

January 4, 2021

16VAC25-220, DRAFT Final Permanent Standard for

Infectious Disease Prevention of the

SARS-CoV-2 Virus That Causes COVID-19

As Adopted by the

Safety and Health Codes Board

on _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY (DOLI)

Effective Date: To be Determined, but no later than January 27, 2021

16VAC25-220

January 4, 2021

[LANGUAGE HIGHLIGHTED IN YELLOW REPRESENTS CHANGES FROM JULY 24, 2020]

[LANGUAGE HIGHLIGHTED IN BLUE REPRESENTS CHANGES FROM DECEMBER 10, 2020]

[DATES ARE HIGHLIGHTED IN GREEN]

DRAFT Final Permanent Standard for

Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19

16VAC25-220

16VAC25-220-10. Purpose, scope, and applicability.

A. This standard is designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.

B. ~~This standard shall not be extended or amended without public participation in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and 16VAC25-60-170.~~

~~C.~~ This standard is adopted in accordance with subdivision 6 a of § 40.1-22 of the Code of Virginia and shall apply to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program as described in 16VAC25-60-20 and 16VAC25-60-30.

~~D.~~ This standard is designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable directly or indirectly to SARS-CoV-2 virus or COVID-19 disease-related hazards such as, but not limited to, those dealing with personal protective

equipment, respiratory protective equipment, sanitation, access to employee exposure and medical records, occupational exposure to hazardous chemicals in laboratories, hazard communication, § 40.1-51.1 A of the Code of Virginia, etc. Should this standard conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.

Notwithstanding anything to the contrary in this standard, no enforcement action shall be brought against an employer or institution for failure to provide PPE required by this standard, if (i) such PPE is not readily available on commercially reasonable terms, and (ii) the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms. The Department of Labor and Industry shall consult with the Virginia Department of Health as to the ready availability of PPE on commercially reasonable terms and, in the event there are limited supplies of PPE, whether such supplies are being allocated to high risk or very high risk workplaces.

ED. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard. It is further recognized that various required job tasks prohibit an employee from being able to observe physical distancing from other persons.

Commented [WJ(1): (i) and (ii) numbering added by Registrar of Regulations Office (RRO), and semicolons deleted 1.4.2021

Commented [WJ(2): Added by Administration

Commented [WJ(3): DOLI interprets the phrase "no enforcement action" to mean that either no citation shall issue, or if a citation has already been issued it shall be vacated, "if such PPE is not readily available on commercially reasonable terms, and the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms."

DOLI will still retain the right to carry out its statutory authority to conduct informal investigations or onsite inspections and verify employer compliance with this provision.

2. Factors that shall be considered in determining exposure risk level include, but are not limited to:

a. The job tasks being undertaken, the work environment (e.g. indoors or outdoors), the known or suspected presence of the SARS-CoV-2 virus, the presence of a person known or suspected to be infected with the SARS-CoV-2 virus, the number of employees and other persons in relation to the size of the work area, the working distance between employees and other employees or persons, and the duration and frequency of employee exposure through contact inside of six feet with other employees or persons (e.g., including shift work exceeding 8 hours per day); and

b. The type of hazards encountered, including exposure to respiratory droplets and potential exposure to the airborne transmission of SARS-CoV-2 virus; 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 and exits to the facility; shared work vehicles; and industries or places of employment where employer sponsored shared transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.

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~~F. This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable Virginia executive order or order of public health emergency.~~

~~GE. 1.~~ To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC

recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. **The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.**

Commented [WJ(5): Added for consistency with first sentence in this subsection

2F. A public or private institution of higher education that has received certification from the State Council of Higher Education of Virginia that the institution's re-opening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor's Office in conjunction with the Virginia Department of Health shall be considered in compliance with this standard, provided the institution operates in compliance with its certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard. A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and who operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this

Commented [WJ(6): Language added by Administration.

Reference:

§ 40.1-51. State Health Commissioner to provide advice and aid; rules and regulations.

A. The State Health Commissioner shall be responsible for advising and providing technical aid to the Commissioner on matters pertaining to occupational health on request.

B. The Department of Labor and Industry shall be responsible for drafting and submitting to the Virginia Safety and Health Codes Board for adoption rules and regulations pertaining to control measures to protect the health of workers. In formulating rules and regulations pertaining to health, the Department of Labor and Industry shall request the advice and technical aid of the Department of Health.

Commented [WJ(7): Added for consistency with second sentence in this subsection

standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. **The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.**

Commented [WJ(8): Language added by Administration.

Reference:

§ 40.1-51. State Health Commissioner to provide advice and aid; rules and regulations.

A. The State Health Commissioner shall be responsible for advising and providing technical aid to the Commissioner on matters pertaining to occupational health on request.

B. The Department of Labor and Industry shall be responsible for drafting and submitting to the Virginia Safety and Health Codes Board for adoption rules and regulations pertaining to control measures to protect the health of workers. In formulating rules and regulations pertaining to health, the Department of Labor and Industry shall request the advice and technical aid of the Department of Health.

HGHG. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

16VAC25-220-20. Effective dates.

Commented [WJ(9): Lettering correction by RRO 1.4.2021

A. Adoption Process.

1. This standard shall take effect ~~[to be determined, but no later than January 27, 2021]~~ upon approval review by the Governor, and if no revisions are requested, filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

Commented [WJ(10): Commas deleted - RRO typo change 1.4.2021

2. If the Governor's review results in one or more requested revisions to the standard, the Safety and Health Codes Board shall reconvene to approve, amend, or reject the requested revisions.

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3. If the Safety and Health Codes Board approves the requested revisions to the standard as submitted, the standard shall take effect upon filing with the Registrar of Regulations

and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

4. Should the Governor fail to review the standard under subsection A 1 of this section within thirty (30) days of its approval by the Safety and Health Codes Board, the Board will not need to reconvene to take further action, and the standard shall take effect upon filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

Commented [WJ(12): Reference number change made by RRO 1.4.2021

Commented [WJ(13): RRO change 1.4.2021

B. The requirements for 16VAC25-220-70 shall take effect on March 26, 2021.

The training requirements in 16VAC25-220-80 shall take effect on March 26, 2021.

Commented [WJ(14): This date assumes the permanent standard has an effective date of January 27, 2021.

Commented [WJ(15): This date assumes the permanent standard has an effective date of January 27, 2021.

C. Within fourteen (14) days of the expiration of the Governor's COVID-19 State of Emergency

Commented [WJ(16): Comment 86152.

and Commissioner of Health's COVID-19 Declaration of Public Emergency, the Virginia Safety and Health Codes Board shall notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for the standard.

Commented [WJ(17): RRO change 1.4.2021

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Commented [WJ(19): The new language in 16VAC25-220.C requires the Board to make a "determination" of whether there is continued need for the standard. The Department has identified three "determination" options:

- That there is no continued need for the standard;
- That there is a continued need for the standard with no changes; and
- That there is a continued need for a revised standard.

Regardless of the determination, the Department and Board will provide notice and comment opportunities on any changes to or revocation of the standard.

Commented [WJ(20): With regard to the phrase "notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to," the intent of the language is to give the Board the maximum amount of flexibility to "notice" the Board meeting within 14 days even if the Board may not actually meet within 14 days

16VAC25-220-30. Definitions.

The following words and terms when used in this standard shall have the following meanings unless the context clearly indicates otherwise:

"Administrative control" means any procedure that significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or

manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.

"Airborne infection isolation room" or "AIIR," formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide (i) negative pressure in the room so that air flows under the door gap into the room, (ii) an air flow rate of 6-12 air changes per hour (ACH) (6 ACH for existing structures, 12 ACH for new construction or renovation), and (iii) direct exhaust of air from the room to the outside of the building or recirculation of air through a High Efficiency Particulate Air (HEPA) filter before returning to circulation.

"Asymptomatic" means a person who does not have symptoms.

"Building or facility owner" means the legal entity, including a lessee, that exercises control over management and record keeping functions relating to a building or facility in which activities covered by this standard take place.

"CDC" means Centers for Disease Control and Prevention.

"Cleaning" means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, cleaning decreases their number and therefore any risk of spreading infection.

"Community transmission," also called "community spread," means people have been infected with SARS-CoV-2 in an area, including some who are not sure how or where they became infected. The level of community transmission is classified by the CDC as:

1. "No to minimal" where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facilities, schools, mass gatherings, etc.);¹
2. "Moderate" where there is sustained community transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases;
3. "Substantial, controlled" where there is large scale, controlled community transmission, including communal settings (e.g., schools, workplaces, etc.); or
4. "Substantial, uncontrolled" where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).

Commented [WJ(21): Make consistent with CDC guidance language

"COVID-19" means Coronavirus Disease 2019, which is primarily a respiratory disease, caused by the SARS-CoV-2 virus.

"Disinfecting" means using chemicals approved for use against SARS-CoV-2, for example EPA-registered disinfectants, to kill germs on surfaces. The process of disinfecting does not necessarily clean dirty surfaces or remove germs, but killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html>

"Duration and frequency of employee exposure" means how long ("duration") and how often ("frequency") an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected could involve a customer, patient, or other person not wearing a face covering or other personal protective equipment, or coughing or sneezing directly into the face of an employee. An example of a chronic situation would be could involve a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

"Economic feasibility" means the employer is financially able to undertake the measures necessary to comply with one or more requirements in this standard. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this standard has occurred. If an employer's level of compliance lags significantly behind that of its industry, an employer's claim of economic infeasibility will not be accepted.

"Elimination" means a method of exposure control that removes the employee completely from exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

"Employee" means an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard also includes, but is not limited to, January 4, 2021

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temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

"Engineering control" means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

"Exposure risk level" means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. The exposure risk level assessment should address all risks and all modes of transmission, including airborne transmission, as well as transmission by asymptomatic and presymptomatic individuals. Risk levels should be based on the risk factors present that increase risk exposure to COVID-19 and are present during the course of employment regardless of location. Hazards and job tasks have been divided into four risk exposure levels: very high, high, medium, and lower:

Commented [WJ(24)]: Typo correction

"Very high" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or persons known or suspected to be infected with the SARS-CoV-2 virus, including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a patient or person known or suspected to be infected with the SARS-CoV-2 virus;

2. Collecting or handling specimens from a patient or person known or suspected to be infected with the SARS-CoV-2 virus (e.g., manipulating cultures from patients known or suspected to be infected with the SARS-CoV-2 virus); and

3. Performing an autopsy that involves aerosol-generating procedures on the body of a person known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.

"High" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, or with persons known or suspected to be infected with the SARS-CoV-2 virus that are not otherwise classified as very high exposure risk, including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a patient known or suspected to be infected with the SARS-CoV-2 virus, including field hospitals (e.g., doctors, nurses, cleaners, and other hospital staff who must enter patient rooms or areas);

2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care,

rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, blood donation services, **contact tracer services**, and chiropractic services;

Commented [WJ(25)]: VDH comment. Also listed under Medium risk exposure

3. First responder services provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus;

4. Medical transport services (loading, transporting, unloading, etc.) provided to patients known or suspected to be infected with the SARS-CoV-2 virus (e.g., ground or air emergency transport, staff, operators, drivers, pilots, etc.); and

5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.

"Medium" exposure risk hazards or job tasks are those not otherwise classified as very high or high exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected to be infected with the SARS-CoV-2 virus. Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience stores, and food banks; drug stores and pharmacies; manufacturing settings; indoor and outdoor construction settings; correctional facilities,

jails, detentions centers, and juvenile detention centers; work performed in customer premises, such as homes or businesses; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salon, and spa settings; venues for sports, entertainment, movies, theaters, and other forms of mass gatherings; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and

2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities; outpatient medical facilities; clinics, drug treatment programs, and medical outreach services; non-medical support services; mental health facilities; home health care, nursing homes, assisted living facilities, memory care facilities, and hospice care; rehabilitation centers, doctors' offices, dentists' offices, and chiropractors' offices; first responders services provided by police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

"Lower" exposure risk hazards or job tasks are those not otherwise classified as very high, high, or medium exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact **with others** through the implementation of engineering, administrative and work practice controls, such as, but not limited to **to**.

Commented [WJ(26)]: VDH comment

Commented [WJ(27)]: Typo correction

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);

2. Telecommuting;

3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;

4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and

5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact. ~~However, when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required.~~

Commented [WJ(28): Moved to 16VAC25-220-40.H per VDH comment

"Face covering" means an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape,

and shall not be made of material that makes it hard to breathe, such as vinyl.² normally made of cloth, or various other materials with elastic bands or cloth ties to secure over the wearer's nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person's nose and mouth). A face covering is not normally intended to protect the wearer, but it may serve as a source control to reduce the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask or respirator. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

"Face shield" means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of the face primarily used for eye protection from droplets or splashes for the person wearing it. A face shield is not a substitute for a face covering, surgical/medical procedure mask, or respirator.³

"Feasible" as used in this standard includes both technical and economic feasibility.

"Filtering facepiece respirator" means a negative pressure air purifying particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. Filtering facepiece respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH).

Commented [WJ(29)]: VDH comment

Commented [WJ(30)]: Comment 86327 contends it is wrong to assert that face covering are "not intended to protect the wearer".

Commented [WJ(31)]: CDC guidance indicates that face coverings can serve to protect both the wearer and others from the spread of SARS-CoV-2. <https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html>
"Cloth masks not only effectively block most large droplets (i.e., 20-30 microns and larger)⁹ but they can also block the exhalation of fine droplets and particles (also often referred to as aerosols) smaller than 10 microns.... Studies demonstrate that cloth mask materials can also reduce wearers' exposure to infectious droplets through filtration, including filtration of fine droplets and particles less than 10 microns."

Commented [WJ(32)]: VDH comment

Commented [WJ(33)]: VDH comment

² <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>

³ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>

"Hand sanitizer" means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this standard.

"HIPAA" means Health Insurance Portability and Accountability Act.

"Known to be infected with the SARS-CoV-2 virus" means a person, whether symptomatic or asymptomatic, who has tested positive for SARS-CoV-2, and the employer knew or with reasonable diligence should have known that the person has tested positive for SARS-CoV-2.

"May be infected with SARS-CoV-2 virus" means any person not currently a person known or suspected to be infected with SARS-CoV-2 virus ~~and not currently vaccinated against the SARS-CoV-2 virus.~~

Commented [WJ(34)]: VDH comment

"Minimal occupational contact" means no or very limited, brief, and infrequent contact with employees or other persons at the place of employment. Examples include, but are not limited to, remote work (i.e., those working from home); employees with no more than brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet); healthcare employees providing only telemedicine services; a long distance truck driver.⁴

Commented [WJ(35)]: Comments 85259, 85492.

"Occupational exposure" means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards at the work location or while engaged in work activities at another location.

⁴ <https://www.osha.gov/SLTC/covid-19/hazardrecognition.html>

"Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological, or other workplace hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, goggles, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, impermeable gowns or coveralls, face shields, coveralls, vests, and full body suits.

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Commented [WJ(37)]: VDH comment

"Physical distancing" also called "social distancing" means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least six feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall (e.g., an office setting) constitutes one form of physical distancing from an employee or other person stationed on the other side of the wall, provided that six feet of physical distance is maintained from others around the edges or sides of the wall as well.

Commented [WJ(38)]: Comment 85955. Clarification that floor to ceiling wall is one form of providing physical distancing.

Commented [WJ(39)]: VDH comment

"Respirator" means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be (i) tight-fitting, which means either a half mask that covers the mouth and nose or a full face piece that covers the face from the hairline to below the chin or (ii) loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

1. Air-purifying, which remove contaminants from the air; and
2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.

"Respirator user" means an employee who in the scope of their current job may be assigned to tasks that may require the use of a respirator in accordance with this standard or required by other provisions in the VOSH and OSHA standards.

"SARS-CoV-2" means a betacoronavirus, like MERS CoV and SARS CoV the novel virus that causes coronavirus disease 2019, or COVID-19. Coronaviruses are named for the crown-like spikes on their surfaces. The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

Commented [WJ(40)]: VDH comment

"Severely immunocompromised" means being on chemotherapy for cancer, being within one year out from receiving a hematopoietic stem cell or solid organ transplant, untreated HIV infection with CD4 T lymphocyte count < 200, combined primary immunodeficiency disorder, and receipt of prednisone >20mg/day for more than 14 days.⁵ The degree of immunocompromise is determined by the treating provider, and preventive actions are tailored to each individual and situation.

Commented [WJ(41)]: Definition added per VDH comment under "return to work" requirements in 16VAC25-220-40

Commented [WJ(42)]: VDH comment

"Signs of COVID-19" are abnormalities that can be objectively observed, and may include fever, trouble breathing or shortness of breath, cough, persistent pain or pressure in the chest, vomiting, new confusion, inability to wake or stay awake, bluish lips or face, etc.

Commented [WJ(43)]: VDH comment

⁵ Footnote 1, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

"Surgical/medical procedure mask" means a mask to be worn over the wearer's nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. A surgical/medical procedure mask protects others from the wearer's respiratory emissions. A surgical/medical procedure mask has a looser fitting face seal than a tight-fitting respirator. A surgical/medical procedure mask does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. A surgical/medical procedure mask is considered a form of personal protective equipment, but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).

Commented [WJ(44)]: VDH comment

"Suspected to be infected with SARS-CoV-2 virus" means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza).

"Symptoms of COVID-19" are abnormalities that are subjective to the person and not observable to others, and may include chills, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, nausea, congestion or runny nose, diarrhea, etc.

Commented [WJ(45)]: VDH comment

"Symptomatic" means the employeea person is experiencing signs and/or symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. A person may become symptomatic may appear in two2 to 14 days after exposure to the SARS-CoV-2 virus.

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Commented [WJ(47)]: "and/" deleted per RRO 1.4.2021

Commented [WJ(48)]: VDH comment

Commented [WJ(49)]: VDH comment

"Technical feasibility" means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances that can be applied to one or more requirements in this standard with a reasonable possibility that employee exposure to the SARS-CoV-2 virus and COVID-19 disease hazards will be reduced. If an employer's level of compliance lags significantly behind that of the employer's industry, allegations of technical infeasibility will not be accepted.

"USBC" means Virginia Uniform Statewide Building Code.

"VDH" means Virginia Department of Health.

"VOSH" means Virginia Occupational Safety and Health.

"Work practice control" means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

16VAC25-220-40. Mandatory requirements for all employers.

A. Employers ~~in all exposure risk levels~~ shall ensure compliance with the requirements in this section to protect employees ~~in all exposure risk levels~~ from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease.

Commented [WJ(50)]: VDH comment

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if employees suspect possible exposure or are experiencing signs **and/or symptoms** of **an oncoming** illness.

3. Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2 virus. Serological testing has not been determined if persons who have the antibodies are immune from infection.

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected to be infected with the SARS-CoV-2 virus.

b. Serologic test results shall not be used to make decisions concerning employees who were previously classified as known or suspected to be infected with the SARS-CoV-2 virus about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

4. Employers shall develop and implement policies and procedures for employees to report when **employees they** are experiencing **signs and/or** symptoms consistent with

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Commented [WJ(53): VDH comment

Commented [WJ(54): "and/" deleted per RRO 1.4.2021

COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza). Such employees shall be designated by the employer as “suspected to be infected with SARS-CoV-2 virus.”

5. Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work (see subsection C of this section). Nothing in this standard shall prohibit an employer from permitting an employee known or suspected to be infected with SARS-CoV-2 virus from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to the SARS-CoV-2 virus.

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

7. Employers shall discuss with subcontractors and companies that provide contract or temporary employees **about** the importance **and requirement of to exclude from work** employees or other persons **(e.g., volunteers)** who are known or suspected to be infected with the SARS-CoV-2 virus **of staying home**. Subcontractor, contract, or temporary employees known or suspected to be infected with the SARS-CoV-2 virus shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their **employees** known or suspected to be infected with

Commented [WJ(55)]: VDH comment

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Commented [WJ(57)]: VDH comment

the SARS-CoV-2 virus **employees** to report to or be allowed to remain at work or on a job site until cleared for return to work.

8. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within **2 days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test), the previous 14 days from the date of positive test, and the e** employers shall notify:

Commented [WJ(58)]: VDH comment

a. The employer's own employees who may have been exposed, within 24 hours of discovery of the **employees** possible exposure, while keeping confidential the identity of the **person** known to be infected with SARS-CoV-2 virus **person** in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

Commented [WJ(59)]: Typo correction

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b. In the same manner as subdivision 8 a of this subsection, other employers whose employees were present at the work site during the same time period; and

c. In the same manner as subdivision 8 a of this subsection, the building or facility owner. The building or facility owner will require all employer tenants to notify the owner of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This notification will allow the owner to take the necessary steps to sanitize the common areas of the building. In addition, the building or facility owner

will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located. The identity of the individual will be kept confidential in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

d. The Virginia Department of Health **within 24 hours of the discovery of a positive case, during a declaration of an emergency by the Governor pursuant to § 44-146.17 of the Code of Virginia.** Every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health (VDH) when the worksite has had **two or more confirmed cases of COVID-19 of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.** Employers shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases. Employers shall continue to report all cases until the local health department has closed the outbreak. After the outbreak is closed, subsequent identification of two or more confirmed cases of COVID-19 during a declared emergency shall be reported, as above. The following employers are exempt from this provision because of separate outbreak reporting requirements contained in 12VAC5-90-90: any residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp; and

Commented [WJ(61): VDH comment

Commented [WJ(62): RRO change 1.4.2021

Commented [WJ(63): VDH comment to make clear that certain double reporting to VDH is not required.

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three or more **of its own** employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

Commented [WJ(64)]: §40, FAQ 21

9. Employers shall ensure employee access to the employee's own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry. Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employees' access to the employees' own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with 16VAC25-90-1910.1020, Access to Employee Exposure and Medical Records.

C. Return to work.

1. ~~The employer shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work. using either a symptom-based or test-based strategy, depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in subdivision 1 a of this subsection will constitute compliance with the requirements of this subsection.~~

Commented [WJ(65)]: VDH comment

⁶ See Frequently Asked Question (FAQ) §40, FAQ 21, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

a. ~~For Symptomatic employees~~ known or suspected to be infected with the SARS-CoV-2 virus ~~employees the symptom-based strategy excludes an employee are excluded~~ from returning to work until ~~all three of the following have been met:~~

~~(i)(1) at least three days (72 hours) have passed since recovery, defined as resolution of fever without the use of fever-reducing medications,~~

Commented [WJ(66): RRO change 1.4.2021

~~and (ii)(2) improvement in respiratory symptoms (e.g., cough, and shortness of breath) have improved, and~~

Commented [WJ(67): RRO change made 1.4.2021

Commented [WJ(68): VDH comment

~~(iii)(3) at least 10 days have passed since symptoms first appeared.~~

Commented [WJ(69): RRO change made 1.4.2021

~~However, a limited number of employees with severe illness may produce replication-competent virus beyond 10 days that may warrant extending duration of isolation for up to 20 days after symptom onset. Employees who are severely immunocompromised may require testing to determine when they can return to work - consider consultation with infection control experts.~~

Commented [WJ(70): VDH comment

~~b. The test-based strategy excludes an employee from returning to work until (i) resolution of fever without the use of fever-reducing medications, (ii) improvement in respiratory symptoms (e.g., cough, shortness of breath), and (iii) negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected 24 hours or more apart (total of two negative specimens).~~

Commented [WJ(71): VDH comment

~~i. If a known or suspected to be infected with the SARS-CoV-2 virus employee refuses to be tested, the employer compliance with subdivision 1 a of this subsection, symptom based strategy, will be considered in compliance with this standard. Nothing in this standard shall be construed to prohibit an employer from requiring a known or suspected to be infected with the SARS-CoV-2 virus employee to be tested in accordance with subdivision 1 b of this subsection.~~

Commented [WJ(72): VDH comment

~~ii. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.~~

Commented [WJ(73): Language became duplicative with other VDH changes to this section. See 16VAC25-220-40.C.1.c below

~~2b. The employer shall develop and implement policies and procedures for Employees known to be infected with SARS-CoV-2 who never develop signs or symptoms asymptomatic employees to return to work using either a time based or test based strategy depending on local healthcare and testing circumstances are excluded from returning to work until 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in subdivision 2 a of this subsection will constitute compliance with the requirements of this subsection.~~

Commented [WJ(74): "signs" added for consistency with other parts of standard

Commented [WJ(75): VDH comment

Commented [WJ(76): VDH comment

~~a. The time based strategy excludes an employee from returning to work until at least 10 days have passed since the date of the employee's first positive COVID-19~~

diagnostic test assuming the employee has not subsequently developed symptoms since the employee's positive test. If the employee develops symptoms, then the symptom-based or test-based strategy shall be used.

Commented [WJ(77)]: VDH comment

b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected 24 hours or more apart (total of two negative specimens).

Commented [WJ(78)]: VDH comment

i. If a known to be infected with SARS-CoV-2 asymptomatic employee refuses to be tested, employer compliance with subdivision 2 a of this subsection, time-based strategy, will be considered in compliance with this standard. Nothing in this standard shall be construed to prohibit an employer from requiring a known to be infected with SARS-CoV-2 asymptomatic employee to be tested in accordance with subdivision 2 b of this subsection.

Commented [WJ(79)]: VDH comment

ii. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations. If an employer's health insurance covers the entire cost of COVID-19 testing, use of the insurance coverage would not be considered a violation of 16VAC25-220-40-C, 2-d.⁷

Commented [WJ(80)]: §40 FAQ 23

Commented [WJ(81)]: RRO changes made 1.4.2021

⁷ See Frequently Asked Question (FAQ) §40, FAQ 23, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

D. Unless otherwise provided in this standard, employers shall **establish and implement policies and procedures that** ensure **that** employees observe physical distancing while on the job and during paid breaks on the employer's property, including policies and procedures that:

1. Use verbal announcements, signage, or visual cues to promote physical distancing.
2. Decrease worksite density by limiting non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure.

3. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements in this subsection.

E. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled.

1. If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical distancing, an employer may designate, reconfigure, and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc., with controlled access, provided the following conditions are met:

- a. At the entrance of the designated common area or room **the** employers shall clearly post the policy limiting the occupancy of the space, and requirements for physical distancing, hand washing and hand sanitizing, and cleaning and disinfecting of shared surfaces.

Commented [WJ(82): Comment by Virginia Hospital and Healthcare Association, <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Hospital-and-Healthcare-Association-Comment-on-Permanent-Regulations-092520.pdf>

Commented [WJ(83): D.2 and D.3 combined to make clear that occupancy limit originally referenced in D.3 applies to D.2.

Commented [WJ(84): Typo correction

b. ~~The eE~~employer shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. ~~The eE~~employers shall enforce the occupancy limit.

c. Employees shall be required to clean and disinfect the immediate area in which they were located prior to leaving, or ~~the~~employers may provide for cleaning and disinfecting of the common area or room at regular intervals throughout the day, and between shifts of employees using the same common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies).

d. Hand washing facilities, and hand sanitizer where feasible, are available to employees. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.

F. When multiple employees are occupying a vehicle for work purposes, ~~employers shall;~~

1. ~~the employers shall eE~~nsure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry. ~~Until adequate supplies of respiratory protection and/or personal protective equipment become readily available for non-medical and non-first responder employers and employees, employers shall provide and employees shall wear face coverings while occupying a work vehicle with other employees or persons.~~⁸

Commented [WJ(85): Comment 86145.

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/using-transportation.html>

2. Provide access to fresh air ventilation (e.g., open windows, do not recirculate cabin air).

3. Where physical distancing cannot be maintained, establish procedures to maximize separation between employees during travel.

G. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.

HG. Where the nature of an employee's work or the work area does not allow the employee to observe physical distancing requirements from employees or other persons, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. In such situations, and until adequate supplies of respiratory protection and/or personal protective equipment become readily available for non-medical and non-first responder employers and employees, employers shall provide and employees shall wear face coverings.

H. When it is necessary for employees solely exposed to lower risk hazards or job tasks to have brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet), a face covering is required.

I. When required by this standard, face coverings shall be worn over the wearer's nose and mouth and extend under the chin.⁹

Commented [WJ(86)]: §40, FAQ 20

Commented [WJ(87)]: Comment 85187.

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>

11. Nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition; however, nothing in this standard shall negate an employer's obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.

1. Although face shields are not considered a substitute for face coverings as a method of source control and not used as a replacement for face coverings among people without medical contraindications, face shields may provide some level of protection against contact with respiratory droplets. In situations where a face covering cannot be worn due to medical contraindications, employers shall provide and employees shall wear either:¹⁰

Commented [WJ(88)]: VDH comment of 10.14.2020

a. A face shield that wraps around the sides of the wearer's face and extends below the chin; or

Commented [WJ(89)]: RRO change 1.4.2021

b. A hooded face shield; and

c. To the extent feasible, employees wearing face shields in accordance with this subsection shall observe physical distancing requirements in this standard.

2. Face shield wearers shall wash their hands before and after removing the face shield and avoid touching their eyes, nose and mouth when removing it.

3. Disposable face shields shall only be worn for a single use and disposed of according to manufacturer instructions.

¹⁰ *Id.*

4. Reusable face shields shall be cleaned and disinfected after each use according to manufacturer instructions.

JK. Requests to the Department for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after Department consultation with the Office of the Attorney General.

KL. Sanitation and disinfecting.

1. In addition to the requirements contained in this standard, employers shall comply with the VOSH sanitation standard applicable to its industry.

2. Employees that interact with customers, the general public, contractors, and other persons shall be provided with and immediately use supplies to clean and disinfectant surfaces contacted during the interaction where there is the potential for exposure to the SARS-CoV-2 virus by themselves or other employees.

3. In addition to the requirements contained in this standard, employers shall comply with the VOSH hazard communication standard applicable to the employers' industry for cleaning and disinfecting materials and hand sanitizers.

4. Areas in the place of employment where employees or other persons known or suspected to be infected with the SARS-CoV-2 virus employees or other persons accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas. Where feasible, a period of 24 hours will be observed prior to cleaning and

Commented [WJ(90)]: VDH comment of 12.2.2020

disinfecting. This requirement shall not apply if the areas in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms (including port-a-johns, privies, etc.)¹¹ frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at least once during or at the end of each the shift. Where multiple shifts are employed, such spaces shall be cleaned and disinfected no less than once every 12 hours. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

Commented [WJ(91)]: §40, FAQ 13

Commented [WJ(92)]: Comments 85955, 86145.

6. Employers shall ensure that cleaning and disinfecting products are readily available to employees to accomplish the required cleaning and disinfecting. In addition, employers shall ensure use of only disinfecting chemicals and products indicated in the Environmental Protection Agency (EPA) List N for use against SARS-CoV-2.

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).

8. Employees shall have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, for the duration of work. Employees assigned to a work station where job tasks require frequent interaction inside six feet with other persons shall be provided with hand sanitizer where feasible at the employees work station.

¹¹ See DOLI Frequently Asked Questions (FAQ), §40, FAQ 13. <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

9. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities that meet the requirements of VOSH laws, standards, and regulations dealing with sanitation. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable, and use and storage in hot environments can result in a hazard.

9.10. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower as presenting potential exposure risk for purposes of application of the requirements of this standard. In situations other than emergencies, the employer shall ensure that protective measures are put in place to prevent cross-contamination.

LM. Unless otherwise provided in this standard, when engineering, work practice, and administrative controls are not feasible or do not provide sufficient protection, employers shall provide personal protective equipment to their employees and ensure the equipment's proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

16VAC25-220-50. Requirements for hazards or job tasks classified as very high or high exposure risk.

A. The requirements in this section for employers with hazards or job tasks classified as very high or high exposure risk apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-220-70, and 16VAC25-220-80.

B. Engineering controls.

1. Employers shall ensure that appropriate air-handling systems **under their control**:

Commented [WJ(93)]: Virginia Department of Housing and Community Development (DHCD) comment

a. Are installed and maintained in accordance with **the USBC and** manufacturer's instructions in healthcare facilities and other places of employment treating, caring for, or housing persons **with known** or suspected to be infected with the SARS-CoV-2 virus; and

Commented [WJ(94)]: VDH comment

~~b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a), which covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.~~

Commented [WJ(95)]: DHCD comment

Commented [WJ(96)]: A number of commenters questioned the legality of this provision as a potential violation of the Virginia Uniform Statewide Building Code (USBC), <https://www.dhcd.virginia.gov/usbc>

ALTERNATIVE LANGUAGE is provided which is derived from current CDC guidance, and similar language was put forward by a number of commenters from the business community (Comment 86145 and comment <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Manufacturers-Association-Public-Comments-on-Proposed-Permanent-Regulation-9.25.2020.pdf>)

b. Where feasible and within the design parameters of the system, are utilized as follows:¹²

- (1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open).**

Commented [WJ(97)]: RRO number changes made (1) through (9) 1.4.2021

Commented [WJ(98)]: DOLI change based on comment by DHCD: Increased airflow is not always a good thing. For example, doors may become hard to operate. This could be a bad thing especially if the user happens to be the aging community. For the record, the IMC is based on ASHRAE 62 airflow rates. Those designated rates took everything into account, in each specific occupancy, when the numbers were established. Tweaking certain parts of any complete set of regulations is always a bad idea.

¹² <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>

iii.(2) In ground transportation settings, use natural ventilation (i.e., opening windows if possible and safe to do so) to increase outdoor air dilution of inside air when environmental conditions and transportation safety and health requirements allow;

iii.(3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;

iv.(4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

v.(5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;

vi.(6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);

vii.(7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied.

Commented [WJ(99): DOLI change to limit application to transportation settings (cars, trucks, buses, etc.).

DHCD comment noted the following problems if this language applied to all indoor applications: This is not always a good idea in a situation where health issues may be present, like respiratory, allergies, etc....The cost of doing a 2 hour full-fledged air change with 100% outside air (same as b.ii. above) is going to overburden HVAC equipment that is not designed to accommodate such a load and the energy cost are going to skyrocket in these applications and prematurely wear equipment....not many systems are going to be able to work like these guidelines suggest and exercising them as them as ii and iv suggest is going to cause equipment failures.

Commented [WJ(100): DHCD comment: They want to increase air rates but with as high a MERV as possible. It doesn't work that way in an existing system. You will burn up the fans to get higher rates through more filters. Our engineers just did a presentation that most existing systems out there cannot handle more than MERV 16.

viii. (8) If the system's design can accommodate such an adjustment and is allowed

by the air handler manufacturer's installation instructions and listing, improve

central air filtration to MERV-13 and seal edges of the filter to limit bypass;¹³ and

ix. (9) Check filters to ensure they are within service life and appropriately installed.

c. Comply with USBC and applicable referenced American Society of Heating,

Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.

Commented [WJ(101)]: DHCD comment: Using higher levels of filtration above what the equipment was designed for can violate listings and damage equipment. Exceeding the design MERV rating will burn up air handler blower motors.

2. For employers not covered by subdivision 1 of this subsection, ensure that air-handling systems where installed and under their control are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:

a. Are maintained in accordance with the manufacturer's instructions; and

b. Comply with subdivisions 1 b and 1 c of this subsection.

3. Hospitalized patients with known or suspected to be infected with the SARS-CoV-2 virus, where feasible and available, shall be placed in an airborne infection isolation room (AIIRs).

Commented [WJ(102)]: VDH comment

4. Employers shall use AIIRs rooms when available for performing aerosol-generating procedures on patients with known or suspected to be infected with the SARS-CoV-2 virus.

Commented [WJ(103)]: VDH comment

¹³ <https://www.ashrae.org/technical-resources/filtration-disinfection#iso>

5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of persons known or suspected to be infected with the SARS-CoV-2 virus persons at the time of their death.

Commented [WJ(104)]: VDH comment

6. Employers shall use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-1112 “Biosafety in Microbiological and Biomedical Laboratories” (Dec. 2009), which is hereby incorporated by reference, when handling specimens from patients or persons known or suspected to be infected with the SARS-CoV-2 virus patients or persons.

Commented [WJ(105)]: VDH comment

Diagnostic laboratories that conduct routine medical testing and environmental specimen testing for COVID-19 are not required to operate at BSL-3.¹⁴

Commented [WJ(106)]: VDH comment; §50, FAQ 3

7. To the extent feasible, employers shall install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.

C. Administrative and work practice controls.

1. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.

¹⁴ See Frequently Asked Question (FAQ) §50, FAQ 3. <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

2. In healthcare facilities, ~~an~~ employers shall follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.

3. ~~An Ee~~ employer shall limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.

4. ~~An Ee~~ employer shall post signs requesting patients and family members to immediately report signs and/or symptoms of respiratory illness on arrival at the healthcare facility and use disposable face coverings.

Commented [WJ(107)]: RRO change made 1.4.2021

Commented [WJ(108)]: VDH comment

5. ~~An Ee~~ employers shall offer enhanced medical monitoring of employees during COVID-19 outbreaks.

~~6. An employer shall provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine and refresher training in accordance with 16VAC25-220-80.~~

Commented [WJ(109)]: Duplicative of 16VAC25-220-80.

~~76. To the extent feasible, ~~an~~ employers shall ensure that psychological and behavioral support is available to address employee stress at no cost to the employee.~~

Commented [WJ(110)]: This language was accidentally deleted when the Word document was converted to PDF on December 10, 2020, and is being reinserted.

~~87. In health care settings, ~~an~~ employers shall provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol to employees at fixed work sites and~~

to emergency responders and other personnel for decontamination in the field when working away from fixed work sites.

98. Employers shall provide face coverings to non-employees suspected to be infected with SARS-CoV-2 virus non-employees to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).

Commented [WJ(111)]: VDH comment

109. Where feasible, employers shall:

- a. Implement flexible worksites (e.g., telework).
- b. Implement flexible work hours (e.g., staggered shifts).
- c. Increase physical distancing between employees at the worksite to six feet.
- d. Increase physical distancing between employees and other persons to six feet.
- e. Implement flexible meeting and travel options (e.g., use telephone or video conferencing instead of in person meetings; postpone non-essential travel or events; etc.).
- f. Deliver services remotely (e.g. phone, video, internet, etc.).
- g. Deliver products through curbside pick-up.

D. Personal protective equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132), shall comply with the following

requirements for a SARS-CoV-2 virus and COVID-19 disease-related hazard assessment and personal protective equipment selection:

a. The employers shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). The employers shall provide for employee and employee representative involvement in the assessment process.

b. If such hazards or job tasks are present or likely to be present, the employers shall:

(1)(1) Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

(2)(2) Communicate selection decisions to each affected employee; and

(3)(3) Select PPE that properly fits each affected employee.

2. The employers shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date of the hazard assessment; and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-COV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915,

Commented [WJ(112): RRO numbering changes (1) through (3) 1.4.2021

16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. ~~The employer~~ shall implement a respiratory protection program in accordance with 16VAC25-90-1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), that covers each employee required to use a respirator.

5. Unless contraindicated by a hazard assessment and equipment selection requirements in subdivision 1 of this subsection, employees classified as very high or high exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and a respirator when in contact with or inside six feet of patients or other persons known to be or suspected of being infected with SARS-CoV-2. ~~Where indicated by the hazard assessment and equipment selection requirements in subsection D of this section, such employees shall also be provided with and wear a surgical/medical procedure mask. Gowns shall be large enough to cover the areas requiring protection; the correct size to assure protection.~~

~~E. Employee training shall be provided in accordance with the requirements of 16VAC25-220-80 of this standard.~~

~~E. Employee training shall be provided in accordance with the requirements of 16VAC25-220-80 of this standard.~~

16VAC25-220-60. Requirements for hazards or job tasks classified at medium exposure risk.

A. The requirements in this section for employers with hazards or job tasks classified as medium exposure risk apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-70, and 16VAC25-80.

B. Engineering controls.

Commented [WJ(113)]: VDH comment

Commented [WJ(114)]: VDH comment

Commented [WJ(115)]: Duplicative of 16VAC25-220-80

Commented [WJ(116)]: This language was accidentally deleted when the Word document was converted to PDF on December 10, 2020, and is being reinserted.

1. Employers shall ensure that air-handling systems **under their control where installed in accordance with the** appropriate to address the SARS-CoV-2 virus and COVID-19 disease-related hazards and job tasks that occur at the workplace and:

Commented [WJ(117)]: DHCD comment

Commented [WJ(118)]: RRO change 1.4.2021

a. Are maintained in accordance with the manufacturer's instructions; and

~~b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a), which covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.~~

Commented [WJ(119)]: DHCD comment

b. Where feasible and within the design parameters of the system, are utilized as follows:¹⁵

Commented [WJ(120)]: A number of commenters questioned the legality of this provision as a potential violation of the Virginia Uniform Statewide Building Code (USBC), <https://www.dhcd.virginia.gov/usbc>

ALTERNATIVE LANGUAGE is provided which is derived in part from current CDC guidance, and similar language put forward by a number of commenters from the business community (Comment 86145 and at <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Manufacturers-Association-Public-Comments-on-Proposed-Permanent-Regulation-9.25.2020.pdf>)

~~i. (1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open).~~

Commented [WJ(121)]: RRO numbering changes made (1) through (9) 1.4.2021

~~ii. (2) In ground transportation settings, use natural ventilation (i.e., opening windows if possible and safe to do so) to increase outdoor air dilution of inside air~~

Commented [WJ(122)]: DOLI change based on the following comment by DHCD: Increased airflow is not always a good thing. For example, doors may become hard to operate. This could be a bad thing especially if the user happens to be the aging community. For the record, the IMC is based on ASHRAE 62 airflow rates. Those designated rates took everything into account, in each specific occupancy, when the numbers were established. Tweaking certain parts of any complete set of regulations is always a bad idea.

¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>

when environmental conditions and transportation safety and health requirements allow;

iii.(3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;

iv.(4) Increase air filtration to as high as possible in a manner that will enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

v.(5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;

vi.(6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);

vii.(7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;

viii.(8) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass;¹⁶and

ix.(9) Check filters to ensure they are within service life and appropriately installed.

Commented [WJ(123): DOLI change to limit application to transportation settings (cars, trucks, buses, etc.).

DHCD comment noted the following problems if this language applied to all indoor applications: This is not always a good idea in a situation where health issues may be present, like respiratory, allergies, etc....The cost of doing a 2 hour full-fledged air change with 100% outside air (same as b.ii. above) is going to overburden HVAC equipment that is not designed to accommodate such a load and the energy cost are going to skyrocket in these applications and prematurely wear equipment....not many systems are going to be able to work like these guidelines suggest and exercising them as them as ii and iv suggest is going to cause equipment failures.

Commented [WJ(124): DHCD comment: They want to increase air rates but with as high a MERV as possible. It doesn't work that way in an existing system. You will blow the fans to get higher rates through more filters. Our engineers just did a presentation that most existing systems out there cannot handle more than MERV 16.

Commented [WJ(125): RRO change made 1.4.2021

Commented [WJ(126): DHCD comment: Using higher levels of filtration above what the equipment was designed for can violate listings and damage equipment. Exceeding the design MERV rating will burn up air handler blower motors.

¹⁶ <https://www.ashrae.org/technical-resources/filtration-disinfection#iso>

c. Comply with USBC and applicable referenced American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.

2. Where feasible, employers shall install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission.

C. Administrative and work practice controls.

1. To the extent feasible, employers shall implement the following administrative and work practice controls:

a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.

b. Provide face coverings to **non-employees** suspected to be infected with SARS-CoV-2 **non-employees** to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).

Commented [WJ(127)]: VDH comment

c. Implement flexible worksites (e.g., telework).

d. Implement flexible work hours (e.g., staggered shifts).

e. Increase physical distancing between employees at the worksite to six feet.

f. Increase physical distancing between employees and other persons, including customers, to six feet (e.g., drive-through physical barriers) where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.

~~g. To the extent feasible, install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission.~~

Commented [WJ(128): This provision moved to 16VAC25-220-60.A.2 as it is an engineering control. Comment 85910.

hg. Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postponing non-essential travel or events; etc.).

ih. Deliver services remotely (e.g. phone, video, internet, etc.).

ii. Deliver products through curbside pick-up or delivery.

kj. Require employers to shall provide and require employees to wear face coverings who, because of job tasks, cannot feasibly practice physical distancing from another employee or other person if the hazard assessment has determined that personal protective equipment, such as respirators or surgical/medical procedure masks, was not required for the job task.

lk. Require employers to shall provide and require employees in customer or other person facing jobs to wear face coverings.

D. Personal protective equipment.

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132) shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease-related hazard assessment and personal protective equipment selection:

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). The employer shall provide for employee and employee representative involvement in the assessment process. If such hazards or job tasks are present or likely to be present, the employer shall:

i. Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

ii. Communicate selection decisions to each affected employee; and

iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date of the hazard assessment; and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-COV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. PPE ensembles for employees in the medium exposure risk category will vary by work task, the results of the employer's hazard assessment, and the types of exposures employees have on the job.

16VAC25-220-70. Infectious disease preparedness and response plan.

A. Employers with hazards or job tasks classified as:

1. Very high and high shall develop and implement a written Infectious Disease Preparedness and Response Plan;
2. Medium with 11 or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.

B. The plan and training requirements tied to the plan shall only apply to those employees classified as very high, high, and medium covered by this section.

C. Employers shall designate a person to be responsible for implementing their plan. The plan shall:

1. Identify the name or title of the person responsible for administering the plan. This person shall be knowledgeable in infection control principles and practices as the principles and practices apply to the facility, service, or operation.

2. Provide for employee involvement in development and implementation of the plan.

3. Consider and address the level of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to at those sites, and job tasks employees perform at those sites. Such considerations shall include:

a. Where, how, and to what sources of the SARS-CoV-2 virus or COVID-19 disease might employees be exposed at work, including:

~~1.~~ (1) The general public, customers, other employees, patients, and other persons;

Commented [WJ(129): RRO number changes (1) through (3) made 1.4.2021

~~2.~~ (2) Persons known or suspected to be infected with the SARS-CoV-2 virus or those at particularly high risk of COVID-19 infection (e.g., local, state, national, and international travelers who have visited locations with ongoing COVID-19 community transmission and healthcare employees who have had unprotected exposures to persons known or suspected to be infected with SARS-CoV-2 virus; persons); and

Commented [WJ(130): VDH comment

~~3.~~ (3) Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a very high, high, or medium level of exposure risk; and

iv. Situations where employees work during higher risk activities involving potentially large numbers of people or enclosed work areas such as at large social gatherings, weddings, funerals, parties, restaurants, bars, hotels, sporting events, concerts, parades, movie theaters, rest stops, airports, bus stations, train stations, cruise ships, river boats, airplanes, etc.¹⁷

Commented [WJ(131)]: VDH comment

b. To the extent permitted by law, including HIPAA, employees' individual risk factors for severe disease. For example, people of any age with one or more of the following conditions are at increased risk of severe illness from COVID-19: chronic kidney disease; COPD (chronic obstructive pulmonary disease); immunocompromised state (weakened immune system) from solid organ transplant; obesity (body mass index or BMI of 430¹⁸ or higher); serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; or type 2 diabetes mellitus). Also, for example, people with one or more of the following conditions might be at an increased risk for severe illness from COVID-19: asthma (moderate-to-severe); cerebrovascular disease (affects blood vessels and blood supply to the brain); cystic fibrosis; hypertension or high blood pressure; immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines; neurologic

Commented [WJ(132)]: VDH comment

Commented [WJ(133)]: VDH comment

¹⁷ <https://www.vdh.virginia.gov/coronavirus/coronavirus/travel-to-areas-with-widespread-ongoing-community-spread/>

<https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html>

¹⁸ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

conditions, such as dementia; liver disease; pregnancy; pulmonary fibrosis (having damaged or scarred lung tissues); smoking; thalassemia (a type of blood disorder); type 1 diabetes mellitus; etc.). **The risk for severe illness from COVID-19 also increases with age.**¹⁹

Commented [WJ(134)]: VDH comment

c. Engineering, administrative, work practice, and personal protective equipment controls necessary to address those risks.

4. Consider **and address** contingency plans for situations that may arise as a result of outbreaks **and impact employee safety and health**, such as:

Commented [WJ(135)]: DOLI change – make language consistent with 70.B.3

Commented [WJ(136)]: In response to comments requesting elimination of business considerations unrelated to occupational safety and health. Comments 85259, 85492.

a. Increased rates of employee absenteeism **(an understaffed business can be at greater risk for accidents);**²⁰

b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination and substitution, engineering controls, administrative and work practice controls, and personal protective equipment; **(e.g., respirators, surgical/medical procedure masks, etc.);**

Commented [WJ(137)]: Typo correction

c. Options for conducting essential operations **in a safe and healthy manner** with a reduced workforce, **including cross-training employees across different jobs in order to continue operations or deliver surge services;** and

Commented [WJ(138)]: Language deleted In response to comments requesting elimination of business considerations unrelated to occupational safety and health. Comments 85259, 85492.

¹⁹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

²⁰ <https://smallbusiness.chron.com/absenteeism-affect-safety-workplace-62089.html>

d. Interrupted supply chains or delayed deliveries **of safety and health related products and services essential to business operations.**

Commented [WJ(139)]: Subsection clarified in response to comments requesting elimination of business considerations unrelated to occupational safety and health. Comments 85259, 85492.

5. Identify **basic** infection prevention measures to be implemented:

Commented [WJ(140)]: VDH comment

a. Promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons to the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

b. Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

c. Establish policies and procedures for managing and educating visitors to the place of employment.

6. Provide for the prompt identification and isolation of **employees** known or suspected to be infected with the SARS-CoV-2 virus **employees** away from work, including procedures for employees to report when they are experiencing **signs and/or** symptoms of COVID-19.

Commented [WJ(141)]: VDH comment

Commented [WJ(142)]: VDH comment

Commented [WJ(143)]: VDH comment

Commented [WJ(144)]: RRO change to delete "and/" 1.4.2021

7. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors who enter the place of employment, businesses that provide **or** contract or temporary employees to the employer, and other persons accessing the place of employment to comply with the requirements of this standard and the employer's plan.

Commented [WJ(145)]: Typo correction

8. Identify the mandatory and non-mandatory recommendations in any CDC guidelines or Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this standard, as provided for in 16VAC25-220-10 G 1 and G 2.

9. Ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency related to the SARS-CoV-2 virus or COVID-19 disease.

16VAC25-220-80. Training.

A. Employers with hazards or job tasks classified as very high, high, or medium exposure risk at a place of employment shall provide training on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease to all employees working at the place of employment regardless of employee risk classification. The training program shall enable each employee to recognize the hazards of the SARS-CoV-2 virus and signs and symptoms of COVID-19 disease and shall train each employee in the procedures to be followed in order to minimize these hazards.

B. The training required under subsection A shall include:

1. The requirements of this standard;
2. The mandatory and non-mandatory recommendations provisions in any CDC guidelines or State Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this standard as provided for in section 16VAC25-220-10 EG 1 and EG 2;
3. The characteristics and methods of transmission of the SARS-CoV-2 virus;

Commented [WJ(146)]: VDH comment

Commented [WJ(147)]: VDH comment

4. The signs and symptoms of ~~the~~ COVID-19 disease;

5. Risk factors ~~effor~~ severe COVID-19 illness ~~with~~including underlying health conditions ~~and advancing age~~;

Commented [WJ(148)]: VDH comment

6. Awareness of the ability of ~~persons~~ pre-symptomatic~~ally~~ and asymptomatic~~ally~~ infected ~~with SARS-CoV-2/COVID-19 persons~~ to transmit the SARS-CoV-2 virus;

7. Safe and healthy work practices, including but not limited to, physical distancing, ~~the~~ wearing of face coverings, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;

Commented [WJ(149)]: VDH comment

Commented [WJ(150)]: RRO punctuation change made 1.4.2021

8. **Personal protective equipment (PPE)**:

a. When PPE is required;

b. What PPE is required;

c. How to properly don, doff, adjust, and wear PPE;

d. The limitations of PPE;

e. The proper care, maintenance, useful life, and disposal of PPE; ~~and~~

~~f. Strategies to extend PPE usage during periods of limited supply; and~~

Commented [WJ(151)]: VDH comment

~~fg.~~ Heat-related illness prevention including the signs and symptoms of heat-related illness ~~associated with the use of COVID-19 PPE and face coverings~~;

Commented [WJ(152)]: Added to clarify purpose of this provision being limited to impact COVID-19 related PPE can have in hot work environments

9. The anti-discrimination provisions in 16VAC25-220-90; and

10. The employer's Infectious Disease Preparedness and Response Plan, where applicable.

C. Employers covered by 16VAC25-220-50 shall verify compliance with 16VAC25-220-80 A by preparing a written certification record for those employees exposed to hazards or job tasks classified as very high, high, or medium exposure risk levels.

1. The written certification record shall contain:

a. The name or other unique identifier of the employee trained,

b. The trained employee's physical or electronic signature,

c. The date of the training, and

d. The name of the person who conducted the training, or for computer-based training, the name of the person or entity that prepared the training materials.

2. A physical or electronic signature is not necessary if other documentation of training completion can be provided (e.g., electronic certification through a training system; security precautions that enable the employer to demonstrate that training was accessed by passwords and usernames unique to each employee, etc.).

3. If the employer relies on training conducted by another employer or completed prior to the effective date of this standard, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

4. The latest training or retraining certification shall be maintained.

Commented [WJ(153)]: VDH comment

Commented [WJ(154)]: Language added from DOLI §80 FAQ 2

E. When **the an** employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by 16VAC25-220-80 A, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;
2. Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or
3. Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.

F. Employers with hazards or job tasks classified at lower risk shall provide written or oral information to employees exposed to such hazards or engaged in such job tasks on the hazards and characteristics of SARS-COV-2 and the symptoms of COVID-19 and measures to minimize exposure. The Department of Labor and Industry shall develop an information sheet containing information on the items listed in subsection G, which an employer may utilize to comply with this subsection.

G. The information required under subsection F shall include at a minimum:

1. The requirements of this standard;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The **signs and** symptoms of **the** COVID-19 disease;

Commented [WJ(155)]: VDH comment

4. The ability of persons pre-symptomatic^{ally} and asymptotically infected with SARS-CoV-2 COVID-19 persons to transmit the SARS-CoV-2 virus;

Commented [WJ(156)]: VDH comment

5. Safe and healthy work practices and control measures, including but not limited to, physical distancing, the benefits of wearing face coverings, sanitation and disinfection practices; and

Commented [WJ(157)]: VDH comment

6. The anti-discrimination provisions of this standard in 16VAC25-220-90.

16VAC25-220-90. Discrimination against an employee for exercising rights under this standard is prohibited.

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard, Title 40.1 of the Code of Virginia, and implementing regulations under 16VAC25-60-110 for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own personal protective equipment, including but not limited to a respirator, face shield, gown, or gloves, or face covering if such equipment is not provided by the employer, provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees. No person shall discharge or in any way discriminate

Commented [WJ(158)]: VDH comment

Commented [WJ(159)]: VDH comment because "face coverings" are not considered PPE.

against an employee who voluntarily provides and wears the employee's own face covering, provided that the face covering does not create a greater hazard to the employee or create a serious hazard for other employees.

Commented [WJ(160)]: VDH comment

C. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

D. Nothing in this standard shall limit an employee from refusing to do work or enter a location that the employee feels is unsafe. However, employees should familiarize themselves with 16VAC25-60-110, which contains the requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death.

DRAFT