

Virginia Office
District – 2-13



Workers of America

3960 Stillman Parkway, Suite 130
Glen Allen, Virginia 23060

June 22, 2020

Jay Withrow, Director
Division of Legal Support, ORA, OPPPI, and OWP
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219

Dear Mr. Withrow and Board:

Please consider CWA's comments on the Emergency Temporary Standard/Regulation for **Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**.

The Communications Workers of America is a Labor Union representing workers in various industries and sectors across the United States, Canada and Puerto Rico. In Virginia we represent approximately 6,500 workers across the Commonwealth. This includes Virginia workers in the industries of telecom, airlines, media, retail, manufacturing, and healthcare. We also represent workers at the American Red Cross, Virginia Department of Corrections and the Virginia Department of Juvenile Justice.

We have seen first-hand the devastation that COVID-19 has had on workers across the country, including Virginia. Hundreds of our members have become infected with this deadly disease with too many of them succumbing to this deadly disease. Clearly, the current approach has not been working to prevent worker COVID-19 illnesses and deaths and there are significant gaps in coverage of existing occupational standards that leave workers unprotected and vulnerable. We must have a strong, ENFORCEABLE, infectious disease standard to protect all workers from COVID-19 and Virginia can lead the way where our Federal Government has failed.

The proposed standard/regulation is a start but there are major areas of concern we have in making sure that this will, as currently written, do everything it must do to protect workers within the Commonwealth. These concerns are as follows:

I. This Standard must be the Rule in Virginia.

Section "G" in the VA proposed emergency temporary standard is a giant loophole that will enable employers to opt out of complying with the provisions of the standard. Throughout the pandemic, all too often employers have stated they are "following CDC guidelines" when safety concerns have been raised. We must not rely on the CDC and the politicization of COVID-19 in protecting Virginia's workers. Virginia is doing the work to create this standard due to the realization that employers and workers need set guidelines to ensure that we are safe. We have, unfortunately, not been able to rely on the CDC for consistent safe messages. . Some of the CDC guidelines have recommended strategies that are dangerous to workers and can cause COVID-19 spread at work and in the community, such as allowing healthcare workers and essential workers with a known exposure to COVID-19 to be allowed to continue to work if they are asymptomatic, instead of quarantining during the period where they might be asymptomatic and infectious. Even those CDC guidelines that may contain measures that are protective have not been sufficient to keep workplaces safe and protect workers.

The following provision should be struck and **MUST NOT** be included in the final standard enacted:

G. To the extent that an employer complies with requirements contained in CDC publications to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.

II. Creating categories of "Risk Exposure" levels are problematic and fail to adequately protect all workers.

The exposure risk level categories should be more inclusive and the factors that shall be considered in determining exposure risk level should be expanded.

The proposed standard/regulation does not provide adequate coverage of risk factors for potential worker exposure to SARS-CoV-2. Identification of all potential risk factors is a critical step in the process used to determine the 'risk category' as defined by the standard/regulation.

The assessment of risk is also used to determine workplace and work process controls to protect workers. If all potential risk factors are not taken into consideration, the level of risk will be underestimated and the protections for workers will be insufficient.

The emergency standard/regulation must take into account all modes of transmission of SARS-CoV-2, including airborne transmission involving very small aerosols which may contain infectious viral material. Small, suspended aerosols can travel greater distances than the 6 foot distance used to protect against droplet transmission.

The emergency standard/regulation must also address the risk of transmission by asymptomatic or pre-symptomatic individual who may be infected with COVID-19, but do not know they are infected. Risk of exposure by asymptomatic or pre-symptomatic individuals significantly increases the “silent spread” of COVID-19. Making a distinction between known and suspected CoVID-19 cases while ignoring individuals who may be infected, but are asymptomatic or pre-symptomatic is dangerous and misguided. In our experience, the vast number of infections have come from exposure to people who were not showing any symptoms or obviously sick. How would it be possible for an employee or employer to know if a customer walked into a store and was positive? Maybe the customer had no idea and were asymptomatic. Employers must take all potential risks of exposure into consideration, regardless of whether the risk factors are controlled by the employer or not. The determination of the Risk level should be based upon factors related to the work task(s) or any aspect of the work environment encountered in the course of employment and the selection of the risk level should be based on the factors posing the highest degree of risk. For example, a telecommunications technician who must enter customer homes or businesses has a high risk of exposure performing work in those circumstances, but will have a lower risk of exposure while performing work outside of a customer premise. Therefore, the risk level category for telecommunications technicians should be categorized as “high”.

The language in section D(2) should be revised to:

The determination of risk levels should be based on the presence of one or more of the following factors that will increase risk and are present during the course of employment, regardless of location:

- a. *Performance of work in an indoor environment or an enclosed environment, such as a vehicle, where other people are present. People are potential sources of exposure. It is impossible to know which individuals may be infected, but asymptomatic or pre-symptomatic until such time as there is a rapid test available.;*
- b. *The presence of a known or suspected COVID-19 person;*
- c. *Direct care of a person known or suspected of being COVID-19 positive or any other health-related work (e.g. performing COVID-19 or serology tests, taking blood) involving individuals who could be infected, but are not symptomatic;*
- d. *The presence of people in the work location, which can include employees, customers, clients, contractors, vendors, and members of the public. The more people in the work area or the more people that frequent the work area, the greater the risk of exposure;*
- e. *The working distance between employees and other employees or persons. Risk is increased the closer people are. A separation of 6 feet, particularly in an indoor or enclosed environment, is important, but not sufficient to protect against airborne transmission;*

- f. *The duration and frequency of employee exposure through contact with other employees or persons (e.g., including shift work exceeding 8 hours per day). The greater the duration or frequency of contact the greater the risk. However, the level of exposure that can cause an individual to become ill is not known at the current time, so workers should be protected against all potential exposure;*
- g. *Contact, including potential exposure to the SARS-CoV-2 virus through respiratory droplets in the air or through smaller aerosols that may remain suspended in the air; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility;*
- h. *Industries, sectors, or places of employment where employees ride together in work/service vehicles during the course of their employment (e.g. emergency responders, telecommunications technicians, news crews in news vans, etc.);*
- i. *Industries, sectors or places of employment where employees share transportation, such as ride-share vans or shuttle vehicles (e.g. in airports), car-pools, and public transportation, etc.*
- j. *Industries, sectors or places of employment that have had a COVID-19 outbreak of 2 or more employees.*

Within section D(3), the “Lower Risk” category of exposure should only apply to employees who do not perform work tasks or who do not work in an environment that contains one or more of the risk factors listed above or if all existing risk factors can be completely controlled and eliminated

III. Workers MUST be involved in Risk Assessment

Workers do the work. They know how they engage in tasks, who they must communicate with and what is required to complete what is in front of them. Workers are also ultimately responsible for their own safety. They must be involved in the risk assessment process. This is also why we need to define the tasks into various levels of risks and not whole industries as the standard is currently written. Another concern is as we currently witness a rush to “return to normal” safety is becoming increasingly less important than “fixing the economy”. As President Trump has said “Will some people be affected badly? Yes, but we have to get our country open and we have to get it open soon.”¹ This type of dangerous talk may

¹ <https://www.marketwatch.com/story/how-do-you-choose-between-economic-deaths-of-despair-and-coronavirus-victims-economists-lawmakers-grapple-with-a-moral-conundrum-2020-03-26>

lead some employers to make different decisions on what is an appropriate level of risk. The victim in this would be the workers.

The way we mitigate such risks is to make sure that workers are involved in every level of risk assessment. Employers should not be allowed to self-assess where workers would fall in such a system. In workplaces where the workers have organized into a Labor Union or formed an Employee Association, those organizations are already in place to be a part of this decision making. Where there is not already an organization the employer should form a safety committee, where one does not exist, to help make these decisions. This risk assessment should be a mutual agreement between employer and employee to ensure the safety of the workers doing the work. We would propose the following amendment to the standards, with the additional language in **Bold**:

*1. Employers **and workers (or Labor Unions/Associations where present)** shall **mutually** assess their workplace for hazards and job tasks that can potentially expose employees to SARS-CoV-2 or COVID-19. Employers **and workers (or Labor Unions/Associations where present)** shall **mutually** classify each employee according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this . . .*

IV. Correctional facilities, jails, detention centers, and juvenile detention centers are unique environments and MUST have increased and more comprehensive workplace controls and protections.

Correctional facilities, jails, detentions centers, and juvenile detention centers have been proven to be hotbeds of infection due to their unique environment. The numbers in the Virginia Department of Corrections alone have been staggering. As of June 21, 2020, there have been 1443 offenders and 89 staff infected with 10 deaths.² The controls that have been put in place have been inadequate and we have seen the widespread outbreaks within this system. These facilities were never designed to keep individuals separated in the way that would allow adequate social distancing. The DOC early on distributed “face coverings” that they had the offenders making. At one time, the capacity was up to 15,000 a day which were being sold through Correctional Enterprises. This still failed in adequately controlling the spread of the virus.

We have seen a similar spread in the Department of Juvenile Justice at the Bon Air JCC. As of June 15, 2020, this facility had 29 residents (“resident” is the term for juveniles housed there) and 14 staff infected.³ Disturbingly, many of those infected were asymptomatic. In fact, DJJ Chief Physician Dr. Christopher Moon Dr. speaking at a press conference about that mid-

² <https://vadoc.virginia.gov/news-press-releases/2020/covid-19-updates/>

³ <http://www.djj.virginia.gov/pages/about-djj/covid.htm>

April outbreak said “Of the 25 Bon Air residents who have tested positive, I’m pleased to report that 21 exhibited no outward symptoms, and only four had symptoms that were no more severe than a cold or flu,”⁴ With so many asymptomatic, pre-screening is virtually useless and was in place at the time of this outbreak.

The Bon Air outbreak forced the DJJ to institute widespread testing at this one facility. At the DOC we have seen widespread testing at only a few centers with outbreaks where the National Guard was brought in to facilitate. The vast majority of facilities are doing point prevalence testing. This point prevalence testing only gives a single snapshot of a limited population and does not include staff. Staff are being told to go to their Primary Care Physician. This is not enough. This does not include the many jails, detention centers and other facilities within the commonwealth which have faced similar problems. Yet it is impossible to determine an accurate level of infection with localities operating under their own guidelines and testing ability.

The guidelines listed in this current version would do nothing to halt infections under the conditions that they are in. The current draft lists these facilities under a “Medium” risk. The majority of the Administrative and Work Practice Controls would not be possible within this environment and the ones that are possible, such as Pre-screening, have been in place prior to the outbreaks within the facilities. Clearly, that wasn’t enough. If these risk categories are maintained then these facilities must be in a “High” risk category. This is still not enough and we strongly feel that these facilities need the following guidelines written into the standard to ensure safety:

- a. Stop all entrance into the facilities for anyone not incarcerated or employed and assigned to that individual facility.
- b. Test ALL staff, resident/inmate, officer, deputy, etc. within the facility as a baseline and then regularly to ensure no exposure is being brought in.
- c. Identify all shared equipment (vehicles, radios, weapons, work stations, etc.) and ensure that this is disinfected prior to utilized again.
- d. Mandate “Respirator” use, not “face covering” for all employees and all inmates/residents when they are transported or removed from their normal pod.

V. This standard must also be clear for workers in uncontrolled environments such as residences or other businesses.

⁴ <https://www.nbc12.com/2020/04/17/inmates-bon-air-juvenile-correctional-center-test-positive-covid/>

This Standard fails to address Employees who work outside of the Employer controlled environment such as those that visit customers residences or businesses. This type of worker has no way of identifying a threat until after they are exposed and become ill and an employer has no way of insuring that this is a safe environment. There is a further concern in that if this is not properly contained these workers can carry this exposure from house to house as they go throughout their day. Procedures such as “curbside” service in retail and in “no contact” delivery for packages or food are in place to recognize the danger in carrying this disease from person to person. This category of worker who routinely enter uncontrolled environments such as residences, businesses, and other facilities (including health care), however, must often enter a dwelling to repair, test, or install equipment and they are subject to a much higher degree of danger that then continues to be carried to the next residence. In order to protect these workers and to mitigate the exposure risk for others we strongly believe these workers should have the following standards:

1. These workers must be issued NIOSH-certified Respirators, not “face coverings” that are not regulated or certified in any way, as well as other appropriate PPE prior to entering this unknown environment.
2. After exiting they must also be provided with appropriate cleaning supplies and disinfectant and appropriate receptacles to safely dispose of possible contaminated PPE.
3. Employers must ensure that workers have enough tools and equipment to minimize sharing of equipment, including vehicles. In the rare event this does not happen, all shared equipment must be sterilized prior to use of another employee.
4. Employers must also be required to screen customers or locations prior to dispatching an employee for possible high risk scenarios.
5. Employees must also be protected from any retaliation, harassment or discipline if they refuse to enter an unknown location that they self-evaluate as unsafe.

VI. The use of the term “Where Feasible” is concerning and must be changed.

The term “where feasible” should be struck from this standard in all instances that it occurs. This term is not defined with strict guidelines on where it might logically and safely apply and this presents ambiguous guidance that some will interpret as permission to work as “business as usual”. The workers’ safety should be paramount at all times and in cases where this safety cannot be ensured we should, very simply, not be requiring workers to do those tasks.

VII. This current standard does not adequately define and protect Professionals who collect Blood and Plasma.

Under the current draft, that sets different categories for known and suspected cases as opposed to unknown, it fails to recognize the danger these employees are in who work with bodily fluids and are in close proximity to donors. This is also an environment that can see

donor after donor coming through a “drive” in a relatively short amount of time that increases the risk of exposure. We know there is a danger due to the high number of quarantines at the American Red Cross that we have seen. We have seen multiple employees in this field test positive for Covid-19 and there is a desperate need for clear guidelines. We strongly object to the Risk Categories, however, if those remain this category of work should clearly fall under a “High” risk.

VIII. Training should be for all workers.

The current standard requires training for workers in “Very High” and “High” categories with some workers that fall into a “Medium” category. We strongly believe that all employees should receive training. This training should, at the very least, include:

1. How to identify risk factors for exposure
2. COVID-19 basics including how COVID-19 is transmitted, signs and symptoms, and risk factors for severe disease
3. How to perform tasks safely along with proper cleaning and disinfecting
4. Proper use of PPE, proper disposal of contaminated PPE, and risk of heat stress when wearing PPE under certain conditions.
5. Proper procedures and resources if workers are exposed at work or in their personal life.
6. Proper reporting of all incidents.

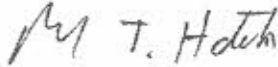
IX. Contact Tracing, Reporting, and Record-keeping

This standard should also mandate that employers have designated, trained contact tracers that can ensure that every worker is captured, i.e. identified, and notified when there is a possible exposure. Employers should be mandated to report employee cases of COVID-19 to the VA Department of Health and to VOSH. Employers should record work-related cases of COVID-19 as per the VOSH/OSHA Recordkeeping standard and all employers should maintain a separate log of all employee suspected or confirmed COVID-19 cases they are aware of.

As Virginia continues to reopen we must find a way to ensure that Virginia’s workers are safe. We continue to see cases rise in states that have opened too soon and that do not have adequate standards in place. The CDC guidelines have not been enough. We also must confront the fact that with the politicization of Covid-19, to include the very basic act of mask wearing, employees are more likely to come into contact with an unprotected populace. Virginia then has a choice; go back into lockdown or make sure that workplaces are the safest we can make them to keep our economy going.

We urge the Safety and Health Codes Board to immediately adopt a revised and improved version of 16 VAC 25-220 as an Emergency Temporary Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19. During the 6-month period that the Emergency Temporary Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 is in effect, the VA Department of Labor and Industry should develop a proposed, permanent regulation to continue to protect workers from COVID-19 now and as protection against future infectious disease outbreaks.

Sincerely,

A handwritten signature in black ink that reads "Richard T. Hatch". The signature is written in a cursive style with a large initial "R".

Richard T. Hatch
CWA Representative