

MEMORANDUM

TO: Commissioner Ray Davenport
FROM: Michael Cassidy, The Commonwealth Institute for Fiscal Analysis
RE: Emergency Workplace Regulations for COVID-19 Situation
DATE: June 11, 2020

With Virginia progressing through phase two of reopening, there is an urgent need for appropriate protections for workers in Virginia. Below are some key areas where we believe Virginia is currently lacking sufficient protections and where DOLI has the authority to act through rulemaking.

We would like to arrange a call together to discuss possible action on the part of the department and administration on these issues.

Background:

On the federal level, guidelines have been published, but OSHA lacks the ability to enforce these actions for worker safety.¹² While the Families First Coronavirus Response Act has created some protections, such as paid sick leave for some workers, these positive steps still have holes which the state can fill (such as for employees of larger or smaller firms).³

On the state level, Executive Orders 61-63 attempt to protect consumers and employees from each other, but do not address intra-workplace transmission. Even though the state has guidelines for worker safety, several common sense rules are still voluntary.

Using federal and state guidelines, as well as the actions that other states have taken, we believe that there are several common-sense regulatory items available under current Virginia law which would protect workers as Virginia reopens.

Policy Recommendations:

Based on the actions of other states, as well as federal and state guidelines, the following are a list of suggested regulations. Several are currently voluntary “best practices” for businesses in the state, though there is a general obligation for employers to maintain safety under The Code of Virginia.⁴ These regulations *should not be viewed as universal*, since certain industries (such as healthcare, food processing, etc) will have higher safety requirements. Rather, this should be used as a safety “floor” for Virginia businesses.

¹ www.nelp.org/publication/worker-safety-health-during-covid-19-pandemic-rights-resources/

² <https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

³ <https://thehalfsheet.org/post/613499528822358016/understanding-federal-action-on-covid-19-and>

⁴ <https://law.lis.virginia.gov/vacode/title40.1/chapter3/section40.1-51.1/>

For purposes of workplace safety, “worker” should be clearly defined to include any person whom an employer suffers or permits to work, and shall include independent contractors, and persons performing work for an employer through a temporary services or staffing agency.⁵

- Ensure all workers and customers have access to hand washing materials, whether it is hand sanitizer or just soap and water.⁶
- A presumption of teleworking ought to exist, and the employer ought to be required to justify why workers need to be back in a physical location.
- Based upon CDC recommendations, and expanding upon EO 63: workers, *even when not interacting with a patron*, should be required to wear a mask at all times, except for when eating, or for health and religious reasons as specified in EO63. Mask wearing is not a substitute for social distancing (at minimum 6 feet apart) or telecommuting when possible.⁷ Masks should be provided free of charge to workers.
 - For “Low and Medium Risk” workers as defined by OSHA, cloth masks at a minimum should be mandatory, due to their ability to prevent disease spread.⁸ Employers ought to be required to provide these face coverings if an employee is unable to provide their own.
 - For “High and Very High Risk” workers as defined by OSHA, PPE, such as but not limited to N95 Respirators, gloves and face shields, ought to be provided to workers except in the most extenuating circumstances to protect them from the virus. Due to the prevalence of outbreaks, these protective items should also be provided to all meatpacking workers.⁹ Only in the case that there is not an adequate supply of N95 respirators would use of a surgical mask in these situations be acceptable.¹⁰ If there is a sufficient amount of N95 respirators or surgical masks for High and Very High Risk workers, medium risk workers who are above the age of 60 or are immunocompromised ought to be provided with surgical masks.¹¹
 - In workplaces that create a “Medium Risk” for workers as defined by OSHA, such as heavily trafficked places of commerce, physical barriers such as plexiglass shields ought to be installed to protect workers and consumers.¹² In higher risk environments, the same ought to be required, if compatible with the job at hand.
 - Training ought to be required in all of these work environments for employees who have not used PPE or masks in a work environment before.

⁵ <https://s27147.pcdn.co/wp-content/uploads/Protecting-Worker-Safety-Health-COVID-State-Local-Policy-Response.pdf>

⁶ www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Virginia-Forward-Phase-One-Business-Sector-Guidelines.pdf

⁷ www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html

⁸ <https://www.osha.gov/Publications/OSHA3990.pdf> pg 18-25

⁹ <https://www.nytimes.com/2020/06/01/health/masks-surgical-N95-coronavirus.html?action=click&module=Top%20Stories&pgtype=Homepage>

¹⁰ *ibid*

¹¹ <https://bmjopen.bmj.com/content/5/4/e006577>

¹² <https://www.osha.gov/Publications/OSHA3990.pdf>

- Employers ought to be required to inform workers within 12 hours if someone has been infected with COVID-19 (while still protecting the privacy rights of those who were infected), in order to allow those workers who came into contact to self-isolate. This would need to be done in a method consistent with HIPPA.
- All workplaces should, at minimum, require daily temperature checks for employees. While it cannot prevent those who are asymptomatic from entering, it can prevent those with symptoms from spreading the disease.¹³ Employers should also look for other symptoms, and do more than daily checks on workers in high risk or highest risk environments.

¹³www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html