

# Virginia's COVID-19 Workplace Regulations Made Permanent

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As Vedder Price [previously reported](#) in July 2020, Virginia was the first state to enact comprehensive COVID-19 requirements on a temporary basis for all public and private employers (the Emergency Temporary Standard or the “ETS”). Virginia is now the first state to establish a final permanent standard establishing comprehensive COVID-19 workplace safety requirements—the [Final Permanent Standard for Infectious Disease Prevention of COVID-19, 16 VAC 25-220](#) (the “FPS”), which replaces the ETS.

The FPS closely resembles the ETS and continues to exceed the guidance issued by the U.S. Occupational Safety and Health Administration (“OSHA”), the U.S. Centers for Disease Control and Prevention (“CDC”), and the U.S. Environmental Protection Agency (“EPA”), making the FPS particularly instructive for employee health and workplace safety.

## *When does the FPS take effect?*

The FPS became effective on January 27, 2021, with announcements being made on the [Department of Labor and Industry website](#) and in the [Richmond Times Dispatch](#).

## *Who does the FPS cover?*

The FPS applies to all Virginia employers and imposes specific obligations on employers with jobs or workplaces classified as “very high,” “high,” “medium,” and “low” exposure risk. Employers are expected to consider various factors in determining the exposure risk level in their workplaces, including the following:

- the tasks being undertaken, whether the work is done inside or outside, and the number of employees present in the work area in relation to its size;
- the known or suspected presence of COVID-19, or a person infected with COVID-19, in the workspace; and
- the type of hazards encountered in the workspace which may increase the risk of exposure to COVID-19.

## *What does the FPS require?<sup>1</sup>*

The FPS places certain obligations on employers regardless of risk level, including the following:

- **Exposure Assessment.** Employers must assess workplaces for hazards, classify each job task based on potential exposure risk level and, for each risk level, implement certain workplace requirements to protect employees. Employers are also required to encourage employees to self-monitor for signs and symptoms of COVID-19 and encourage telework or other forms of work isolation.
- **Sanitation and Disinfecting.** Employers must disinfect areas where persons known or suspected to be infected with COVID-19 have been present; must disinfect common areas at least once during or at the end of each shift; and must provide employees with access to soap, water and hand sanitizer.

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

- Notification Requirements. Employers must develop and implement policies for employees to report when they experience COVID-19 symptoms. The FPS also requires employers to establish a system to notify the following:
  - their own employees who may have been exposed within 24 hours of discovery of their possible exposure;
  - other employers whose employees were present at the work site during the same time period within 24 hours of discovery of possible exposure;
  - the building/facility owner within 24 hours of discovery of possible exposure;
  - the Virginia Department of Health when the work-site has had two or more confirmed cases of its own employees having COVID-19 at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day time period; 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 COVID-19 during a 14-day time period.
- Face Covering Requirements. Face coverings must be required at all times when an employee is expected to have brief or extended contact with others at a distance of less than six feet.
- Physical Distancing Procedures. Employers must implement policies and procedures to ensure employers observe physical distancing on the job and while on breaks on the employer's property.
- Return to Work Policy. Employers must develop and implement policies and procedures for employees known or suspected to be infected with COVID-19 to return to work after they have recovered. Symptomatic employees known or suspected to be infected are excluded from returning to work until all three of the following conditions have been met:
  - the employee is fever-free (less than 100.0° F) for at least 24 hours without the use of fever-reducing medications;
  - respiratory symptoms, such as cough and shortness of breath, have improved; and
  - at least 10 days have passed since symptoms first appeared.

### *What should employers do now?*

All Virginia employers should review and implement the FPS regulations as soon as possible, including ensuring that all employer policies and procedures based on the ETS are updated to reflect changes made by the FPS. Non-Virginia employers that seek guidance for employee health and workplace safety can review the FPS.

Vedder Price attorneys are closely monitoring updates to the Virginia regulations, as well as general COVID-19 guidance, and are available to help employers navigate implementation. If you have any questions regarding the topics discussed in this article, please contact **Amy L. Bess** at +1 (202) 312 3361, **Aleksandra Rybicki** at +1 (202) 312 3336 or any Vedder Price attorney with whom you have worked.

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