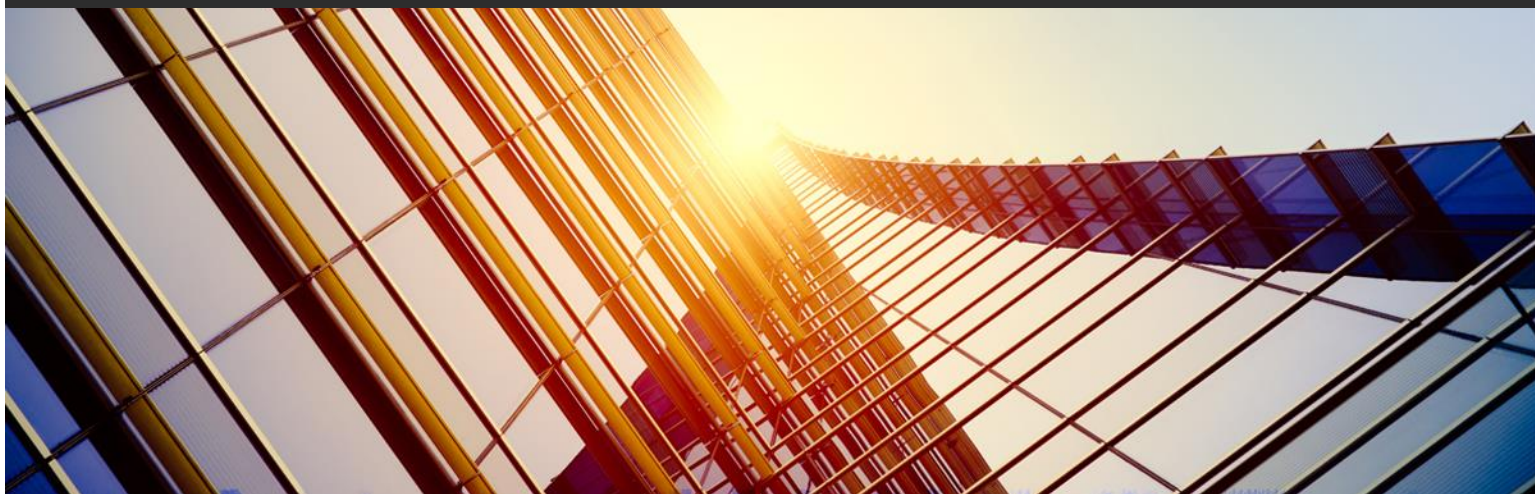


**Alert | Health Emergency Preparedness Task Force:
Business Continuity Amid COVID-19**



July 2020

Virginia Becomes First State to Adopt COVID-19-Related Workplace Health and Safety Standard

On July 15, 2020, Virginia's Safety and Health Codes Board (Board), the body that establishes Virginia Occupational Safety and Health regulations and standards, approved workplace safety regulations related to Coronavirus Disease 2019 (COVID-19). Virginia is the first state in the country to enact such a standard or regulation, though other states, like Oregon, may follow suit. According to Gov. Ralph Northam's office, the emergency standard was prompted by the alleged lack of enforcement from the Occupational Safety and Health Administration (OSHA), the federal agency that enforces workplace safety and health regulations. To date, OSHA has not created a workplace safety standard specifically related to addressing COVID-19 in the workplace, instead opting to issue a plethora of non-mandatory workplace safety and health guidance regarding COVID-19.

The Board's standard, titled "Emergency Temporary Standard/Emergency Regulation, Infectious Disease Prevention, SARS-CoV-2 virus that Causes COVID-19," (COVID-19 Standard) will go into effect July 27, 2020, and will expire in six months or when it is superseded by a permanent standard, whichever occurs first, or when the Board repeals the COVID-19 Standard. Like other safety and health standards and regulations, the Virginia Department of Labor and Industry is responsible for enforcing it.

The COVID-19 Standard is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program. As an initial matter, businesses that choose to (and actually do) comply with Centers for Disease Control and Prevention (CDC) guidelines, whether mandatory or non-mandatory, to mitigate COVID-19-related hazards and job tasks

addressed in the COVID-19 Standard, the employer's actions will be considered in compliance with the COVID-19 Standard. In other words, employers must comply with the COVID-19 Standard or all mandatory and non-mandatory CDC guidelines. The COVID-19 Standard requires all employers to:

- Assess their workplace for hazards and tasks that can potentially expose employees to COVID-19. Employers shall classify job tasks as either “very high,” “high,” “medium,” or “low” risk according to the hazards to which employees are potentially exposed:
 - “Very high” exposure risk hazards and job tasks are tasks like medical, postmortem, or laboratory procedures where there is a high potential for employee exposure to COVID-19 or suspected sources of COVID-19.
 - “High” exposure risk hazards and job tasks are tasks related to health care delivery and first responders to individuals known or suspected to have COVID-19.
 - “Medium” exposure risk hazards and job tasks are tasks that require occupational contact inside six feet with other employees and the general public who may be infected with COVID-19 but who are not known or suspected to have COVID-19 (i.e., operations like poultry, meat, and seafood processing, restaurants and bars, and correctional facilities).
 - “Low” exposure risk hazards and job tasks are those that do not require contact inside six feet with persons known to be, or suspected of being, infected with COVID-19.
- Inform employees of the methods of self-monitoring for signs and symptoms of COVID-19 and encourage employees to self-monitor;
- Develop and implement policies for employees with symptoms consistent with COVID-19 and no alternative diagnosis has been made;
- Establish a system to receive positive COVID-19 tests by employees and for employer tenants to inform, among others, building/facility owners of two positive COVID-19 tests for any employees or residents in a building so the building/facility owner can sanitize common areas of the building; the Virginia Department of Health; and, in the event of three or more employees present at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day period
- Provide notice to specific individuals who could have been in contact with an infected employee in the event of a positive test for one if its employees, subcontractors, temporary employees, or other person who was present at the workplace within the previous 14 days from the date of the positive test; and
- Develop and implement policies and procedures for employees to return to work after testing positive for COVID-19 (whether the employee had symptoms or was asymptomatic) and employees who are suspected to have had COVID-19.

To the extent feasible, all employers must ensure employees maintain physical distancing while working and during paid breaks and provide employees with appropriate personal protective equipment (PPE). Employers must also close or control access to common areas, breakrooms, and lunchrooms.

Employers who classify hazards or job tasks as “very high,” “high,” or “medium” are required to implement, to the extent feasible, certain engineering, administrative, and work practice controls to minimize potential exposure to COVID-19. Further, employers who classify hazards or job tasks as “very high” or “high” exposure risk as well as those who classify hazards and job tasks as “medium” exposure risk with 11 or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan and train employees classified as “very high,” “high,” or “medium” on the plan. The

Plan must, among other things, designate a person responsible for the Plan and consider contingency plans for situations that may arise as a result of a COVID-19 outbreak.

The COVID-19 Standard also requires employers with hazards or job tasks classified as “very high” or “high” exposure risk at a place of employment to provide training to all employees at the workplace regardless of risk classification on the hazards and characteristics of COVID-19. The training requirement will take effect 30 days after the COVID-19 Standard becomes effective. Employers with job tasks at “lower” risk must provide written information to employees who perform those tasks regarding the hazards, characteristics, and symptoms of COVID-19. The Virginia Department of Labor will develop this written information, and employers may use it to comply with this requirement.

Finally, the COVID-19 Standard prohibits employers from discriminating or retaliating against an employee who wears their own PPE or raises a reasonable concern about infection control related to COVID-19.

Employers in Virginia should review the COVID-19 Standard and use it as a guide when drafting and implementing policies and procedures related to reopening their places of employment and COVID-19 generally. Virginia employers that fail to comply with the COVID-19 Standard are subject to fines up to \$12,726 for serious violations and \$127,254 for willful violations.

For more information and updates on the developing situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

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