



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

RE: Comments for VA Department of Labor and Industry, Safety and Health Codes Board  
Emergency Temporary Standard/Emergency Regulation, Infectious Disease  
Prevention: SARS-CoV-2 Virus That Causes COVID-19

POSITION: Not in favor as currently written and proposed

To Board Members and Staff:

Thank you for the opportunity to offer comments on the Virginia Department of Labor and Industry's recommended 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19. I will try to make these remarks brief. Other business groups have had to expend more time and effort to go over the Draft in minute detail with much more knowledge of OSHA, VOSHA, and DOLI regulatory authority, existing regulations and procedures. I appreciate their in-depth understanding of the implications of this proposed Draft. But even someone not as well versed in specific rules and regulations can see issues in the Draft that should be corrected or struck even before a vote is considered.

First, these are potentially significant changes to some business operations, without much notice and only ten days to review and comment. Business operations depend on "certainty", or at least the absence or reduction of risks. The businesses that I know that have remained open, both "essential" businesses as well as those not classified as such but that have adapted (remote working, social distancing, shift adjustments, constant sanitizing, etc), have been following both CDC guidelines and the Governor's Executive Orders, as well as Forward Virginia directives. Additionally, companies have been consistently reviewing and adapting as best practices emerge and change for the general population and business sector or industry specific.

An area of specific concern is the assumption of business responsibility for someone contracting COVID-19 at work. The major areas of business concern with reopening which I have heard on calls as well as through a local Chamber business survey, are: keeping employees safe; providing a clean environment and keeping customers safe; bringing employees back to work (various issues, including those who do not want to return to work); and business liability questions, even when following CDC guidelines and industry best practices. With this Draft, there appears to be no burden of proof or responsibility for an employee's responsibilities, hygiene or social interactions outside of the work environment. There must be some reasonable balance, which the proposal before you seems to ignore.

Additionally, these are “temporary” and “emergency” but there is a clause to possibly continue the effective application beyond the specified timeframe. The concern here is that regulations and guidelines can be indefinitely extended and become de facto changes to existing laws and regulations. The unwritten assumption, of course, is that the Coronavirus may be around longer than the initial period specified in the Draft, but by the same logic the CDC guideline and industry best practices have changed as science and medical understanding of the virus has evolved and they will continue to do so.

As others will undoubtedly point out in their remarks, there are many specific instances of ambiguity with existing laws and regulations and sections that need more clarification than one public Board meeting can resolve.

If the Board feels that it must do something, please have them remit the DRAFT to DOLI staff to clean up first, then revisit the document. Passing the Draft in its current form, as the economy is trying to climb out of the abyss of COVID-19 and employers have been adjusting and planning based on CDC guidelines, the Governor’s Executive Orders and their own industry’s best practices may create more problems than it might solve.

Thank you and the Board for the opportunity to submit these comments and concerns.

Sincerely,



Frank M. Tamberrino, President