

September 25, 2020

Ms. Princy Doss  
Director of Policy, Planning and Public Information  
Virginia Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219

**RE: Adoption of Permanent Standard for Infectious Disease Prevention SARS-CoV-2 Virus that Causes COVID-19, 16 VAC 25-220**

Ms. Doss:

On behalf of the Virginia Restaurant, Lodging & Travel Association, we want to take this opportunity to share our organization's comments regarding the Virginia Department of Labor and Industry's (VDOLI) intent to adopt the emergency regulation for preventing COVID-19 in places of employment as a permanent standard.

Hospitality and tourism related businesses have been working diligently to comply with COVID-19 related requirements from the Governor's Executive Orders (EO), Virginia Department of Health (VDH), Virginia Department of Labor and Industry (VDOLI) and applicable federal requirements.

In fact, the hospitality and tourism industry has strived to protect the public and their staff throughout this public. The American Hotel & Lodging Association created the Safe Stay program, and the National Restaurant Association developed the ServeSafe Dining Commitment/ COVID-19 trainings. Major hotel brands, including Marriott, Hilton, and others also have implemented rigorous cleaning protocols as well. These lessons were created in accordance with the guidance issued by public health authorities, including the U.S. Centers for Disease Control. Regrettably, VDOLI has failed to accept these hospitality industry specific education programs even after much encouragement from our industry to get these recognized as satisfying training and safety criteria of the ETS.

In our review of the emergency temporary standards (ETS) that were adopted by your agency, we noticed many of the concerns that we expressed inadequately addressed.

The ETS was approved ostensibly to provide a means of ensuring employees and the public were protected during the temporary COVID-19 emergency; however, your agency is now seriously considering establishing these as permanent standards.

Eventually, COVID-19 will have viable treatments and vaccines. Therefore, it's misguided to establish these requirements as a permanent standard that will be perennial. As a result, hospitality and tourism businesses will need to comply with these onerous regulations after successful treatments and vaccines have been established.

As you may be aware, hospitality related businesses have been one of the most heavily impacted by COVID-19. These businesses have already been absorbing huge costs just to comply with existing requirements from VDH, EOs, CDC, and national trainings. Making the VDOLI standard permanent will place these businesses in a more precarious situation. We currently anticipate that almost 25% of restaurants in Virginia will permanently close,

and these regulations will increase the rate of permanent closures.

Therefore, we believe that it's imprudent to transition the ETS to a permanent standard, but should your agency move forward with making these standards permanent here are our suggestions:

- Exempt hotels, restaurants, and campgrounds that train their staff in either the American Hotel & Lodging Association (AHLA) Stay Safe, national hotel brand trainings and guidance, National Restaurant Association (NRA) ServeSafe Dining Commitment, or National Association of RV Parks and Campgrounds (ARVC) Re-Opening RV Parks and Campgrounds procedures and follow necessary protocols included in these respective programs.
- Remove the requirements included in 16VAC25-220-60 B. 1. b. which applies to medium risk businesses and stipulates all building in Virginia must meet the most updated HVAC systems guidelines. This requirement should only be applicable for replacing units or new construction.
- Amend the standards to reflect the original draft language that provided safe harbor to employers following federal guidance, such as that contained in CDC and OSHA.
- Clarify what is considered "minimal contact" in the standard.
- Strike the language pertaining to sick leave policies. Restaurants are already bound to follow the FDA food code which stipulates that employees who are sick should remain at home. Moreover, employers are already required to provide sick leave to employees under the FFCRA.
- Remove the redundant stipulation that employers report positive cases to VDH. Health care providers already required to alert VDH of positive test results.
- Remove the requirement for hand sanitizer be available as it's not in line with public health officials. The CDC only requires that hand sanitizer be available as a substitute for hand washing, whereas the VDH considers it a best practice.
- Adjust the time based "return-to-work" rule to align with the CDC requirement.
- Sunset the regulation when the Governor's State of Emergency concludes for COVID-19.

As noted above, there are many issues with the proposed language in the permanent standard that appears to conflict with public health guidelines and requirements. This ambiguity is why VRLTA believes it's best to not make these standards permanent. We remain of the belief that hospitality related businesses that follow national health and safety procedures from AHLA, NRA, and ARVC should be exempt from the VDOLI regulations as these procedures were developed in accordance with CDC guidelines.

For these reasons, we strongly believe that the best approach is to not adopt the ETS as a permanent regulation. However, if you do promulgate them, we believe the adjustments outlined above will provide the means to address the public health issues pertinent to mitigating transmission of COVID-19.

Sincerely,



Eric Terry  
President  
Virginia Restaurant, Lodging & Travel Association



Robert Melvin  
Director, Government Affairs  
Virginia Restaurant, Lodging & Travel Association