



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY (DOLI)

BACKGROUND:

On January 13, 2021, [the Virginia Safety and Health Codes Board adopted a Virginia Occupational Safety and Health \(VOSH\) Standard for Infectious Disease Prevention](#) (“standard”) addressing occupational exposure to the SARS-CoV-2 Virus That Causes COVID-19. The standard applies to health care provider. This is the standard that required mask in health care settings, COVID-19 reporting requirements, cleaning/sanitation requirements, etc. that were above and beyond the Governor’s Executive Actions. There have been some recent changes and updates to the standard that we wanted to highlight for your information. Here is some new information for you regarding the standard. Please read through the entire document and click the appropriate links.

TIMELINE:

On August 26, 2021, the Board adopted revisions to the standard:

- The standard was Dispatch on September 8, 2021 and took effect on the same day.
- The requirements for 16VAC25-220-70 shall take effect on October 8, 2021.
- The training requirements in 16VAC25-220-80 shall take effect on November 7, 2021.
- The standard incorporates the following documents by reference **Environmental Protection Agency (EPA) List N for use against SARS-CoV-2 and Biosafety in Microbiological and Biomedical Laboratories” (Dec. 2009)**

Highlights of the Updated Standard:

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

(Highlights . This is not a comprehensive list. Please read the entire document for an in depth listing)

- 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.
- 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

- 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
- 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).
- Return to work. Employers shall develop and implement policies and procedures for suspected or confirmed COVID-19 employees to return to work.
- 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
- Access to common areas, breakrooms, or lunchrooms shall be closed or controlled. This subsection does not apply to fully vaccinated employees.
- 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 or surgical masks for employees that are not fully vaccinated:
 - 1. When an employee is alone in a room.
 - 2. While an employee is eating and drinking at the workplace, provided each employee 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
 - 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.
 - 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.

- 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 26 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.
- Where a face shield is required to comply with this paragraph 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



There's a great resource that highlights many [FAQ's](#) about the updated standard that may be found at DOLI VOSH Standard for Infectious Disease Prevention for COVID-19 – Frequently Asked Questions (virginia.gov). We tried to highlight many of the relevant [FAQ's](#) that pertain to healthcare providers and healthcare settings. Please take a look through the list of topics that are covered under the [FAQ's](#) to see how they may impact your office.

FAQ TOPICS:

- #1 - What industries and employers are covered by the Standard?
- #2 - Does the standard superseded other VOSH laws, standards, or regulations that may be applicable to COVID-19
- #3 – What the Safety and health codes boards' adoption of OSHA's Emergency Temporary Standard for Healthcare Services and Healthcare support services, does the Virginia Standard still apply to healthcare settings
- #4 – If an employer complies with CDC guidance for its industry, do they have to comply with the standard?
- #7 – Does the standard supersede a Governor's Executive Order or order of public health emergency?
- #8 – Does the standard require employers to conduct "Contact Tracing" if one of their employees is diagnosed with COVID-19?
- #10 – Regarding 16VAC25-220-10.E – Which CDC Guidelines can employers follow that would be considered by VOSH to be in compliance with a provision of this standard?
- #18 – Does the standard require employees to be vaccinated?
- #20 – Can my employer legally ask if I received the COVID-19 vaccine and am fully vaccinated?
- #21 – Can my employer require me to get fully vaccinated?
- §40 Mandatory requirements for all employers. #1 – Can an employer require and employee who was diagnosed with COVID-19 or was suspected to be infected with SARS-COV-2 Virus to be tested for COVID-19 Returning to work?
- §40 Mandatory requirements for all employers #6 – Does the standard require employers in Virginia to notify employees about a positive case of COVID-19 in the workplace?
- §40 Mandatory requirements for all employers #19 – Are "Lower Risk" Employees required to wear face coverings while at work?

- §40 Mandatory requirements for all employers - #25 – Which employees are not required to stay home (quarantine) after having a close contact with someone with COVID-19
- §40 Mandatory requirements for all employers - #26 – When can an employee filling an essential critical infrastructure role return to work
- §40 Mandatory requirements for all employers - #26 – When can an employee not filling an essential critical infrastructure role return to work
- §40 Mandatory requirements for all employers - #42 – The CDC updated its guidelines for cleaning and disinfecting workplaces on 6/15/21, do the updated guidelines apply to healthcare settings?
- §40 Mandatory requirements for all employers -#47 – The CDC released updated healthcare infection prevention and control recommendations, which allow for communal gatherings of fully vaccinated healthcare personnel without source control or physical distancing while dining or conducting in-person meetings. Can healthcare personnel follow the new updated guidance in lieu of complying with 16VAC25-220-40.H?
- §40 Mandatory requirements for all employers - #51 – Are employees that are unvaccinated or not fully vaccinated still required to wear face coverings or other PPE, including respirators, in the workplace?
- §40 Mandatory requirements for all employers -#56 – With the CDC updated guidance on fully vaccinated employees issued on May 13, 2021, are employers still required to conduct daily health assessments/screenings?
- §60 Requirements for higher-risk workplaces - #3 – When are employee require to wear face coverings under the standard?
- §80 Training. #3 – When do current employees have to be trained on the standard?