standard incorporates the following documents by reference **Environmental Protection Agency (EPA) List N for use against SARS-CoV-2** (<http://www.doli.virginia.gov/wp-content/uploads/2020/07/List-N-Products-with-Emerging-Viral-Pathogens-AND-Human-Coronavirus-claims-for-use-against-SARS-CoV-2Date-Accessed-07202020.pdf>) and **Biosafety in Microbiological and Biomedical Laboratories" (Dec. 2009)** (<http://www.doli.virginia.gov/wp-content/uploads/2020/07/CDC-BiosafetyMicrobiologicalBiomedicalLaboratories-2009-P.pdf>)

The Virginia Occupational Safety and Health (VOSH) program developed these FAQs to provide information and assistance to employers and employees regarding the standard's requirements.

This document is organized by standard section number and is subject to revision.

§10 Purpose, scope, and applicability.

➡ 1. WHAT INDUSTRIES AND EMPLOYERS ARE COVERED BY THE STANDARD?

The standard applies to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program as described in §§ 16VAC25-60-20 and 16VAC25-60-30, including state and local government employers and employees.

NOTE: Federal OSHA retains jurisdiction over private sector maritime activities in Virginia. VOSH has jurisdiction of state and local government maritime related activities only.

➡ 2. DOES THE STANDARD SUPERSEDE OTHER VOSH LAWS, STANDARDS, OR REGULATIONS THAT MAY BE APPLICABLE TO COVID-19?

No. Section 10.C states that the standard is designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable directly or indirectly to SARS-CoV-2 virus or COVID-19 disease-related hazards such as, but not limited to:

- personal protective equipment,
 - respiratory protective equipment,
 - sanitation,
 - access to employee exposure and medical records,
 - occupational exposure to hazardous chemicals in laboratories,
 - hazard communication,
 - Va. Code §40.1-51.1.A

Should the standard conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.

➡ 3. IS IT POSSIBLE FOR AN EMPLOYER TO HAVE EMPLOYEES CLASSIFIED IN MORE THAN ONE RISK LEVEL, AND IF SO, HOW DOES THE STANDARD APPLY?

Yes. Section 10.D.1 specifically recognizes that “various hazards or job tasks at the same place of employment can be designated as “very high”, “high”, “medium”, or “lower” exposure risk for purposes of application of the requirements of this standard”.

The standard takes a layered approach to providing employee protection against SARS-CoV2 and COVID-19 hazards and job tasks depending on exposure risk level:

- There are minimum requirements that apply to all employers (see §40, Mandatory requirements for employers in all exposure risk levels),
- Enhanced requirements for “medium” exposure risks (see §60 Requirements for hazards or job tasks classified at “medium” exposure risk); and
- Enhanced requirements for “very high” or “high” exposure risks (see §50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk).

➡ 4. IF AN EMPLOYER COMPLIES WITH CDC GUIDANCE FOR ITS INDUSTRY, DO THEY HAVE TO COMPLY WITH THE STANDARD?

Section 10.E provides that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer’s actions shall be considered in compliance with this standard. An employer’s actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.

As provided in the standard, CDC provisions that an employer complies with must provide equivalent or greater protection to employees in order for the employer’s actions to be considered in compliance with the standard.

➡ 5. WHAT REQUIREMENTS APPLY TO PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION?

Section 10.F provides that:

A public or private institution of higher education that has received certification from the State Council of Higher Education for Virginia that the institution’s reopening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor’s Office in conjunction with the Virginia Department of Health shall be considered in compliance with this standard, provided the institution operates in compliance with its certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard.

6. WHAT REQUIREMENTS APPLY TO PUBLIC SCHOOL DIVISIONS AND PRIVATE SCHOOLS?

Section 10.G provides that:

A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and that operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.

7. DOES THE STANDARD SUPERSEDE A GOVERNOR'S EXECUTIVE ORDER OR ORDER OF PUBLIC HEALTH EMERGENCY?

No. However, please note that existing VOSH standards and regulations that were in place and applicable to covered employers and employees prior to the COVID-19 pandemic may be used to address SARS-CoV-2 and COVID-19 workplace hazards in an enforcement setting. VOSH is required by the OSH Act of 1970 and OSHA regulations to be "at least as effective as" federal OSHA. VOSH generally follows OSHA interpretations of federal identical standards and regulations.

8. DOES THE STANDARD REQUIRE EMPLOYERS TO CONDUCT "CONTACT TRACING" IF ONE OF THEIR EMPLOYEES IS DIAGNOSED WITH COVID-19?

No. Section 10.H specifically provides that "Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease."

9. DOES THE STANDARD APPLY TO VOLUNTEER FIRE FIGHTERS OR VOLUNTEER RESCUE SQUAD MEMBERS?

No, provided that they “serve without pay.” Virginia Occupational Safety and Health (VOSH) laws, standards, and regulations do not apply to volunteer fire fighters or members of volunteer rescue squads who “serve without pay.” Section 16 VAC 25-60-10-() [1] defines a “public employee” as:

“Public employee” means any employee of a public employer. Volunteer members of volunteer fire departments, pursuant to §27-42-() [2] of the Code of Virginia, members of volunteer rescue squads who serve without pay, and other volunteers pursuant to the Virginia State Government Volunteers Act [§2.2-3600-() [3] et. seq.] are not public employees....

In determining whether volunteer fire fighters or volunteer rescue squad members are covered by VOSH, the question of whether they “serve without pay” is looked at on a case by case basis. Volunteers are not paid a salary but do receive some benefits from their organization. If the benefits the volunteer receives are authorized by the Code of Virginia they are not considered as pay and those benefits would not bring the volunteer under VOSH coverage. Examples of benefits that are authorized by the Code of Virginia include, but are not limited to, meals, lodging, liability insurance coverage, etc. Receipt of such statutorily defined benefits would not be considered pay.

However, for instances where “benefits” go beyond or are different from those listed in the Code of Virginia, VOSH will make an independent determination on whether the additional benefits amount to “pay.” For example, if each volunteer received trip money per call of \$50 and the most it could cost to get from one end of the service area to the other is \$20 then the additional amount might be considered pay.

Please call Rob Field, DOLI Hearing and Legal Services Officer, at (804) 786-4777 if you have additional questions.()

➔ 10. REGARDING 16VAC25-220-10.E, WHICH CDC GUIDELINES ARE CONSIDERED BY VOSH TO PROVIDE “EQUIVALENT OR GREATER PROTECTION THAN PROVIDED BY A PROVISION OF THIS STANDARD?

In order for an employer to take advantage of the language in 16VAC25-220-10.E to be “considered in compliance with” the standard in the context of a VOSH inspection, the employer will have to inform VOSH which CDC guidelines they are complying with that they contend provide “equivalent or greater protection than provided by a provision of this standard.” VOSH will then evaluate the employer’s submission and if it agrees that the guidelines do provide equivalent or greater protection, it will then have to verify employer compliance with the guidelines through the inspection process (e.g., conduct interviews, etc.). VOSH will not be going through a separate process of identifying CDC guidelines it considers to provide equivalent or greater employee protection to individual provisions of the standard.

➡ 11. IF WE MEET AND EXCEED THE CDC GUIDELINES AND WE SHOW GOOD FAITH IN MEETING VIRGINIA'S TEMPORARY STANDARD, DO WE STILL NEED TO PERFORM A RISK ASSESSMENT PER HOSPITAL?

16VAC25-220-10.G.1 provides in part:

"To the extent that an employer actually complies with a recommendation contained in CDC guidelines... and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard...."

In order for an employer to take advantage of the language in 16VAC25-220-10.E to be "considered in compliance with" the standard (for instance, in the context of a VOSH inspection), the employer will have to inform VOSH what CDC guidelines they are complying with that they contend provide "equivalent or greater protection than provided by a provision of this standard."

First, when you use the term "risk assessment" we are assuming you are referring to the requirement in 16VAC25-220-40.B.1 that:

Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

Second, with regard to your specific question about performing a risk assessment for each hospital, you would need to provide information on which CDC guidelines you are referring to and indicate whether those guidelines provided for any sort of risk assessment that could be considered to provide equivalent or greater protection to that provided by 16VAC25-40.B.1. The CDC guidelines you point to do not have to be identical in nature to any particular provision in the standard, but they would have to achieve the same intended result in at least an equivalent fashion.

Third, in the context of your statement that you are dealing with multiple hospitals, if you have consistent types of job tasks across those hospitals, we note that 16VAC25-40.B.1 provides that "Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes." An employer may prepare a risk assessment that provides corporate wide classification of job tasks by risk category (very high, high, medium, and lower) for its Virginia locations that could meet the requirements of the standard.

However, please note that if an individual hospital had special job tasks needing classification that were not contained in the corporate assessment, those job tasks would have to be classified for that specific hospital.

The individual hospitals would also need to be made aware of the corporate assessments and ensure that they provide employee protections at their worksite according to the level of risk associated with the specific job tasks.

12. DOES THE STANDARD APPLY TO TEMPORARY EMPLOYEES AND TEMPORARY STAFFING AGENCIES?

Yes. 16VAC25-220-30 defines "Employee" as "an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard also includes, but is not limited to, **temporary employees** and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings."

The roles and responsibilities of temporary staffing agencies and host employers with regard to temporary employee training and other requirements under the standard are the same as for any other VOSH or OSHA standard. See the following for general guidance:

https://www.osha.gov/temp_workers/index.html (https://www.osha.gov/temp_workers/index.html)

13. ARE VIRGINIA PUBLIC SCHOOL AND MUNICIPAL EMPLOYEES IN VIRGINIA COVERED BY THE STANDARD? IN SOME CASES, ESPECIALLY LIKE SCHOOL OCCUPATIONAL AND PHYSICAL THERAPISTS, FOR EXAMPLE, FREQUENT AND PERSONAL CONTACT WITH STUDENTS IS LIKELY LESS THAN 6 FEET AND INVOLVE REGULAR PHYSICAL CONTACT. FOR MUNICIPAL EMPLOYEES, SOME MAY HAVE THE SAME PRESUMABLY MEDIUM RISK EXPOSURES AS THEIR SKILL-SET COUNTERPARTS IN INDUSTRY.

Yes. See answer to §10 – FAQ 1, above. Also, with regard to public and private schools, please note that 16VAC25-220-10.G provides in part:

A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and that operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.

As provided in the standard, Phase II and Phase III plans that are aligned with CDC provisions that a public school division or private school complies with must provide equivalent or greater protection to employees than a provision in the standard in order for the employer's implementation actions to be

considered in compliance with the standard.

➊ 14. WHAT EXPOSURE RISK CLASSIFICATIONS APPLY AT AUTOMOTIVE SALES AND REPAIR BUSINESSES?

To determine appropriate protections for employees from the SARS-CoV-2 virus under the standard, employers must first:

....assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes. 16VAC25-220-40.B.1.

Definitions for very high, high, medium, or lower risk levels of exposure can be found in 16VAC25-220-10.

NOTE: Employees classified as **lower risk**:

....do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting, or are able to achieve minimal occupational contact with others through the implementation of engineering, administrative and work practice controls.... 16VAC25-220-10.

In addition, (for lower risk classifications):

....Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact. 16VAC25-220-10.

And, 16VAC25-220-40.H provides:

When it is necessary for employees solely exposed to lower risk hazards or job tasks to have brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet), a face covering is required.

You discussed in your letter that:

- The natural layout of our locations lends our work spaces to be more than six feet of social (physical) distancing.
- Our service bays are spaced farther apart than six feet, and because of this, our employees performing their required duties are not in contact with other employees or customers.
- These businesses are offering numerous options so their customers have minimal to no contact with the employees of the store.

- Concierge pickup and delivery services of the vehicle, after hour exterior key drop services, complimentary
- Uber rides home or to work, phone payments and more insure a safe experience for our member's customers with little or no contact.
- In addition, our member store employees wear face coverings and gloves, and exterior surfaces are continuously cleaned and sanitized.
- The customer's vehicle is sanitized before being returned.

If your member's employees are able to maintain physical distancing of 6 feet from other persons (employees, customers, etc.) at all times, then it is appropriate for their job tasks to be classified as "lower risk."

As noted above, the definition for "lower risk" also provides that "when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required", and still allows the job tasks to remain classified as "lower risk."

The main situation VOSH can envision that might cause some difficulties in risk classification, would be for those job tasks, if any, where employees are required to work inside six feet with each other for more than "brief" contact (e.g. encountering another person in a hallway that does not allow for physical distancing of 6 feet). If such job tasks exist, then that would result in those job tasks being classified as "medium" risk, which would mean additional requirements in the standards would apply. This type of determination will have to be made on a case by case basis by your members based on the definitions in the standard.

VOSH would also take this opportunity to note your members' ongoing obligation to comply with other existing VOSH standards and regulations such as those for personal protective equipment, respiratory protection equipment, hazard communication, etc., which are not impacted by the standard for lower risk classifications, but do protect against other workplace hazards (hearing loss, chemical hazards, welding hazards, etc.).

At its core the standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus. It provides certain mandatory requirements for all employers and additional requirements commensurate with increased levels of risks associated with certain workplace hazards and job tasks. The standard also provides employers with a level of flexibility to achieve compliance and incentivizes employers to establish mitigation strategies that will eliminate or substantially decrease employee exposure to the virus.

While the standard provides specific additional requirements for very high, high and medium risk work environments centered around mitigation of hazards and redesign of job tasks, it is also designed to incentivize employers to make changes that will allow job tasks to be reclassified to lower risk. Any actions that your members can take in redesigning work that will enable them to reclassify a medium risk job task to lower risk will both reduce the likelihood of employees spreading the virus as well as the regulatory burden on your member's company.

VOSH encourages you to suggest your members consider working with our Consultation Program for small employers (up to 250 employees at one site or 500 nationwide) which is available to provide free, confidential consultation and training services. The program also has 3 consultants that are available as demand allows to work with large employers.

<https://www.doli.virginia.gov/vosh-programs/consultation/> (<https://www.doli.virginia.gov/vosh-programs/consultation/>)

15. ARE PRIVATE CONTRACTORS AND TEMPORARY EMPLOYEES WHO ARE WORKING AT A FEDERAL WORKPLACE (E.G., MILITARY INSTALLATION, FEDERAL BUILDING, ETC.) COVERED BY THE STANDARD?

No. Here is a link to OSHA's website that explains VOSH jurisdiction:

<https://www.osha.gov/stateplans/va> (<https://www.osha.gov/stateplans/va>)

VOSH does not generally cover private contractors working at federal installations (with the exception of those engaged in asbestos removal):

"The Virginia State Plan applies to private sector workplaces in the state with the exception of:

Employment at worksites located within federal military facilities as well as on other federal enclaves where civil jurisdiction has been ceded by the state to the federal government."

With regard to temporary employees working for the federal government, any exposures to COVID-19 they may experience at the federal installation would also fall under federal OSHA jurisdiction.

16. WE HAVE AN EMPLOYEE WHO'S DOCTOR IS REQUESTING ACCOMMODATIONS RELATED TO COVID-19 EXPOSURE THAT ARE EXPENSIVE AND NOT SUSTAINABLE AND WE ARE LOOKING FOR GUIDANCE ON HOW TO PROCEED.

The situation you raise falls under the Americans With Disabilities Act (ADA) which is enforced by the Equal Employment Opportunity Commission (EEOC). We are not experts on the ADA, but here is a link to their webpage with guidance on the ADA and COVID-19 issues. You need to research the core issue of whether the "high risk" category that the employee falls into is a "medical condition" that meets the definition of a "disability" under the ADA or not. Section D contains FAQs on "reasonable accommodations" that are provided to employees with a disability. You will also see the term "undue hardship" referenced, which you should research to see if it applies to your company's situation.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>)

17. COULD YOU ELABORATE ON 16VAC25-220-10.F? OUR UNIVERSITY'S RE-OPENING PLAN HAS BEEN APPROVED BY THE STATE COUNCIL OF HIGHER EDUCATION OF VIRGINIA

AND IS IN OUR OPINION EQUIVALENT TO THE STANDARD (WE MAY NEED TO ADD THE STANDARD AWARENESS AND DISCRIMINATION PROVISIONS). ARE WE IN COMPLIANCE? DO WE NEED TO CONDUCT EXPOSURE RISK ASSESSMENTS? DO WE NEED TO COMPLY WITH THE 24 HOUR EMPLOYEE NOTIFICATIONS?

16VAC25-220-10.G.2 provides that:

Public and private institutions of higher education that have received certification from the State Council of Higher Education of Virginia that the institution's re-opening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor's Office in conjunction with the Virginia Department of Health, shall be considered in compliance with this standard, provided the institution operates in compliance with their certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard.

In order for an employer to take advantage of the language in 16VAC25-220-10.F to be "considered in compliance with" the standard in the context of a VOSH inspection, the employer will have to provide VOSH with its certified re-opening plan and indicate which elements they are complying with that they contend provide "equivalent or greater protection than provided by the standard."

VOSH will then evaluate the employer's submission and if it agrees that the plan element(s) do provide equivalent or greater protection, it will then have to verify employer compliance with the plan element(s) through the inspection process (e.g., conduct interviews, etc.).

To assure the effective use of limited inspection resources, VOSH will not be going through a separate process of conducting pre-inspection review and approval of plans that an employer considers to provide equivalent or greater employee protection to individual provisions of the standard. That responsibility lies with the employer.

VOSH recommends that employers do their due diligence in comparing their plan to the standard, which you appear to have done, and make any modifications you deem necessary to take advantage of 16VAC25-220-10.F. As further noted in that section:

An institution's actual compliance with recommendations contained in...the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.

You also asked whether the university has to comply with provisions in the standard for conducting exposure risk assessments under 16VAC25-220-40.B.1 or comply with the 24 hour notification requirements for positive COVID-19 employee cases under 16VAC25-220-40.B.7.d and -40.B.7.e. With regard to comparing your institution's plan to the standard to determine whether it provides equivalent or greater levels of employee protection, you need to identify whether your plan provides for any sort of risk assessment or employee notifications that could be considered to provide equivalent or greater protection to that provided by 16VAC25-220-40.B.1 and -40.B.7. The institution's plan does not have to be identical in nature to any particular provision in the standard, but it would have to achieve the same intended result as the standard in at least an equivalent fashion.

➡ 18. DOES THE STANDARD APPLY TO MINES OR ARE MINES UNDER THE MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), WHICH PRE-EMPTS OSHA REGULATIONS?

Generally speaking, VOSH does not have jurisdiction over mines and quarries, which are regulated by the Virginia Department of Mines, Minerals and Energy (DMME). At the federal level, the Mine Safety and Health Administration (MSHA) and OSHA entered into an Interagency Agreement in 1980, which VOSH follows when determining jurisdiction issues involving mines and quarries – there are lines of demarcation for when MSHA/DMME jurisdiction ends and OSHA/VOSH jurisdiction begins. The Agreement can be found at this link:

<https://www.osha.gov/enforcement/directives/cpl-02-00-042-0>
(<https://www.osha.gov/enforcement/directives/cpl-02-00-042-0>)

§20 Effective Dates.

➡ 1. WHAT ARE THE EFFECTIVE DATES FOR THE STANDARD?

The standard took effect on January 27, 2021.

The requirements for 16VAC25-220-70 shall take effect on March 26, 2021.

The training requirements in 16VAC25-220-80 shall take effect on March 26, 2021.

§30 Definitions.

➡ 1. WHAT TERMS ARE DEFINED IN THE STANDARD?

Definitions are provided for the following terms in §30:

Administrative Control, Airborne infection isolation room (AIIR), Asymptomatic, Building/facility owner, Cleaning, Community transmission, COVID-19, Disinfecting, Duration and frequency of employee exposure, Economic feasibility, Elimination, Employee, Engineering control, Exposure Risk Level (“Very high,” “High,” “Medium,” and “Lower”), Face covering, Face shield, Feasible, Filtering facepiece, Hand sanitizer, HIPAA, Known to be infected with SARS-CoV-2 virus, May be infected with SARS-CoV-2 virus, Minimal occupational contact, Occupational exposure, Personal protective equipment, Physical

distancing, Respirator, Respirator user, SARS-CoV-2, Severely immunocompromised, Signs of COVID-19, Surgical/Medical procedure mask, Suspected to be infected with SARS-CoV-2 virus, Symptomatic, Technical feasibility, USBC, VDH, VOSH, and Work practice control.

§40 Mandatory requirements for all employers.

- ➔ 1. CAN AN EMPLOYER REQUIRE AN EMPLOYEE WHO WAS DIAGNOSED WITH COVID-19 OR WAS SUSPECTED TO BE INFECTED WITH THE SARS-COV-2 VIRUS REQUIRE THE EMPLOYEE TO BE TESTED FOR COVID-19 BEFORE RETURNING TO WORK UNDER §40.B?

The standard is silent on the issue. However, the Equal Employment Opportunity Commission (EEOC) has decided that employers can require employees to be tested for COVID-19:

Answer to Question A.6, "...employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus."

- ➔ 2. DO EMPLOYEES HAVE TO PAY FOR COVID-19 TESTS IF REQUIRED BY THEIR EMPLOYER?

No. Section 40.C.3 provides:

For purposes of this section, COVID-19 testing is considered a "medical examination" under §40.1-28 of the Code of Virginia. The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations. If an employer's health insurance covers the entire cost of COVID-19 testing, use of the insurance coverage would not be considered a violation of this subdivision C 3.

- ➔ 3. ARE BUILDING OWNERS REQUIRED TO NOTIFY EMPLOYER TENANTS OF A SARS-COV-2 POSITIVE TEST OF AN EMPLOYEE IN THE BUILDING?

Yes. Section 40.B.7.3 provides that:

.... The building or facility owner will require all employer tenants to notify the owner of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This notification will allow the owner to take the necessary steps to sanitize the common areas of the building. In addition, [Translate »](#)

building or facility owner will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located. The identity of the individual will be kept confidential in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations;

➡ 4. BESIDES THE STANDARD, WHICH VOSH STANDARDS AND REGULATIONS APPLY TO EMPLOYER PROTECTION OF WORKERS DURING THE COVID-19 PANDEMIC?

- personal protective equipment
 - respiratory protective equipment
 - sanitation
 - access to employee exposure and medical records
 - occupational exposure to hazardous chemicals in laboratories
 - hazard communication
 - recordkeeping

➡ 5. DOES THE STANDARD CONTAIN A REQUIREMENT FOR A MASK MANDATE FOR THE PUBLIC (THE STANDARD USES THE TERM “FACE COVERING”)?

No. See Virginia Executive Order 72 dated December 14, 2020 and entitled Commonsense Surge Restrictions Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19), for information about face covering requirements in Virginia. While the standard does not mandate face coverings for the general public, 16VAC25-220-50.C.8 provides as follows for very high and high risk workplaces:

Employers shall provide face coverings to non-employees suspected to be infected with SARS-CoV-2 virus to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).

The above requirement is also contained in 16VAC25-220-60.C.2 for medium risk workplaces.

➡ 6. DOES THE STANDARD REQUIRE EMPLOYERS IN VIRGINIA TO NOTIFY EMPLOYEES ABOUT A POSITIVE CASE OF COVID-19 IN THE WORKPLACE?

Yes. 16VAC25-220-40.B.7 provides:

To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test). Employers shall notify:

The employer's own employees who may have been exposed, within 24 hours of discovery of the employees' possible exposure, while keeping confidential the identity of the person known to be infected with SARS-CoV-2 virus in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations;

In the same manner as subdivision 7 a of this subsection, other employers whose employees were present at the work site during the same time period;

➡ 7. IF AN EMPLOYEE TESTS POSITIVE, BUT WAS NOT AT A FACILITY OR JOBSITE WHERE OTHER EMPLOYEES COULD HAVE BEEN EXPOSED, DOES THAT POSITIVE TEST HAVE TO BE REPORTED UNDER 16VAC25-220-40.B.7.D OR §16VAC25-220-40.B.7.E?

No. Please note that the reporting provisions in 16VAC25-220-40.B.7 only apply to situations where an employee was present at the place of employment within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test).

➡ 8. REGARDING THE NOTIFICATION REQUIREMENTS OF 16VAC25-220-40.B.7.E, DOES **PLACE OF EMPLOYMENT** MEAN THAT THE 3 OR MORE EMPLOYEES WHO TEST POSITIVE WITHIN TWO DAYS PRIOR TO SYMPTOM ONSET **OR POSITIVE TEST IF THE EMPLOYEE IS ASYMPTOMATIC** UNTIL 10 DAYS AFTER ONSET (OR POSITIVE TEST) WORK AT THE SAME FACILITY OR JOBSITE RATHER THAN THE SAME EMPLOYER REGARDLESS OF LOCATION?

In the context of 16VAC25-220-40.B.7.e, "place of employment" means that the 3 or more infected employees worked at the same work site within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test).

➡ 9. WE HAVE MEMBERS THAT CANNOT PROVIDE ALCOHOL-BASED HAND SANITIZER IN THEIR FACILITIES BECAUSE IT EITHER CREATES A FIRE HAZARD OR PRODUCT CONTAMINATION HAZARD. THESE COMPANIES SOMETIMES USE ALCOHOL FREE HAND SANITIZER (0.13% BENZALKONIUM CHLORIDE) INSTEAD. WILL EMPLOYERS WHO CANNOT PROVIDE ALCOHOL-BASED HAND SANITIZERS IN THEIR FACILITIES DUE TO FIRE

HAZARD OR PRODUCT CONTAMINATION CONCERNS BE IN VIOLATION OF 16VAC25-220-40.E.4 OR 16VAC25-220-40.L.9?

No. First, it is important to note that the standard and General Industry standard §1910.141, Sanitation, provide for an alternative method of compliance in the form of employee access to hand washing facilities:

- “Employees shall have easy, frequent access and permission to use soap and water,” 16VAC25-220-40.L.9;
- “Each lavatory shall be provided hot and cold running water, or tepid running water,” 1910.141(d)(2)(ii); and
- “Hand soap or similar cleansing agents shall be provided,” 1910.141(d)(2)(iii).

Second, both final standard sections referenced above acknowledge that there may be considerations of “feasibility” regarding the supply and usage of alcohol-based hand sanitizer (“hand sanitizer where feasible”).

With regard to the fire hazard concern, 16VAC25-220-40.E.4 specifically acknowledges that “Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.”

VOSH encourages employers to engage in management of change best practices to prevent the unintentional introduction of a new occupational hazard when a new chemical, material, product, etc., is introduced into an existing work environment. VOSH considers the potential for a fire hazard due to the presence of alcohol-based hand sanitizers in a hot manufacturing environment to present an issue of infeasibility within the definition of that term in the standard or occupational safety and health case law (impossibility or infeasibility of compliance is an affirmative defense to VOSH citations and penalties, although employers must attempt to provide alternative methods of protection to employees).

With regard to the concern that the introduction of an alcohol-based hand sanitizer into a facility could pose a threat of product contamination, VOSH considers product contamination concerns to present an issue of infeasibility within the definition of that term in the standard or occupational safety and health case law (impossibility or infeasibility of compliance is an affirmative defense to VOSH citations and penalties, although employers must attempt to provide alternative methods of protection to employees).

10. DOES A COMPANY WITH MULTIPLE LOCATIONS IN VIRGINIA THAT OPERATE IN AN IDENTICAL OR VERY SIMILAR FASHION HAVE TO PERFORM A RISK ASSESSMENT SPECIFIC TO EACH LOCATION?

When you use the term “risk assessment” we assume you are referring to the requirement in 16VAC25-220-40.B.1 that:

Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

In the context of your statement that you are dealing with multiple worksite locations, if you have consistent types of job tasks across those locations, please note that 16VAC25-40.B.1 provides that “Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.” An employer may prepare a risk assessment that provides corporate wide classification of job tasks by risk category (very high, high, medium, and lower) for its Virginia locations that could meet the requirements of the standard.

However, please note that if an individual location had special job tasks needing classification that were not contained in the corporate assessment, those job tasks would have to be classified for that specific worksite location.

The individual worksite locations would also need to be made aware of the corporate assessments and ensure that they provide employee protections at their worksite according to the level of risk associated with the specific job tasks.

➊ 11. UNDER, §16VAC25-220-40.B.7.E THERE IS A REQUIREMENT FOR EMPLOYERS TO NOTIFY THE VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY WITHIN 24 HOURS OF THE DISCOVERY OF THREE (3) OR MORE EMPLOYEES PRESENT AT THE PLACE OF EMPLOYMENT WITHIN TWO DAYS PRIOR TO SYMPTOM ONSET (OR POSITIVE TEST IF THE EMPLOYEE IS ASYMPTOMATIC) UNTIL 10 DAYS AFTER ONSET (OR POSITIVE TEST). DOES THE TIME PERIOD INCLUDE DAYS PRIOR TO WHEN THE STANDARD WENT INTO EFFECT, OR IS THE TIME PERIOD FORWARD LOOKING FROM THE EFFECTIVE DATE OF THE STANDARD?

16VAC25-220-40.B.7.e is not retroactive in nature, so the referenced time period first starts on the effective date of the standard, which was January 27, 2021.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with standard sections 16VAC25-220-40.B.7.d and -40.B.7.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on Monday, September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>
(<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>)

➔ 12. WE ARE NOT AWARE OF ANY “INDUSTRY STANDARDS” FOR PPE IN REGULAR TRUCKING OPERATIONS. EXCEPT FOR CERTAIN HAZARDOUS MATERIAL OPERATIONS, WE ARE NOT AWARE OF ANY PPE REQUIREMENTS FOR THE OPERATION OF TRUCKS OR LOADING AND UNLOADING ACTIVITIES

All federal OSHA identical standards and regulations enforced by VOSH in General Industry (29 CFR Part 1910) apply to general industry employers like the trucking industry, except where otherwise exempted by §4(b)(1) of the OSH Act of 1970. Two such standards are the Personal Protective Equipment (PPE) (1910.132^[1]) and Respiratory Protection (1910.134^[2]) standards. COVID-19 is a respiratory disease that spreads easily through airborne transmission between persons in contact with each other inside six feet, so the PPE and Respirator Standards are considered applicable.

While the standard contains specific requirements for an employer to determine the level of exposure risk to the SARS-CoV-2 virus at its workplace (very high, high, medium, or lower risk), generally the determination in most workplace settings outside of healthcare and emergency response will result in either a medium or lower risk classification depending on whether employees are required to work inside six feet of other persons (employees, customers, etc.) or not.

Employers must first implement engineering, administrative, and work practice controls to eliminate or reduce the frequency of contact with others inside of six feet to the extent feasible. Where it is not feasible to eliminate contact with others inside of six feet, medium risk employers must determine what level of personal protective equipment (PPE) must be provided and worn as the last line of protection for employees against the virus. This is done through conducting a hazard assessment to determine personal protective equipment (PPE) requirements for employees. 16VAC25-220-60.D (medium risk).

For medium risk job tasks, the standards requires “Employers shall provide and require employees to wear face coverings who, because of job tasks, cannot feasibly practice physical distancing from another employee or other person if the [PPE] hazard assessment has determined that personal protective equipment, such as respirators or surgical/medical procedure masks, was not required for the job task.” 16VAC25-220-60.C.10.

The standard also requires for medium risk job tasks that “Employers shall provide and require employees in customer facing jobs to wear face coverings.” 16VAC25-220-60.C.11.

➔ 13. THE STANDARD CALLS FOR CLEANING AND DISINFECTING OF COMMON SPACES, INCLUDING BATHROOMS AT THE END OF EACH SHIFT 16VAC25-220-40.L.5. DOES THIS REQUIREMENT INCLUDE PORT-A-JOHNS OR PRIVIES AT CONSTRUCTION OR OTHER WORK SITES?

Yes. 16VAC25-220-40.K.5 applies to port-a-johns or privies.

NOTE: Normally, port-a-johns or privies are rented from a service company and the agreement specifies the number of cleanings and servicing. They are normally serviced and cleaned two or three times per week, depending on the use, time of year or need due to site conditions. The servicing and cleaning is performed by an employee of the rental/service company providing the "johnny".

14. HOW DO YOU REQUEST A RELIGIOUS WAIVER UNDER 16VAC25-220-40.K?

16VAC25-220-40.K of the standard provides that:

Requests to the Department of Labor and Industry for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after Department of Labor and Industry consultation with the Office of the Attorney General.

Requests for religious waivers can be sent to:

Division of Legal Support
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219

OR

webmaster@doli.virginia.gov (<mailto:webmaster@doli.virginia.gov>)

The request should:

- Identify which provision of the standard you are requesting a waiver from.
- Explain the religious basis for the waiver.
- Identify, if any, what reasonable accommodation you are requesting that would provide an equivalent form of protection.

Background

The federal Occupational Safety and Health Act (OSHA) regulates conditions in workplaces which affect employee safety and health. The federal government assigned OSHA enforcement responsibilities in Virginia to the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program. To maintain federal OSHA approval, Virginia is required to maintain OSHA program standards (regulations) that are "at least as effective as" federal regulations.

While the standard is unique to Virginia, VOSH's Respiratory Protection Standard, 1910.134, is identical to that of OSHA.

[Federal OSHA Interpretations on Religious Waivers](#)

The following federal OSHA interpretations have been issued with regard to religious waivers for respirator use under 1910.134:

<https://www.osha.gov/laws-regs/standardinterpretations/2011-08-05> (<https://www.osha.gov/laws-regs/standardinterpretations/2011-08-05>)

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=24408&p_table=INTERPRETATIONS (https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=24408&p_table=INTERPRETATIONS)

<https://www.osha.gov/laws-regs/standardinterpretations/1998-12-02> (<https://www.osha.gov/laws-regs/standardinterpretations/1998-12-02>)

<https://www.osha.gov/laws-regs/standardinterpretations/1984-01-18> (<https://www.osha.gov/laws-regs/standardinterpretations/1984-01-18>)

Title VII Considerations (Title VII of the Civil Rights Act prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy).

(From EEOC Technical Assistance Questions and Answers – Updated on June 17, 2020)

“G.2. An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests? (4/17/20)

An employer may require employees to wear *protective gear* (<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act#q12>) (for example, masks and gloves) and observe *infection control practices* (<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act#q11>) (for example, regular hand washing and social distancing protocols).

However, where an employee...needs a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer’s business under the ADA or Title VII.”

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>)

➊ 15. WHO IS RESPONSIBLE TO REQUEST A RELIGIOUS WAIVER FROM THE FACE COVERING REQUIREMENT, THE EMPLOYEE WANTING THE WAIVER OR THE EMPLOYER?

Either the employee wanting the waiver or the employer may submit the request for the waiver. However, if the employer chooses to submit the request, it will have to consult with the employee wanting the waiver to provide certain information needed for the request (see §40 – FAQ 14 for how to **Translate »**

mit a request and what information needs to be provided).

We are not aware of any prohibition against the employer requiring the employee to submit the request.

Please also note that there are both occupational safety and health related issues in regard to religious waivers and Title VII legal issues as well (see §40 – FAQ 14 for further information).

➡ 16. CAN RELIGIOUS ACCOMMODATIONS REGARDING FACIAL HAIR BE MADE FOR THE WEARING OF FACE MASKS (REFERRED TO IN THE STANDARD AS “FACE COVERINGS”)?

16VAC25-220-40.K of the standard provides that:

Requests to the Department of Labor and Industry for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after Department of Labor and Industry consultation with the Office of the Attorney General.

Please note that face coverings are not considered respirators under 1910.134 or personal protective equipment under 1910.132.

16VAC25-220-20, Definitions, provides a definition of face covering:

“Face covering” means an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape, and shall not be made of material that makes it hard to breathe, such as vinyl. A face covering is not a surgical/medical procedure mask or respirator. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

There is no prohibition in the standard against wearing a face covering over facial hair.

➡ 17. 16VAC25-220-40.E.4 REQUIRES EMPLOYERS TO MAKE HAND-WASHING AND HAND SANITIZER WHERE FEASIBLE AVAILABLE TO EMPLOYEES. EMPLOYERS OF TRUCK DRIVERS WILL HAVE DIFFICULTY COMPLYING WITH THIS REQUIREMENT. SUCH EMPLOYERS CANNOT ENSURE THAT THEIR DRIVERS WILL HAVE ACCESS TO HAND-WASHING FACILITIES AT ALL LOCATIONS WHERE THEY CONDUCT LOADING AND UNLOADING DUTIES. IN FACT, THIS SAME SECTION REQUIRES THAT COMMON AREAS, BREAKROOMS,

OR LUNCHROOMS BE CLOSED OR CONTROLLED AT A GREAT NUMBER OF LOCATIONS WHERE TRUCK DRIVES WILL BE LOADING AND UNLOADING FREIGHT. IN FACT, MANY TRUCKING EMPLOYERS HAVE AND ARE EXPERIENCING SITUATIONS WHERE SHIPPERS AND RECEIVERS HAVE CLOSED ACCESS TO THESE FACILITIES TO THEIR DRIVERS. PLEASE PROVIDE GUIDANCE ON HOW AN EMPLOYER OF A TRUCK DRIVER IS TO COMPLY WITH THIS REQUIREMENT IN THESE SITUATIONS.

With regard to “sanitation” under 16VAC25-220-40.E.4, -40.L.9, and 1910.141,^[1] truck drivers are considered to be part of a “mobile crew”. 16VAC25-220-40.L.10 provides:

Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site or client or customer location and shall have transportation immediately available to nearby toilet facilities and handwashing facilities that meet the requirements of VOSH laws, standards, and regulations dealing with sanitation. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable, and use and storage in hot environments can result in a hazard.

Also, §1910.141(c)(1)(ii) provides:

The requirements of paragraph (c)(1)(i) (which contains the requirement for providing toilet facilities) of this section do not apply to mobile crews or to normally unattended work locations so long as employees working at these locations have transportation immediately available to nearby toilet facilities which meet the other requirements of this subparagraph.

In addition, §1910.141(d)(2)(i) provides:

Lavatories (lavatories are required to be provided with hot and cold running water, or tepid running water) shall be made available in all places of employment. The requirements of this subdivision do not apply to mobile crews or to normally unattended work locations if employees working at these locations have transportation readily available to nearby washing facilities which meet the other requirements of this paragraph.

With regard to the requirement to provide hand sanitizer, VOSH assumes that the employer can comply with this requirement “where feasible” as the standard provides in 16VAC25-220-40.E.4 and -40.L.10.

However, please note the potential hazard of locating hand sanitizer in vehicle cabs where a hot environment might develop (this is regarded as a “feasibility” issue that needs to be considered by the employer). 16VAC25-220-40.L.10 provides:

....Hand sanitizers required for use to protect against SARS-CoV-2 are flammable, and use and storage in hot environments can result in a hazard.

With regard to the standard requirements for common areas, breakrooms, or lunchrooms where drivers conduct loading and unloading duties (“host employers”), if they are closed to your employees, the standard requirements are not implicated.

If the areas are open to your employees and the host employer has implemented precautions consistent with the requirements in 16VAC25-220-40.E dealing with “Access to common areas, breakrooms, or lunchrooms shall be closed or controlled,” then the driver’s employer can instruct employees that they

can use the areas, provided the employees follow the host employer's rules for use.

If the areas are open to your employees, but the host employer has not complied with the requirements in 16VAC25-220-40.E, the driver's employer can instruct employees to not use those areas.

➡ 18. WITH REGARD TO LOW RISK CATEGORY (OFFICE ENVIRONMENT). WE ARE STRUGGLING WITH OUR INTERPRETATION ON THE SECTION THAT ADDRESSES FLOOR-TO-CEILING BARRIERS. SPECIFICALLY, WE ARE WONDERING IF THEY ARE ONE WAY OF ACCOMPLISHING PHYSICAL DISTANCING, OR IF THEY ARE REQUIRED EVEN WHERE PHYSICAL DISTANCING OF 6 FEET OR MORE IS FEASIBLE?

Floor to ceiling barriers are one way of accomplishing physical distancing, but not required where it is already feasible to accomplish in other ways.

The definition of "Physical distancing" provides in part:

Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall (e.g., an office setting) constitutes one form of physical distancing from an employee or other person stationed on the other side of the wall, provided that six feet of travel distance is maintained from others around the edges or sides of the wall as well.

➡ 19. ARE "LOWER RISK" EMPLOYEES REQUIRED TO WEAR FACE COVERINGS WHILE AT WORK?

No, except as noted below.

Lower risk job tasks are defined in 16VAC25-220-10 as:

....those not otherwise classified as very high, high, or medium exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting, or are able to achieve minimal occupational contact with others through the implementation of engineering, administrative and work practice controls.... Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

16VAC25-220-40.H provides:

When it is necessary for employees solely exposed to lower risk hazards or job tasks to have brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet), a face covering is required.

If a lower risk office employee's job tasks do not involve working inside six feet of others, they are not required to wear a face covering under the standard. However, as noted in 16VAC25-220-40.H, if a lower risk employee has "brief" contact with others inside six feet, they are required to wear a face covering (e.g., passing another person in a hallway that does not allow physical distancing of six feet).

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- ➔ 20. UNDER SECTION 16VAC25-220-40.B.7.E, SHOULD AN EMPLOYER NOTIFY THE VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY ONLY IF ONE OF ITS OWN EMPLOYEES IS DIAGNOSED? OR DOES THIS NOTIFICATION REQUIREMENT INCLUDE DIAGNOSED CONTRACTORS AND/OR OTHER WORKERS AT THE SAME WORKSITE? IF SO, WOULDN'T THAT LEAD TO DOUBLE (OR TRIPLE) REPORTING OF THE SAME DIAGNOSES?

Yes. Employers only need notify DOLI about the positive COVID-19 tests of its own employees under 16VAC25-220-40.B.7.e.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with standard sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on Monday, September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>
(<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>)

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- ➔ 21. IF AN EMPLOYER MANDATES EMPLOYEES BE TESTED PRIOR TO RETURNING TO WORK AND THE EMPLOYEE REFUSES, CAN THE EMPLOYEE BE DISCIPLINED FOR NOT FOLLOWING THE COMPANY'S POLICY?

The standard is silent on the issue of using testing as part of an employer's return to work policy.

Employees potentially can be disciplined for refusing to be tested if the employer chooses to do so under its disciplinary policy.

The above situation has become less of an issue with the change in the standard and CDC recommendations focusing on using symptoms/time based alternatives for return to work instead of a test based system. See 16VAC25-220-40.C, Return to work.

➡ 22. IF AN EMPLOYER'S HEALTH INSURANCE COVERS THE ENTIRE COST OF COVID-19 TESTING, DOES THIS MEET THE REQUIREMENT OF SECTION 40.C.3?

Yes, if an employer's health insurance covers the entire cost of COVID-19 testing, use of the insurance coverage would not be considered a violation of 16VAC25-220-40.C.3, which provides that:

For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations. If an employer's health insurance covers the entire cost of COVID-19 testing, use of the insurance coverage would not be considered a violation of this subdivision C 3.

➡ 23. THE OWNERS OF A SALON HAVE A QUESTION ABOUT ALERTING THE EMPLOYEES AT THEIR WORKPLACE WHEN AN EMPLOYEE TESTS POSITIVE FOR COVID-19. THEY ARE UNDER THE IMPRESSION THAT ONLY EMPLOYEES IN "CLOSE CONTACT" (AS DEFINED BY THE CDC) WITH THE POSITIVE EMPLOYEE MUST BE ALERTED. THE SALON HAS A STRICT PHYSICAL DISTANCING REQUIREMENT OF SIX FEET OR MORE FOR EMPLOYEES, SO THEY ALERTED NO ONE AT THE WORKPLACE OF THE POSITIVE CASE. IS THIS CORRECT?

No. Employees were required to be notified.

The term "close contact" is not used in the standard. The term "close contact" is used by the CDC for determining when contact tracing should be conducted and is defined as "any individual within 6 feet of an infected person for at least 15 minutes." [1] 16VAC25-220-10.H specifically provides that:

Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

16VAC25-220.40.B.7.a requires employers to notify their "own employees who may have been exposed, within 24 hours of discovery of the employees' possible exposure...."

Just because an employer has a strict policy of physical distancing as the company alleges does not mean that all employees, customers or persons complied at all times. The intent of the notification requirement is to provide employees information of a "possible" exposure so that employees can make decisions for themselves on the appropriate course of action to take.

In a situation such as a typical beauty salon where the "footprint" of the floor space would not be considered large, and all employees work in the same work space on the same floor, the employer must notify all employees that were "present at the place of employment within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test)."

24. WHAT IS THE DIFFERENCE BETWEEN ISOLATION AND QUARANTINE?

“Isolation” is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the standard in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18).

“Quarantine” is separation of people who were in “close contact” with a person with COVID-19 from others. People in quarantine should stay home as much as possible, limit their contact with other people, and monitor their health closely in case they become ill.

“Close contact” means you were within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; you provided care at home to someone who is sick with COVID-19; you had direct physical contact with the person (hugged or kissed them); you shared eating or drinking utensils; or they sneezed, coughed, or somehow got respiratory droplets on you.^[1]

Requirements for returning to work from “quarantine” is NOT covered by the standard. Instead, Virginia Department of Health (VDH) guidelines apply (see §40, FAQs 26, 27, 28, 29).

25. WHEN CAN AN EMPLOYEE FILLING AN ESSENTIAL CRITICAL INFRASTRUCTURE ROLE EXCEPT FOR EDUCATION SECTOR WORKERS RETURN TO WORK AFTER CLOSE CONTACT WITH A PERSON WITH COVID19?

Close contacts of a known COVID-19 case who are not experiencing symptoms should be quarantined at home until 14 days have passed since last contact with the COVID-19 case or, if contact is ongoing (such as living together in a household), 14 days after the COVID-19 patient has been released from isolation, which may result in exclusion for up to 24 days.

NOTE: If the employee is a household contact of a person with COVID-19 and the employee is able to have complete separation from the ill person (meaning no contact, no time together in the same room, no sharing of any spaces, such as the same bathroom or bedroom), the employee may follow the timeline for non-household contact.

However, it may be necessary for personnel filling essential [critical infrastructure roles](https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce) (except for education sector workers) who are asymptomatic contacts to remain in the workplace in order to provide essential services, if the business cannot operate without them. These situations should be reviewed with the local health department on a case-by-case basis, with home quarantine being the preferred method of addressing close contacts.

If the employee develops symptoms of COVID-19 or tests positive for SARS-CoV-2, exclusion guidance for employees suspected or confirmed to have COVID-19 should be followed. If the employee tests negative during the quarantine period, they must continue to quarantine for the full 14 days.

If a business is unable to operate without the [critical infrastructure](https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce) (<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>) employee, the employee (except for education sector workers, who should follow the public health quarantine guidance for non-essential workers listed in FAQ 27 and outlined [here](https://www.vdh.virginia.gov/content/uploads/sites/182/2020/04/Home-IsolationQuarantine-Release-Graphic_FINAL.pdf) (https://www.vdh.virginia.gov/content/uploads/sites/182/2020/04/Home-IsolationQuarantine-Release-Graphic_FINAL.pdf)) may return to work (not undergo quarantine) as long as:

- Employers pre-screen the employee (temperature checks)
- Employers conduct regular monitoring of employee
- Employee wears a face mask at all times for 14 days after last close contact
- Employee maintains 6 feet of physical distance from all persons outside their household
- Employer ensures work space is routinely cleaned and disinfected

However, anyone who has been exposed through close contact with someone with COVID-19 does NOT need to stay home when the exposed person:

- developed COVID-19 illness within the previous 3 months,
- has recovered, and
- remains without COVID-19 symptoms (for example, cough, shortness of breath)

➡ 26. WHEN CAN AN EMPLOYEE NOT FILLING AN ESSENTIAL CRITICAL INFRASTRUCTURE ROLE RETURN TO WORK AFTER CLOSE CONTACT WITH A PERSON WITH COVID19?

Close contacts of a known COVID-19 case who are not experiencing symptoms should be quarantined at home until 14 days have passed since last contact with the COVID-19 case or, if contact is ongoing (such as living together in a household), 14 days after the COVID-19 patient has been released from isolation, which may result in exclusion for up to 24 days.

NOTE: If the employee is a household contact of a person with COVID-19 and the employee is able to have complete separation from the ill person (meaning no contact, no time together in the same room, no sharing of any spaces, such as the same bathroom or bedroom), the employee may follow the timeline for non-household contact.

If the employee develops symptoms of COVID-19 or tests positive for SARS-CoV-2, exclusion guidance for employees suspected or confirmed to have COVID-19 should be followed. If the employee tests negative during the quarantine period, they must continue to quarantine for the full 14 days.

However, anyone who has been exposed through close contact with someone with COVID-19 does NOT need to stay home when the exposed person:

- developed COVID-19 illness within the previous 3 months,
- has recovered, and

- remains without COVID-19 symptoms (for example, cough, shortness of breath)

Further details are available [here](#)

(https://www.vdh.virginia.gov/content/uploads/sites/182/2020/04/Home-IsolationQuarantine-Release-Graphic_FINAL.pdf).

27. CAN EMPLOYERS REQUIRE EMPLOYEES WHO WERE CLOSE CONTACTS OF A COVID-19 CASE TO RETURN TO WORK SOONER THAN 14 DAYS AFTER THE CLOSE CONTACT?

Employers must follow appropriate quarantine requirements discussed in FAQs 25 and 26 for employees who were close contacts of a COVID-19 case before allowing such employees to return to work.

28. CAN AN EMPLOYEE'S NEGATIVE TEST FOR SARS-COV-2 AFTER CLOSE CONTACT WITH A COVID-19 CASE RELEASE AN EMPLOYEE FROM QUARANTINE?

No. It is possible for an employee to test negative for SARS-CoV-2 after the close contact and still develop symptoms of COVID-19 up to 14 days after the close contact. Employers and employees must follow appropriate quarantine requirements discussed in FAQs 25 and 26 for employees who were close contacts of a COVID-19 case before allowing such employees to return to work.

29. CAN YOU PROVIDE SOME CLARIFICATION ON RETURN TO WORK AND DIAGNOSIS REQUIREMENTS UNDER THE STANDARD? WE WANT TO ISOLATE AND TEST ANYONE WITH SIGNS OR SYMPTOMS OF COVID-19 (DEFINED UNDER THE STANDARD AS "SUSPECTED TO BE INFECTED WITH SARS-COV-2 VIRUS"), BUT IF THE TEST COMES BACK NEGATIVE, WE WANT TO RULE OUT COVID-19 AS THE DIAGNOSIS AND TREAT THE EMPLOYEE LIKE THEY HAVE A MORE COMMON AND LESS DANGEROUS ILLNESS. THE REGULATION IS NOT CLEAR ON THIS AND READS LIKE WE CAN ONLY RETURN THEM TO WORK AFTER TWO TESTS AS IF THE INITIAL PRESUMPTION WAS CORRECT.

16VAC25-220-20 defines the term "Suspected to be infected with SARS-CoV-2 virus" as:

"a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza)."

If an employee HAS HAD “close contact (<https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html>)” with a COVID-19 case and developed signs or symptoms, but tested negative for SARS-CoV-2, the employee should remain under quarantine for 14 days after last close contact with the COVID-19 case. Although not defined in the standard, the Virginia Department of Health (VDH) and the CDC define “close contact” as meaning “you were within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; you provided care at home to someone who is sick with COVID-19; you had direct physical contact with the person (hugged or kissed them); you shared eating or drinking utensils; or they sneezed, coughed, or somehow got respiratory droplets on you.”^[1]

However, if the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for

SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn’t infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

➊ 30. ARE EMPLOYERS SUBJECT TO HIPAA PRIVACY RULES?

Per the U.S. Department of Health and Human Services’ (HHS) [guidance on employers and health information in the workplace \(https://www.hhs.gov/hipaa/for-individuals/employers-health-information-workplace/index.html\)](https://www.hhs.gov/hipaa/for-individuals/employers-health-information-workplace/index.html), HIPAA’s privacy rule does not protect employment records, even if the information in those records is health-related. In most cases, the Privacy Rule does not apply to the actions of an employer.

Per HHS’ [HIPAA information for professionals \(https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html\)](https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html), the HIPAA Rules apply to [covered entities \(https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/AreYouaCoveredEntity\)](https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/AreYouaCoveredEntity) **and** [business associates \(https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html\)](https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html).

[HIPAA-covered entities \(https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/Downloads/CoveredEntitiesChart20160617.pdf\)](https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/Downloads/CoveredEntitiesChart20160617.pdf) include health plans, clearinghouses, and certain healthcare providers (e.g., providers who submit HIPAA transactions, like claims, electronically). A [business associate \(https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/AreYouaCoveredEntity\)](https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/AreYouaCoveredEntity) is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health informa-

tion on behalf of, or provides services to, a covered entity. A member of the covered entity's workforce is not a business associate. A covered health care provider, health plan, or health care clearinghouse can be a business associate of another covered entity.

Specifically, the Department of Health and Human services states "Individuals, organizations, and agencies that meet the definition of a **covered entity** under HIPAA must comply with the Rules' requirements to protect the privacy and security of health information and must provide individuals with certain rights with respect to their health information. If a covered entity engages a **business associate** to help it carry out its health care activities and functions, the covered entity must have a written business associate contract or other arrangement with the business associate that establishes specifically what the business associate has been engaged to do and requires the business associate to comply with the Rules' requirements to protect the privacy and security of protected health information.

In addition to these contractual obligations, business associates are directly liable for compliance with certain provisions of the HIPAA Rules. If an entity does not meet the definition of a covered entity or business associate, it does not have to comply with the HIPAA Rules. See definitions of 'business associate' and 'covered entity' at [45 CFR 160.103 \(https://www.hhs.gov/hipaa/for-professionals/privacy/index.html\)](https://www.hhs.gov/hipaa/for-professionals/privacy/index.html)."

Employers should not forget that HIPAA does apply to an employer's request for health information from a covered entity. A covered entity may not disclose protected health information to an employer without the employee's authorization or as otherwise allowed by law. This is true even where the employee is also a patient or member of the covered entity; information maintained in that capacity may not be shared with human resources or an employee's managers, except as expressly authorized by the employee or applicable law.

Additional information about compliance with HIPAA privacy standards can be found [here \(https://www.hhs.gov/hipaa/for-professionals/faq/190/who-must-comply-with-hipaa-privacy-standards/index.html\)](https://www.hhs.gov/hipaa/for-professionals/faq/190/who-must-comply-with-hipaa-privacy-standards/index.html).

➊ 31. IS THE VIRGINIA DEPARTMENT OF HEALTH (VDH) AUTHORIZED TO RECEIVE PATIENT HEALTH INFORMATION UNDER HIPAA?

Yes. The U.S. Department of Health and Human Services permits covered entities and business associates to disclose protected health information without authorization for specified public health purposes. Further information is available [here \(https://www.hhs.gov/hipaa/for-professionals/special-topics/public-health/index.html\)](https://www.hhs.gov/hipaa/for-professionals/special-topics/public-health/index.html).

➋ 32. IS THE VIRGINIA DEPARTMENT OF HEALTH (VDH) AUTHORIZED TO RECEIVE PATIENT HEALTH INFORMATION UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)?

Yes. The [U.S. Equal Employment Opportunity Commission \(https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws\)](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws) (question B3) states an employer may disclose the name of an employee to a public health agency when it learns that the employee has COVID-19.

33. IS THE VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM SUBJECT TO HIPAA PRIVACY RULES?

No. OSHA and states that operate their own occupational safety and health plans, such as VOSH, are not a “covered entity” under HIPAA and are not bound by the use and disclosure requirements included in the HIPAA privacy statute or implementing regulations.

34. HOW DO EMPLOYERS COMPLY WITH THE COVID-19 CASE REPORTING REQUIREMENTS TO VDH AND DOLI CONTAINED IN 16VAC25-220-40.B.7.D AND -40.B.7.E?

16VAC25-220-40.B.7.d and -40.B.7.e require employers to report certain positive COVID-19 cases involving employees “present at the place of employment within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test).”:

The Virginia Department of Health during a declaration of an emergency by the Governor pursuant to § 44-146.17 of the Code of Virginia. Every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health (VDH) when the work site has had two or more confirmed cases of COVID-19 of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period. Employers shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases. Employers shall continue to report all cases until the local health department has closed the outbreak. After the outbreak is closed, subsequent identification of two or more confirmed cases of COVID-19 during a declared emergency shall be reported, as required by this subdivision B 7 d. The following employers are exempt from this provision because of separate outbreak reporting requirements contained in 12VAC5-90-90: any residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp; and

The Virginia Department of Labor and Industry within 24 hours of the discovery of three or more of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period. A reported positive SARS-CoV-2 test does not need to be reported more than once and will not be used for the purpose of identifying more than one grouping of three or more cases, or more than one 14-day period.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with standard sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on

Monday, September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>
(<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>)

- ➔ 35. AN INDIVIDUAL PROVIDED AND PAID BY A STAFFING AGENCY WORKS AT OUR FACILITY AND TEST'S POSITIVE FOR COVID-19 (NOT A WORKPLACE TRANSMISSION). THIS INDIVIDUAL IS CONSIDERED A CONTRACTOR, BUT RECEIVES DAY-TO-DAY SUPERVISION FROM FULL TIME EMPLOYEES. THE RESPONSE TO THE FAQ BELOW STATES THAT EMPLOYERS NEED ONLY REPORT ITS OWN EMPLOYEES AND NOT CONTRACTORS. WE ARE REQUESTING CLARIFICATION TO THE REPORTING REQUIREMENTS FOR THESE TYPES OF CONTRACTORS.

If your business obtained the worker from a temporary staffing agency and your company supervises them onsite, the worker is not a "contractor" but a temporary employee of the business (commonly referred to as the "host employer"). In temporary employment situations, the host employer is considered to be in a "joint employment" relationship with the temporary staffing agency.

Here is an FAQ on the subject of temporary employees (§10, FAQ 12):

[Does the standard apply to temporary employees and temporary staffing agencies?](https://www.doli.virginia.gov/cononavirus-covid-19-faqs/)
(<https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

Yes. 16VAC25-220-30 defines "Employee" as "an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard also includes, but is not limited to, temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings."

The roles and responsibilities of temporary staffing agencies and host employers with regard to temporary employee training and other requirements under the standard are the same as for any other VOSH or OSHA standard. See the following for general guidance:

https://www.osha.gov/temp_workers/index.html (https://www.osha.gov/temp_workers/index.html)

<https://www.doli.virginia.gov/cononavirus-covid-19-faqs/> (<https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

With regard to the notification issue, either the host employer or the staffing agency has to notify VOSH – if neither reports it, then both employers could be subject to citation.

The host employer can make an arrangement with the temporary staffing agency that the temporary agency will be the one to notify VOSH, but the host employer needs to make sure that the notification is submitted to avoid any chance of citation.

Here is a link to the reporting portal for whichever employer chooses to do the reporting:

<https://redcap.vdh.virginia.gov/redcap/surveys/?s=LRHNP89XPK>
(<https://redcap.vdh.virginia.gov/redcap/surveys/?s=LRHNP89XPK>)

\$50 Requirements for hazards or job tasks classified at very high or high exposure risk.

➊ 1. WHAT IS THE DIFFERENCE BETWEEN “VERY HIGH” AND “HIGH” EXPOSURE RISK LEVELS, AND IF THEY ARE DIFFERENT WHY DO THEY HAVE THE SAME MANDATORY REQUIREMENTS?

“Very high” exposure risk hazards involve situations where employees are exposed to hazards or are required to perform job tasks that involve the use of aerosol-generating procedures on persons (either living or during autopsies) known or suspected to be infected with SARS-CoV-2 virus, or the collecting or handling of specimens from persons known or suspected to be infected with SARS-CoV-2 virus. The primary method for transmission of the SARS-CoV-2 virus is through airborne transmission.

“High” exposure risk hazards involve situations where employees are exposed to hazards or are required to perform job tasks that involve exposure inside six feet with known or suspected sources of SARS-CoV-2 as part of their job duties.

Very high and high exposure risk levels have the same mandatory requirements because working with known or suspected sources of the SARS-CoV-2 virus are mandatory job duty requirements for the exposed employees and involve a high probability of exposure to the virus because of the nature of the job duties performed and hazardous exposures experienced.

➋ 2. 16VAC25-220-50.B.2 STARTS OFF WITH 'FOR EMPLOYERS NOT COVERED BY SUBDIVISION 1 OF THIS SUBSECTION...

16VAC25-220-50.B.1.a to B.1.c applies to “healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected to be infected with the SARS-CoV-2 virus” and requires that appropriate air handling systems are installed and maintained in accordance with the requirements of subdivisions B.1.a to B.1.c.

Laboratories that handle the SARS-CoV-2 virus would be one example of an employer not covered by 16VAC25-220-50.B.1 that would be covered by subdivision B.2 because they don’t treat, care for or house persons with known or suspected to be infected with the SARS-CoV-2 virus.

Please note that 16VAC25-220-50.B.2 applies to “air-handling systems where installed.”

➡ 3. ARE DIAGNOSTIC LABORATORIES THAT CONDUCT ROUTINE MEDICAL TESTING AND ENVIRONMENTAL SPECIMEN TESTING FOR COVID-19 REQUIRED TO OPERATE AT BIOSAFETY LEVEL 3 (BSL-3)?

No. 16VAC25-220-50.B.6 provides that:

6....Diagnostic laboratories that conduct routine medical testing and environmental specimen testing for COVID-19 are not required to operate at BSL-3.

§60 Requirements for hazards or job tasks classified at medium exposure risk.

➡ 1. DO THE AIR-HANDLING SYSTEM REQUIREMENTS IN §60 REQUIRE EMPLOYERS TO INSTALL AIR CONDITIONING SYSTEMS WHERE NO SYSTEM IS CURRENTLY IN PLACE?

No. 16VAC25-220-60.B.1 specifically applies to under the control of the employer.

➡ 2. WHAT IS AN EMPLOYER REQUIRED TO DO IF A NON-EMPLOYEE (E.G. CUSTOMER OR VISITOR) IS SUSPECTED TO BE INFECTED WITH THE SARS-COV-2 VIRUS?

16VAC25-220-60.C.2 provides that:

To the extent feasible, employers shall....

....

Provide face coverings to non-employees suspected to be infected with SARS-COV-2 to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).

Section 30 provides that:

“Suspected to be infected with SARS-CoV-2 virus” means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza).

➡ 3. WHEN ARE EMPLOYEES REQUIRED TO WEAR FACE COVERINGS UNDER THE STANDARD?

While the standard contains specific requirements for an employer to determine the level of exposure risk to the SARS-CoV-2 virus at its workplace (very high, high, medium, or lower risk), generally the determination in most workplace settings outside of healthcare and emergency response will result in either a medium or lower risk classification depending on whether employees are required to work inside six feet of other persons (employees, customers, etc.) or not.

Employers must first implement engineering, administrative, and work practice controls to eliminate or reduce the frequency of contact with others inside of six feet to the extent feasible. Where it is not feasible to eliminate contact with others inside of six feet, medium risk employers must determine what level of personal protective equipment (PPE) must be provided and worn as the last line of protection for employees against the virus.

For medium risk job tasks, the standard requires that “Employers shall provide and require employees to wear face coverings who, because of job tasks cannot feasibly practice physical distancing from another employee or other person if the [PPE] hazard assessment has determined that personal protective equipment, such as respirators or surgical/medical procedure masks, was not required for the job task.” 16VAC25-220-60.C.10.

The standard also requires for medium risk job tasks “employers to provide and employees in customer facing jobs to wear face coverings.” 16VAC25-220-60.C.11.

§70 Infectious disease preparedness and response plan.

➡ 1. DOES AN EMPLOYER WITH A “MEDIUM” RISK EMPLOYEE HAVE TO HAVE A WRITTEN INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE PLAN?

Employers with hazards or job tasks classified as “medium” risk that employ eleven (11) or more employees (regardless of other classifications), must have a written Infectious Disease Preparedness and Response Plan” solely applicable to those employees that fall in the medium risk category.

➡ 2. DOES THE INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE PLAN NEED TO BE SUBMITTED TO ANYONE AT VOSH OR DO WE JUST NEED TO HAVE IT ON HAND IN CASE WE ARE ASKED FOR IT?

The plan does not have to be submitted to VOSH unless it is specifically requested. It should be available for review if a VOSH inspection is conducted at the establishment.

➡ 3. ARE VIRGINIA FARMERS MARKETS REQUIRED TO HAVE AN INFECTIOUS DISEASE PLAN? IT LOOKS LIKE FOR “MEDIUM” RISK BUSINESSES — ONLY BUSINESSES WITH ELEVEN (11) OR MORE EMPLOYEES HAVE TO DEVELOP AND IMPLEMENT A WRITTEN INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE PLAN. HOWEVER, MANY MARKETS DO NOT HAVE 11 EMPLOYEES BUT ALL MARKETS HAVE AT LEAST 11 VENDORS UNDER CONTRACT WITH THE MARKET TO WORK AT THE MARKET SELLING THEIR PRODUCTS. ARE MARKETS THAT HAVE UNDER 11 “EMPLOYEES” BUT HAVE 11 PLUS VENDORS THAT ARE UNDER CONTRACT TO WORK /SELL AT VIRGINIA’S FARMERS MARKETS CONSIDERED THE SAME AS EMPLOYEES AND THEREFORE THE MARKETS SHOULD HAVE AN INFECTIOUS DISEASE PLAN?

As described in your question, a vendor would be considered an “independent contractor” and not an employee for purposes Virginia Occupational Safety and Health (VOSH) laws, standards and regulations. The standard’s requirement for an Infectious Disease Preparedness and Response Plan applies to employers with hazards or job tasks classified as medium when they have 11 or more employees.

Accordingly, only those farmer’s market organizers that have 11 or more employees, or those vendors who have 11 or more employees are required to have an Infectious Disease Preparedness and Response Plan. The vendors would not be considered employees of the farmer’s market organizer.

However, in case you are not aware of the issue, the Department wants to make sure you are familiar with an employment practice where some businesses will attempt to misclassify employees as “independent contractors” to avoid having to comply with federal and state legal protections for employees (e.g., workers’ compensation, occupational safety and health protections, unemployment compensation, etc.).

This practice is referred to as “misclassification” and when attempted by an employer can result in serious enforcement consequences from a variety of agencies including VOSH, the Virginia Employment Commission, the Virginia Department of Taxation, etc. Employers who engage in misclassification also open themselves up to the potential of being sued by employees who allege they were misclassified (See Va. Code 40.1-28.7:7, <https://law.lis.virginia.gov/vacode/40.1-28.7:7/> (<https://law.lis.virginia.gov/vacode/40.1-28.7:7/>)).

Here is a link to VOSH policy on the issue of worker misclassification for your information: <https://www.doli.virginia.gov/vosh-programs/misclassification-in-the-workplace/> (<https://www.doli.virginia.gov/vosh-programs/misclassification-in-the-workplace/>)

Based on the description of the contractual relationship you described below between farmer's market organizers and vendors, it does not appear that misclassification should be an issue for your organization, but we want to make sure you were aware of the issue.

§80 Training.

➔ 1. ARE EMPLOYERS REQUIRED TO PROVIDE TRAINING TO AN EMPLOYEE IN A LANGUAGE OTHER THAN ENGLISH OR IN SOME OTHER MANNER THAT THEY CAN UNDERSTAND, IF THE EMPLOYEE DOES NOT UNDERSTAND ENGLISH?

Yes. OSHA (and VOSH) have "a long and consistent history of interpreting its standards and other requirements to require employers to present information in a manner that their employees can understand."

"In practical terms, this means that an employer must instruct its employees using both a language and vocabulary that the employees can understand. For example, if an employee does not speak or comprehend English, instruction must be provided in a language the employee can understand. Similarly, if the employee's vocabulary is limited, the training must account for that limitation. By the same token, if employees are not literate, telling them to read training materials will not satisfy the employer's training obligation. As a general matter, employers are expected to realize that if they customarily need to communicate work instructions or other workplace information to employees at a certain vocabulary level or in language other than English...."

"Many OSHA standards require that employees receive training so that work will be performed in a safe and healthful manner. Some of these standards require "training" or "instruction," others require "adequate" or "effective" training or instruction, and still others require training "in a manner" or "in language" that is understandable to employees. It is the Agency's position that, regardless of the precise regulatory language, the terms "train" and "instruct," as well as other synonyms, mean to present information in a manner that employees receiving it are capable of understanding. This follows from both the purpose of the standards — providing employees with information that will allow work to be performed in a safe and healthful manner that complies with OSHA requirements — and the basic definition that implies the information is presented in a manner the recipient is capable of understanding."

NOTE: It is VOSH's intent to provide outreach, education, and training materials on the standard in English and Spanish.

➔ 2. OUR FRANCHISE NETWORK UTILIZES AN ONLINE LEARNING MANAGEMENT SYSTEM TO PROVIDE MOST OF OUR TRAININGS. THIS SYSTEM DOES NOT CURRENTLY HAVE THE ABILITY FOR EMPLOYEES TO SUBMIT AN ELECTRONIC SIGNATURE. HOWEVER, THE SYSTEM HAS MULTIPLE OTHER DATA POINTS THAT CAN VERIFY THAT A PARTICULAR PERSON COMPLETED THE TRAINING, SUCH AS LOGIN DATE/TIME, COMPLETION STATUS

OF THE TRAINING, AND A CERTIFICATE OF COMPLETION FOR EACH EMPLOYEE. EMPLOYEES MUST USE UNIQUE PASSWORDS AND USERNAME TO LOG IN. WOULD THE CERTIFICATION STANDARD BE SATISFIED BY USING A LEARNING MANAGEMENT SYSTEM, OR DO WE STILL NEED TO COLLECT SIGNATURES FROM THE EMPLOYEE AND EMPLOYER TO SATISFY THE STANDARD? OUR THOUGHT IS THAT THE UNIQUE ACCOUNT USED TO COMPLETE TRAINING AND THE OBJECTIVE MARKERS SHOWING THE TRAINING WAS COMPLETED ARE EFFECTIVELY AN ELECTRONIC UNIQUE "SIGNATURE.

16VAC25-80.C provides in part that:

Employers covered by 16VAC25-220-50 shall verify compliance with 16VAC25-220-80.A by preparing a written certification record for those employees exposed to hazards or job tasks classified as very high, high, or medium exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee's physical or electronic signature....16VAC25-220-80.C.1.

16VAC25-220-80.C.2 addresses the issue raised in the question:

A physical or electronic signature is not necessary if other documentation of training completion can be provided (e.g., electronic certification through a training system, security precautions that enable the employer to demonstrate that training was accessed by passwords and usernames unique to each employee, etc.).

➔ 3. WHEN DO CURRENT EMPLOYEES HAVE TO BE TRAINED ON THE STANDARD?

March 26, 2021.

§90 Discrimination against an employee for exercising rights under this standard is prohibited.

➔ 1. THE STATES STATES THAT NO PERSON THAT RAISES A COVID-19 CONCERN IN "PRINT, ONLINE, SOCIAL OR ANY OTHER MEDIA" CAN BE DISCIPLINED OR TERMINATED FOR DOING SO. IF A PERSON IS LYING ON SOCIAL MEDIA AND NEVER RAISED THE CONCERN TO VOSH OR MANAGEMENT, THEY SHOULD NOT BE INSULATED FROM DISCIPLINARY ACTION. ISN'T THIS BROADER THAN THE EXISTING OSHA REGULATIONS THEMSELVES?

No. Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia (“because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.”).

Whether an employee engaged in a “protected activity” under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media platform in certain situations.

With regard to the specific situation described above, §90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer’s agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

Where “a person is lying on social media,” such an act by an employee would not be considered “reasonable” under the standard and disciplinary action taken against the employee in accordance with the employer’s human resource policies would not be considered “discrimination” under the standard or Va. Code §40.1-51.2:1.

For further background see §16VAC25-60-110. Whistleblower Discrimination; Discharge or Retaliation; Remedy for Retaliation:

In carrying out his duties under § 40.1-51.2:2 of the Code of Virginia, the commissioner shall consider case law, regulations, and formal policies of federal OSHA. An employee’s engagement in activities protected by Title 40.1 does not automatically render him immune from discharge or discipline for legitimate reasons. Termination or other disciplinary action may be taken for a combination of reasons, involving both discriminatory and nondiscriminatory motivations. In such a case, a violation of § 40.1-51.2:1 of the Code of Virginia has occurred if the protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place “but for” engagement in protected activity.

Employee whistleblower activities, protected by § 40.1-51.2:1 of the Code of Virginia, include:

Making any complaint to his employer or any other person under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;

Instituting or causing to be instituted any proceeding under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;

Testifying or intending to testify in any proceeding under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;

Cooperating with or providing information to the commissioner during a worksite inspection; or

Exercising on his own behalf or on behalf of any other employee any right afforded by the safety and health provisions of Title 40.1 of the Code of Virginia.

Here is a link to the Office of Whistleblower Protection with the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) program:

<https://www.doli.virginia.gov/vosh-programs/whistleblower/> (<https://www.doli.virginia.gov/vosh-programs/whistleblower/>)

As noted in the above link:

Workers in Virginia have the right to complain to VOSH and seek an investigation of alleged workplace safety and health retaliation. Virginia Code §40.1-51.2:1 and -51.2:2 authorizes VOSH to investigate employee complaints of employer retaliation against employees who are involved in safety and health activities protected under the Virginia laws, standards and regulations.

Downloadable Forms

- Boiler and Pressure Vessel Safety
(<https://doli.virginia.gov/boiler-safety/boiler-forms/>)
- Labor and Employment Law
(<https://doli.virginia.gov/labor-law/payment-of-wage-english/claim-for-unpaid-wages-form/>)
- Asbestos and Lead Forms
(<https://doli.virginia.gov/asbestos-and-lead-forms/>)

Downloadable Publications

- Administrative Regulations Manual (VOSH)
(<https://www.doli.virginia.gov/wp-content/uploads/2019/01/ARM-11-1-2018.pdf>)
- Closing Conference Guide (VOSH)
(<http://www.doli.virginia.gov/wp-content/uploads/2019/08/Closing-Conf-Guide-August-5-2019.pdf>)
- Employer Rights and Responsibilities (VOSH)
(<http://www.doli.virginia.gov/wp-content/uploads/2020/05/ERCAFI-FINAL-5-14-2020-revised-penalties-2020.pdf>)
- OSHA 300 Log
(<http://www.osha.gov/recordkeeping/RKforms.html>)
- Registered Apprenticeship Brochure
(<http://www.doli.virginia.gov/wp-content/uploads/2018/03/DOLI-Apprenticeship-Brochure.pdf>)
- More.... (<https://doli.virginia.gov/vosh-programs/regulations-standards/resources/downloadable-publications/>)

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View Expenditures

(<https://www.datapoint.apa.virginia.gov/dashboard.php>)



(<http://www.yesvirginia.org/>)



(<https://logi.eapro.cgipdc.com/Public/rdPage.aspx?rdReport=Public.PublicLandingPage&rdRnd=99142>)

ORGANIZATION CHART

([HTTPS://WWW.DOLI.VIRGINIA.GOV/WP-CONTENT/UPLOADS/2018/05/ORG-CHART-FOR-WEBSITE_MAY-2018.PDF](https://www.doli.virginia.gov/wp-content/uploads/2018/05/ORG-CHART-FOR-WEBSITE_MAY-2018.PDF))

CODE OF ETHICS

([HTTPS://WWW.DOLI.VIRGINIA.GOV/WP-CONTENT/UPLOADS/2018/04/CODE-OF-ETHICS.PDF](https://www.doli.virginia.gov/wp-content/uploads/2018/04/CODE-OF-ETHICS.PDF))

EMPLOYMENT

([HTTPS://WWW.DOLI.VIRGINIA.GOV/EMPLOYMENT-AT-DOLI/](https://www.doli.virginia.gov/employment-at-doli/))

BUSINESS NE STOP

(<http://businessonestop.virginia.gov/>)



Virginia Performs 
(<http://vaperforms.virginia.gov/>)

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