



# Industrial Practice Good Hygiene

September 2020

## Virginia Business **COVID STANDARDS** Compliance

Ready or not, it's time for compliance... compliance with [16VAC25-220, Emergency Temporary Standard Infectious Disease Prevention: SARS-CoV-2 Virus that causes COVID-19](#) adopted on July 15, 2020 by the Virginia Occupational Safety and Health (VOSH) Program and the Virginia Safety & Health Codes Board. The Emergency Temporary Standard went into effect on July 27, 2020 when published in the Richmond Times Dispatch. This Virginia Standard applies to public employers, employees and places of employment that are under the VOSH Program jurisdiction. If you are not sure if you fall within that jurisdiction, please see the following: [16VAC25-60-20](#) and [16VAC25-60-30](#); the very few exceptions to the new Temporary Standard including those who fail under federal OSHA jurisdiction.

### OK, What Is It and What Do I Have to Do?

The purpose is to 'control, prevent, and mitigate the spread of SARS-CoV-2' by/to employees and employers. The employee risk assessment is the major component of the Temporary Standard as it dictates which sections apply. Each employer is tasked with determining the exposure risk for each job task performed by employees. The designations include the following risk categories; very high, high, medium and low risk. Each of

these is well defined within the Standard so the employer needs to compare the job tasks to the descriptions and then make a category determination. Employees with medium and higher risk categories are required to have provided employee training by August 26, 2020. Additionally, an infectious disease preparedness



and response plan and training is required by September 25, 2020 (Section 16VAC25-220-70) for employers with job task classified as very high and high and/or medium risk with 11 or more employees. Thirty to sixty days for assessment and compliance does not seem like a lot of time to gather resources and get in compliance but thankfully the VOSH Cooperative Programs Division assisted in developing training and

outreach products including training information, certification forms, hazard assessments, steps for compliance, and an infectious disease plan template, among others. These are available via the [Virginia Department of Labor and Industry](#) webpage for your use. We encourage you to visit this page and download the resources you need to comply with the standard.

If your business has already implemented a COVID-19 control or back to business plan and if you have relied heavily on guidance from the CDC, you are off to a good start. According to the Standard, compliance with CDC guidelines, whether mandatory or non-mandatory, will be considered evidence of good faith should you become involved with an enforcement proceeding.

### Some Key Takeaways

While the following list is not exhaustive and more details are included within the Standard, some takeaways are as follows:

- There are no requirements to conduct contact tracing;
- Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site until cleared for return to work;
- Discrimination against an employee for exercising their rights is prohibited. Further, employees are allowed to refuse to do work in or enter a location that the employee feels unsafe.
- Determination of whether an individual is infected or not can be based on symptom observations or testing;
- The employer must have a system in place to receive reports of positive tests and inform occupants in a building that may have been exposed. This includes employees, subcontractors, contract employees, and temporary employees. Further, the employer

must notify the Department of Health within 24 hours of discovery of a positive case.

- The results of blood testing for the presence of antibodies cannot be used to make decisions about allowing an employee to return to work
- A formerly diagnosed employee can return to work using either a symptom-based or test-based strategy.



Another consideration is the fact that this is a TEMPORARY Standard that has sunset provisions. The Standard will expire “within six months of its effective date, upon expiration of the Governor’s State of Emergency, or when superseded by a permanent standard, whichever occurs first” OR if it is repealed by the Virginia Safety and Health Codes Board. However, it is almost certain that a PERMANENT standard will be drafted and implemented by January 27, 2021 such that the state will be able to exercise regulation during future pandemics or similar circumstances. [The DOLI website](#) allows public [comment](#) for the permanent standard. It is important to voice the ways that the standard may effect individuals and business in the commonwealth. Requirements in the Standard can impact business operation costs and logistical considerations; now is the time to address those considerations.

The Standard covers a broad range of topics and for most will require some technical expertise



to fully understand. But just like the virus, it is here and something that Virginia employers need to have become familiar with and begun implementation of at least some of the policies contained within, depending on which particular scope of the Standard affects each individual business. Employers should keep in mind that the intent of the Standard is to first and foremost protect your employees and their family members. But the strategies discussed and required by the Standard also lay a path for the successful return of businesses throughout the Commonwealth. And we all are hopeful to a return to the conditions that we used to take for granted.

#### **About the Authors**

Glenn Hargrove and Jesse Phillips currently serve as the Practice Leaders for F&R's Industrial Hygiene group. Both maintain familiarity with the rapidly developing science and best practices related to SARS-CoV-2 (COVID-19) coronavirus and have vast experience with assessments for a wide range of microbiological agents including mold, bacteria, and viruses.

#### ***For Help with All Your Compliance Strategies:***

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