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*A Voice for Virginia's
Working Families*

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Working people are in desperate need of a strong, enforceable standard to require their employers to plan for and protect them from COVID-19. In Virginia, over 58,465 people have been infected with the virus¹, and as the state continues to expand reopening, without the proper protections in place, exposures in the workplace will escalate.

We are proud of Virginia for being the first state to propose a comprehensive standard to protect all workers from COVID-19. It is a significant step forward in protecting our workers and our communities from this virus.

We urge the board to vote for moving forward on this standard in a timely manner. However, there are improvements that must be made to ensure the standard is meaningful, has impact, and truly protects workers from this deadly virus.

General Concerns

1. **The provision allowing for employers to comply with CDC guidance as a replacement for following the Virginia standard must be removed.** Voluntary guidance is never a substitute for an enforceable standard. Also, the CDC has watered down guidance during the pandemic due to industry desires instead of scientific reasoning and public safety.
2. The standard must clearly recognize 1) **airborne transmission** of the virus (which requires higher levels of adequate respirators and social distancing), and 2) **asymptomatic transmission** of the virus (which requires high levels of protection and quick removal from work with paid leave and employer reporting of cases to public health department and OSHA, etc.). **The scientific evidence is clear.**
3. **The risk categories in the proposal are misguided. They are not relevant to the current exposure and infection rates in workplaces.** We now know that all workplaces where workers are in close contact with the public or their coworkers are at high risk of exposure, such as meatpacking and corrections, not just in healthcare settings. **The standard must ensure that all high-risk workers are protected equally from the virus through requiring an exposure assessment, infection plan, controls, reporting and training in ALL at-risk workplaces.**

¹ <https://www.vdh.virginia.gov/coronavirus/> as of June 22, 2020.

4. **The standard must include strong requirements for reporting and recordkeeping.** These elements are currently weak or missing and are essential to quickly understand the location and severity of outbreaks and to target prevention measures.

Specific Commentary

1. Many general definitions must be strengthened, clarified, or generally improved, as stated in the “General Concerns”. The definition of “occupational exposure” in § 30 is too narrow. It is not sufficient to state that a worker was exposed or potentially exposed during a “job task.” Any exposure or potential exposure that occurs while an employee is at his workplace or “during the course and scope” of his employment should be covered.

Further, when considering the factors in determining exposure risk levels, as stated above, §10 D(2)(b) must specifically state that airborne transmission is included as a route of exposure. By having accurate risk factors considered, this will assist in ensuring that more workers are appropriately classified. As stated above, many workers are not appropriately classified in the current proposal. For example, the current proposal identifies meatpacking workers as only having “medium” risk of exposure. The data suggests that workers at meatpacking plants are at least at a “high” risk. There is a high risk of community transmission, potential for animal to human transmission, and as critical employment, these workers are put in an environment where the risk of transmission of COVID-19 is significant. Not only should the factors be better defined as stated herein, but more workers should be classified as “very high” or “high” risk for exposure.

2. For those workers who are appropriately categorized in the “medium” exposure category, the standard protections must be strengthened. There are several proposed standards that apply only to “very high” or “high” risk that must also apply to the “medium” exposure workers.
 - a. Specifically, employees in the “very high” or “high” risk of exposure categories are provided enhanced medical monitoring and job-specific education and training set forth in §50 B(6). These provisions must be extended to those workers categorized as being in a “medium” exposure level as well.
 - b. Further, employers of those in “medium” exposure work should be required to provide psychological and behavioral support as set forth in §50 B(8).
 - c. Employers of “medium” risk employees should be required to provide alcohol-based hand sanitizers that meet the appropriate minimum expectations as those expected in “very high” and “high” risk employment as referenced in §50 B(8), and employers of “medium” risk employees should be required to implement respiratory protection programs as set forth in §50 C(4) in line with the same level of protection provided to “very high” and “high” risk employees.
 - d. The PPE training requirements set forth in §50 D must also apply to employees in all categories- every worker must have sufficient training on the use of PPE, not just those in “very high” or “high” risk employment. Every worker should be appropriately trained to safely and effectively use the safety equipment provided to help prevent the transmission of COVID-19.
 - e. Simply put, these protections for “very high” or “high” risk employment should also be required in “medium” risk level employment.

3. Personal Protective Equipment (PPE) definitions in Section 30, specifically describing respirators and surgical masks, are appropriate. However, the definition of a face shield is inaccurate.

- a. The current proposed definition suggesting that it protects from airborne particles is not correct. The face shield only protects from droplets and does not provide respiratory protection, and as such, this definition should be changed so that the language stating that it protects the face from airborne particles is removed and modified to state that it protects the face from droplet particles only.

Although respirators and surgical masks are well defined in §30, §50 C(1), discussing the requirements for “very high” or “high” exposure risk, appears to treat respirators and surgical masks as being interchangeable. This provision should clarify when surgical masks are sufficient compared to when respirators are required.

- b. Further, §60, which deals with workers in a “medium” exposure classification, is very ambiguous about what PPE is required for these workers. As stated above, these workers should also be entitled to a requirement that the employer implement a respiratory protection program like those for “very high” and “high” risk employment.
- c. Section 60 should be strengthened and supplemented so that even employees in “low” and “medium” risk jobs have guidance on respiratory protection, and should require that even “low” and “medium” risk employees wear at least cloth masks at all times, not just when interacting with the public. It should also make it clear that even a respirator may be a possible need for employees in these categories.
- d. Generally, it must also be clear that PPE is to be provided by the employer, to the employees, at no cost to the employees.

4. The proposals regarding planning, reporting, record keeping, and employee involvement are weak and incomplete. Currently, §70 C(7) only requires that employers of “very high” and “high” risk employees have a plan in place to effectively combat the spread of COVID-19 and to provide training to implement the plan.

- a. While the details of any plan may vary depending on the specific job risk, every employer must be required to have a plan and to provide appropriate training, not only the “very high” and “high” risk employers.
- b. Further, there is no mention that the employees or an employee representative be involved in the development or review of the plan.
- c. A new section should be added to guarantee that the employees have input, whether direct or through a representative, on the plan to ensure their own safety.
- d. In addition to requiring every employer to have a plan, based on employee input, additional administrative requirements must be strengthened. The current proposals

do not require an employer to report positive testing to any higher authority. In addition to notifying employees, other employers at a site, and a property owner, in compliance with HIPAA, employers must be required report multiple infections to OSHA, as the CDC defines three or more infections as an outbreak.

- e. Also, currently, there is no requirement regarding recordkeeping. It is necessary that employers be required to keep records and appropriately report positive tests to higher authorities to ensure accountability. This is key to monitoring and understanding the locations and severity of outbreaks to help plan further prevention measures.
5. Basic minimal protections for common areas and protection of the general workplace need to be stronger.
- a. Specifically, §40 D(1)(c) only provides that employees wipe down a work area and that an employer “may” disinfect a common area. It must be clear that the employer must be responsible for disinfecting all common areas. There can be no ambiguity about this.
 - b. Further, provisions regarding prescreening must be more clear. “Prescreening or surveying” is not well defined, and may not require employers to take sufficient measures to test for infection.
 - c. In addition to well-defined screening practices, employers should be required to thoroughly observe and monitor their employees for symptoms and actual temperature checking measures must be implemented.
6. We urge the board to adopt the proposed standard **as a standard** with the following very critical amendment. We urge the board to delete Paragraph G on page 6 (see below): If the board does not delete at least the paragraph below, then the standard will not protect VA workers from exposure to COVID 19 at work, and as the economy reopens in Virginia more workers will get sick and it will spread back into the community.

Delete the paragraph below, from page 6, of the ETS document:

“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.”

The above paragraph would undermine all the protections required in the standard. It would allow employers to be in compliance with this proposed standard if they are following non mandatory CDC publications that are mere suggestions to employers. The CDC publications on COVID-19 are not requirements nor are they standards—they are written as suggestions.

Thus the CDC publications to mitigate SARS-CoV-2 and COVID-19 related hazards state that employers should just consider these recommendations—the employer does not actually have to implement any of them. For example, the CDC publications are filled with non-

mandatory recommendations to employers in the meat and poultry industry include phrases such as “consider this”, or do this “if possible”. Thus employers say they are in compliance with these suggestions, if they have just considered something, and decided, it is just not possible.

You must strike this paragraph –or workers will continue to be at risk at work in Virginia to COVID-19, and the disease will spread at work and back out into the community. All employers must comply with this standard and the requirements the standard—and not be allowed to use vague, recommendations and suggestions as cover to continue exposing workers to unsafe conditions in this Pandemic.

We strongly support Virginia moving forward in protecting workers from COVID-19 through a strong enforceable standard. With some improvements, the proposed standard will save lives and slow the spread of the virus in our state.