

Virginia Administrative Code

Title 16. Labor And Employment

Agency 25. Safety And Health Codes Board

Chapter 220. Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19

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

A. This chapter 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 chapter is adopted in accordance with subdivision (6a) 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.

1. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board and take effect, application of this chapter, except for 16VAC25-220-40 B 7 d and B 7 e and 16VAC25-220-90, to such covered employers and employees subject to the chapter shall be suspended while the federal COVID-19 Emergency Temporary Standard remains in effect.

2. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502 et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed or invalidated by a state or federal court, the provisions of this chapter, including 16VAC25-220-50, shall immediately apply to such employers and employees in its place with no further action of the board required.

3. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502 et seq., applicable to all settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed by federal OSHA, or otherwise revoked, repealed, declared unenforceable, or permitted to expire, the provisions of this chapter, including 16VAC25-220-50, shall immediately apply to such employers and employees in its place with no further action of the board required. In addition, the Virginia Safety and Health Codes Board shall within 30 days, notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for this chapter or whether it should be maintained, modified, or revoked.

C. This chapter 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 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. 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 the appropriate workplaces.

D. Reserved.

E. To the extent that an employer actually complies with a recommendation contained in current 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 chapter, the employer's actions shall be considered in compliance with this chapter. An employer's actual compliance with a recommendation contained in current CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this chapter shall be considered evidence of good faith in any enforcement proceeding related to this chapter. 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 current CDC guidelines.

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

**Statutory Authority**

§40.1-22 of the Code of Virginia.

**Historical Notes**

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

16VAC25-220-20. Effective dates.

A. Adoption process.

1. This chapter shall take effect upon 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.
2. If the Governor's review results in one or more requested revisions to the chapter, the Safety and Health Codes Board shall reconvene to approve, amend, or reject the requested revisions.
3. If the Safety and Health Codes Board approves the requested revisions to the chapter as

submitted, the chapter 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 chapter under subdivision A 1 of this section within 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 chapter 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.

B. The Governor reviewed this chapter under subdivision A 1 of this section, and the requirements of this chapter shall take effect on September 8, 2021, except where otherwise noted.

C. The requirements for 16VAC25-220-70 shall take effect on October 8, 2021.

D. The training requirements in 16VAC25-220-80 shall take effect on November 7, 2021.

Statutory Authority

§40.1-22 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

### 16VAC25-220-30. Definitions.

The following words and terms when used in this chapter 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.

"Aerosol-generating procedure" means a medical procedure that generates aerosols that can be infectious and are of respirable size. Only the following medical procedures are considered aerosol-generating procedures: open suctioning of airways; sputum induction; cardiopulmonary resuscitation; endotracheal intubation and extubation; non-invasive ventilation (e.g., BiPAP, CPAP); bronchoscopy; manual ventilation; medical/surgical/postmortem procedures using oscillating bone saws; and dental procedures involving: ultrasonic scalers; high-speed dental handpieces; air/water syringes; air polishing; and air abrasion.

"Airborne infection isolation room" or "AIIR" means a dedicated negative pressure patient-care room, with special air handling capability, that is used to isolate persons with a suspected or confirmed airborne-transmissible infectious disease. AIIRs include both permanent rooms and temporary structures (e.g., a booth, tent, or other enclosure designed

to operate under negative pressure).

"Ambulatory care" means health care services performed on an outpatient basis, without admission to a hospital or other facility. It is provided in settings such as offices of physicians and other health care professionals; hospital outpatient departments; ambulatory surgical centers; specialty clinics or centers (e.g., dialysis, infusion, medical imaging); and urgent care clinics. Ambulatory care does not include home health care settings.

"ASTM" means American Society for Testing and Materials.

"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 recordkeeping functions relating to a building or facility in which activities covered by this chapter take place.

"CDC" means Centers for Disease Control and Prevention.

"Cleaning" means the removal of dirt and impurities, including germs, from surfaces using soap and water or other cleaning agents. Cleaning alone reduces germs on surfaces by removing contaminants and may also weaken or damage some of the virus particles, which decreases risk of infection from surfaces.

"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 may be obtained from the VDH website and is assessed using, at a minimum, two metrics: (i) new COVID-19 cases per 100,000 persons in the last seven days and (ii) the percentage of positive SARS-CoV-2 diagnostic nucleic acid amplification tests in the last seven days. For each of these metrics, CDC classifies transmission values as low, moderate, substantial, or high. If the values for each of these two metrics differ (e.g., one indicates moderate and the other low), then the higher of the two should be used for decision-making.

CDC core indicators of and thresholds for community transmission levels of SARS-CoV-2:

"Confirmed COVID-19" 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.

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

"COVID-19 positive and confirmed COVID-19" refer to a person who has a confirmed positive test for, or who has been diagnosed by a licensed health care provider with, COVID-19.

"COVID-19 test" means a test for SARS-CoV-2 that is:

1. Cleared or approved by the U.S. Food and Drug Administration (FDA) or is authorized by an emergency use authorization (EUA) from the FDA to diagnose current infection with the

SARS-CoV-2 virus; and

2. Administered in accordance with the FDA clearance or approval or the FDA EUA as applicable.

"Disinfecting" means using chemicals approved for use against SARS-CoV-2 virus, for example EPA-registered disinfectants, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2 virus, 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.

"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 time of the 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 could involve a customer, patient, or other person who is not fully vaccinated not wearing a face covering or personal protective equipment or coughing or sneezing directly into the face of an employee. An example of a chronic situation could involve a job task that requires an employee who is not fully vaccinated 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 chapter. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this chapter 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 support a VOSH decision to decline to take enforcement action.

"Elastomeric respirator" means a tight-fitting respirator with a facepiece that is made of synthetic or rubber material that permits it to be disinfected, cleaned, and reused according to manufacturer's instructions. It is equipped with a replaceable cartridge, canister, or filter.

"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 chapter also includes, but is not limited to, 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.

"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. Nonmedical disposable masks for single use that otherwise meet the definition of "face covering" in this chapter, with the exception that they are not washable, are permissible to use as 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. A face covering is not a surgical mask or respirator. A face covering is not subject to testing and approval by a state or federal government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards. Notwithstanding any other provisions in this definition, face coverings approved as having met ASTM standards for face coverings effective against the SARS-CoV-2 virus shall be considered to be in compliance with this chapter.

"Facemask" means a surgical, medical procedure, dental, or isolation mask that is FDA-cleared, authorized by an FDA EUA, or offered or distributed as described in an FDA enforcement policy. Facemasks may also be referred to as "medical procedure masks."

"Face shield" means a device, typically made of clear plastic, that:

1. Is certified to ANSI/ISEA Z87.1; or
2. Covers the wearer's eyes, nose, and mouth to protect from splashes, sprays, and spatter of body fluids, wraps around the sides of the wearer's face (i.e., temple-to-temple), and extends below the wearer's chin.

"Feasible" as used in this chapter 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).

"Fully vaccinated" means a person is considered fully vaccinated for COVID-19 more than or equal to two weeks after they have received the second dose in a two-dose series, or more than or equal to two weeks after they have received a single-dose vaccine, provided such vaccine has been FDA-approved, or authorized by an FDA EUA, or authorized for emergency use by the World Health Organization (WHO).

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

"HIPAA" means Health Insurance Portability and Accountability Act.

"Health care services" mean services that are provided to individuals by professional health

care practitioners (e.g., doctors, nurses, emergency medical personnel, oral health professionals) for the purpose of promoting, maintaining, monitoring, or restoring health. Health care services are delivered through various means including hospitalization, longterm care, ambulatory care, home health and hospice care, emergency medical response, and patient transport. Health care services include autopsies.

"Health care support services" mean services that facilitate the provision of health care services. Health care support services include patient intake or admission, patient food services, equipment and facility maintenance, housekeeping services, health care laundry services, medical waste handling services, and medical equipment cleaning or reprocessing services.

"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.

"Otherwise at-risk" means a person whose ability to have a full immune response to vaccination may have been affected by certain conditions, such as a prior transplant, as well as prolonged use of corticosteroids or other immune-weakening medications.

"Personal protective equipment" or "PPE" 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 for actual or potential exposure to SARS-CoV-2 or COVID-19 exposure may include, but is not limited to, gloves, safety glasses, goggles, respirators, surgical masks, facemasks, impermeable gowns or coveralls, face shields, vests, and full body suits.

"Physical distancing" also called "social distancing" means a person keeping space between himself 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 travel distance is maintained from others around the edges or sides of the wall as well.

"Powered air-purifying respirator" or "PAPR" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Respirator" means a

type of PPE that is certified by NIOSH under 42 CFR Part 84 or is authorized under an EUA by the FDA. Respirators protect against airborne hazards by removing specific air contaminants from the ambient (surrounding) air or by supplying breathable air from a safe source. Common types of respirators include filtering facepiece respirators, elastomeric respirators, and PAPRs. Face coverings, facemasks, and face shields are not respirators.

"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 chapter or required by other provisions in the VOSH and OSHA standards.

"SARS-CoV-2" means the novel virus that causes coronavirus disease 2019, or COVID-19. Coronaviruses are named for the crown-like spikes on their surfaces.

"Severely immunocompromised" means a seriously weakened immune system that lowers the body's ability to fight infection and may increase the risk of getting severely sick from SARS-CoV-2, from 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 less than 200, combined primary immunodeficiency disorder, and receipt of prednisone greater than 20mg per day for more than 14 days. The degree of immunocompromise is determined by the treating provider, and preventive actions are tailored to each individual and situation.

"Signs of COVID-19" are medical conditions that can be objectively observed and may include fever, cough, shortness of breath or trouble breathing, vomiting, new confusion, inability to wake or stay awake, pale, gray, or blue-colored skin, lips, or nail beds, depending on skin tone, etc.

"Surgical mask" means a mask that covers the user's nose and mouth and provides a physical barrier to fluids and particulate materials. The mask meets certain fluid barrier protection standards and Class I or Class II flammability tests. Surgical masks are generally regulated by FDA as Class II devices under 21 CFR 878.4040 – Surgical apparel.

"Suspected COVID-19" means a person who has been told by a licensed health care provider that they are suspected to have COVID-19; or is experiencing recent loss of taste and/or smell with no other explanation; or is experiencing both fever (greater than or equal to 100.4° F) and new unexplained cough associated with shortness of breath; or has symptoms consistent with the clinical criteria in the CDC national case definition and no other explanation for symptoms exist.

"Symptomatic" means a person is experiencing signs or symptoms attributed to COVID-19. A person may become symptomatic two to 14 days after exposure to the SARS-CoV-2 virus.

"Symptoms of COVID-19" are medical conditions 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, congestion or runny nose, nausea, or diarrhea, etc.

"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 chapter 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.

"Vaccine" means a biological product authorized or licensed by the FDA to prevent or provide



protection against COVID-19, whether the substance is administered through a single dose or a series of doses.

"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.

Statutory Authority

§40.1-22 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

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

A. Employers shall have a policy in place to ensure compliance with the requirements in this section to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease. Such policy shall have a method to receive anonymous complaints of violations. An employer that enforces its policy in good faith and resolves filed complaints shall be considered in compliance with this subsection.

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. Tasks that are similar in nature and employees exposed to the same hazard may be grouped for classification purposes.

Employers may rely on an employee's representation of being fully vaccinated, as defined by this chapter without requiring proof of vaccination; however, nothing in this chapter shall be construed to preclude an employer from requiring proof that an employee is fully vaccinated.

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 .

3. Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2 virus. It has not been determined that persons who test positive for the presence of antibodies by serological testing 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 suspected or confirmed COVID-19.

b. Serologic test results shall not be used to make decisions concerning employees who were previously classified as suspected or confirmed COVID-19 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 they are experiencing signs or symptoms consistent with 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 COVID-19.

5. Employers shall not permit suspected or confirmed COVID-19 employees or other persons 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 chapter shall prohibit an employer from permitting a suspected or confirmed COVID-19 employee 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. Employers shall discuss with subcontractors and companies that provide contract or temporary employees the importance and requirement to exclude from work employees or other persons (e.g., volunteers) who are suspected or confirmed COVID-19. Subcontractor, contract, or temporary employees who are suspected or confirmed COVID-19 shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their suspected or confirmed COVID-19 employees to report to or be allowed to remain at work or on a job site until cleared for return to work.

7. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive COVID-19 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being suspected or confirmed COVID-19) present at the place of employment within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test). Employers shall notify:

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 confirmed COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) (42 USC § 1201 et seq.) and other applicable federal and Virginia laws and regulations;

b. In the same manner as subdivision 7 a of this subsection, other employers whose employees were present at the work site during the same time period;

c. In the same manner as subdivision 7 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 COVID-19 positive test for any employees or residents in

the building. This notification will allow the owner to take the necessary steps to clean 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;

d. The Virginia Department of Health . Every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health (VDH) when the work site 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 COVID-19 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 investigation. After the outbreak investigation is closed, subsequent identification of two or more confirmed cases of COVID-19 shall be reported, as required by this subdivision B 7 d. 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

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of two or more of its own employees present at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day time period. A reported positive COVID-19 test does not need to be reported more than once and will not be used for the purpose of identifying more than one grouping of two or more cases, or more than one 14-day period.

8. 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. Employers shall develop and implement policies and procedures for suspected or confirmed COVID-19 employees to return to work.

1. If the employer knows an employee is COVID-19 positive, regardless of vaccination status then the employer must immediately remove that employee from the work site and keep the employee removed until they meet the return to work criteria in subdivision C 3 of this section.

2. If the employer knows an employee is suspected COVID-19, regardless of vaccination status then the employer must immediately remove that employee from the work site and

either:

a. Keep the employee removed until they meet the return to work criteria in subdivision C 3 of this section; or

b. Keep the employee removed and provide a COVID-19 polymerase chain reaction (PCR) test at no cost to the employee.

(1) If the test results are negative, the employee may return to work immediately.

(2) If the test results are positive, the employer must comply with subdivision C 1 of this section.

(3) If the employee refuses to take the test, the employer must continue to keep the employee removed from the workplace consistent with subdivision C 1 of this section. Absent undue hardship, employers must make reasonable accommodations for employees who cannot take the test for religious or disability-related medical reasons.

3. The employer must make decisions regarding an employee's return to work after a COVID-19-related workplace removal in accordance with guidance from a licensed health care provider, a VDH public health professional, or CDC's "Isolation Guidance" (hereby incorporated by reference); and CDC's "Return to Work Healthcare Guidance" (hereby incorporated by reference). If an employee has a known exposure to someone with COVID-19, the employee must follow any testing or quarantine guidance provided by a VDH public health professional.

4. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. Employers shall not require employees 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 this subdivision C 4.

D. Unless otherwise provided in this chapter, employers shall establish and implement policies and procedures that ensure employees who are not fully vaccinated and otherwise at-risk 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. 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; and

3. Provide that such requirements do not apply to fully vaccinated employees.

E. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled. This subsection does not apply to fully vaccinated employees.

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:

1. At the entrance of the designated common area or room, employers shall clearly post the policy limiting the occupancy of the space and requirements for physical distancing, hand washing and hand sanitizing, and cleaning of shared surfaces for employees who are not fully vaccinated;
2. Employers shall limit occupancy of the designated common area or room so that occupants who are not fully vaccinated can maintain physical distancing from each other. Employers shall enforce the occupancy limit;
3. When no suspected or confirmed COVID-19 persons are known to have been in a space, the employer shall clean the common area, breakroom, or lunchroom once per shift; and
4. Handwashing 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 an employee is occupying a vehicle or other form of transportation with one or more employees or other persons for work purposes, employers shall use the hierarchy of hazard controls to mitigate the hazards associated with SARS-CoV-2 and COVID-19 to prevent employee exposures in the following order. This subsection does not apply to fully vaccinated employees in areas of low to moderate community transmission and except as otherwise noted:

1. Eliminate the need for employees to share work vehicles or other transportation and arrange for alternative means for additional employees to travel to work sites.
2. Provide access to fresh air ventilation (e.g., windows). Do not recirculate cabin air.
3. When physical distancing cannot be maintained, establish procedures to maximize separation between employees as well as other persons during travel (e.g., setting occupancy limits, sitting in alternate seats, etc.).
4. When an employee who is not fully vaccinated must share a work vehicle or other transportation with one or more employees or other persons because no other alternatives are available, such employees shall be provided with and wear respiratory protection, such as an N95 filtering face piece respirator, or a face covering at the option of the employee. When an employee who is fully vaccinated must share work vehicles or other transportation with one or more employees or other persons in areas of substantial or high community transmission because no other alternatives are available, such employees shall be provided with and wear face coverings.
5. The employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry (e.g., when one or

more employees is accompanying a suspected or confirmed COVID-19 person in an ambulance).

6. 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 or other transportation with other employees or persons.

Notwithstanding anything to the contrary in this chapter, the Secretary of Labor may exercise discretion in the enforcement of an employer's failure to provide PPE required by this chapter, if the employer demonstrates that the employer:

- a. Is exercising due diligence to come into compliance with such requirement; and
- b. Is implementing alternative methods and measures to protect employees that are satisfactory to the Secretary of Labor after consultation with the Commissioner of Labor and Industry and the Secretary of Health and Human Services.

7. For commercial motor vehicles or trucks, if the driver is the only person in the vehicle or truck, or the vehicle or truck is operated by a team who all live in the same household and are the only persons in the vehicle, an employer of such drivers would be considered to be in compliance with subdivisions F 1 through F 5 of this section.

G. Employers shall provide and require employees that are not fully vaccinated, fully vaccinated employees in areas of substantial or high community transmission, and otherwise at-risk employees (because of a prior transplant or other medical condition) to wear face coverings or surgical masks while indoors, unless their work task requires a respirator or other PPE. Such employees shall wear a face covering or surgical mask that covers the nose and mouth to contain the wearer's respiratory droplets and help protect others and potentially themselves. This subsection does not apply to fully vaccinated employees in areas of low to moderate community transmission, and except as otherwise noted.

The following are exceptions to the requirements for face coverings, facemasks or surgical masks for employees that are not fully vaccinated and fully vaccinated employees in areas of substantial or high community transmission:

1. When an employee is alone in a room.
2. While an employee is eating and drinking at the workplace, provided each employee who is not fully vaccinated is at least six feet away from any other person, or separated from other people by a physical barrier.
3. When employees are wearing respiratory protection in accordance with 16VAC25-90-1910.134 or this chapter.
4. When it is important to see a person's mouth (e.g., communicating with an individual who is deaf or hard of hearing) and the conditions do not permit a facemask that is constructed of clear plastic or includes a clear plastic window. In such situations, the employer must ensure that each employee wears an alternative to protect the employee,

such as a face shield, if the conditions permit it. The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

5. When employees cannot wear facemasks due to a medical necessity, medical condition, or disability as defined in the Americans with Disabilities Act (ADA) (42 USC § 12101 et seq.), or due to a religious belief. Exceptions must be provided for a narrow subset of persons with a disability who cannot wear a facemask or cannot safely wear a facemask, because of the disability, as defined in the ADA, including a person who cannot independently remove the facemask. The remaining portion of the subset who cannot wear a facemask may be exempted on a case-by-case basis as required by the ADA and other applicable laws. In all such situations, the employer must ensure that any such employee wears a face shield for the protection of the employee, if their condition or disability permits it. Accommodations may also need to be made for religious beliefs consistent with Title VII of the Civil Rights Act (42 USC § 2000e et seq.). The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

6. When the employer can demonstrate that the use of a facemask presents a hazard to an employee of serious injury or death (e.g., arc flash, heat stress, interfering with the safe operation of equipment). In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. Any employee not wearing a facemask must remain at least six feet away from all other people unless the employer can demonstrate it is not feasible. The employee must resume wearing a facemask when not engaged in the activity where the facemask presents a hazard. The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

7. Where a face shield is required to comply with this subsection or is otherwise required by the employer, the employer must ensure that face shields are cleaned at least daily and are not damaged. When an employee provides a face shield that meets the definition of that term in 16VAC25-220-30, the employer may allow the employee to use it and is not required to reimburse the employee for that face shield. Notwithstanding anything to the contrary in this chapter, the Secretary of Labor may exercise discretion in the enforcement of an employer's failure to provide PPE required by this chapter if the employer demonstrates that the employer:

- a. Is exercising due diligence to come into compliance with such requirement; and
- b. Is implementing alternative methods and measures to protect employees that are satisfactory to the Secretary of Labor after consultation with the Commissioner of Labor and Industry and the Secretary of Health and Human Services.

H. Reserved.

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

J. Reserved.

K. Reserved.

L. Sanitation and disinfecting.

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

2. Reserved.

3. In addition to the requirements contained in this chapter, employers shall comply with the VOSH hazard communication standard applicable to the employers' industry for cleaning and disinfecting materials and hand sanitizers (e.g., 16VAC25-90-1910.1200, 16VAC25-175-1926.59).

4. Areas in the place of employment where suspected or confirmed COVID-19 employees or other persons accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas as follows:

a. The provisions in subdivisions 4 b, 4 c, and 4 d of this subsection do not apply to health care settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.

b. If less than 24 hours have passed since the person who is sick or diagnosed with COVID-19 has been in the space, clean and disinfect the space.

c. If more than 24 hours have passed since the person who is sick or diagnosed with COVID-19 has been in the space, cleaning is enough. Employers may choose to also disinfect depending on certain conditions or everyday practices required by the facility.

d. If more than three days have passed since the person who is sick or diagnosed with COVID-19 has been in the space, no additional cleaning or disinfecting beyond regular cleaning practices is needed.

5. All common spaces, including bathrooms (including port-a-johns, privies, etc.), frequently touched surfaces, and doors, shall at a minimum be cleaned at least once during or at the end of the shift (where multiple shifts are employed, such spaces shall be cleaned no less than once every 12 hours), except as provided in subdivisions 5 a and 5 b of this subsection.

a. The provision in subdivision 5 b of this subsection does not apply to health care settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.

b. When no suspected or confirmed COVID-19 persons are known to have been in a



space, clean once a day.

6. All shared tools, equipment, workspaces, and vehicles shall be cleaned prior to transfer from one employee to another. This subsection does not apply when the transfer is from one fully vaccinated employee to another fully vaccinated employee.

7. 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, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2.

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

9. 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.

10. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site or client or customer location 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.

11. In situations other than emergencies, employers shall ensure that protective measures are put in place to prevent cross-contamination between tasks, areas, and personnel.

M. Unless otherwise provided in this chapter, 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.

Statutory Authority

§40.1-22 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

16VAC25-220-50. Requirements for health care services or health care support services.

A. Scope and application.

1. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board and take effect, application of this chapter, except for 16VAC25-220-40 B 7 d and B 7 e and 16VAC25-220-90, to such covered employers and employees subject to the chapter shall be suspended while the federal COVID-19 Emergency Temporary Standard remains in effect.
2. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed or invalidated by a state or federal court, the provisions of this chapter, including this section, shall immediately apply to such employers and employees in its place with no further action of the board required.
3. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to all settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed by federal OSHA, or otherwise revoked, repealed, declared unenforceable, or permitted to expire, the provisions of this chapter, including this section, shall immediately apply to such employers and employees in its place with no further action of the board required. In addition, the Virginia Safety and Health Codes Board shall within 30 days, notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for this chapter or whether it should be maintained, modified, or revoked.
4. The requirements in this section for employers apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-220-70, and 16VAC25-220-80.
5. Except as otherwise provided in this subsection, this section applies to all settings where any employee provides health care services or health care support services.
6. This section does not apply to the following:
  - a. The provision of first aid by an employee who is not a licensed health care provider;
  - b. The dispensing of prescriptions by pharmacists in retail settings;
  - c. Nonhospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
  - d. Well-defined hospital ambulatory care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
  - e. Home health care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;

f. Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing); or

g. Telehealth services performed outside of a setting where direct patient care occurs.

h. VOSH does not intend to preclude the employers of employees who are unable to be vaccinated from the scope exemption in subdivisions A 6 d and A 6 e of this section.

Under various anti-discrimination laws, workers who cannot be vaccinated because of medical conditions, such as allergies to vaccine ingredients or certain religious beliefs may ask for a reasonable accommodation from their employer. Accordingly, where an employer reasonably accommodates an employee who is unable to be vaccinated in a manner that does not expose the employee to COVID-19 hazards (e.g., telework, working in isolation), that employer may be within the scope exemption in subdivisions A 6 d and A 6 e of this section.

7. Where a health care setting is embedded within a non-health care setting (e.g., medical clinic in a manufacturing facility, walk-in clinic in a retail setting), this section applies only to the embedded health care setting and not to the remainder of the physical location.

## B. Engineering controls.

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

a. Are installed and maintained in accordance with the USBC and manufacturer's instructions in health care facilities and other places of employment treating, caring for, or housing suspected or confirmed COVID-19 persons; and

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

(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);

(2) In ground transportation settings, use natural ventilation to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission to employees, and when environmental conditions and transportation safety and health requirements allow;

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

(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;

(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;

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

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

(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; and

(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.

2. Reserved.

3. Hospitalized patients who are suspected or confirmed COVID-19, where feasible and available, shall be placed in airborne infection isolation room (AIIRs).

4. Employers shall use AIIRs when available for performing aerosol-generating procedures on suspected or confirmed COVID-19 patients .

5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of persons suspected or confirmed COVID-19 at the time of their death.

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 suspected or confirmed COVID-19. Diagnostic laboratories that conduct routine medical testing and environmental specimen testing for COVID-19 are not required to operate at BSL-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 virus and COVID-19 disease 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.

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

3. Employers 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

subdivision C 3.

4. Employers shall post signs requesting patients and family members to immediately report signs or symptoms of respiratory illness on arrival at the health care facility and use disposable face coverings.

5. Employers shall offer enhanced medical monitoring of employees during COVID-19 outbreaks.

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

7. In health care settings, 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.

8. Employers shall provide face coverings to suspected COVID-19 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).

9. Where feasible, employers shall:

a. Implement flexible work site (e.g., telework).

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

c. Increase physical distancing between employees at the work site 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. Unless contraindicated by a hazard assessment and equipment selection requirements in 16VAC25-90-1910.132, employees of employers covered by this section 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 suspected or confirmed COVID-19 patients or other persons . Gowns shall be the correct size to assure protection.

2. In addition, hazard assessment and equipment selection requirements may determine that respirators or other PPE are necessary in other circumstances to reduce exposure. When respirators are required, 16VAC25-90-1910.134 shall apply to all employees for that purpose.

§40.1-22 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

### 16VAC25-220-60. Requirements for higher-risk workplaces.

A. The requirements in this section for employers with higher-risk workplaces with mixed-vaccination status employees apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-220-70, and 16VAC25-220-80.

Employers shall take the additional steps in subsections B, C, and D of this section to mitigate the spread of COVID-19 for employees who are not fully vaccinated, employees who are fully vaccinated but work in a place of employment with substantial or high community transmission, and otherwise at-risk employees in workplaces (which include, but are not limited to, manufacturing, meat and poultry processing, high-volume retail and grocery, transit, seafood processing, correctional facilities, jails, detention centers, and juvenile detention centers) where there is heightened risk due to the following types of factors:

1. Where employees who are not fully vaccinated or otherwise at-risk employees are working close to one another, for example, on production or assembly lines. Such workers may also be near one another at other times, such as when clocking in or out, during breaks, or in locker or changing rooms.
2. Where employees who are not fully vaccinated or otherwise at-risk workers often have prolonged closeness to coworkers or potential frequent contact with members of the public who may not be fully vaccinated.
3. Where employees who are not fully vaccinated or otherwise at-risk workers work in enclosed indoor spaces with inadequate ventilation where other coworkers or members of the public are present.
4. Where employees who are not fully vaccinated or otherwise at-risk employees may be exposed to the infectious virus through respiratory droplets or aerosols in the air, for example, when working next to employees who are not fully vaccinated or otherwise at-risk employees in a manufacturing or factory setting who have the virus. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances or exits to the facility may contribute to their risk.
5. Other distinctive factors that may increase risk among these employees who are not fully vaccinated or otherwise at-risk employees include:
  - a. A common practice at some workplaces of sharing employer-provided transportation such as ride-share vans or shuttle vehicles; and

b. Communal housing or living quarters onboard vessels with other employees who are not fully vaccinated or otherwise at-risk individuals.

## B. Engineering controls.

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

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

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

(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);

(2) In ground transportation settings, use natural ventilation to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission to employees and when environmental conditions and transportation safety and health requirements allow;

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

(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;

(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;

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

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

(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; and

(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.

2. Where feasible, employers shall install physical barriers (e.g., such as clear plastic sneeze guards, etc.) for employees who are not fully vaccinated or otherwise at-risk employees, where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission.

3. In workplaces (or well-defined work areas) with processing or assembly lines where there are employees who are not fully vaccinated or otherwise at-risk employees, working on food processing or assembly lines can result in virus exposure because these workplaces have often been designed for a number of employees to stand next to or across from each other to maximize productivity. Employers shall ensure proper spacing of employee who are not fully vaccinated or otherwise at-risk employees (or if not possible, appropriate use of barriers).

C. Administrative and work practice controls. To the extent feasible, employers shall implement the following administrative and work practice controls in all higher-risk workplaces where there are employees who are not fully vaccinated or otherwise at-risk employees:

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.
2. Provide face coverings to suspected COVID-19 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).
3. Stagger break times or provide temporary break areas and restrooms to avoid groups of employees who are not fully vaccinated or otherwise at-risk employees congregating during breaks. Employees who are not fully vaccinated or otherwise at-risk employees shall maintain at least six feet of distance from others at all times, including on breaks.
4. Stagger employee's arrival and departure times to avoid congregations of employees who are not fully vaccinated or otherwise at-risk in parking areas, locker rooms, and near time clocks.
5. Implement flexible work hours (e.g., staggered shifts).
6. Provide visual cues (e.g., floor markings, signs) as a reminder to maintain physical distancing.
7. In retail workplaces (or well-defined work areas within retail) where there are employees who are not fully vaccinated, fully vaccinated employees in areas of substantial or high community transmission, or otherwise at-risk employees:
  - a. Post signage requiring face coverings for employees who are not fully vaccinated (or unknown-status) and fully vaccinated employees in areas of substantial or high community transmission and requesting face coverings for customers and other visitors.
  - b. Require physical distancing from other people who are not known to be fully vaccinated. If distancing is not possible, implement the use of barriers between work stations used by employees who are not fully vaccinated or otherwise at-risk employees and the locations customers will stand, with pass-through openings at the bottom, if possible.



c. Move the electronic payment terminal or credit card reader farther away from any employees who are not fully vaccinated or otherwise at-risk employees in order to increase the distance between customers and such employees, if possible.

d. Shift primary stocking activities of employees who are not fully vaccinated or otherwise at-risk employees to off-peak or after hours when possible to reduce contact between employees who are not fully vaccinated or otherwise at-risk employees and customers.

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

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

D. Personal protective equipment. This subsection does not apply to fully vaccinated employees. Otherwise, employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132) shall comply with the requirements of this subsection for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment and personal protective equipment selection.

1. 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). Employers 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, employers shall:

a. Except as otherwise required in the chapter, 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;

b. Communicate selection decisions to each affected employee; and

c. Select PPE that properly fits each affected employee.

2. 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, 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 will vary by work task, the results of the employer's hazard assessment, and the types of exposures employees have on the job.

§40.1-22 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

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

A. The following employers shall develop and implement a written Infectious Disease Preparedness and Response Plan:

1. Employers covered by 16VAC25-220-50; and
2. Employers covered by 16VAC25-220-60 with 11 or more employees. In counting the number of employees, the employer may exclude fully vaccinated employees.

B. The plan and training requirements tied to the plan shall apply to those employees:

1. Covered by 16VAC25-220-50; and
2. Covered by 16VAC25-220-60, unless such employees are fully vaccinated.

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) The general public, customers, other employees, patients, and other persons;
    - (2) Persons suspected or confirmed COVID-19 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 health care employees who have had unprotected exposures to ) suspected or confirmed COVID-19 persons;
    - (3) Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that involve potential exposure to sources of the SARS-CoV-2 virus or COVID-19 disease; and

(4) 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.

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 30 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 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.

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 that impact employee safety and health, such as:

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

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 masks, etc.);

c. Options for conducting essential operations in a safe and healthy manner with a reduced workforce; and

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

5. Identify infection prevention measures to be implemented:

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 about the infection prevention procedures at the place of employment.

6. Provide for the prompt identification and isolation of suspected or confirmed COVID-19 employees away from work, including procedures for employees to report when they are experiencing signs or symptoms of COVID-19.

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 contract or temporary employees to the employer, and other persons accessing the place of employment to comply with the requirements of this chapter and the employer's plan.

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 chapter, as provided for in 16VAC25-220-10 E.

#### Statutory Authority

§40.1-22 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

### 16VAC25-220-80. Training.

A. The following employers shall provide training on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease to employees working at the place of employment:

1. Employers covered by 16VAC25-220-50; and
2. Employers covered by 16VAC25-220-60.

Employers may provide fully vaccinated employees with written information meeting the requirements of subsection F of this section in lieu of training. Where applicable, 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 of this section shall include:

1. The requirements of this chapter;
2. The mandatory and non-mandatory provisions in any applicable CDC guidelines or

Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this chapter as provided for in 16VAC25-220-10 E;

3. The characteristics and methods of transmission of the SARS-CoV-2 virus;
4. The signs and symptoms of COVID-19 disease;
5. Risk factors for severe COVID-19 illness including underlying health conditions and advancing age;
6. Awareness of the ability of persons pre-symptomatically and asymptotically infected with SARS-CoV-2 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.;
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;
  - f. Strategies to extend PPE usage during periods when supplies are not available and no other options are available for protection, as long as the extended use of the PPE does not pose any increased risk of exposure. The training to extend PPE usage shall include the conditions of extended PPE use, inspection criteria of the PPE to determine whether it can or cannot be used for an extended period, and safe storage requirements for PPE used for an extended period; and
  - g. Heat-related illness prevention including the signs and symptoms of heat-related illness associated with the use of COVID-19 PPE and face coverings;
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 employees trained in accordance with this section.

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 an employer relies on training conducted by another employer, 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.

D. When an employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by subsection A of this section, 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.

E. Employers not covered by 16VAC25-220-50 or 16VAC25-220-60 shall provide written or oral information to employees exposed to such hazards or engaged in such job tasks on the hazards and characteristics of the SARS-CoV-2 virus, the signs and 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 F of this section, which an employer may utilize to comply with this subsection.

F. The information required under subsection E of this section shall include at a minimum:

1. The requirements of this chapter;

2. The characteristics and methods of transmission of the SARS-CoV-2 virus;

3. The signs and symptoms of COVID-19 disease;

4. The ability of persons pre-symptomatically and asymptotically infected with SARS-CoV-2 to transmit the SARS-CoV-2 virus;

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

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

Statutory Authority

§40.1-22 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

**16VAC25-220-90. Discrimination against an employee for exercising rights under this chapter 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 chapter, 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, provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees. In situations where face coverings are not provided by the employer, no person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own face covering that meets the requirements of this chapter, provided that the face covering does not create a greater hazard to the employee or create a serious hazard for other employees. Nothing in this subsection shall be construed to prohibit an employer from establishing and enforcing legally permissible dress code or similar requirements addressing the exterior appearance of personal protective equipment or face coverings.

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 chapter shall limit an employee from refusing to do work or enter a location because of a reasonable fear of illness or death. The requirements of 16VAC25-60-110 contain the applicable requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of illness or death.

Statutory Authority

§40.1-22 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.

**Documents Incorporated by Reference (16VAC25-220).**

[List N Products with Emerging Viral Pathogens and Human Coronavirus claims for use against SARS-CoV-2](#) , U.S. Environmental Protection Agency, Date Accessed July 20, 2020, [www.epa.gov](http://www.epa.gov)

[Biosafety in Microbiological and Biomedical Laboratories](#) , 5th Edition, HHS Publication No. (CDC) 21-112, revised December 2009, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institutes of Health

Return to Work Criteria for Healthcare Personnel with SARS-CoV-2 Infection, Centers for Disease Control and Prevention, updated June 2, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

COVID-19 Quarantine and Isolation, Centers for Disease Control and Prevention, updated July 29, 2021, available at [https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fif-you-are-sick%2Fquarantine.html](https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fif-you-are-sick%2Fquarantine.html)

Statutory Authority

Historical Notes