

June 29, 2020

VIRGINIA SAFETY AND HEALTH CODES BOARD

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Virginia Occupational Safety and Health (VOSH) Program

Continued Emergency Electronic Meeting on the

Draft Emergency Temporary Standard:

Infectious Disease Prevention: SARS-CoV-2 That Causes COVID-19

16 VAC 25-220

Summary of the Draft Emergency Temporary Standard

At its core the draft emergency temporary standard (hereinafter referred to as the “standard”) is a risk management system to prevent or limit the spread of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and additional requirements commensurate with increased levels of risks associated with certain workplace hazards and job tasks.

The draft standard also provides employers with a level of flexibility to achieve compliance and incentivizes employers to establish mitigation strategies that will eliminate or substantially decrease employee exposure to COVID-19.

The core elements of the draft standard for employers include:

- Classifying employees by risk level (very high, high, medium, and lower) based on workplace hazards and job tasks;
- Establishing and implementing a system for self-assessment and screening for COVID-19 signs and symptoms;

- Implementing procedures that will prevent sick employees and other persons from infecting healthy employees;
- Using the occupational safety and health hierarchy of controls to implement mitigation efforts to guard against **pre-symptomatic and asymptomatic** virus spread such as:
 - engineering controls,
 - administrative and work practice controls,
 - sanitation controls,
 - personal protective equipment, and
 - respiratory protection equipment
- Communicating with employees by encouraging self-assessment, conducting screening, and notifying employees of workplace exposures to COVID-19 so they can take personal actions to protect their health and safety;
- Incentivizing employees to report symptoms by implementing flexible sick leave and alternative working arrangements;
- Establishing a return to work policy;
- Providing specific additional requirements for very high and high risk work environments centered around mitigation of hazards and redesign of job tasks, but also incentivizing employers to make changes that will enable employees to be reclassified to medium or lower risk;
- Providing specific additional requirements for medium risk work environments centered around mitigation of hazards and redesign of job tasks, but also incentivizing employers to make changes that will enable employees to be reclassified to lower risk;
- Instituting a planning mechanism for very high, high, and medium risk work environments with employee involvement (with regard to medium risk employers, the planning requirement would be limited to those employers with 11 or more employees);

- Requiring employers with risk classifications of very high and high to train all employees regardless of risk level at any worksite where a very high or high risk work environment exists; and
- Protecting employees against safety and health discrimination

Specific Provisions

It is recognized that various hazards or job tasks at the same place of employment can be designated as “very high”, “high”, “medium”, or “lower” as presenting potential exposure risk for purposes of application of the requirements of this standard.

The following provisions were submitted by the Administration:

Section 10.F provides:

“This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable Virginia executive order or order of public health emergency.”

NOTE 1: VOSH is required by the OSH Act of 1970 and OSHA regulations to be “at least as effective as” federal OSHA. VOSH generally follows OSHA interpretations of federal identical standards and regulations.

NOTE 2: The above Executive Order limitation does not apply to previously adopted VOSH laws, standards, and regulations, including those identical to OSHA standards and regulations that currently apply to SARS-CoV-2 and COVID-19 related hazards and job tasks.

NOTE 3: The Department is not currently aware of any provisions in the draft standard that would be in conflict with Executive Order 61 such that the EO would take precedence over it.

Section 10.G.1 provides:

“To the extent that an employer actually complies with requirements contained in CDC [Centers for Disease Control and Prevention] publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, the employer’s actions shall be considered in compliance with this standard.”

NOTE: 1 The intent of §10.G.1 is to give employers the option to either comply with the requirements of the standard or demonstrate that as an alternative that they have complied with requirements in a CDC publication addressing the same hazard, issue, etc.

In order to take advantage of §10.G.1, an employer would have to demonstrate that it was complying with language in CDC publications that could be considered both “mandatory” (e.g., “shall”, “will”, etc.) **and** “non-mandatory” (“it is recommended that”, “should”, “may”, etc.). In other words, an employer would have to comply with a CDC “recommended” practice even if the CDC publication doesn't “require” it. Section 10.G.1 makes this clear by use of the word “requirement”.

NOTE 2: The standard does not require employers to comply with any CDC publication language that is solely directed at assuring the safety and health of the general public. The focus of the standard is employee safety and health, and the focus of §10.G.1 is only CDC publications’ language that addresses employee safety and health, and occupationally-related hazards, issues, mitigation efforts, etc.

Section 10.G.2 provides:

“Public and private institutions of higher education that have received certification from the State Council of Higher Education that their re-

opening plans are in compliance with guidance documents developed by the State Council of Higher Education in conjunction with the Virginia Department of Health and who operate in compliance with their certified reopening plans shall be considered in compliance with this standard. Public school divisions that submit their plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools and who operate in compliance with their submitted plans shall be considered in compliance with this standard.”

NOTE 1: In order to take advantage of §10.G.2, an educational institution would have to demonstrate that it was complying with language in applicable State Council of Higher Education guidance documents that could be considered both “mandatory” (e.g., “shall”, “will”, etc.) and “non-mandatory” (“it is recommended that”, “should”, “may”, etc.). In other words, an employer would have to comply with a “recommended” practice even if the guidance document doesn't “require” it. Section 10.G makes this clear by use of the word “requirement”.

NOTE 2: The above provision does not exempt educational institutions from complying with previously adopted VOSH laws, standards, and regulations, including those identical to OSHA standards and regulations that currently apply to SARS-CoV-2 and COVID-19 related hazards and job tasks.

Notes on Board Amendments

There will be times with regard to Board member amendments that the Department will inform the Board of its position and other times where it may take no position.

The Department will provide guidance as needed to clear up inconsistencies or provide clarification on the impact of a proposed amendment.

Department staff will read into the record amendment language prior to it being voted on for the benefit of the visually impaired.

Error Correction – Board Member Amendments Overlooked

The following Board member amendments were mistakenly not included in the June 28, 2020 Combined Board Amendments document:

- §10.D.2.b - Travis Parsons
- §40.A.6 - Courtney Malveaux
- §70.A-B - Millie Rodriguez
- §70.B - Thomas Thurston [amendment has since been withdrawn]

The above amendments will be presented to the Board in the above order in the appropriate place as the Board moves through the draft standard.

Process for Working Through Board Amendments

The plan is for the Board to move through the draft standard page by page and section by section.

We will be using a document which contains Department changes and Board amendments submitted to date.

All changes by the Department made on June 23rd to the original June 12th draft will be shown highlighted in yellow with new language underlined and deleted language ~~struck through~~.

Please note that, as discussed above, there is one additional change submitted by the Department to the standard on behalf of the Administration on June 28, 2020 contained in §10 dealing with educational institutions.

Board member amendments will be presented in the following fashion with new language highlighted in yellow and underlined and deleted language ~~struck through~~ and highlighted:

§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “HIGH” BOARD AMENDMENT – TT

1. First responder services provided by police, **corrections**, fire, paramedic, search and rescue, recovery, and emergency medical services provided to a known or suspected COVID-19 patient, resident, or other person;

The “TT” at the end of the title are in the initials of the Board member – in this case Thomas Thurston.

Where language is being added and deleted and it may be a little difficult in determining the final language being voted on, the Board member’s amendment will be presented like this:

§90.C BOARD AMENDMENT – CM

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer’s agent, **other employees, or** a government agency, ~~or to the public such as through print, online, social, or any other media.~~

AMENDED LANGUAGE MINUS EDITS

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer’s agent, or a government agency.

We will now proceed with consideration of the text of the draft standard.