

# Virginia's New COVID-19 Workplace Regulations: What You Need to Know

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July 30, 2020

In May 2020, Governor Ralph Northam's Executive Order 63 directed the Virginia Safety and Health Codes Board (the "Board") to create an Emergency Temporary Standard ("ETS") to address the COVID-19 pandemic in the workplace. On July 15, 2020, the Board approved the "[Emergency Temporary Standard/Emergency Regulation, Infectious Disease Prevention, SARS-CoV-2 Virus That Causes COVID-19, § 16 VAC 25-220](#)." The ETS establishes mandatory comprehensive requirements for all Virginia employers.

## When Does the ETS Take Effect?

The ETS was published in the Richmond Times Dispatch on July 27, 2020 and became effective immediately.

## Who Is Affected?

The regulations apply to ALL Virginia employers, but also impose specific obligations on employers with jobs or workplaces classified as "very high," "high," "medium," and "low" exposure risk.

- **"Very High" risk:** high potential for exposure to known or suspected sources of COVID-19, including medical, postmortem, or laboratory procedures.
- **"High" risk:** high potential for COVID-19 exposure to known or suspected sources of COVID-19 within six feet.
- **"Medium" risk:** more than minimal contact within six feet with individuals who may be infected with COVID-19, but are not known carriers, including food processing, agricultural labor, transportation services, educational settings, bars and restaurants, exercise facilities and spas.
- **"Low" risk:** no required contact within six feet with other employees or the general public, such as a standard office workplace setting.

## What Do the Regulations Require?<sup>1</sup>

### Exposure Assessment

Employers must:

- (1) assess workplaces for hazards and classify each job task based on potential exposure as "very high," "high," "medium," or "low" risk levels of exposure, and for each risk level, implement certain work place requirements to protect employees;
- (2) encourage employees to self-monitor for signs and symptoms of COVID-19; and
- (3) encourage telework or other forms of work isolation.

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<sup>1</sup> This is not a comprehensive list. Review the ETS for all requirements.

## **Notification Requirements**

Employers must:

- (1) develop and implement policies for employees to report when they experience COVID-19 symptoms; and
- (2) establish a system to notify:
  - (a) its own employees who may have been exposed within 24 hours of discovery of their possible exposure;
  - (b) other employers whose employees were present at the work site during the same time period within 24 hours of discovery of possible exposure;
  - (c) the building/facility owner within 24 hours of discovery of possible exposure;
  - (d) the Virginia Department of Health within 24 hours of the discovery of a positive case; and
  - (e) the Virginia Department of Labor and Industry within 24 hours of the discovery of 3 or more employees present at the place of employment within a 14-day period testing positive for COVID-19 during a 14-day time period.

## **Required Policies for Known or Suspected Cases**

Employers must:

- (1) develop and implement “return to work” policies for employees known or suspected to have COVID-19, including asymptomatic employees, using either a symptom-based, time-based, or test-based strategy based on local healthcare and testing circumstances; and
- (2) ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

## **Obligatory Social Distancing Procedures & Monitoring Access to Common Areas**

Employers must ensure that:

- (1) employees observe physical distancing while on the job and during paid breaks on the employer’s property; and
- (2) employees’ access to common areas, break areas, or lunchrooms is closed or controlled.

## **Facilitating Sanitation and Disinfecting**

- (1) Employees who interact with customers and/or the general public must be provided with supplies to clean and disinfect surfaces;
- (2) Employers must ensure that the manufacturer’s instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.); and
- (3) Employees must have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, during work hours.

## **Employee Access to Medical Records**

If employers maintain COVID-19 medical records for employees, such employers must ensure that employees have access to their own COVID-19-related medical records in accordance with industry specific standards.

## Resources to Ensure Compliance with the New Regulations

On July 27, 2020, the Virginia Occupational Safety and Health Program (“VOSH”) made the [following](#) outreach, education, and training materials available to the general public:

- Nine Steps to Achieve COVID-19 ETS Compliance;
- FAQs about the Regulations;
- ETS Training PowerPoint that explains the regulations and details “very high,” “high,” “medium,” and “lower” exposure risk requirements with a Training Certification Form (including a shortened “Overview” Presentation);
- Hazard Assessment Certificate Instructions;
- Infectious Disease Preparedness and Response Plan Template;
- Infographic for employee notice;
- Lower Risk Level Information; and
- Toolbox Talks

Now that the ETS has become effective, employers have 30 days, or until August 27, 2020, to train employees on the regulations and 60 days, or until September 28, 2020, to develop their infectious disease preparedness and response plans.

## What You Need to Do Now

All Virginia employers should review and implement the ETS regulations. Vedder Price attorneys are closely monitoring updates to the regulations and general guidance and are available to help employers navigate implementation.

If you have questions about these mandates, please contact **Amy L. Bess** at +1 (202) 312 3361, **Sadina Montani** at +1 (202) 312 3363, **Aleksandra Rybicki** at +1 (202) 312 3336 or any other Vedder Price attorney with whom you have worked.

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