

Virginia Enacts Permanent COVID-19 Employee Health and Workplace Safety Regulations

January 19, 2021

On January 13, the [Virginia Department of Labor and Industry's](#) Safety and Health Codes Board voted to enact a permanent workplace safety rule to protect employees from COVID-19 exposure, making Virginia one of the first states in the US to impose COVID-19-specific safety requirements on public and private employers of all sizes. The permanent rule largely mirrors the board's temporary emergency workplace safety standards, which were passed in July, and in key respects mandates and even exceeds the guidance issued by the [US Centers for Disease Control](#) and the [Occupational Safety and Health Administration](#). The new rule is expected to go into effect no later than January 27 and will remain in effect until the board approves its repeal.

Exposure risk levels

The permanent rule requires that employers assess the exposure risk level of COVID-19-related hazards in the workplace by job position and defines factors that employers should consider when classifying workplace hazards or job tasks as very high, high, medium or lower with regard to exposure risk.

The rule imposes different requirements on employers depending on the exposure risk levels in their workplace. For example, employers with hazards or job tasks classified as very high, high or medium exposure risk are required to provide all employees with detailed training on the COVID-19 disease (signs, symptoms and transmission), Virginia's new workplace safety rule and the company's operational safety guidelines and practices. In addition, the rule also requires that employers with employees in the very high and high exposure risk categories develop a written infectious disease preparedness response plan and implement certain engineering and administrative controls, including HVAC and ventilation system changes and physical distancing barriers.

Mandatory requirements for all employers

The following mandatory requirements apply to all employers in Virginia, regardless of the exposure levels present in their workplace:

- Informing employees of the methods of contracting COVID-19 and encouraging employees to self-monitor for COVID-19 signs and symptoms
- Developing and implementing policies and procedures for employees to report when they are experiencing COVID-19 symptoms
- Prohibiting employees or other persons known or suspected to be infected with COVID-19 from reporting to or remaining at the work site until cleared to return to work
- Ensuring that sick leave policies are flexible and consistent with public health guidance and notifying employees of these policies
- Discussing with contractors, subcontractors and temporary employees the importance of employees staying home if they are suspected or known to have COVID-19
- Creating a system to receive notice of any positive COVID-19 tests by employees or contractors who were present at the place of employment within the two days prior to symptom onset (or positive test) until 10 days after onset of symptoms (or positive test) and provide certain notifications to their own employees, the employees of others, the building/facility owner, the Virginia Department of Health and the Virginia Department of Labor and Industry
- Ensuring employees have access to their own virus- and disease-related exposure and medical records
- Developing and implementing policies and procedures for return to work after a suspected or confirmed case of COVID-19, based on specific time, test and symptom-based requirements laid out in the rule

- Ensuring employees observe physical distancing while on the employer's property using verbal announcements and signage that promote distancing and the implementation of worksite density rules
- Closing or controlling access to common areas
- Ensuring compliance with respiratory protection when the nature of an employee's work or work area does not allow physical distancing
- Complying with specific sanitation and disinfection requirements articulated in the Virginia permanent rule, including cleaning of common spaces at the end of each work shift and use of cleaning supplies and chemicals approved by the US Environmental Protection Agency

The new rule also prohibits employers from discriminating against employees for exercising any rights under the workplace safety regulations or raising concerns regarding COVID-19 infection control in the workplace.

Next steps for employers

As Virginia employers contemplate a return to work, they should review their existing workplace safety policies and procedures and consult with counsel to determine whether any changes are required by the permanent rule. To the extent they have not done so already, employers should also begin the process of conducting a fulsome assessment of the exposure risk levels for each and every position and job task in their workplace. We will be monitoring any developments on the permanent rule and the enforcement of the new regulations by Virginia's Occupational Health and Safety Administration, and we will issue updates as necessary.

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