

Please accept the following comments regarding:

16VAC25-220, DRAFT Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19

Issue 1:

16VAC25-220-40 F.

When multiple employees are occupying a vehicle for work purposes, employers shall:

1. Ensure 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

Comment 1:

Although providing respirators to all employees 2 or more in a vehicle is conceptually appropriate considering the pandemic and although the standard accommodates supply issues that could limit respirator compliance, the requirement to wear respirators will create a number of burdens to employers. These issues include coordination to medically clear employees to comply with the OSHA respirator requirements requiring employee medical questionnaires reviews by a qualified medical professional and consequently a physical if the employee has too many risk factors. In addition, employees will require initial fit testing, training and associated documentation. Regretfully, there will be a percentage of employees that will be determined as medically unfit to wear a respirator that could jeopardize their employment. In addition when supplies become available, fit testing may not be a possibility due to a shortage of sizes. The compliance with this aspect of the standard abruptly may also overwhelm medical facilities attempting to evaluate a large volume of employees. Additional issues include costs of physicals, PPE and training that are secondary issues but could be challenging particularly for smaller employers.

Recommendation:

Consider other options than respirators that may not be as effective but may provide a reasonable level of protection, particularly for vehicle sharing by small groups or pairs for only short durations. Another consideration, provide employers a significant time to comply with the respirator directive to allow employers reasonable time to phase in the requirements and consider alternative work assignments and transportation.

Issue 2:

16VAC25-220-40 G.

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.

Comment 2:

Although providing respirators to all employees who may work within six feet of each other is conceptually appropriate considering the pandemic, consideration should include permitting face masks rather than respirators for outdoor work that although may require working within six feet, may be of short duration and risk mitigated by outside fresh air. The other issues, as expressed in Comments 1, relate to the logistics of coordination to medically clear employees to comply with the OSHA respirator requirements requiring employee medical questionnaires reviews by a qualified medical professional and consequently a physical if the employee has too many risk factors. In addition, employees will require initial fit testing, training and associated documentation. Regretfully, there will be a percentage of employees that will be determined as medically unfit to wear a respirator that could jeopardize their employment. In addition when supplies become available, fit testing may not be a possibility due to a shortage of sizes. The compliance with this aspect of the standard abruptly may also overwhelm medical facilities attempting to evaluate a large volume of employees. Additional issues include costs of physicals, PPE and training that are secondary issues but could be challenging particularly for smaller employers.

Recommendation:

Consider other options than respirators that may not be as effective but may provide a reasonable level of protection particularly for outdoor work. Another consideration, provide employers a significant time to comply with the respirator directive to allow employers reasonable time to phase in the requirements and consider alternative work assignments and transportation.

Issue 3:

16VAC25-220-30. Definitions

"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.

Comments 3:

Although creating solid floor to ceiling walls may appear conceptually appropriate to limit the spread of COVID-19, it would be impractical to build walls in facilities due to the impact on the designed operation of HVAC units that serve the structure to maximize appropriate airflow and air exchanges. Building walls can interfere with air distribution and air flow to design return locations. In addition to constructed walls impairing air circulation, there are fire suppression systems that could be impacted such as sprinkler systems and building walls may encumber emergency escape access that is critical for life safety and active shooter considerations.

Recommendation:

Instead of walls, suggest requiring functional barriers that provide reasonably protection such as large plastic barriers at work stations with openings for contactless transactions (similar those in prevalent use for cashiers or retail barriers but in office or administrative settings) that can effectively limit exposure from person to person and can be readily added at low expense. These temporary shields would have the advantage of being temporary and at a reasonable cost so when the pandemic hopefully ends, work stations can return to normal.

Issue 4:

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

C. Return to work.

1. The employers 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:

a. Symptomatic employees known or suspected to be infected with the SARS-CoV2 are excluded from returning to work until all three of the following have been met:

(1) The employee is fever-free (less than 100.0° F) for at least 24 hours), have passed since recovery, defined as resolution of fever without the use of fever-reducing medications, and

(2) Respiratory symptoms, such as cough, and shortness of breath have improved, and

(3) At least 10 days have passed since symptoms first appeared. 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.

Comment 4:

16VAC25-220-40 C.3. states that "Employees who are severely immunocompromised may require testing to determine when they can return to work - consider consultation with infection control experts.

Due to HIPAA restrictions, information concerning an employee's health would only be known if an employee discloses their medical condition voluntarily.

Recommendation:

Remove the immunocompromised section of the proposed standard or reword it so that the burden is on the employee to disclose the condition voluntarily which may require confirmation from their personal physician.

Issue 5: 16VAC25-220-50. Requirements for hazards or job tasks classified as very high or high exposure risk

16VAC25-220-40 B.1.vi. states “Have staff work in “clean” ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open)”.

Comment 5:

Although limited to employees determined at a very high or high risk exposure, the wording of this provision inhibits workplace-specific risk assessment of “clean” and “higher-risk” areas.

Recommendation:

Consider a modifier such as “if feasible and determined to provide lesser risk” because in some settings limiting public interactions to a lobby station best accommodates physical distancing, prevents greater foot traffic throughout a work site, and risk can be mitigated by plastic barriers or other engineering of administrative controls as discussed in Comment 3.

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