



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF LABOR AND INDUSTRY**

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**DRAFT AGENDA**

**CONTINUED EMERGENCY MEETING OF THE VIRGINIA SAFETY AND HEALTH CODES BOARD**

**July 7, 2020 Electronic Meeting**  
**9:15 AM**

**\*\*\*\*Refer to the Third Page of Agenda for Meeting Access Information\*\*\*\***

Notes on this Draft Agenda:

A copy of this proposed agenda and all agenda packets, unless exempt, all materials furnished to members of the Safety and Health Code Board ("SHCB") for this meeting were made available for public inspection on the Department of Labor and Industry's website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> at the same time such documents were furnished to the members of the SHCB.

Public Comment will not be received during this continued emergency meeting. A public comment forum was held on the proposed Temporary Emergency Standard from June 12-June 22, 2020 via a Virginia Regulatory Townhall comment forum.

As required by Va. Code 40.1-22(6a), a public hearing will be held within the next six months before any permanent standard is adopted. The public will have an opportunity to address the Board at that public hearing.

**Items on the Agenda**

1. **Call to Order.**
2. **Approval of Agenda.**
3. **New Business.**
  - a) Review and consider revised draft of Emergency Temporary Standard to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and

employers under the jurisdiction of the Virginia Occupational Safety and Health (VOSH) program, 16 VAC 25-220, submitted by Department on June 23, 2020.

- b) Review and consider Proposed Amendments to draft Emergency Temporary Standard to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers introduced by Board member Malveaux.
  - c) Review and consider Proposed Amendments to draft Emergency Temporary Standard to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers introduced by Board member Parsons.
  - d) Review and consider Proposed Amendments to draft Emergency Temporary Standard to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers introduced by Board member Rodriguez.
  - e) Review and consider Proposed Amendments to draft Emergency Temporary Standard to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers introduced by Board member Thurston.
  - f) Review and consider any other Proposed Amendments to draft Emergency Temporary Standard to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers
  - g) Vote on Final Emergency Temporary Standard to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers.
4. **Items of Interest from the Department of Labor and Industry.**
5. **Meeting Adjournment.**

## **PUBLIC PARTICIPATION**

Members of the public may listen to the meeting via the Cisco WebEx platform using the link, access code, and password below, or by audio conference only.

A transcript of the meeting will be posted on the Virginia Regulatory Townhall when it becomes available.

Event address for attendee:

<https://covaconf.webex.com/covaconf/onstage/g.php?MTID=edf01c7bc3d095451429cb4898e68501b>

**Event number (access code): 161 246 2950**

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Should any interruption of the broadcast of this meeting occur, please call 804-786-7179 or email **Christine.childress@doli.virginia.gov** to notify the agency. Any interruption in the broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.

FOIA Council Electronic Meetings Public Comment form for submitting feedback on this electronic meeting may be accessed at:

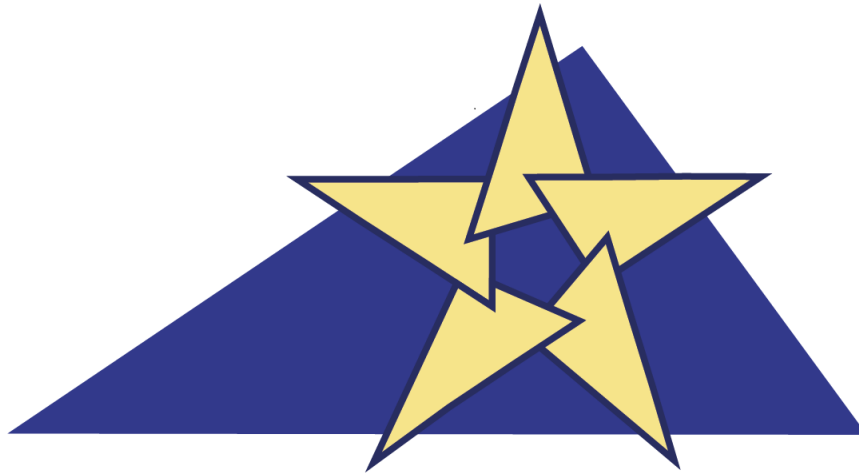
<http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>

**16 VAC 25-220, Emergency Temporary Standard ~~Emergency Regulation~~  
Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

**VOSH PROPOSED AMENDMENTS: July 7, 2020,**

**Reflecting Changes to June 12, 2020 Draft**

**COMBINED BOARD MEMBER AMENDMENTS: July 7, 2020**



**DEPARTMENT OF LABOR AND INDUSTRY**

Contact Person:

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NOTE: Items highlighted in **yellow** and underlined INDICATE a Department change or Board Member Amendment to the text of the draft Emergency Temporary Standard

NOTE: Strikethrough language is deleted

NOTE: Items highlighted in **gray** subject to change

## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, Emergency Temporary Standard ~~Emergency Regulation~~, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of **July 15, 2020**.

The Department also recommends that the Board state in any motion it may make regarding this Emergency Temporary Standard ~~Emergency Regulation~~ that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.

**16 VAC 25-220, Emergency Temporary Standard / ~~Emergency Regulation~~**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

As Adopted by the  
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date:

16 VAC 25-220

Emergency Temporary Standard ~~/Emergency Regulation~~

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

16 VAC 25-220

**§10 Purpose, scope, and applicability.**

- A. This emergency temporary standard ~~/emergency regulation~~ is designed to establish requirements for employers to control, prevent, and mitigate the spread of ~~SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19)~~ to and among employees and employers.
- B. ~~This standard shall not be extended or amended without public participation in accordance with the Virginia Administrative Process Act, Va. Code §§ 2.2-4000 et seq. and 16 VAC 25-60-170.~~
- C. ~~B.~~ This standard ~~/regulation~~ adopted in accordance with Va. Code § 40.1-22(6) ~~(a) or § 2.2-4011~~ shall apply to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program as described in §§ 16VAC25-60-20 and 16VAC25-60-30.
- D. ~~C.~~ This standard ~~/regulation~~ 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, Va. Code §40.1-51.1.A, etc. Should this standard ~~/regulation~~ conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- E. ~~D.~~ Application of this standard ~~/regulation~~ to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard ~~/regulation~~ (i.e., “very high”, “high”, “medium”, and “lower”).

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

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

- a. The job tasks being undertaken; the work environment (e.g. indoors or outdoors); the known or suspected presence of the SARS-CoV-2 virus; the presence of a person known or suspected to be infected with the SARS-CoV-2 virus; the number of employees and/or other persons in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through close contact (i.e., inside of six feet) with other employees or persons (e.g., including shift work exceeding 8 hours per day);
- b. ~~a.~~ The type of hazards encountered contact, including potential exposure to the airborne transmission (including droplets or airborne droplet nuclei) of SARS-CoV-2 virus through respiratory droplets in the air; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; industries or places of employment where employer sponsored shared ing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.

~~E. Reference to the term “employee” in this standard/regulation includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.~~



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

G.

1. To the extent that an employer actually complies with requirements contained in CDC publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard ~~regulation~~, the employer's actions that provide an equivalent or greater level of protection than a provision of this standard shall be considered in compliance with this standard ~~regulation~~.

The employer must document which CDC publication and section the employer is complying with that provides an equivalent or greater level of protection than a specific requirement of this standard. In order to take advantage of §10.G, an employer would have to demonstrate that it was complying with guidance language in CDC publications that could be considered both "mandatory" (e.g., "shall", "will", etc.) and "non-mandatory" ("it is recommended that", "should", "may", etc.).

2. Public and private institutions of higher education that have received certification from the State Council of Higher Education that their re-opening plans are in compliance with guidance documents developed by the State Council of Higher Education in conjunction with the Virginia Department of Health and who operate in compliance with their certified reopening plans that provide equivalent or greater levels of employee protection than a provision of this standard shall be considered in compliance with this standard.

The public or private institution of higher education must document which section of its re-opening plan it is complying with that provides an equivalent or greater level of protection than a specific requirement of this standard.

In order to take advantage of §10.G.2.A, a public or private institution of higher education would have to demonstrate that it was complying with language in its re-opening plan that could be considered both "mandatory" (e.g., "shall", "will", etc.) and "non-mandatory" ("it is recommended that", "should", "may", etc.).

3. Public school divisions that submit their plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools and who operate in compliance with their submitted plans that provide equivalent or greater levels of employee protection than a provision of this standard shall be considered in compliance with this standard/regulation.

The public school division must document which CDC publication and section it is complying with that provides an equivalent or greater level of protection than a specific requirement of this standard.

In order to take advantage of §10.G.2.B, a school division would have to demonstrate that it was complying with guidance language in CDC publications that could be considered both “mandatory” (e.g., “shall”, “will”, etc.) and “non-mandatory” (“it is recommended that”, “should”, “may”, etc.).

DEPARTMENT NOTE

From: **Healy, Megan** <[megan.healy@governor.virginia.gov](mailto:megan.healy@governor.virginia.gov)>

Date: Mon, Jul 6, 2020 at 10:18 PM

Subject: Thank You and Follow Up

To: Carlton Davenport <[Ray.Davenport@doli.virginia.gov](mailto:Ray.Davenport@doli.virginia.gov)>, Jay Withrow <[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)>, Robert Ball <[brian.ball@governor.virginia.gov](mailto:brian.ball@governor.virginia.gov)>

Dear Safety and Health Codes Board,

Thank you for your continued service, especially now through this health and economic crisis. Secretary Ball and I had great conversations with many of you today and sorry if we couldn't catch up with a couple of you. We really appreciate your willingness to listen.

I wanted to send you links to the K-12 and higher education plans in case you wanted to learn more about the process and procedure to reopen schools. The Virginia Department of Health, Department of Education (K-12), and the State Council for Higher Education (SCHEV) have worked hard in ensuring all workers and students are safe when institutions reopen. The link to the higher education plan requirements is [HERE](#) and the K-12 Plan can be found [HERE](#).

As to Section 10G., the Administration requests that the Board reconsider adopting the language proposed in the published regulation. To make clear that an employer must comply with either this standard or a CDC publication, we believe it would be

appropriate to insert the word "actually" the word "complies" in the first line of 10G. and the words "whether mandatory or non-mandatory" after the word "publications" in the second line of 10G.

§10.G AMENDMENT - ADMINISTRATION

1. To the extent that an employer actually complies with requirements contained in CDC publications whether mandatory or non-mandatory to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, the employer's actions shall be considered in compliance with this standard.

2. Public and private institutions of higher education that have received certification from the State Council of Higher Education that their re-opening plans are in compliance with guidance documents developed by the State Council of Higher Education in conjunction with the Virginia Department of Health and who operate in compliance with their certified reopening plans shall be considered in compliance with this standard/regulation. Public school divisions that submit their plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools and who operate in compliance with their submitted plans shall be considered in compliance with this standard/regulation.

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

**§20 Dates.**

[Under §40.1-22(6)]

This emergency temporary standard shall take immediate effect on July 15, 2020 upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia.

DEPARTMENT NOTE

ABOVE effective date added for emergency temporary standard, effective date same as publication date.

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this standard. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this standard.

DEPARTMENT NOTE:

Separate effective dates for training requirements.

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this standard.

DEPARTMENT NOTE

Separate effective dates for Infectious disease preparedness and response plan requirement.

This emergency temporary standard shall expire within six months of its effective date, upon expiration of the Governor's State of Emergency, or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

[Under §2.2-4011]

This emergency regulation shall become take effective twenty one (21) days after upon approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012.

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this regulation. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this regulation.

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this regulation.

This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

### §30 Definitions.

“Administrative Control” means any procedure which significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.

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

“Asymptomatic” means an employee person who does not have symptoms that has tested positive for SARS CoV 2 but who is not symptomatic.

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

“CDC” means Centers for Disease Control and Prevention.

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

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

1. “None to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facility facilities, schools, mass gatherings, etc.);

2. “Moderate” is where there is ~~widespread or~~ sustained community transmission with high likelihood or confirmed exposure within communal settings ~~with and~~ potential for rapid increase in suspected cases; or

3. “Substantial, controlled” is where there is large scale, controlled community transmission, ~~healthcare staffing significantly impacted, multiple cases within~~ including communal settings ~~(e.g., like healthcare facilities, schools, mass gatherings workplaces,~~ etc.).

4. “Substantial, uncontrolled” is where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).

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

“Disinfecting” means using chemicals approved for use against SARS-CoV-2, for example EPA-registered disinfectants, to kill germs on surfaces. This process 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 exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

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

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

“Employee” means an employee of an employer who is employed in a business of his employer. Reference to the term “employee” in this standard /regulation also includes, but is not limited to, temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

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

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

“Very high” exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or and the COVID-19 disease persons known or suspected to be infected



with SARS-CoV-2 virus, including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person known or suspected to have COVID-19;
2. Collecting or handling specimens from a known or suspected COVID-19 patient or person known or suspected to have COVID-19 (e.g., manipulating cultures from patients known or suspected to have COVID-19 patients);
3. Performing an autopsy, which generally that involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

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

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient known or suspected to be infected with SARS-CoV-2 virus in a hospital-like setting, including field hospitals (e.g., doctors, nurses, cleaners, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, resident, or other person known or suspected to have COVID-19 involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing

services, blood donation services, contact tracer services, and chiropractic services;

3. ~~2.~~ First responder services provided by police, corrections, fire, paramedic, search and rescue, recovery, and emergency medical services provided to a known or suspected COVID-19 patient, resident, or other person known or suspected to have COVID-19;
4. Medical transport services (loading, transporting, unloading, etc.) provided to patients known or suspected to have COVID-19 patients (e.g., ground or air emergency transport, staff, operators, drivers, ~~or~~ pilots, etc.);
5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium” exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected to have COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

“Medium” exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than minimal occupational contact with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected to have COVID-19.

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

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

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

#### §30, DEFINITIONS – EXPOSURE RISK LEVEL – “MEDIUM” – ADMINISTRATION

As for poultry, seafood and meat processors, we would like to recommend that these job roles stay as medium risk because these workers are not directly working with the general public or COVID-19 patients.

- There is a proposed amendment to move poultry, meat, and seafood processing from the “Medium” category to the “High” category.
- Existing “high” risk job tasks are all health care fields where employees are exposed to people who are known or suspected positive cases of infection. These are jobs that come in contact with COVID-19 regularly as a part of their job function.
- High risk job categories include hospitals, nursing homes, and emergency medical transport, but only when dealing with a known or suspected COVID-19 patient.

- Hospitals, nursing homes, and other medical employment is considered “Medium” when not dealing with known or suspected COVID-19.
- Meat processing facilities are required by these regulations and CDC/OSHA guidance to send any positive cases home and not let them come to work while they quarantine. There is no workplace contact with known or suspected positive cases.
- Putting meat processing in the same category as hospital employees who deal with COVID patients sends the wrong message. This would seem to say that it is ok for meat processing employees to be in contact with positive COVID cases. The goal should be for any factory to eliminate all contact with positive cases.
- Designating meat workers as “high” presumes (incorrectly) that the workers come in contact with COVID-19 on a daily basis. This will create stigma for these mostly minority workers who already face discrimination in the community.
- For these reasons, this amendment should be rejected.

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; ~~nor contact inside six feet with other employees, other persons, or the general public except as otherwise provided in this definition.~~

Employees in this category have minimal occupational contact with other employees, other persons, or the general public; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

§30, DEFINITIONS – EXPOSURE RISK LEVEL – “LOWER” – ADMINISTRATION  
AMENDMENT

Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc. that allows employees to maintain physical distancing from other employees, other persons, and the general public; and
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

6. Employee use of face coverings for close contact (inside six feet of) with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

§30, DEFINITIONS – EXPOSURE RISK LEVEL - LOWER – AJ

6. Employee use of face coverings for close contact (inside six feet of) with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact. However, when it is necessary for brief contact with others within the 6 feet distance a face covering is required.

“Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to potentially contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth). A face covering is not intended to protect the wearer, but it may prevent reduce the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from airborne particles droplets or splashes.

“Feasible” means both “technical” and “economic” feasibility as defined in this standard /regulation.

§30, DEFINITIONS – FEASIBLE – AJ

“Feasible” as used in this standard includes both technical and economic feasibility means both “technical” and “economic” feasibility as defined in this standard /regulation.

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

§30, DEFINITIONS – FILTERING FACEPIECE – AJ

“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. These are certified for use by the National Institute for Occupational Safety and Health (NIOSH).

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

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.



“May be infected with SARS-CoV-2” means any person not currently a person known or suspected to be infected with SARS-CoV-2 virus, and not currently vaccinated against the SARS-CoV-2 virus. but potentially exposed to SARS-CoV-2 through:

- ~~1. Contact inside six feet with a person known or suspected to be infected with SARS-CoV-2 virus within the last 14 days,~~
- ~~2. Contact inside six feet with a suspected COVID-19 person within the last 14 days,~~

**DEPARTMENT NOTE**

~~ABOVE change consolidates 1 and 2, and would result in renumbering of the subsections.~~

~~3. Being a resident of a locality, city, town, or county with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission, or~~

~~4. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.~~

**DEPARTMENT NOTE**

~~ABOVE changes reflect change in CDC definition.~~

**DEPARTMENT NOTE**

After considering previous discussions with Board members about this definition and reviewing comments received on the definition, the Department now recommends simplifying the definition by removing references to “community transmission” and clarifying the impact of a SARS-CoV-2 vaccine being developed.



“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 work during job tasks.

DEPARTMENT NOTE

ABOVE change made in response to comment as not consistent with traditional OSHA position on “exposure” – situations where an employee is exposed but not actually conducting a job task.

§30, DEFINITIONS – OCCUPATIONAL EXPOSURE – AJ

“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 work during job tasks the work location or while engaged in work activities at another location.

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

“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

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

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this standard /regulation.

#### §30, DEFINITIONS – RESPIRATOR USER – AJ

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

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV. Coronaviruses are named for the crown-like spikes on their surface. The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

“Signs” of COVID-19 include trouble breathing, persistent pain or pressure in the chest, new confusion, inability to wake or stay awake, bluish lips or face, etc.

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

“Suspected to have COVID-19” means a person that is has signs or symptoms of COVID-19 symptomatic but has not tested positive for SARS-CoV-2 and no alternative diagnosis has been made (e.g., tested positive for influenza).

DEPARTMENT NOTE

ABOVE change in response to comments to make clear that an alternative diagnosis can be used to avoid classifying an employee as “suspected to have COVID-19”

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this standard /regulation 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 their industry, allegations of technical infeasibility will not be accepted.

“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.

#### §40 Mandatory requirements for all employers.

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

- A. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.
  - 1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to **the SARS-CoV-2 virus** or COVID-19 **disease**. Employers shall classify **each employee** according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this standard **/regulation** for “very high,” “high,” “medium,” or “lower” risk levels of exposure. **Employees exposed to the same hazards or performing the same job tasks may be grouped for classification purposes.**

#### DEPARTMENT NOTE

ABOVE change made in response to comment requesting more flexibility for employers to not have to conduct “individual” assessments for each employee in situations where groups of employees have the same job duties

#### §40.A.1, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

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

AMENDMENT LANGUAGE MINUS EDITS

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

§40.A.1, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to SARS-CoV-2 or COVID-19. Employers shall classify each employee according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this standard/regulation for “very high,” “high,” “medium,” or “lower” risk levels of exposure.

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

3. Employers shall develop and implement policies and procedures to address a situation where they are notified that an for employees to report when they have has tested positive for anti-SARS-CoV-2 antibodies through serologic testing:

§40.A.3, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS - ADMINISTRATION

DEPARTMENT NOTE

The Virginia Department of Health and the Administration agree that §40.A.3 dealing with serological testing can be deleted.

§40.A.3, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

Why does this focus only on serologic testing? Antibody testing is a marker of past infection, so it shouldn't play a big role in any decisions related to the employee (assuming the employee doesn't also have a positive viral test, the employee is no longer symptomatic, etc.). However, viral testing (which isn't mentioned) would indicate a current infection and should certainly be a part of deciding when to exclude an ill employee. Furthermore, this blurb talks about how serologic testing can't be used to make decisions about things. Why is serologic testing mentioned at all if it doesn't change any recommendations?

§40.A.3, SEROLOGIC TESTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – MR

Section 40.A.3 of the draft standard requires that all employers develop and implement policies and procedures for employees to report positive results from antibody testing. This provision fails to recognize the severe limitations of serologic tests and conflicts with CDC guidelines that the results of serologic tests should not be used for individual determinations due to the lack of sensitivity and specificity of many of these tests. <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>.

The final standard should eliminate the requirement for employers to develop reporting policies and procedures for these tests. Reporting of the results of these tests should not be required given their lack of reliability and utility, and the great potential for misuse.

To be consistent with current CDC guidelines, the introduction to section 40.A.3 should be amended to read: "If an employer is notified of the results of an anti-SARS-

CoV-2 antibody test for an employee, the employer shall not utilize the results of that test to make decisions about returning to work or other work-related determinations for that individual employee.”

3. ~~Employers shall develop and implement policies and procedures for employees to report when they have tested positive for anti-SARS-CoV-2 antibodies through serologic testing:~~

If an employer is notified of the results of an anti-SARS-CoV-2 antibody test for an employee, the employer shall not utilize the results of that test to make decisions about returning to work or other work-related determinations for that individual employee:

§40.A.3, SEROLOGIC TESTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **TT**

3. ~~Employers shall develop and implement policies and procedures to address a situation where they are notified that an employee has tested positive for anti-SARS-CoV-2 antibodies through s~~ Serologic testing:

§40.A.3, SEROLOGIC TESTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

3. ~~Employers shall develop and implement policies and procedures to address a situation where they are notified that an employee has tested positive for anti-SARS-CoV-2 antibodies through serologic testing:~~ Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2. It has not been determined if persons who have the antibodies are immune from infection.



a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected to have COVID-19.

b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected to have COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected to have COVID-19 may go to work provided they are do not have signs or symptoms of COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily). However, nothing in this paragraph shall be construed to require an employer to allow an employee who tested positive by serologic testing to return to work.

DEPARTMENT NOTE

ABOVE change made to assure those employers that want to take extra precautions about returning employees to work.

§40.A.3.c, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **CM**

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected to have COVID-19 may go to work provided they are do not have signs or symptoms of COVID-19 symptomatic, follow all requirements set forth in § 40.B (“Return to Work”) herein, and follow general

recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily).

§40.A.3.c, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – AJ

c. Employees who test positive by serologic testing ~~and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and~~ must continue to follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid ~~close~~ contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily). ~~However, nothing in this paragraph shall be construed to require an employer to allow an employee who tested positive by serologic testing to return to work.~~

d. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing 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 ~~to have~~ COVID-19”.

DEPARTMENT NOTE

ABOVE change in response to comments to make clear that an alternative diagnosis can be used to avoid classifying an employee as “suspected ~~to have~~ COVID-19”

5. Employers shall not permit ~~known COVID-19 or suspected COVID-19~~ employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or ~~be allowed to~~ remain at the work ~~or on a job~~ site until cleared for return to work ~~or the job site~~ (see §40.B). Nothing in this standard ~~/regulation~~ shall prohibit an employer from permitting an ~~an~~ ~~known or suspected COVID-19~~ employee known or suspected to be infected with SARS-CoV-2 virus from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to the SARS-CoV-2 ~~virus~~ ~~or COVID-19~~.

§40.A.5, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

<p>5. Employers shall not permit <del>known COVID-19 or suspected COVID-19</del> employees or other persons <u>known or suspected to be infected with SARS-CoV-2 virus</u> to report to or <del>be allowed to</del> remain at the work <del>or on a job</del> site <u>or engage in work at a customer or client location</u> until cleared for return to work <del>or the job site</del> (see §40.B)....</p>
<p>AMENDMENT LANGUAGE MINUS EDITS</p> <p>5. Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site, or engage in work at a customer or client location until cleared for return to work (see §40.B)....</p>

DEPARTMENT NOTE

ABOVE change in response to comments to make clear that an alternative diagnosis can be used to avoid classifying an employee as “suspected to have COVID-19”

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

7. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected to have COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected to have COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at the work or on a job site until cleared for return to work.

§40.A.7, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

7. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of employees or other persons who are suspected to have COVID-19 and known COVID-19 cases subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies....

§40.A.7, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **CM**

7. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected to have COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected to have COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at work or on a job site until cleared for return to work. Subcontractors shall not allow their employees with known or suspected to have COVID-19 cases to report to or be allowed to remain at work or on a job site until cleared for return to work.

§40.A.7, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

Recommend reflecting CDC guidance here, which states in some cases in long-term care settings, only if the facility has exhausted all other staffing options and is in Crisis Capacity Strategies, staff with suspected or confirmed COVID-19 may be allowed to work while following certain criteria (do not interact with others, work with confirmed COVID-19 patients, etc.). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/mitigating-staff-shortages.html>

DEPARTMENT NOTE

This comment is resolved by §10.G.1 which allows employers to follow CDC guidance and be found to be in compliance with this standard.

8. If an employer is notified of a COVID-19 SARS-CoV-2 positive test for one of its own employees, a subcontractor employee, a contract employee, a temporary employee, or other person (excluding patients hospitalized on the basis of being known or suspected to have COVID-19) who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

§40.A.8, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – AJ

8. If an employer is notified of a COVID-19 SARS-CoV-2 positive test for one of its own employees, a subcontractor employee, a contract employee, a temporary employee, or other person Employers shall establish a system to report positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to have COVID-19) who was present at the place of employment within the previous 14 days from the date of positive test, and the employer shall notify:

DEPARTMENT NOTE

ABOVE change [“contract employee”] was made in response to differentiate between employees and independent contractors.

DEPARTMENT NOTE

ABOVE change [“(excluding patients hospitalized on the basis of being known or suspected to have COVID-19)”] made in response to comments to clarify that, for instance, a hospital would not have to notify its employees during intake of COVID-19 patients.

- a. Its own employees at the same place of employment within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable Virginia laws and regulations;

DEPARTMENT NOTE

ABOVE change in response to comment to clarify that employers would only have to notify employees at the same place of employment.

§40.A.8.a, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

- a. Its own employees who, upon reasonable belief of the employer may have been exposed, within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

§40.A.8.a, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

It isn't clear here that only people exposed will be notified of a positive case. Here it suggests anyone who was on-site at the same time will be notified, but being in the same building doesn't necessarily constitute an exposure. If a person were in a given building with 15 floors and went directly to their office, didn't use the elevator, didn't leave the floor for the day, would every floor need to be notified? That may be unnecessary. Recommend limiting notifications to those who were potentially exposed.

DEPARTMENT NOTE

The draft standard does not require employers to do contact tracing, which is implied in the above suggestion to notify only "those people exposed."

- b. In the same manner as §40.A.7.a, other employers whose employees were present at the work site during the same time period; and
- c. In the same manner as §40.A.7.a, the building/facility owner.

§40.A.8.c, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

~~c. In the same manner as §40.A.7.a the building/facility owner.~~

§40.A.8.c, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – AJ

c. In the same manner as §40.A.7.a the building/facility owner. The building/facility owner will require all employer tenants to notify them of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This will allow them to take the necessary steps to sanitize the common areas of the building. In addition, the building/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.

§40.8 [ADD §§8.d and 8.e], MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – MR

d. The Virginia Department of Health within 24 hours of the discovery of a positive case.

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three (3) or more employees present at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day time period.

9. ~~Each e-~~Employers shall ensure employee access to their 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 their own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.

DEPARTMENT NOTE

ABOVE change made in response to comment to make clear that there are no HIPAA or confidentiality concerns where the employee is requesting his or her own records.

B. Return to Work.

1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected to have COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in §40.B.1.a will constitute compliance with the requirements of §40.B.



- a. For suspected or known COVID-19 employees the symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.
- b. The test-based strategy excludes an employee from returning to work until resolution of fever without the use of fever-reducing medications, and improvement in respiratory symptoms (e.g., cough, shortness of breath), and negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected  $\geq 24$  hours apart (total of two negative specimens).

i. If a known or suspected **to have** COVID-19 employee refuses to be tested, ~~then the employer shall comply~~ **compliance** with §40.B.1.a, symptom-based strategy, **will be considered in compliance with this standard /regulation. Nothing in this standard /regulation shall be construed to prohibit an employer from requiring a known or suspected to have COVID-19 employee to be tested in accordance with §40.B.1.b.**

§40.B.1.b.i, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS

DEPARTMENT NOTE

ABOVE change is made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “...employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

- ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28. The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.
2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.
- a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.
  - b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected ≥24 hours apart (total of two negative specimens).
    - i. If a known asymptomatic COVID-19 employee refuses to be tested, employer compliance with §40.B.2.a, symptom-based strategy, will be considered in compliance with this standard /regulation. Nothing in this standard /regulation shall be construed to prohibit an employer from requiring a known asymptomatic COVID-19 employee to be tested in accordance with §40.B.2.b. refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.

§40.B.2.b.i, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS

DEPARTMENT NOTE

ABOVE change is made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “...employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

§40.B.2.b.i, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

This says if a known asymptomatic employee refuses to be tested, employer compliance with a symptom-based strategy for return to work would qualify as compliance. However, you can't have a symptom-based strategy for an asymptomatic person. This should be a time-based strategy, not symptom-based.

TYPOGRAPHICAL ERROR CORRECTION:

i. If a known asymptomatic COVID-19 employee refuses to be tested, employer compliance with §40.B.2.a, ~~symptom~~ time-based strategy, will be considered in compliance with this standard. Nothing in this standard shall be construed to prohibit an employer from requiring a known asymptomatic COVID-19 employee to be tested in accordance with §40.B.2.b.

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

C. Unless otherwise provided in this standard /regulation, employers shall establish and implement policies and procedures designed to ensure that employees observe physical distancing while on the job and during paid breaks on the employer's property.

DEPARTMENT NOTE

ABOVE change made in response to comment to provide flexibility for employers with large open campuses.

§40.C, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – III

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

1. Use verbal announcements, signage, and visual cues to promote physical distancing;

2. Decrease worksite density by limiting non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure.

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

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

1. If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical distancing, an employer may designate a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:

§40.D.1, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – TT

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

1. If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical distancing, an employer may designate ~~a common area, room, or similar area where meals may be safely consumed~~, 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:

AMENDMENT LANGUAGE MINUS EDITS

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

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

a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and requirements for the minimum physical distancing, hand washing/hand sanitizing, and space cleaning and disinfecting of shared surfaces requirements.

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

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

DEPARTMENT NOTE

ABOVE change made in response to comments to provide more clarity of what cleaning and disinfecting is required.

d. Hand washing facilities, and hand sanitizer where feasible, are available to employees.

DEPARTMENT NOTE

ABOVE language added to address the event of greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

§40.D.1.d, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

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

E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with

mandatory requirements of any applicable Virginia executive order or order of public health emergency.

§40.E, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **CM**

~~E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.~~

**IF ADOPTED, §§40.F THROUGH I WOULD HAVE TO BE RENUMBERED**

§40.E, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AF**

When multiple employees are occupying a vehicle for work purposes, ~~the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry.~~ **E** employers shall ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency. This includes 6 feet physical distancing and/or the wearing of face coverings.

§40.E, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **DF**

This statement is true [Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.] and should be made on its own, separate from a blurb about vehicle occupancy.

E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance

~~with mandatory requirements of any applicable Virginia executive order or order of public health emergency.~~

NEW §40.F

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

**IF ADOPTED, RENUMBER FOLLOWING PARAGRAPHS**



F. Where the nature of an employee’s work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable **Virginia** executive order or order of public health emergency.

§40.F, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

F. Where the nature of an employee’s work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable **Virginia** executive order or order of public health emergency. **This includes the wearing of face-coverings.**

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

§40.G, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

G. Nothing in this section shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to their health or safety because of a medical condition; however, nothing in this standard **/regulation** shall negate an employer’s obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry. **The employee must provide a medical opinion indicating the employee has this job restriction.**

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

DEPARTMENT NOTE

ABOVE change made in response to comments to clarify that this section only applies to such requests made directly to the Department, not employers.

§40.H, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

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

I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this standard ~~/regulation~~, employers shall comply with the VOSH sanitation standard ~~/regulation~~ applicable to its industry.
2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use supplies to clean and disinfectant ~~supplies to clean~~ surfaces contacted during the interaction where there is the potential for exposure to the SARS-CoV-2 virus by themselves or other employees.

DEPARTMENT NOTE

ABOVE change made in response to comments to make clear that any requirement is tied to employee occupational exposure, not customer/general public exposure, which is outside VOSH jurisdiction.

§40.I.2, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use disinfectant supplies to clean surfaces contacted during the interaction frequently.

3. In addition to the requirements contained in this standard /regulation, employers shall comply with the VOSH hazard communication standard applicable to its industry.

§40.I.3, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – AJ

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

4. Areas in the place of employment where known COVID-19 and suspected to have COVID-19 employees or other persons accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.

§40.I.4, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

Strongly encourage that this adhere to CDC guidelines to wait 24 hours after the person was last there to clean, if possible, to reduce the risk of transmission to the cleaning crew.

4. Areas in the place of employment where known COVID-19 and suspected to have COVID-19 employees or other persons accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas. Where feasible, a period of 24 hours will be observed prior to cleaning and disinfecting. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. Where feasible, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

§40.I.4, SANITATION AND DISINFECTING – **TI**

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. **Where feasible, All** shared tools, equipment, **workspaces**, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

6. Employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.

§40.I.6, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

6. **Employers shall ensure that cleaning and disinfecting products are readily available to employees to accomplish the required cleaning and disinfecting. In addition, E** employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.

§40.I.6, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **CM**

6. Employers shall ensure only disinfecting chemicals and products **are used that are approved by indicated in** the Environmental Protection Act (EPA) **and listed on** List N for use against SARS-CoV-2 **and emerging viral pathogens**.

AMENDED LANGUAGE MINUS EDITS

6. Employers shall ensure only disinfecting chemicals and products indicated in the Environmental Protection Act (EPA) List N for use against SARS-CoV-2.

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

8. Employees shall have easy, frequent access, and permission to use soap and water, and hand sanitizer where feasible, during 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 their work station. Mobile crews shall be provided with hand sanitizer where feasible for use during the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

DEPARTMENT NOTE

ABOVE change made to address potential greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

§40.1.8, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – **AJ**

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

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

J. Anti-Discrimination.

The employer shall ensure compliance with the anti-discriminations provisions of §90.

§40.J, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

~~J. Anti-Discrimination.~~

~~The employer shall ensure compliance with the anti-discriminations provisions of §90.~~

K. Unless otherwise provided in this standard /regulation, 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

§40.L, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – TT

**ADD A NEW §40.L**

I. Nothing in this section shall limit an employee from refusing to do work or enter a location they feel is unsafe.

## **§50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

### **A. Engineering Controls.**

1. Ensure appropriate air-handling systems:
  - a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected **to have** COVID-19, and
  - b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.
2. For employers not covered by §50.A.1, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 **virus** and COVID-19 **disease** related hazards and job tasks that occur at the workplace:
  - a. Are maintained in accordance with the manufacturer’s instructions; and
  - b. Comply with §50.A.1.b.
3. Hospitalized patients with known or suspected **to have** COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected **to have** COVID-19.



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

§50.A.5, REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK – **DF**

Aerosol-generating procedures should not be performed on a body known or suspected of having COVID-19 prior to death.

6. 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 known or suspected to have COVID-19 patients or persons.
  7. To the extent feasible, employers shall install physical barriers, (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.
- B. Administrative and Work Practice Controls.
1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is does not have signs or symptoms of COVID-19 symptomatic.

§50.B.1, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – TT

<p>1. <del>To the extent feasible, p</del> Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee <del>is</del> <u>does</u> not <u>have signs or symptoms of</u> COVID-19 <del>symptomatic</del>.</p>
<p>AMENDMENT LANGUAGE MINUS EDITS</p> <p>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.</p>

2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.

§50.B.3, REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK – DF

<p>Recommend removing this statement, as it is not applicable to employees.</p>
<p><del>3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.</del></p>

4. Limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer’s compliance with occupancy limits contained in any applicable **Virginia** executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face **masks coverings**.
6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with §80.
8. **To the extent feasible,** ~~E~~ ensure that psychological and behavioral support is available to address employee stress.

§50.B.8, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – **CM**

<del>8. — Ensure that psychological and behavioral support is available to address employee stress.</del>
AMENDED LANGUAGE MINUS EDITS
§50.B.8 – DELETED
PREVIOUS §§ 50.B.9, B.10, AND B11 RENUMBERED AS §§B.8, B.9, AND B.10

§50.B.8, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – **TP**

8. Ensure that psychological and behavioral support is available to address employee stress <b>at no cost to the employee</b> .
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9. In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol<sup>1</sup> 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.

§50.B.9, REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK – DF

Recommend defining health care settings in the definitions section.

DEPARTMENT NOTE

The Department feels there is sufficient guidance in the definition for “Exposure risk level” for the regulated community to understand the meaning of the term “health care settings”.

10. Provide face coverings to suspected **to have** COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).

11. Where feasible:

- a. Use verbal announcements, signage, and visual cues to promote physical distancing;
- b. Implement flexible worksites (e.g., telework);
- c. Implement flexible work hours (e.g., staggered shifts);
- d. Increase physical distancing between employees at the worksite to six feet;
- e. Increase physical distancing between employees and other persons to six feet;
- f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

- g. 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.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

§50.B.11, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – **II**

11. Where feasible:

- ~~a. Use verbal announcements, signage, and visual cues to promote physical distancing;~~
- b. Implement flexible worksites (e.g., telework);
- c. Implement flexible work hours (e.g., staggered shifts);
- d. Increase physical distancing between employees at the worksite to six feet;
- e. Increase physical distancing between employees and other persons to six feet;
- ~~f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;~~
- g. 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.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;

~~j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.~~

~~k.~~

C. Personal Protective Equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 **virus** and COVID-19 **disease** hazard assessment, and personal protective equipment selection:

- a. The employer 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, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

§50.C.1.a, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – **TT**

- a. The employer **and workers (to include Labor Unions/Associations)** shall **mutually** assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

§50.C.1.a, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – AJ

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the standard regulation, select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;
  - ii. Communicate selection decisions to each affected employee; and,
  - iii. Select PPE that properly fits each affected employee.
2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.
4. The employer shall implement a respiratory protection program in accordance with §1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required to use a respirator.
5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either

a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.

§50.C.5, REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK – DF

The 'depending on the hazards they are exposed to or their job tasks and exposure risk' part of the previous version of this document is very important. Not everyone in the high or very high risk groups can or should wear all this PPE unless it is indicated for the task they are doing. Recommend adding this blurb back into this version of the document.

DEPARTMENT NOTE:

The following language in the standard addresses the above concern:

“Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above....”

D. Employee training shall be provided in accordance with the requirements of §80 of this standard /regulation.



**§60 Requirements for hazards or job tasks classified at “medium” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:
  - a. Are maintained in accordance with the manufacturer’s instructions, and
  - b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.
  - c. To the extent feasible, employers shall install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.

§60.A.1.c, ENGINEERING CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) - AJ

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

**MOVE TO §60.B.1.h**

B. Administrative and Work Practice Controls.

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

a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;

§60.B.1, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – DF

Recommend changing this phrase throughout to say "does not have signs and or/symptoms of COVID-19."

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

b. Provide face coverings to suspected to have COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);

c. Where feasible, ± limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer’s compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.

d. Implement flexible worksites (e.g., telework);

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

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

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

- h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- i. Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postponing non-essential travel or events; etc.);
- j. Deliver services remotely (e.g. phone, video, internet, etc.);
- k. Deliver products through curbside pick-up or delivery;
- l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;
- m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.

§60.B.1.b to .l, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – II

- b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);
- ~~c. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.~~
- d. Implement flexible worksites (e.g., telework);
- e. Implement flexible work hours (e.g., staggered shifts);
- f. Increase physical distancing between employees at the worksite to six feet;
- g. Increase physical distancing between employees and other persons, including customers (e.g., drive-through, partitions) to six feet;
- ~~h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;~~

- i. 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.);
- j. Deliver services remotely (e.g. phone, video, internet, etc.);
- k. Deliver products through curbside pick-up or delivery;
- ~~l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;~~
- ~~m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.~~

§60.B.1.g, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – **DF**

Physical barriers are not a form of physical distancing to six feet; recommend moving the second example to another spot.

§60.B.1.g, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – **AJ**

- g. Increase physical distancing between employees and other persons, including customers **to six feet** (e.g., drive-through, ~~partitions, physical barriers where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.~~) **to six feet**;
- h. **To the extent feasible, employers shall install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.**

**MOVED FROM §60.A.1.c**

**IF ADOPTED, WILL HAVE TO RE-LETTER SUBSECTIONS BELOW**

C. Personal Protective Equipment.

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 **virus** and COVID-19 **disease** related hazard assessment, and personal protective equipment selection:

a. The employer shall assess the workplace to determine if SARS-CoV-2 **virus** or COVID-19 **disease** hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

§60.C.1.a, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – **AJ**

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, **which necessitate the use of personal protective equipment (PPE)**. If such hazards or job tasks are present, or likely to be present, the employer shall:

§60.C.1.a, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – **TT**

a. The employer **and workers (or Labor Unions/Associations)** shall **mutually** assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

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

- iii. Select PPE that properly fits each affected employee.
2. The employer shall verify that the required SARS-CoV-2 **virus** and COVID-19 **disease** workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, **which identifies** 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.
4. PPE ensembles for employees in the “medium” exposure risk category will vary by work task, the results of the employer’s hazard assessment, and the types of exposures employees have on the job.

§60.C.4, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – **TT**

- |  |
|--|
| <ol style="list-style-type: none"><li>4. PPE ensembles for employees in the “medium” exposure risk category will vary by work task, the results of the <b>employer’s mutual</b> hazard assessment, and the types of exposures employees have on the job.</li></ol> |
|--|

§60, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – DF

The lower risk category doesn't have any specific guidance outlined for them in this document (other than in the definitions section where it gives some suggestions about how to achieve minimal occupational contact). It seems prudent for anyone in any business setting to evaluate the risk exposures for their setting, assess whether vulnerable populations are at risk, etc. Perhaps the lower risk category does not need to have a written plan, but these considerations should still be thought through for every business setting. For instance, if a person working at large corporate office becomes ill, the employer should still have an idea of how they are going to handle that. Additionally, telework should still be recommended for these groups (which the document only provides as one of the suggestions for minimal occupational contact in the “lower risk” definitions section, since there isn't a specific section for requirements to adhere to for lower risk settings).

DEPARTMENT NOTE

The mandatory requirements in §40 apply to lower risk category employees and employers.

**§70 Infectious disease preparedness and response plan.**

- A. Employers with hazards or job tasks classified as:
  - 1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;
  - 2. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.
- B. The plan and training requirements tied to the plan shall only apply to those employees classified as “very high,” “high,” and “medium” covered by this section.

§70.A AND B - MR

<p>A. Employers <del>with hazards or job tasks classified as:</del></p> <ul style="list-style-type: none"><li>1. <del>“Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan.</del></li><li>2. <del>“Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.</del></li></ul> <p>B. The plan and training requirements tied to the plan shall <del>only</del> apply to <del>these all</del> employees <del>classified as “very high,” “high,” and “medium” covered by this section.</del></p>
<p>AMENDMENT LANGUAGE MINUS EDITS</p> <p>A. Employers shall develop and implement a written Infectious Disease Preparedness and Response Plan.</p> <p>B. The plan and training requirements tied to the plan shall apply to all employees.</p>

- C. Employers shall designate a person to be responsible for implementing their Plan. The Plan shall:
  - 1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they 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(s) of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to 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:
  - i. The general public, customers, other employees, patients, and other persons;
  - ii. Known or suspected to have COVID-19 persons 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, healthcare employees who have had unprotected exposures to known COVID-19 or suspected to have COVID-19 persons); and
  - iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.
- b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., people with chronic lung disease or moderate to severe asthma, or serious heart conditions; people who are immunocompromised; people with severe obesity (body mass index [BMI] of 40 or higher), diabetes, chronic kidney disease undergoing dialysis, liver ~~older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy;~~ etc.).

DEPARTMENT NOTE

ABOVE language updated to reflect CDC definition of risk factors.

§70.C.3.b, INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE PLAN - DF

The list of persons who may be at risk due to underlying medical conditions has been updated on the CDC website. Consider linking to the website to provide additional details, as it is much longer than the list provided here.  
[https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html)

b. To the extent permitted by law, including HIPAA, employees' individual risk factors (e.g., people of any age with 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 [BMI] of 40 or higher); serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; type 2 diabetes mellitus) and (e.g., people with 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 older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy; etc.).

- c. Engineering, administrative, work practice, and personal protective equipment € controls necessary to address those risks.
4. Consider contingency plans for situations that may arise as a result of outbreaks, such as:
- a. Increased rates of employee absenteeism;
  - b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, and personal protective equipment, including e.g., respirators, surgical/medical procedure masks, etc. and face coverings;

DEPARTMENT NOTE

Error correction. “Face coverings” do not qualify as either PPE or respirators because they are not subject to independent testing to assure effectiveness.

- c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
  - d. Interrupted supply chains or delayed deliveries.
5. Identify basic 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.

§70.C, INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE PLAN - DF

<p>“Consider adding language that that facilities should establish policies and procedures for managing and educating all visitors.”</p>
<p><b>NEW §70.C.5.c</b></p> <p><u>c. Establish policies and procedures for managing and educating visitors to the place of employment.</u></p>
<p>“employees should be screened for symptoms prior to shifts, etc.”</p> <p>DEPARTMENT NOTE</p> <p>Employee screening is required in §§50 and 60 for “very high”, “high”, and “medium” risk employees. “Lower” risk employees are covered by the self-reporting requirements in §40.</p>
<p>“Add language that visitors should be screened prior to entering LTCFs [long term care facilities] for fever and COVID-19 symptoms.”</p> <p>DEPARTMENT NOTE</p> <p>The above concern is directed at resident safety, not employee safety and should not be included (see note in §50.B.3 regarding “cohorting” of patients”.</p>
<p>“Additionally, reflect Executive Order guidance that states signs must be posted at entrances describing infection control measures,”</p> <p><b>ADD A NEW §70.C.9</b></p> <p><u>9. Ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency related to the SARS-CoV-2 virus or COVID-19 disease.</u></p>

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

7. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors that enter the place of employment, businesses that provide or contract or temporary employees to the employer, as well as other persons accessing the place of employment to comply with the requirements of this standard /regulation and the employer’s plan.
- ~~8. Provide for training of employees classified as “very high” or “high” risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this standard/regulation, and requirements of the employer’s Infectious Disease Preparedness and Response Plan.~~

DEPARTMENT NOTE:

ABOVE deleted as language that was repetitive of training requirements in §80.B.8.

**§80 Training.**

- A. Employers with hazards or job tasks classified at “very high” or “high” exposure risk at a place of employment shall provide training to all employee(s) working at the place of employment regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The 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.

DEPARTMENT NOTE

ABOVE change made in response to comment to make clear which employees need to be trained and which do not.

§80.A BOARD AMENDMENT – **ADMINISTRATION**

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

§80.A BOARD AMENDMENT – **TP**

- A. Employers with hazards or job tasks classified at “very high”, or “high” ,or medium exposure risk shall provide training to all employee(s) exposed to such hazards or engaged in such job tasks regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The

~~program~~ training shall enable each employee to recognize the hazards of SARS-CoV-2 and symptoms of COVID-19 and shall train each employee in the procedures to be followed in order to minimize these hazards.

AMENDED LANGUAGE MINUS EDITS

A. Employers with hazards or job tasks classified at “very high”, “high”, or medium exposure risk shall provide training to all employee(s) exposed to such hazards or engaged in such job tasks. The training shall enable each employee to recognize the hazards of SARS-CoV-2 and symptoms of COVID-19 and shall train each employee in the procedures to be followed in order to minimize these hazards.

§80.A BOARD AMENDMENT – **MR**

Employers ~~with hazards or job tasks classified at “very high” or “high” exposure risk~~ shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The training shall be tailored to employee’s exposure risk levels.

AMENDED LANGUAGE MINUS EDITS

Employers shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The training shall be tailored to employee’s exposure risk levels.

§80.A BOARD AMENDMENT – **TT**

Employers ~~with hazards or job tasks classified at “very high” or “high” exposure risk~~ shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.

AMENDED LANGUAGE MINUS EDITS

Employers shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.

B. Employees shall be trained on:

1. The requirements of this standard ~~/regulation~~;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The symptoms of the COVID-19 disease;
4. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
5. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
6. PPE:
  - a. When PPE is required;
  - b. What PPE is required;
  - c. ~~W-H~~How to properly don, doff, adjust, and wear PPE;
  - d. When limitations of PPE; and
  - e. The proper care, maintenance, useful life, and disposal of PPE;
7. The anti-discrimination provisions of this standard ~~/regulation~~ in §90; and
8. The employer's Infectious Disease Preparedness and Response Plan, where applicable.



§80.B BOARD AMENDMENT – TP

B. Employees shall be trained on: The training required under paragraph A shall include:

§80.B BOARD AMENDMENT – TT

B. Employees shall be trained on:

1. The requirements of this standard /regulation;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The signs and symptoms of the COVID-19 disease;
4. Risk factors of severe COVID-19 illness for people with underlying health conditions;
5. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
6. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
7. PPE:
  - a. When PPE is required;
  - b. What PPE is required;
  - c. How to properly don, doff, adjust, and wear PPE;
  - d. When limitations of PPE; and
  - e. The proper care, maintenance, useful life, and disposal of PPE;
  - f. Heat stress hazards, signs and symptoms, and precautions when wearing PPE;

C. Employers covered by §50 of this standard /regulation shall verify compliance with §80.A by preparing a written certification record for those employees exposed to hazards or job tasks classified at “very high,” “high,” or “medium” exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee’s physical or electronic signature, the date(s) of the training, and the signature name of the person who conducted the training, or for computer-based training, the signature of the employer-the name of the person or entity that prepared the training materials. If the employer relies on training conducted by another employer or completed prior to the effective date of this standard /regulation, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

DEPARTMENT NOTE

ABOVE change made in response to comment to give employers flexibility in training delivery to employees.

§80.C BOARD AMENDMENT – TP

~~C. Employers covered by §50 of this standard /regulation shall verify compliance with §80.A by preparing a written certification record for those employees exposed to hazards or job tasks classified at “very high,” “high,” or “medium” exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee’s physical or electronic signature, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this standard /regulation, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.~~

C. Employers with hazards or job tasks classified at “lower” risk shall provide written information to employees exposed to such hazards or engaged in such job tasks on the hazards and characteristics of SARS-COV-2 and the symptoms of COVID-19 and measures to minimize exposure. The Department of Labor and Industry shall develop an information sheet containing information on the items listed in section D, which an employer may utilize to comply with this paragraph. The written information required under this paragraph shall include at a minimum:

1. The requirements of this standard/regulation;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The symptoms of the COVID-19 disease;
4. The ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
5. Safe and healthy work practices and control measures, including but not limited to, physical distancing, sanitation and disinfection practices; and
6. The anti-discrimination provisions of this standard/regulation in §90.

D. The latest training certification shall be maintained.

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

1. Changes in the workplace, SARS-CoV-2 **virus** or COVID-19 **disease** hazards exposed to, or job tasks performed render previous training obsolete;
2. Changes are made to the employer’s Infectious Disease Preparedness and Response Plan; or

3. Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.

§80.E BOARD AMENDMENT – TP

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

~~4. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;~~

~~5. Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or~~

~~6. 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.~~

**§90 Discrimination against an employee for exercising rights under this standard ~~/regulation~~ is prohibited.**

- A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard ~~/regulation~~ or Title 40.1 of the Code of Virginia for themselves or others.

§90.A BOARD AMENDMENT – TP

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard ~~/regulation~~, or 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 their own personal protective equipment, including but not limited to a respirator, face mask covering, face shield, or gloves, if such equipment is not provided by the employer, provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

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.

§90.C BOARD AMENDMENT – CM

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, or~~ a government agency, ~~or to the public such as through print, online, social, or any other media.~~

AMENDED LANGUAGE MINUS EDITS

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, or a government agency.

§90.D BOARD AMENDMENT – TP [NEW §90.D ADDED]

D. Add a section to cross-reference employees’ right to refuse unsafe work.

SUGGESTED LANGUAGE FROM THE DEPARTMENT

D. See §16VAC25-60-110 for requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death.



Trice, Holly <holly.trice@doli.virginia.gov>

**RE: Safety and Health Codes Board: Proposed Emergency Temporary Standard/Emergency Regulation - July 7th continued meeting from June 29th and June 24th - July 7th update**

1 message

**Jay Withrow** <jay.withrow@doli.virginia.gov> Tue, Jul 7, 2020 at 7:34 AM  
To: Anna Jolly <anna@circlesafety.com>, Courtney Malveaux <courtney.malveaux@jacksonlewis.com>, Dwight Flammia <dwight.flammia@vdh.virginia.gov>, Jerome Brooks <jerome.brooks@deq.virginia.gov>, John Fulton <jfulton@emsrva.com>, Kenneth Richardson <kennethwrichardson1967@gmail.com>, "Louis Cernak Jr." <cernakjr@verizon.net>, Millie Rodriguez <rodrim@afge.org>, Phil Glaize <phil@glaizeapples.com>, Thomas Thurston <tthurston@cwa-union.org>, Tina Hoover <thoover@vapgc.com>, Travis Parsons <tparsons@lhsfna.org>, michael\_luce@hsb.com, Chuck Stiff <chuckstiff@verizon.net>  
Cc: Princy Doss <princy.doss@doli.virginia.gov>, Holly Trice <holly.trice@doli.virginia.gov>, Josh Laws <jlaws@oag.state.va.us>

To Safety and Health Codes Board Members,

I wanted to pass along the following email from the Administration, the contents of which will be included in a REVISED Combined Board Amendments document I will be sending out before the 9:15 meeting this morning.

----- Forwarded message -----

From: **Healy, Megan** <megan.healy@governor.virginia.gov>  
Date: Mon, Jul 6, 2020 at 10:18 PM  
Subject: Thank You and Follow Up  
To: Carlton Davenport <Ray.Davenport@doli.virginia.gov>, Jay Withrow <jay.withrow@doli.virginia.gov>, Robert Ball <brian.ball@governor.virginia.gov>

Dear Safety and Health Codes Board,

Thank you for your continued service, especially now through this health and economic crisis. Secretary Ball and I had great conversations with many of you today and sorry if we couldn't catch up with a couple of you. We really appreciate your willingness to listen.

I wanted to send you links to the K-12 and higher education plans in case you wanted to learn more about the process and procedure to reopen schools. The Virginia Department of Health, Department of Education (K-12), and the State Council for Higher Education (SCHEV) have worked hard in ensuring all workers and students are safe when institutions reopen. The link to the higher education plan requirements is [HERE](#) and the K-12 Plan can be found [HERE](#).

As to Section 10G., the Administration requests that the Board reconsider adopting the language proposed in the published regulation. To make clear that an employer must comply with either this standard or a CDC publication, we believe it would be appropriate to insert the word "actually" the word "complies" in the first line of 10G. and the words "whether mandatory or non-mandatory" after the word "publications" in the second line of 10G.

As for poultry, seafood and meat processors, we would like to recommend that these job roles stay as medium risk because these workers are not directly working with the general public or COVID-19 patients. We are aware of the concern that the medium risk workers will not require training. We propose the following amendments:

**§30 Definitions (Low Risk)**

Employees in this category have minimal occupational contact with other employees, other persons, or the general public, **such as in an office building setting**; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

**§80 Training.**

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

We also wanted to pass on additional points sent to us from the meat processing industry. These are attached.

--Secretary Brian Ball and Chief Advisor Megan Healy

I also wanted to note that the Administration and the Virginia Department of Health agree that §40.A.3 dealing with serological testing can be deleted. The REVISED Combined Board Amendments document is being updated to reflect this recommendation.

Jay Withrow, Director

Division of Legal Support, VPP, ORA, OPPPI, and OWP

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**From:** Jay Withrow <[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)>

**Sent:** Monday, July 6, 2020 9:00 PM

**To:** 'Anna Jolly' <[anna@circlesafety.com](mailto:anna@circlesafety.com)>; 'Courtney Malveaux' <[courtney.malveaux@jacksonlewis.com](mailto:courtney.malveaux@jacksonlewis.com)>; 'Dwight Flammia' <[dwight.flammia@vdh.virginia.gov](mailto:dwight.flammia@vdh.virginia.gov)>; 'Jerome Brooks' <[jerome.brooks@deq.virginia.gov](mailto:jerome.brooks@deq.virginia.gov)>; 'John Fulton' <[jfulton@emsrva.com](mailto:jfulton@emsrva.com)>; 'Kenneth Richardson' <[kennethrichardson1967@gmail.com](mailto:kennethrichardson1967@gmail.com)>; 'Louis Cernak Jr.' <[cernakjr@verizon.net](mailto:cernakjr@verizon.net)>; 'Millie Rodriguez' <[rodrim@afge.org](mailto:rodrim@afge.org)>; 'Phil Glaize'



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**Subject:** RE: Safety and Health Codes Board: Proposed Emergency Temporary Standard/Emergency Regulation - July 7th continued meeting from June 29th and June 24th - July 6th update

**Importance:** High

To Safety and Health Codes Board Members,

Attached is the COMBINED BOARD AMENDMENT document that will be used during the July 7<sup>th</sup> Board meeting.

It reflects amendments from Anna Jolly, Millie Rodrigues, Travis Parsons, and Thomas Thurston – highlighted in blue.

We are expecting an Amendment from the Administration, but it has not been received as of 8:59 pm.

Jay

Jay Withrow, Director

Division of Legal Support, VPP, ORA, OPPPI, and OWP

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 **Points on Meat Processing Amendment.DOCX**  
24K

- There is a proposed amendment to move poultry, meat, and seafood processing from the “Medium” category to the “High” category.
- Existing “high” risk job tasks are all health care fields where employees are exposed to people who are known or suspected positive cases of infection. These are jobs that come in contact with COVID-19 regularly as a part of their job function.
- High risk job categories include hospitals, nursing homes, and emergency medical transport, but only when dealing with a known or suspected COVID-19 patient.
- Hospitals, nursing homes, and other medical employment is considered “Medium” when not dealing with known or suspected COVID-19.
- Meat processing facilities are required by these regulations and CDC/OSHA guidance to send any positive cases home and not let them come to work while they quarantine. There is no workplace contact with known or suspected positive cases.
- Putting meat processing in the same category as hospital employees who deal with COVID patients sends the wrong message. This would seem to say that it is ok for meat processing employees to be in contact with positive COVID cases. The goal should be for any factory to eliminate all contact with positive cases.
- Designating meat workers as “high” presumes (incorrectly) that the workers come in contact with COVID-19 on a daily basis. This will create stigma for these mostly minority workers who already face discrimination in the community.
- For these reasons, this amendment should be rejected.

June 29, 2020

**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY**

**Virginia Occupational Safety and Health (VOSH) Program**

Continued Emergency Electronic Meeting on the

Draft Emergency Temporary Standard:

Infectious Disease Prevention: SARS-CoV-2 That Causes COVID-19

16 VAC 25-220

**Summary of the Draft Emergency Temporary Standard**

At its core the draft emergency temporary standard (hereinafter referred to as the “standard”) is a risk management system to prevent or limit the spread of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and additional requirements commensurate with increased levels of risks associated with certain workplace hazards and job tasks.

The draft standard also provides employers with a level of flexibility to achieve compliance and incentivizes employers to establish mitigation strategies that will eliminate or substantially decrease employee exposure to COVID-19.

The core elements of the draft standard for employers include:

- Classifying employees by risk level (very high, high, medium, and lower) based on workplace hazards and job tasks;
- Establishing and implementing a system for self-assessment and screening for COVID-19 signs and symptoms;

- Implementing procedures that will prevent sick employees and other persons from infecting healthy employees;
- Using the occupational safety and health hierarchy of controls to implement mitigation efforts to guard against **pre-symptomatic and asymptomatic** virus spread such as:
  - engineering controls,
  - administrative and work practice controls,
  - sanitation controls,
  - personal protective equipment, and
  - respiratory protection equipment
- Communicating with employees by encouraging self-assessment, conducting screening, and notifying employees of workplace exposures to COVID-19 so they can take personal actions to protect their health and safety;
- Incentivizing employees to report symptoms by implementing flexible sick leave and alternative working arrangements;
- Establishing a return to work policy;
- Providing specific additional requirements for very high and high risk work environments centered around mitigation of hazards and redesign of job tasks, but also incentivizing employers to make changes that will enable employees to be reclassified to medium or lower risk;
- Providing specific additional requirements for medium risk work environments centered around mitigation of hazards and redesign of job tasks, but also incentivizing employers to make changes that will enable employees to be reclassified to lower risk;
- Instituting a planning mechanism for very high, high, and medium risk work environments with employee involvement (with regard to medium risk employers, the planning requirement would be limited to those employers with 11 or more employees);

- Requiring employers with risk classifications of very high and high to train all employees regardless of risk level at any worksite where a very high or high risk work environment exists; and
- Protecting employees against safety and health discrimination

### **Specific Provisions**

It is recognized that various hazards or job tasks at the same place of employment can be designated as “very high”, “high”, “medium”, or “lower” as presenting potential exposure risk for purposes of application of the requirements of this standard.

The following provisions were submitted by the Administration:

Section 10.F provides:

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

NOTE 1: VOSH is required by the OSH Act of 1970 and OSHA regulations to be “at least as effective as” federal OSHA. VOSH generally follows OSHA interpretations of federal identical standards and regulations.

NOTE 2: The above Executive Order limitation does not apply to previously adopted VOSH laws, standards, and regulations, including those identical to OSHA standards and regulations that currently apply to SARS-CoV-2 and COVID-19 related hazards and job tasks.

NOTE 3: The Department is not currently aware of any provisions in the draft standard that would be in conflict with Executive Order 61 such that the EO would take precedence over it.

Section 10.G.1 provides:

“To the extent that an employer actually complies with requirements contained in CDC [Centers for Disease Control and Prevention] publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, the employer’s actions shall be considered in compliance with this standard.”

NOTE: 1 The intent of §10.G.1 is to give employers the option to either comply with the requirements of the standard or demonstrate that as an alternative that they have complied with requirements in a CDC publication addressing the same hazard, issue, etc.

In order to take advantage of §10.G.1, an employer would have to demonstrate that it was complying with language in CDC publications that could be considered both “mandatory” (e.g., “shall”, “will”, etc.) **and** “non-mandatory” (“it is recommended that”, “should”, “may”, etc.). In other words, an employer would have to comply with a CDC “recommended” practice even if the CDC publication doesn't “require” it. Section 10.G.1 makes this clear by use of the word “requirement”.

NOTE 2: The standard does not require employers to comply with any CDC publication language that is solely directed at assuring the safety and health of the general public. The focus of the standard is employee safety and health, and the focus of §10.G.1 is only CDC publications’ language that addresses employee safety and health, and occupationally-related hazards, issues, mitigation efforts, etc.

Section 10.G.2 provides:

“Public and private institutions of higher education that have received certification from the State Council of Higher Education that their re-

opening plans are in compliance with guidance documents developed by the State Council of Higher Education in conjunction with the Virginia Department of Health and who operate in compliance with their certified reopening plans shall be considered in compliance with this standard. Public school divisions that submit their plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools and who operate in compliance with their submitted plans shall be considered in compliance with this standard.”

NOTE 1: In order to take advantage of §10.G.2, an educational institution would have to demonstrate that it was complying with language in applicable State Council of Higher Education guidance documents that could be considered both “mandatory” (e.g., “shall”, “will”, etc.) and “non-mandatory” (“it is recommended that”, “should”, “may”, etc.). In other words, an employer would have to comply with a “recommended” practice even if the guidance document doesn't “require” it. Section 10.G makes this clear by use of the word “requirement”.

NOTE 2: The above provision does not exempt educational institutions from complying with previously adopted VOSH laws, standards, and regulations, including those identical to OSHA standards and regulations that currently apply to SARS-CoV-2 and COVID-19 related hazards and job tasks.

### **Notes on Board Amendments**

There will be times with regard to Board member amendments that the Department will inform the Board of its position and other times where it may take no position.

The Department will provide guidance as needed to clear up inconsistencies or provide clarification on the impact of a proposed amendment.

Department staff will read into the record amendment language prior to it being voted on for the benefit of the visually impaired.

### **Error Correction – Board Member Amendments Overlooked**

The following Board member amendments were mistakenly not included in the June 28, 2020 Combined Board Amendments document:

- §10.D.2.b - Travis Parsons
- §40.A.6 - Courtney Malveaux
- §70.A-B - Millie Rodriguez
- §70.B - Thomas Thurston [amendment has since been withdrawn]

The above amendments will be presented to the Board in the above order in the appropriate place as the Board moves through the draft standard.

### **Process for Working Through Board Amendments**

The plan is for the Board to move through the draft standard page by page and section by section.

We will be using a document which contains Department changes and Board amendments submitted to date.

All changes by the Department made on June 23<sup>rd</sup> to the original June 12<sup>th</sup> draft will be shown highlighted in yellow with new language underlined and deleted language ~~struck through~~.

Please note that, as discussed above, there is one additional change submitted by the Department to the standard on behalf of the Administration on June 28, 2020 contained in §10 dealing with educational institutions.

Board member amendments will be presented in the following fashion with new language highlighted in yellow and underlined and deleted language ~~struck through~~ and highlighted:



§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “HIGH” BOARD AMENDMENT – TT

1. First responder services provided by police, **corrections**, fire, paramedic, search and rescue, recovery, and emergency medical services provided to a known or suspected COVID-19 patient, resident, or other person;

The “TT” at the end of the title are in the initials of the Board member – in this case Thomas Thurston.

Where language is being added and deleted and it may be a little difficult in determining the final language being voted on, the Board member’s amendment will be presented like this:

§90.C BOARD AMENDMENT – CM

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, or** a government agency, ~~or to the public such as through print, online, social, or any other media.~~

AMENDED LANGUAGE MINUS EDITS

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, or a government agency.

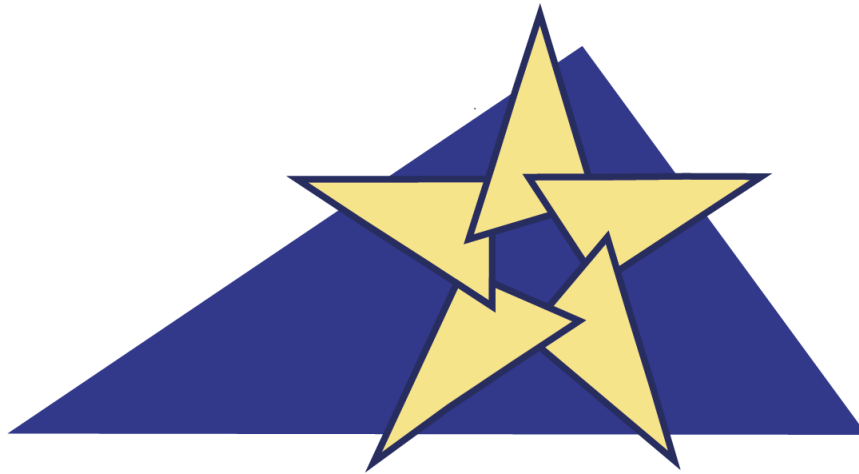
We will now proceed with consideration of the text of the draft standard.

**16 VAC 25-220, Emergency Temporary Standard ~~Emergency Regulation~~  
Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

**VOSH PROPOSED AMENDMENTS: June 12~~23~~, 2020,**

**Reflecting Changes to June 12, 2020 Draft**

**COMBINED BOARD MEMBER AMENDMENTS: June 29, 2020**



**DEPARTMENT OF LABOR AND INDUSTRY**

Contact Person:

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NOTE: Items highlighted in **yellow** and underlined INDICATE a Department change or Board Member Amendment to the text of the draft Emergency Temporary Standard

NOTE: Strikethrough language is deleted

NOTE: Items highlighted in **gray** subject to change

## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, Emergency Temporary Standard ~~Emergency Regulation~~, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of **July 15, 2020**.

The Department also recommends that the Board state in any motion it may make regarding this Emergency Temporary Standard ~~Emergency Regulation~~ that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.

**16 VAC 25-220, Emergency Temporary Standard / ~~Emergency Regulation~~**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

As Adopted by the  
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date:

16 VAC 25-220

Emergency Temporary Standard ~~/Emergency Regulation~~

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

16 VAC 25-220

§10 Purpose, scope, and applicability.

A. This emergency temporary standard ~~/emergency regulation~~ 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.

§10. PURPOSE, SCOPE AND APPLICABILITY, BOARD AMENDMENT – CM

ADD A NEW §10.B

B. This standard shall not be extended or amended without public participation in accordance with the Virginia Administrative Process Act, Va. Code §§ 2.2-4000 et seq. and 16 VAC 25-60-170.

B. This standard ~~/regulation~~ adopted in accordance with Va. Code § 40.1-22(6)(a) ~~or §2-2-4011~~ 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.

C. This standard ~~/regulation~~ 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, Va. Code §40.1-51.1.A, etc. Should this standard ~~/regulation~~ conflict with an existing VOSH rule, regulation, or standard, the more stringent

requirement from an occupational safety and health hazard prevention standpoint shall apply.

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

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

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

- a. The job tasks being undertaken; the known or suspected presence of the SARS-CoV-2 virus; the presence of a known or suspected COVID-19 person; the number of employees in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through close contact (i.e., inside of six feet) with other employees or persons (e.g., including shift work exceeding 8 hours per day);

§10.D.2.a BOARD AMENDMENT – TT

- 2. Factors that shall be considered in determining exposure risk level include, but are not limited to:
  - a. The job tasks being undertaken; the work environment (e.g. indoors or outdoors); the known or suspected presence of the SARS-CoV-2 virus; the presence of a known or suspected COVID-19 person; the number of employees and/or other persons in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through close contact (i.e., inside of six feet) with other employees or persons (e.g., including shift work exceeding 8 hours per day);

§10.D.2.a (PURPOSE, SCOPE, AND APPLICABILITY) – DF

Recommend replacing "known or suspected COVID-19 person" throughout with "person known or suspected to be infected with SARS-CoV-2 virus" or "person confirmed or suspected to have COVID-19."

- b. The type of hazards encountered contact, including potential exposure to the airborne transmission (including droplets or airborne droplet nuclei) of SARS-CoV-2 virus through respiratory droplets in the air; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.

DEPARTMENT NOTE

ABOVE change made in response to comment, “airborne transmission” is a broader term to address a number of methods of transmission.

§10.D.2.b BOARD AMENDMENT – TT

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

....

- b. The type of contact, including potential exposure to the SARS-CoV-2 virus through respiratory droplets in the air; airborne transmission; as well as transmission by asymptomatic and presymptomatic individuals; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; shared work vehicles; industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.



E. ~~Reference to the term “employee” in this standard/regulation includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.~~

DEPARTMENT NOTE

ABOVE language moved to definitions section in response to comment.

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

G. To the extent that an employer actually complies with requirements contained in CDC publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard /regulation, the employer's actions shall be considered in compliance with this standard /regulation.

§10.G BOARD AMENDMENT – TP

~~G. To the extent that an employer actually complies with requirements contained in CDC publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard /regulation, the employer's actions shall be considered in compliance with this standard /regulation.~~

§10.G BOARD AMENDMENT – MR

I suggest removing this section. The regulation/standard should not consider following the CDC guidelines to be in compliance with the regulation/standard. The CDC publishes guidance which employer can choose to follow, but they are not requirements. The CDC guidelines have been changed and unfortunately do not always follow the current science.

~~G. To the extent that an employer actually complies with requirements contained in CDC publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard /regulation, the employer's actions shall be considered in compliance with this standard /regulation.~~

§10.G ADMINISTRATION AMENDMENT

ADDED ON TO §10.G:

1 To the extent that an employer actually complies with requirements contained in CDC publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard /regulation, the employer's actions shall be considered in compliance with this standard /regulation.

2. Public and private institutions of higher education that have received certification from the State Council of Higher Education that their re-opening plans are in compliance with guidance documents developed by the State Council of Higher Education in conjunction with the Virginia Department of Health and who operate in compliance with their certified reopening plans shall be considered in compliance with this standard/regulation. Public school divisions that submit their plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools and who operate in compliance with their submitted plans shall be considered in compliance with this standard/regulation.

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

DEPARTMENT NOTE:

ABOVE change made in response to Comment period.

**§20 Dates.**

~~[Under §40.1-22(6)]~~

This emergency temporary standard shall take immediate effect on July 15, 2020 upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia.

DEPARTMENT NOTE

ABOVE effective date added for emergency temporary standard, effective date same as publication date.

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this standard. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this standard.

DEPARTMENT NOTE:

Separate effective dates for training requirements.

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this standard.

DEPARTMENT NOTE

Separate effective dates for Infectious disease preparedness and response plan requirement.

This emergency temporary standard shall expire within six months of its effective date or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

§20. DATES – CM

This emergency temporary standard shall expire within six months of its effective date, upon expiration of the Governor’s State of Emergency, or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

[Under §2.2-4011]

This emergency regulation shall become take effective twenty one (21) days after upon approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012.

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this regulation. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this regulation.

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this regulation.

This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

**§30 Definitions.**

“Administrative Control” means any procedure which significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.

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

“Asymptomatic” means an employee that has tested positive for SARS-CoV-2 but who is not symptomatic.

**§30. DEFINITION OF “ASYMTOMATIC – DF**

Asymptomatic just means a person who does not have symptoms. A person can be asymptomatic because they are either infected and not showing symptoms or not infected. Consider not limiting the definition to only persons who have tested positive; the clarity on those who are infected but not experiencing symptoms can be described when the term is used throughout the document.
“Asymptomatic” means an <del>an employee person</del> that has tested positive for SARS-CoV-2 <del>but</del> who is not symptomatic.
AMENDED LANGUAGE MINUS EDITS “Asymptomatic” means a person who is not symptomatic.

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

“CDC” means Centers for Disease Control and Prevention.

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

§30. DEFINITIONS, ADD DEFINITION OF “CLOSE CONTACT” – DF

Recommend adding the definition of "close contact" to this list: A close contact is any individual within 6 feet of an infected person for at least 15 minutes starting from 2 days before the person became sick (or 2 days before specimen collection, if asymptomatic) until the person was isolated.

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

1. “None to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facility facilities, schools, mass gatherings, etc.);
2. “Moderate” is where there is widespread or sustained community transmission with high likelihood or confirmed exposure within communal settings with and potential for rapid increase in suspected cases; or

AMENDED LANGUAGE MINUS EDITS

2. “Moderate” is where there is sustained community transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases; or

3. “Substantial, controlled” is where there is large scale, controlled community transmission, healthcare staffing significantly impacted, multiple cases within including communal settings (e.g., like healthcare facilities, schools, mass gatherings workplaces, etc.).

DEPARTMENT NOTE

Changes to ABOVE definition made because of slight wording changes in CDC publications.

AMENDED LANGUAGE MINUS EDITS

3. “Substantial, controlled” is where there is large scale, controlled community transmission, including communal settings (e.g., schools, workplaces, etc.).

4. “Substantial, uncontrolled” is where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).

DEPARTMENT NOTE

ABOVE reflects CDC language change.



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

DEPARTMENT NOTE

ABOVE change made in response to a comment noting that though COVID-19 primarily present as a respiratory disease, some presentations of the disease may be “through gastrointestinal, neurologic, etc.”

“Disinfecting” means using chemicals approved for use against SARS-CoV-2, for example EPA-registered disinfectants, to kill germs on surfaces. This process 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.

§30. DEFINITION OF “DISINFECTING” – DF

Recommend noting that disinfection should occur after cleaning.

“Duration and frequency of employee exposure” means how long (“duration”) and how often (“frequency”) an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside

six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

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

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

"Employee" means an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard ~~/regulation~~ also includes, but is not limited to, temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

DEPARTMENT NOTE

Language MOVED from §10.E Change in response to comment concerns about what legal sources would be used to determine the definition of "employee" in VOSH cases.

First sentence is from language from Title 40.1 of the Code of Virginia

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

"Exposure risk level" means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. Hazards and job tasks have been divided into four risk exposure levels: "very high", "high", "medium", and "lower":

§30, DEFINITION OF "EXPOSURE RISK LEVEL" BOARD AMENDMENT – TT

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

“Very high” exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or and the known COVID-19 or suspected COVID-19 disease persons including, but not limited to, during specific medical, postmortem, or laboratory procedures:

DEPARTMENT NOTE

ABOVE language added to specifically reference the defined terms of “known COVID-19” and “suspected COVID-19”

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person;
2. Collecting or handling specimens from a known or suspected COVID-19 patient or person (e.g., manipulating cultures from known or suspected COVID-19 patients);
3. Performing an autopsy, which generally that involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “VERY HIGH” BOARD AMENDMENT – DF

Aerosol-generating procedures should not be performed on a body known or suspected of having COVID-19 prior to death.

DEPARTMENT NOTE

The criteria in the definition is terminology used by federal OSHA in its guidance documents. Also see <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-postmortem-specimens.html>

“High” exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, or known COVID-19 or suspected COVID-19 persons that are not otherwise classified as “very high” exposure risk including, but not limited to:

DEPARTMENT NOTE

ABOVE language added to specifically reference the defined terms of “known COVID-19” and “suspected COVID-19”

§30, DEFINITION OF “EXPOSURE RISK LEVEL” - HIGH” BOARD AMENDMENT – TT

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

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient in a hospital like setting, including field hospitals (e.g., doctors, nurses, cleaners, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, contact tracer services, and chiropractic services;

§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “HIGH” BOARD AMENDMENT – TT

2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, a patient/client/customer with unknown COVID-19 status, resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, blood donation services, contact tracer services, and chiropractic services;

3. First responder services provided by police, fire, paramedic, search and rescue, recovery, and emergency medical services provided to a known or suspected COVID-19 patient, resident, or other person;

§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “HIGH” BOARD AMENDMENT – TT

3. First responder services provided by police, corrections, fire, paramedic, search and rescue, recovery, and emergency medical services provided to a known or suspected COVID-19 patient, resident, or other person;

4. Medical transport services (loading, transporting, unloading, etc.) provided to known or suspected COVID-19 patients (e.g., ground or air emergency transport, staff, operators, drivers, or pilots, etc.);

5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium” exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

§30, DEFINITION OF “EXPOSURE RISK LEVEL” - MEDIUM” BOARD AMENDMENT – TT

“Medium” exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than minimal occupational contact ~~inside six feet~~ with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19.

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings; indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salons, and spas settings; venues for sports, entertainment, movies, theaters, and other forms of mass gatherings etc., venues ; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and

§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “MEDIUM” BOARD AMENDMENT – TP

“Medium” exposure risk hazards or job tasks may include, but are not limited to operations and services in:

1. Poultry, meat, and seafood processing;

COMMENT: These workers should be placed the high risk classification at a minimum. Meatpacking plants have become COVID-19 hotspots across the U.S. and there have been specific reports of problems with meatpacking plants in Virginia. We have had reports of workers having trouble receiving information, working in close proximity to each other, increased lines speeds, and lack of training.



§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “MEDIUM” BOARD AMENDMENT – TT

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings, indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; work performed in customer premises, such as homes or businesses; ....; and

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

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; ~~nor contact inside six feet with other employees, other persons, or the general public except as otherwise provided in this definition.~~

DEPARTMENT NOTE

The ABOVE language was deleted to make a clear distinction between “medium” risk classification which applies when employees are exposed inside six feet to persons “who may be infected with SARS-CoV-2”.

§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “LOWER” BOARD AMENDMENT – TT

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact ~~inside six feet~~ with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; nor contact ~~inside six feet~~ with other employees, other persons, or the general public except as otherwise provided in this definition.

AMENDED LANGUAGE MINUS EDITS

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; nor contact with other employees, other persons, or the general public except as otherwise provided in this definition.

Employees in this category have minimal occupational contact with other employees, other persons, or the general public; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and

DEPARTMENT NOTE

The ABOVE language was added to assure consistency within the definition

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

Employee use of face coverings for close contact (inside six feet of) with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

“Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to potentially contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth). A face covering is not intended to protect the wearer, but it may prevent reduce the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

DEPARTMENT NOTE

ABOVE language change made in response to comment.

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from airborne particles droplets or splashes.

DEPARTMENT NOTE

ABOVE change made in response to comment noting that face shields are not designed to be fully effective against airborne particles but are designed to serve as splash guards.

“Feasible” means both “technical” and “economic” feasibility as defined in this standard /regulation.

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

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

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

1. Contact inside six feet with a known or suspected COVID-19 person within the last 14 days,
2. ~~Contact inside six feet with a suspected COVID-19 person within the last 14 days,~~

DEPARTMENT NOTE

ABOVE change consolidates 1 and 2, and would result in renumbering of the subsections.

3. Being a resident of a locality, city, town, or county with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission, or
4. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.

DEPARTMENT NOTE

ABOVE changes reflect change in CDC definition.

§30, DEFINITION OF “MAY BE INFECTED WITH” BOARD AMENDMENT – TT

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

1. Contact inside six feet with a known COVID-19 person within the last 14 days,
2. Contact inside six feet with a suspected COVID-19 person within the last 14 days,
3. Being a resident of a locality, city, town, or county with moderate or substantial SARS-CoV-2 ongoing community transmission, or
4. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.

“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 work during job tasks.

DEPARTMENT NOTE

ABOVE change made in response to comment as not consistent with traditional OSHA position on “exposure” – situations where an employee is exposed but not actually conducting a job task.

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

“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

1. Air-purifying, which remove contaminants from the air; and

2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this standard /regulation.

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV. Coronaviruses are named for the crown-like spikes on their surface. The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

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



“Suspected COVID-19” means a person that is COVID-19 symptomatic but has not tested positive for SARS-CoV-2 and no alternative diagnosis has been made (e.g., tested positive for influenza).

DEPARTMENT NOTE

ABOVE change in response to comments to make clear that an alternative diagnosis can be used to avoid classifying an employee as “suspected COVID-19”

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this standard /regulation 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 their industry, allegations of technical infeasibility will not be accepted.

“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.

#### **§40 Mandatory requirements for all employers.**

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

- A. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.
  - 1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to **the SARS-CoV-2 virus** or COVID-19 **disease**. Employers shall classify **each** employees according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this standard **/regulation** for “very high,” “high,” “medium,” or “lower” risk levels of exposure. **Employees exposed to the same hazards or performing the same job tasks may be grouped for classification purposes.**

DEPARTMENT NOTE

ABOVE change made in response to comment requesting more flexibility for employers to not have to conduct “individual” assessments for each employee in situations where groups of employees have the same job duties

§40.A.1, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to SARS-CoV-2 or COVID-19. Employers shall classify each employee according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this standard/regulation for “very high,” “high,” “medium,” or “lower” risk levels of exposure.

AMENDED LANGUAGE MINUS EDITS

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to SARS-CoV-2 or COVID-19. Employers shall ensure compliance with the applicable sections of this standard/ regulation for “very high,” “high,” “medium,” or “lower” risk levels of exposure.

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

3. Employers shall develop and implement policies and procedures to address a situation where they are notified that an ~~for~~ employees ~~to report when they have~~ has tested positive for anti-SARS-CoV-2 antibodies through serologic testing:

§40.A.3, SEROLOGIC TESTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – TT

3. ~~Employers shall develop and implement policies and procedures to address a situation where they are notified that an employee has tested positive for anti-SARS-CoV-2 antibodies through s~~ Serologic testing:

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.

b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily). However, nothing in this paragraph shall be construed to require an employer to allow an employee who tested positive by serologic testing to return to work.

DEPARTMENT NOTE

ABOVE change made to assure those employers that want to take extra precautions about returning employees to work.

§40.A.3.c, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic, follow all requirements set forth in § 40.B (“Return to Work”) herein, and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily).

d. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

§40.A.3, SEROLOGIC TESTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – MR

Section 40.A.3 of the draft standard requires that all employers develop and implement policies and procedures for employees to report positive results from antibody testing. This provision fails to recognize the severe limitations of serologic tests and conflicts with CDC guidelines that the results of serologic tests should not be used for individual determinations due to the lack of sensitivity and specificity of many of these tests.

<https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>.

The final standard should eliminate the requirement for employers to develop reporting policies and procedures for these tests. Reporting of the results of these tests should not be required given their lack of reliability and utility, and the great potential for misuse.

To be consistent with current CDC guidelines, the introduction to section 40.A.3 should be amended to read: “If an employer is notified of the results of an anti-SARS-CoV-2 antibody test for an employee, the employer shall not utilize the results of that test to make decisions about returning to work or other work-related determinations for that individual employee.” Subparagraphs a, b, and d should be retained. Subparagraph c should be deleted, since these are general recommendations that apply to all who are working, whether they test positive by serologic testing or not. I also recommend moving amended Section 40.A.3 to the end of Section 40.A. after section 40.A.7.

~~3. Employers shall develop and implement policies and procedures for employees to report when they have tested positive for anti-SARS-CoV-2 antibodies through serologic testing:~~

**RENUMBER AS §40.A.3 AS §40.A.8**

8. If an employer is notified of the results of an anti-SARS-CoV-2 antibody test for an employee, the employer shall not utilize the results of that test to make decisions about returning to work or other work-related determinations for that individual employee:

**FORMER §40.A.3.a RENUMBERED AS §40.A.8.a WITH IDENTICAL LANGUAGE:**

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19

**FORMER §40.A.3.b RENUMBERED AS §40.A.8.b WITH IDENTICAL LANGUAGE:**

b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

**FORMER §40.A.3.c DELETED:**

~~c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily).~~

**FORMER §40.A.3.d RENUMBERED AS §40.A.8.c WITH IDENTICAL LANGUAGE:**

**c.** There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

**NOTE: IF THE MOVE OF THE ABOVE LANGUAGE IS ADOPTED, CURRENT §§40.A.4 THROUGH 40.A.8 WOULD BE RENUMBERED AS §§40.A.3 THROUGH 40.A.7**

**AMENDED LANGUAGE MINUS EDITS [RENUMBERED FROM §40.A.3]**

8. If an employer is notified of the results of an anti-SARS-CoV-2 antibody test for an employee, the employer shall not utilize the results of that test to make decisions about returning to work or other work-related determinations for that individual employee:
- a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.
  - b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.
  - c. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

**§40.A.3, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF**

Why does this focus only on serologic testing? Antibody testing is a marker of past infection, so it shouldn't play a big role in any decisions related to the employee (assuming the employee doesn't also have a positive viral test, the employee is no longer symptomatic, etc.). However, viral testing (which isn't mentioned) would indicate a current infection and should certainly be a part of deciding when to

exclude an ill employee. Furthermore, this blurb talks about how serologic testing can't be used to make decisions about things. Why is serologic testing mentioned at all if it doesn't change any recommendations?

4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing 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".

DEPARTMENT NOTE

ABOVE change in response to comments to make clear that an alternative diagnosis can be used to avoid classifying an employee as "suspected COVID-19"

5. Employers shall not permit known COVID-19 or suspected COVID-19 employees or other persons to report to or be allowed to remain at the work or on a job site until cleared for return to work or the job site (see §40.B). Nothing in this standard /regulation shall prohibit an employer from permitting a known or suspected 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 or COVID-19.
6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.
7. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at the work or on a job site until cleared for return to work.



§40.A.6, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

6. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home ~~and encourage them to develop non-punitive sick leave policies.~~ Known COVID-19 and suspected COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at work or on a job site until cleared for return to work. Subcontractors shall not allow their employees with known or suspected COVID-19 cases to report to or be allowed to remain at work or on a job site until cleared for return to work.

AMENDED LANGUAGE MINUS EDITS

6. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home. Known COVID-19 and suspected COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at work or on a job site until cleared for return to work. Subcontractors shall not allow their employees with known or suspected COVID-19 cases to report to or be allowed to remain at work or on a job site until cleared for return to work.

§40.A.6, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

Recommend reflecting CDC guidance here, which states in some cases in long-term care settings, only if the facility has exhausted all other staffing options and is in Crisis Capacity Strategies, staff with suspected or confirmed COVID-19 may be allowed to work while following certain criteria (do not interact with others, work with confirmed COVID-19 patients, etc.). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/mitigating-staff-shortages.html>

8. If an employer is notified of a COVID-19 SARS-CoV-2 positive test for one of its own employees, a subcontractor employee, a contract employee, a temporary employee, or other person (excluding patients hospitalized on the basis of being known or suspected COVID-19) who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

DEPARTMENT NOTE

ABOVE change [“contract employee”] was made in response to differentiate between employees and independent contractors.

DEPARTMENT NOTE

ABOVE change [“(excluding patients hospitalized on the basis of being known or suspected COVID-19)”] made in response to comment to clarify that, for instance, a hospital would not have to notify its employees during intake of patients.

a. Its own employees at the same place of employment within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable Virginia laws and regulations;

DEPARTMENT NOTE

ABOVE change in response to comment to clarify that employers would only have to notify employees at the same place of employment.

§40.A.7.a, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

a. Its own employees who, upon reasonable belief of the employer may have been exposed, within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

§40.A.8.a, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

It isn't clear here that only people exposed will be notified of a positive case. Here it suggests anyone who was on-site at the same time will be notified, but being in the same building doesn't necessarily constitute an exposure. If a person were in a given building with 15 floors and went directly to their office, didn't use the elevator, didn't leave the floor for the day, would every floor need to be notified? That may be unnecessary. Recommend limiting notifications to those who were potentially exposed.

b. In the same manner as §40.A.7.a other employers whose employees were present at the work site during the same time period; and

c. In the same manner as §40.A.7.a the building/facility owner.

§40.A.7.c, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

~~c. In the same manner as §40.A.7.a the building/facility owner.~~

§40.7 [ADD §§7.d and 7.e], MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – MR

d. The Virginia Department of Health within 24 hours of the discovery of a positive case.

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three (3) or more employees present at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day time period.

9. ~~Each e-~~Employers shall ensure employee access to their 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 their own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.

DEPARTMENT NOTE

ABOVE change made in response to comment to make clear that there are no HIPAA or confidentiality concerns where the employee is requesting his or her own records.

B. Return to Work.

1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in §40.B.1.a will constitute compliance with the requirements of §40.B.

a. For suspected or known COVID-19 employees the symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.

b. The test-based strategy excludes an employee from returning to work until resolution of fever without the use of fever-reducing medications, and improvement in respiratory symptoms (e.g., cough, shortness of breath), and negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-

CoV-2 RNA from at least two consecutive respiratory specimens collected ≥24 hours apart (total of two negative specimens).

i. If a known or suspected COVID-19 employee refuses to be tested, ~~then~~ the employer ~~shall comply~~ compliance with §40.B.1.a, symptom-based strategy, ~~will be considered in compliance with this standard /regulation. Nothing in this standard /regulation shall be construed to prohibit an employer from requiring a known or suspected COVID-19 employee to be tested in accordance with §40.B.1.b.~~

#### §40.B.1.b.i, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS

ABOVE change made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “...employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

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

2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.

a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive

test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.

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

i. If a known asymptomatic COVID-19 employee ~~refuses to be tested, employer compliance with §40.B.2.a, symptom-based strategy, will be considered in compliance with this standard /regulation. Nothing in this standard /regulation shall be construed to prohibit an employer from requiring a known asymptomatic COVID-19 employee to be tested in accordance with §40.B.2.b.~~

~~refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.~~

#### §40.B.2.b.i, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS

ABOVE change made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “....employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

§40.B.2.b.i, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

This says if a known asymptomatic employee refuses to be tested, employer compliance with a symptom-based strategy for return to work would qualify as compliance. However, you can't have a symptom-based strategy for an asymptomatic person. This should be a time-based strategy, not symptom-based.

TYPOGRAPHICAL ERROR CORRECTION:

i. If a known asymptomatic COVID-19 employee refuses to be tested, employer compliance with §40.B.2.a, ~~symptom~~ time-based strategy, will be considered in compliance with this standard. Nothing in this standard shall be construed to prohibit an employer from requiring a known asymptomatic COVID-19 employee to be tested in accordance with §40.B.2.b.

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

C. Unless otherwise provided in this standard ~~/regulation~~, employers shall establish and implement policies and procedures designed to ensure that employees observe physical distancing while on the job and during paid breaks on the employer's property.

DEPARTMENT NOTE

ABOVE change made in response to comment to provide flexibility for employers with large open campuses.

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

1. If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical distancing, an

employer may designate a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:

- a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and requirements for the minimum physical distancing, hand washing/hand sanitizing, and space cleaning and disinfecting of shared surfaces requirements.
- b. The employer shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit.
- c. Employees shall be required to wipe down clean and disinfect the immediate area in which they were located prior to leaving, or the employer may provide for cleaning and disinfecting of the common area or room at regular intervals throughout the day, and between shifts of employees using the same work common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies).

DEPARTMENT NOTE

ABOVE change made in response to comments to provide more clarity of what cleaning and disinfecting is required.

- d. Hand washing facilities, and hand sanitizer where feasible, are available to employees.

DEPARTMENT NOTE

ABOVE language do address the event of greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.



E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.

§40.E, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

~~E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.~~

**IF ADOPTED, §§40.F THROUGH I WOULD HAVE TO BE RENUMBERED**

§40.E, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

This statement is true [Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.] and should be made on its own, separate from a blurb about vehicle occupancy.

F. Where the nature of an employee’s work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable **Virginia** executive order or order of public health emergency.

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

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

DEPARTMENT NOTE

ABOVE change made in response to comments to clarify that this section only applies to such requests made directly to the Department, not employers.

§40.H, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

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

I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this standard ~~/regulation~~, employers shall comply with the VOSH sanitation standard ~~/regulation~~ applicable to its industry.
2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use supplies to clean and disinfectant ~~supplies to clean~~ surfaces contacted during the interaction where there is the potential for exposure to the SARS-CoV-2 virus by themselves or other employees.

DEPARTMENT NOTE

ABOVE change made in response to comments to make clear that any requirement is tied to employee occupational exposure, not customer/general public exposure, which is outside VOSH jurisdiction.

§40.1.2, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use disinfectant supplies to clean surfaces contacted ~~during the interaction~~ frequently.

AMENDED LANGUAGE MINUS EDITS

2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use disinfectant supplies to clean surfaces contacted frequently.

3. In addition to the requirements contained in this standard ~~/regulation~~, employers shall comply with the VOSH hazard communication standard applicable to its industry.
4. Areas in the place of employment where known COVID-19 and suspected COVID-19 employees or other persons accessed or worked shall be disinfected prior to allowing

other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.

§40.I.4, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – DF

Strongly encourage that this adhere to CDC guidelines to wait 24 hours after the person was last there to clean, if possible, to reduce the risk of transmission to the cleaning crew.

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. Where feasible, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

§40.I.4, SANITATION AND DISINFECTING – TT

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. ~~Where feasible,~~ All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

AMENDED LANGUAGE MINUS EDITS

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

6. Employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.

§40.1.6, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

6. Employers shall ensure only disinfecting chemicals and products ~~are used that are approved by~~ indicated in the Environmental Protection Act (EPA) ~~and listed on~~ List N for use against SARS-CoV-2 ~~and emerging viral pathogens~~.

AMENDED LANGUAGE MINUS EDITS

6. Employers shall ensure only disinfecting chemicals and products indicated in the Environmental Protection Act (EPA) List N for use against SARS-CoV-2.

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

8. Employees shall have easy, frequent access, and permission to use soap and water, and hand sanitizer where feasible, during 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 their work station. Mobile crews shall be provided with hand sanitizer where feasible for use during the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

DEPARTMENT NOTE

ABOVE change made to address potential greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

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

J. Anti-Discrimination.

The employer shall ensure compliance with the anti-discriminations provisions of ~~§90~~.

§40.J, SANITATION AND DISINFECTING, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – CM

~~J. Anti-Discrimination.~~

~~The employer shall ensure compliance with the anti-discriminations provisions of §90.~~

K. Unless otherwise provided in this standard ~~/regulation~~, 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

§40.I, MANDATORY REQUIREMENTS FOR ALL EMPLOYERS – TT

I. Nothing in this section shall limit an employee from refusing to do work or enter a location they feel is unsafe.

## **§50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

### **A. Engineering Controls.**

1. Ensure appropriate air-handling systems:
  - a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected COVID-19, and
  - b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.
2. For employers not covered by §50.A.1, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:
  - a. Are maintained in accordance with the manufacturer’s instructions; and
  - b. Comply with §50.A.1.b.
3. Hospitalized patients with known or suspected COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19.

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

§50.A.5, REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK – DF

Aerosol-generating procedures should not be performed on a body known or suspected of having COVID-19 prior to death.

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

B. Administrative and Work Practice Controls.

1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.

§50.B.1, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – TT

1. ~~To the extent feasible, p~~ Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.



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2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
  3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.

§50.B.3, REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK – DF

Recommend removing this statement, as it is not applicable to employees.

4. Limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer’s compliance with occupancy limits contained in any applicable **Virginia** executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with §80.
8. **To the extent feasible, E** ensure that psychological and behavioral support is available to address employee stress.

§50.B.8, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – CM

~~8. Ensure that psychological and behavioral support is available to address employee stress.~~

AMENDED LANGUAGE MINUS EDITS

§50.B.8 – DELETED

PREVIOUS §§ 50.B.9, B.10, AND B11 RENUMBERED AS §§B.8, B.9, AND B.10

§50.B.8, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – TP

8. Ensure that psychological and behavioral support is available to address employee stress at no cost to the employee.

9. In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol<sup>1</sup> 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.

§50.B.9, REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK – DF

Recommend defining health care settings in the definitions section.

10. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

11. Where feasible:

- a. Use verbal announcements, signage, and visual cues to promote physical distancing;

§50.B.11, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – TP

11. Where feasible Employers shall:

- a. Use verbal announcements, signage, and visual cues to promote physical distancing;

- b. Implement flexible worksites (e.g., telework);
- c. Implement flexible work hours (e.g., staggered shifts);
- d. Increase physical distancing between employees at the worksite to six feet;
- e. Increase physical distancing between employees and other persons to six feet;
- f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- g. 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.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

C. Personal Protective Equipment (PPE).

- 1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following

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

- a. The employer 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, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

§50.C.1.a., ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK) – TT

a. The employer **and workers (to include Labor Unions/Associations)** shall **mutually** assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the standard **/regulation**, select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 **virus** or COVID-19 **disease** hazards identified in the hazard assessment;
  - ii. Communicate selection decisions to each affected employee; and,
  - iii. Select PPE that properly fits each affected employee.
2. The employer shall verify that the required SARS-CoV-2 **virus** and COVID-19 **disease** workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, **which identifies** 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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

5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.

#### §50.C.5, REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “VERY HIGH” OR “HIGH” EXPOSURE RISK – DF

The 'depending on the hazards they are exposed to or their job tasks and exposure risk' part of the previous version of this document is very important. Not everyone in the high or very high risk groups can or should wear all this PPE unless it is indicated for the task they are doing. Recommend adding this blurb back into this version of the document.

D. Employee training shall be provided in accordance with the requirements of §80 of this standard /regulation.

#### **§60 Requirements for hazards or job tasks classified at “medium” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 **virus** and COVID-19 **disease** related hazards and job tasks that occur at the workplace:
  - a. Are maintained in accordance with the manufacturer's instructions, and
  - b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.
  - c. To the extent feasible, employers shall install physical barriers (**e.g., such as** clear plastic sneeze guards, **etc.**), where such barriers will aid in mitigating the spread of SARS-CoV-2 **and COVID-19** virus transmission.

B. Administrative and Work Practice Controls.

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

§60.B.1, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) - TT

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

a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;

§60.B.1, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – DF

Recommend changing this phrase throughout to say "does not have signs and or/symptoms of COVID-19."

b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);

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

d. Implement flexible worksites (e.g., telework);

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

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

g. Increase physical distancing between employees and other persons, including customers to six feet (e.g., drive-through, ~~partitions~~ physical barriers where such

barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.)  
to six feet;

§60.B.1.g, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – DF

Physical barriers are not a form of physical distancing to six feet; recommend moving the second example to another spot.

- h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
  - i. Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postponing non-essential travel or events; etc.);
  - j. Deliver services remotely (e.g. phone, video, internet, etc.);
  - k. Deliver products through curbside pick-up or delivery;
  - l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;
  - m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.
- C. Personal Protective Equipment.
- 1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment, and personal protective equipment selection:
    - a. The employer shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:



§60.C.1.a., ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – TT

a. The employer and workers (or Labor Unions/Associations) shall mutually assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the standard [regulation], select, and have each affected employee use, the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;
  - ii. Communicate selection decisions to each affected employee; and
  - iii. Select PPE that properly fits each affected employee.
2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.
4. PPE ensembles for employees in the “medium” exposure risk category will vary by work task, the results of the employer’s hazard assessment, and the types of exposures employees have on the job.

§60.C.4, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – TT

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

AMENDED LANGUAGE MINUS EDITS

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

§60, ADMINISTRATIVE AND WORK PRACTICE CONTROLS (REQUIREMENTS FOR HAZARDS OR JOB TASKS CLASSIFIED AT “MEDIUM” EXPOSURE RISK) – DF

The lower risk category doesn’t have any specific guidance outlined for them in this document (other than in the definitions section where it gives some suggestions about how to achieve minimal occupational contact). It seems prudent for anyone in any business setting to evaluate the risk exposures for their setting, assess whether vulnerable populations are at risk, etc. Perhaps the lower risk category does not need to have a written plan, but these considerations should still be thought through for every business setting. For instance, if a person working at large corporate office becomes ill, the employer should still have an idea of how they are going to handle that. Additionally, telework should still be recommended for these groups (which the document only provides as one of the suggestions for minimal occupational contact in the “lower risk” definitions section, since there isn’t a specific section for requirements to adhere to for lower risk settings).

**§70 Infectious disease preparedness and response plan.**

- A. Employers with hazards or job tasks classified as:
  - 1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;
  - 2. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.

- B. The plan and training requirements tied to the plan shall only apply to those employees classified as “very high,” “high,” and “medium” covered by this section.
- C. Employers shall designate a person to be responsible for implementing their Plan. The Plan shall:
1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they 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(s) of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to 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:
      - i. The general public, customers, other employees, patients, and other persons;
      - ii. Known or suspected COVID-19 persons 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, healthcare employees who have had unprotected exposures to known COVID-19 or suspected COVID-19 persons); and
      - iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.
    - b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., people with chronic lung disease or moderate to severe asthma, or serious heart conditions; people who are immunocompromised; people with severe obesity (body mass index [BMI] of 40 or higher), diabetes, chronic kidney

disease undergoing dialysis, liver older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy; etc.).

DEPARTMENT NOTE

ABOVE language updated to reflect CDC definition of risk factors.

§70.C.3.b, INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE PLAN - DF

The list of persons who may be at risk due to underlying medical conditions has been updated on the CDC website. Consider linking to the website to provide additional details, as it is much longer than the list provided here. [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html)

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

4. Consider contingency plans for situations that may arise as a result of outbreaks, such as:

- a. Increased rates of employee absenteeism;
- b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, and personal protective equipment, including e.g., respirators, surgical/medical procedure masks, etc. and face coverings;

DEPARTMENT NOTE

Error correction. "Face coverings" do not qualify as either PPE or respirators because they are not subject to independent testing to assure effectiveness.

- c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
  - d. Interrupted supply chains or delayed deliveries.
5. Identify basic 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.
6. Provide for the prompt identification and isolation of known COVID-19 and suspected COVID-19 employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.

§70.C., INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE PLAN - DF

Consider adding language that that facilities should establish policies and procedures for managing and educating all visitors.

Additionally, reflect Executive Order guidance that states signs must be posted at entrances describing infection control measures,

employees should be screened for symptoms prior to shifts, etc.

Add language that visitors should be screened prior to entering LTCFs [long term care facilities] for fever and COVID-19 symptoms.

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

~~8. Provide for training of employees classified as "very high" or "high" risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this standard/regulation, and requirements of the employer's Infectious Disease Preparedness and Response Plan.~~

DEPARTMENT NOTE:

ABOVE deleted as language that was repetitive of training requirements in §80.B.8.

**§80 Training.**

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

DEPARTMENT NOTE

ABOVE change made in response to comment to make clear which employees need to be trained and which do not.

§80.A BOARD AMENDMENT – TP

- A. Employers with hazards or job tasks classified at “very high” or “high” that create potential COVID-19 exposure risk shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.

AMENDED LANGUAGE MINUS EDITS

- A. Employers with hazards or job tasks that create potential COVID-19 exposure risk shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.

§80.A BOARD AMENDMENT – TT

Employers ~~with hazards or job tasks classified at “very high” or “high” exposure risk~~ shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.

AMENDED LANGUAGE MINUS EDITS

Employers shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.

§80.A BOARD AMENDMENT – MR

Employers ~~with hazards or job tasks classified at “very high” or “high” exposure risk~~ shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The training shall be tailored to employee’s exposure risk levels.

AMENDED LANGUAGE MINUS EDITS

Employers shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The training shall be tailored to employee’s exposure risk levels.

§80.A BOARD AMENDMENT – TT

Employers ~~with hazards or job tasks classified at “very high” or “high” exposure risk~~ shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.

AMENDED LANGUAGE MINUS EDITS

Employers shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.



B. Employees shall be trained on:

1. The requirements of this standard ~~/regulation~~;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The symptoms of the COVID-19 disease;
4. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
5. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
6. PPE:
  - a. When PPE is required;
  - b. What PPE is required;
  - c. ~~W-H~~ How to properly don, doff, adjust, and wear PPE;
  - d. When limitations of PPE; and
  - e. The proper care, maintenance, useful life, and disposal of PPE;
7. The anti-discrimination provisions of this standard ~~/regulation~~ in §90; and
8. The employer's Infectious Disease Preparedness and Response Plan, where applicable.

§80.B BOARD AMENDMENT – TT

B. Employees shall be trained on:

1. The requirements of this standard /regulation;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The signs and symptoms of the COVID-19 disease;
4. Risk factors of severe COVID-19 illness for people with underlying health conditions;
5. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
6. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
7. PPE:
  - a. When PPE is required;
  - b. What PPE is required;
  - c. How to properly don, doff, adjust, and wear PPE;
  - d. When limitations of PPE; and
  - e. The proper care, maintenance, useful life, and disposal of PPE;
  - f. Heat stress hazards, signs and symptoms, and precautions when wearing PPE;

C. Employers covered by §50 of this standard /regulation shall verify compliance with §80.A by preparing a written certification record for those employees exposed to hazards or job tasks classified at “very high,” “high,” or “medium” exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee’s physical or electronic signature, the date(s) of the training, and the signature name of the person who conducted the training, or for computer-based training, the signature of the employer—the name of the person or entity that prepared the training materials. If the employer relies on training conducted by another employer or completed prior to the effective date of this standard /regulation, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

DEPARTMENT NOTE

ABOVE change made in response to comment to give employers flexibility in training delivery to employees

D. The latest training certification shall be maintained.

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

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

**§90 Discrimination against an employee for exercising rights under this standard ~~/regulation~~ is prohibited.**

- A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard ~~/regulation~~ or Title 40.1 of the Code of Virginia for themselves or others.
- B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face mask, face shield, or gloves, if such equipment is not provided by the employer, provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.
- 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.

§90.C BOARD AMENDMENT – CM

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, <del>other employees, or</del> a government agency, <del>or to the public such as through print, online, social, or any other media.</del>
AMENDED LANGUAGE MINUS EDITS 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, or a government agency.

§90.D BOARD AMENDMENT – TP [NEW §90.D ADDED]

D. Add a section to cross-reference employees' right to refuse unsafe work.

SUGGESTED LANGUAGE FROM THE DEPARTMENT

D. See §16VAC25-60-110 for requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death.

## **NOTICE REGARDING ATTACHED PROPOSED EMERGENCY TEMPORARY STANDARD**

**The Department revised the original proposed emergency standard to take into consideration the comments received by the Department regarding the proposed standard. The document attached to this Agenda is the revised document, utilizing track changes so that the original document posted on June 12, 2020 is preserved.**

16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**

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

**VOSH PROPOSED AMENDMENTS: June 12, 2020**

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Contact Person:

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Division of Legal Support, ORA, OPPPI, and OWP  
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**NOTE: Items highlighted in yellow are subject to change.**

**RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of **July 15, 2020**.

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The Department also recommends that the Board state in any motion it may make regarding this **Emergency Temporary Standard/Emergency Regulation** that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.

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**16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

As Adopted by the  
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date:

16 VAC 25-220

**Emergency Temporary Standard/Emergency Regulation**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

**16 VAC 25-220**

**§10 Purpose, scope, and applicability.**

- A. This **emergency temporary standard/emergency regulation** 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.<sup>1</sup>
- B. This **standard/regulation** adopted in accordance with Va. Code **§ 40.1-22(6)(a) or §2.2-4011** 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<sup>2</sup> and 16VAC25-60-30<sup>3</sup>.
- C. This **standard/regulation** 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, Va. Code §40.1-51.1.A<sup>4</sup>, etc. Should this **standard/regulation** conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- D. Application of this **standard/regulation** to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this **standard/regulation** (i.e., “very high”, “high”, “medium”, and “lower”).

<sup>1</sup> SOURCE: Michigan Occupational Safety and Health (MIOSHA) draft Emergency Rule

<sup>2</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-20>

<sup>3</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-30>

<sup>4</sup> <https://law.lis.virginia.gov/vacode/40.1-51.1/>

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

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

- a. The job tasks being undertaken; the known or suspected presence of the SARS-CoV-2 virus; the presence of a known or suspected COVID-19 person; the number of employees in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through ~~close contact (i.e., inside of six feet)~~ with other employees or persons (e.g., including shift work exceeding 8 hours per day);
- b. The type of ~~hazards encountered~~~~contact~~, including potential exposure to the ~~airborne transmission (including droplets or airborne droplet nuclei)~~ **of** SARS-CoV-2 virus ~~through respiratory droplets in the air~~; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.<sup>5</sup>

E. ~~Reference to the term “employee” in this standard/regulation includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.~~

**Commented [WJ(1):** Change made in response to comment, “airborne transmission” is a broader term to address a number of methods of transmission.

<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

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

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G. To the extent that an employer actually complies with requirements contained in CDC publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.

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H. Nothing in the standard/regulation shall be construed to require employers to engage in contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

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Commented [WJ(2): Change made in response to Comment period.

#### §20 Dates.

[Under §40.1-22(6)]

This emergency temporary standard shall ~~take~~ take immediate effect on July 15, 2020 upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia.

Commented [WJ(3): Effective date added for regulation

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this standard. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this standard.

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The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this standard.

Commented [WJ(4): Effective date added for training requirements

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This emergency temporary standard shall expire within six months of its effective date or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

Commented [WJ(5): Effective date added for Infectious disease preparedness and response plan

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[Under §2.2-4011]

This emergency regulation shall ~~become~~ take effective twenty-one (21) days after ~~upon~~ approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012.

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this regulation. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this regulation.

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this regulation.

This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

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### §30 Definitions.

“Administrative Control” means any procedure which 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.<sup>6</sup>

“Airborne infection isolation room (AIIR)”, formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide negative pressure in the room (so that air flows under the door gap into the room); *and* an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); *and* direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.<sup>7</sup>

“Asymptomatic” means an employee that has tested positive for SARS-CoV-2 but who is not symptomatic.

<sup>6</sup> VOSH FOM Chapter 5, page 71,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>7</sup> <https://www.cdc.gov/infectioncontrol/guidelines/isolation/glossary.html>

“Building/facility owner”<sup>8</sup> means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.

“CDC” means Centers for Disease Control and Prevention.

“Cleaning” means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection.<sup>9</sup>

“Community transmission”, also called “community spread” means people have been infected with ~~the virus~~ SARS-CoV-2 in an area, including some who are not sure how or where they became infected.<sup>10</sup> The level of community transmission is classified by the CDC as:

1. “~~None~~ to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., ~~e.g.~~, healthcare facilities, ~~ies~~, schools, mass gatherings, ~~etc.~~);
2. “~~M~~oderate” is where there is ~~widespread or~~ sustained community transmission with high likelihood or confirmed exposure within communal settings ~~with~~and potential for rapid increase in ~~suspected~~ cases; or
3. “Substantial, controlled” is where there is large scale, controlled community transmission, ~~healthcare staffing significantly impacted, multiple cases within including~~ communal settings (e.g., ~~like healthcare facilities, s~~schools, ~~mass gatherings~~workplaces, ~~etc.~~).<sup>11</sup>
4. “Substantial, uncontrolled” is where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).<sup>12</sup>

**Commented [WJ(6):** Changes to this definition made because of slight wording changes in CDC publications.

**Commented [WJ(7):** CDC language change

<sup>8</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1101>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>10</sup> Answer to question “What is community spread?”,

[https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vytMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs\\_lcp=CgZwc3ktYWIQAzIECAAQQ1AAWABg5EBoAHAAeACAAYQBIAGEAZIBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKEwigkabqrd7pAhXeI3IEHfigDh4Q4dUDCAw&uact=5](https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vytMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs_lcp=CgZwc3ktYWIQAzIECAAQQ1AAWABg5EBoAHAAeACAAYQBIAGEAZIBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKEwigkabqrd7pAhXeI3IEHfigDh4Q4dUDCAw&uact=5)

<sup>11</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>, Table 3.

<sup>12</sup> Table 1. Level of mitigation needed by level of community transmission and community characteristics, <https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html>

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

“Disinfecting” means using chemicals approved for use against SARS-CoV-2<sup>13</sup>, for example EPA-registered disinfectants, to kill germs on surfaces. This process 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.<sup>14</sup>

“Duration and frequency of employee exposure” means how long (“duration”) and how often (“frequency”) an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

“Economic feasibility” means the employer is financially able to undertake the measures necessary to<sup>15</sup> comply with one or more requirements in this standard/regulation. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this standard/regulation has occurred. If an employer’s level of compliance lags significantly behind that of its industry, an employer’s claim of economic infeasibility will not be accepted.<sup>16</sup>

**Commented [WJ(8):** Change made in response to a comment noting that some presentations of the disease may be “primarily through gastrointestinal, neurologic, etc.”

<sup>13</sup> <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

<sup>14</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>15</sup> Federal OSHA FOM, Chapter 3, <https://www.osha.gov/enforcement/directives/cpl-02-00-164/chapter-3>

<sup>16</sup> VOSH FOM, Chapter 5, pages 72-73, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

“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.<sup>17</sup> Reference to the term “employee” in this standard/regulation also includes, but is not limited to, temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

**Commented [WJ(9):** Language from Title 40.1 of the Code of Virginia

**Commented [WJ(10):** Change in response to comment concerns about what legal sources would be used to determine the definition of “employee” in VOSH cases.

“Engineering control” means the use of substitution, isolation, ventilation, and equipment modification<sup>18</sup> to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

“Exposure risk level” means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. Hazards and job tasks have been divided into four risk exposure levels: “very high”, “high”, “medium”, and “lower”:

“Very high”<sup>19</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or and the known COVID-19 or suspected COVID-19 disease persons including, but not limited to, during specific medical, postmortem, or laboratory procedures:

**Commented [WJ(11):** Language added to specifically reference the defined terms of “known COVID-19” and “suspected COVID-19”

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person;
2. Collecting or handling specimens from a known or suspected COVID-19 patient or person (e.g., manipulating cultures from known or suspected COVID-19 patients);

<sup>17</sup> <https://law.lis.virginia.gov/vacode/title40.1/chapter3/section40.1-49.3/>

<sup>18</sup> VOSH FOM Chapter 5, page 71,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>19</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19



3. Performing an autopsy, ~~that which generally~~ involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

“High”<sup>20</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, ~~or known COVID-19 or suspected COVID-19~~ **persons** that are not otherwise classified as “very high” exposure risk including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient in a hospital like setting, including field hospitals (e.g., doctors, nurses, ~~cleaners~~, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services<sup>21</sup>, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, contact tracer services, and chiropractic services;
3. First responder services provided by police, fire, paramedic, search and rescue, recovery, and emergency medical services ~~provided~~ to a known or suspected COVID-19 patient, resident, or other person;
4. Medical transport services (loading, transporting, unloading, etc.) provided to known or suspected COVID-19 patients ~~–~~(e.g., ground or air emergency transport, staff, operators, drivers, ~~or~~ pilots, etc.);

**Commented [WJ(12):** Language added to specifically reference the defined terms of “known COVID-19” and “suspected COVID-19”

<sup>20</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

<sup>21</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium”<sup>22</sup> exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings; indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming, salons, and spas; ~~settings; venues for~~ sports, entertainment, movies, theaters, ~~and other forms of mass gatherings etc., venues;~~ homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and
2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities; outpatient medical facilities; clinics, drug treatment programs, ~~and~~ medical outreach services<sup>23</sup>; non-medical support services; mental health facilities; home health care, nursing homes, assisted living facilities, memory care facilities, ~~and~~ hospice care; rehabilitation centers, doctors' ~~offices,~~ dentists' ~~offices, and~~

<sup>22</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 20

<sup>23</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

chiropractors' offices; first responders, services provided by such as police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

"Lower" exposure risk hazards or job tasks are those not otherwise classified as "very high", "high", or "medium" exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; ~~nor contact inside six feet with other employees, other persons, or the general public except as otherwise provided in this definition.~~

Employees in this category have minimal occupational contact with other employees, other persons, or the general public;<sup>24</sup> or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for ~~close~~ contact ~~(inside six feet of)~~ with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

"Face covering" means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer's nose and mouth in an effort to ~~potentially~~

**Commented [WJ(13)]:** This language was deleted to make a clear distinction between "medium" risk classification which applies when employees are exposed inside six feet to persons "who may be infected with SARS-CoV-2".

**Commented [WJ(14)]:** Added to assure consistency within the definition

<sup>24</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 18 to 20

contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth)<sup>25</sup>. A face covering is not intended to protect the wearer, but it may ~~prevent~~reduce the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

Commented [WJ(15)]: In response to comment

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from ~~airborne particles~~droplets or splashes.<sup>26</sup>

Commented [WJ(16)]: Change made in response to comment noting that face shields are not designed to be fully effective against airborne particles but are designed to serve as splash guards.

“Feasible” means both “technical” and “economic” feasibility as defined in this standard/regulation.

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

“Hand sanitizer” means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this standard/regulation.<sup>27</sup>

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

1. Contact inside six feet with a known or suspected COVID-19 person within the last 14 days,
2. ~~Contact inside six feet with a suspected COVID-19 person within the last 14 days,~~  
3. Being a resident of a locality, city, town, or county with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission, or

Commented [WJ(17)]: Consolidation into 1. above

<sup>25</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>26</sup> <https://www.osha.gov/SLTC/etools/eyeandface/ppe/impact.html#faceshields>

<sup>27</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 8

43. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.

**Commented [WJ(18):** Reflects change in CDC language.

“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 work during job tasks.

**Commented [WJ(19):** Change made in response to comment as not consistent with traditional OSHA position on “exposure” – situations where an employee is exposed but not actually conducting a job task.

“Personal protective equipment” means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.<sup>28</sup>

“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons.<sup>29</sup> Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

3-1. Air-purifying, which remove contaminants from the air; and

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<sup>28</sup> <https://www.osha.gov/SLTC/personalprotectiveequipment/>

<sup>29</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

4-2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.<sup>30</sup>

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this **standard/regulation**.<sup>31</sup>

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV.<sup>32</sup> Coronaviruses are named for the crown-like spikes on their surface.<sup>33</sup> The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

“Surgical/Medical procedure mask” means a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. It protects the others from the wearer’s respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).<sup>34</sup>

“Suspected COVID-19” means a person that is COVID-19 symptomatic but has not tested positive for SARS-CoV-2 and no alternative diagnosis has been made (e.g., tested positive for influenza).<sup>35</sup>

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny

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**Commented [WJ(20):** In response to comments to make clear that an alternative diagnosis can be used to avoid classifying an employee as “suspected COVID-19”

<sup>30</sup> <https://www.osha.gov/Publications/OSHA3079/osha3079.html>

<sup>31</sup> <https://www.dir.ca.gov/title8/5199.html>

<sup>32</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>

<sup>33</sup> <https://www.cdc.gov/coronavirus/types.html>

<sup>34</sup> <https://www.cdc.gov/niosh/npptl/pdfs/UnderstandDifferenceInfographic-508.pdf>

<sup>35</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.<sup>36</sup>

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this **standard/regulation** with a reasonable possibility that employee exposure to **the SARS-CoV-2 virus** and COVID-19 **disease** hazards will be reduced.<sup>37</sup> If an employer’s level of compliance lags significantly behind that of their industry, allegations of technical infeasibility will not be accepted.<sup>38</sup>

“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.<sup>39</sup>

#### **§40 Mandatory requirements for all employers.<sup>40</sup>**

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

- A. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.
  - 1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to **the SARS-CoV-2 virus** or COVID-19 **disease**. Employers shall

<sup>36</sup> <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

<sup>37</sup> VOSH FOM, Chapter 5, pages 71-72, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>38</sup> VOSH FOM Chapter 5, pages 71-73, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>39</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>40</sup> Partial source for this section: <https://labor.vermont.gov/vosha>

classify ~~each~~ employees according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this **standard/regulation** for “very high,” “high,” “medium,” or “lower” risk levels of exposure. Employees exposed to the same hazards or performing the same job tasks may be grouped for classification purposes.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness.<sup>41</sup>

3. Employers shall develop and implement policies and procedures to address a situation where they are notified that an~~for employees to report when they have~~as tested positive for anti-SARS-CoV-2 antibodies through serologic testing:<sup>42</sup>

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.

b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid ~~close~~ contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily). However, nothing in this paragraph shall be construed to require an employer to allow an employee who tested positive by serologic testing to return to work.

d. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

**Commented [WJ(21):** In response to comment requesting more flexibility for employers to not have to conduct “individual” assessments for each employee in situations where groups of employees have the same job duties

**Commented [WJ(22):** Change made to assure those employers that want to take extra precautions about returning employees to work

<sup>41</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>42</sup> <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>



4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19<sup>43</sup> ~~and no alternative diagnosis has been made (e.g., tested positive for influenza)~~<sup>44</sup> Such employees shall be designated by the employer as “suspected COVID-19”.

Commented [WJ(23)]: See comment above

5. Employers shall not permit known COVID-19 or suspected COVID-19 employees or other persons to report to or ~~be allowed to remain at the work or on a job site~~ until cleared for return to work ~~or the job site~~ (see §40.B). Nothing in this standard/regulation shall prohibit an employer from permitting a known or suspected 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 or COVID-19.~~

~~56.~~ To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act<sup>45</sup>, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.<sup>46</sup>

~~67.~~ Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at ~~the work or on a job site~~ until cleared for return to work.

~~78.~~ If an employer is notified of a ~~COVID-19~~SARS-CoV-2 positive test for one of its own employees, a subcontractor employee, ~~a contract~~ employee, ~~a temporary employee~~, or other person ~~(excluding patients hospitalized on the basis of being known or suspected COVID-19)~~ who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

Commented [WJ(24)]: Change made to differentiate between “employees” and “independent contractors”

Commented [WJ(25)]: Change made in response to comment

<sup>43</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>44</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>45</sup> <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

<sup>46</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 11

a. Its own employees at the same place of employment within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable Virginia laws and regulations;

**Commented [WJ(26):** In response to comment to clarify which employees need to be notified – those that could have been exposed

b. In the same manner as §40.A.7.a other employers whose employees were present at the work site during the same time period; and

c. In the same manner as §40.A.7.a the building/facility owner.

~~89.~~ Each ~~e~~Employer shall ensure employees access to their own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry.<sup>47 48 49</sup> Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employees access to their own SARS-CoV-2 virus and COVID-19 diseases related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.

**Commented [WJ(27):** In response to comment to make clear that there are no HIPAA or confidentiality concerns

#### B. Return to Work.

1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in §40.B.1.a will constitute compliance with the requirements of §40.B.<sup>50</sup>

a. For suspected or known COVID-19 employees the symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-

<sup>47</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1020>

<sup>48</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.33>

<sup>49</sup> Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1020>

<sup>50</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html><https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.

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

i. If a known or suspected COVID-19 employee refuses to be tested, ~~then the~~ employer ~~shall~~ ~~compliance~~ with §40.B.1.a, symptom-based strategy, ~~will be~~ ~~considered in compliance with this standard/regulation. Nothing in this~~ ~~standard/regulation~~ shall be construed to prohibit an employer from requiring a ~~known or suspected COVID-19 employee to be tested in accordance with §40.B.1.b.~~

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>51</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances.<sup>52</sup> While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.<sup>53</sup>

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

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<sup>51</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

<sup>52</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html><https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>53</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.

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

i. If a known asymptomatic COVID-19 employee refuses to be tested, employer compliance with §40.B.2.a, symptom-based strategy, will be considered in compliance with this standard/regulation. Nothing in this standard/regulation shall be construed to prohibit an employer from requiring a known asymptomatic COVID-19 employee to be tested in accordance with §40.B.2.b. ~~refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.~~

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>54</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

C. Unless otherwise provided in this **standard/regulation**, employers shall establish and implement policies and procedures designed to ensure that employees observe physical distancing while on the job and during paid breaks on the employer’s property.

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

1. If the nature of an employer’s work or the work area does not allow employees to consume meals in the employee’s workspace while observing physical distancing, an employer may designate a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:

a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and

**Commented [WJ(29)]:** Change made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “....employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

**Commented [WJ(30)]:** Change made in response to comment to provide flexibility for employers with large open campuses

<sup>54</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

~~requirements for the minimum~~ physical distancing, hand washing/hand sanitizing, and ~~space cleaning and disinfecting of shared surfaces requirements.~~

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

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

d. Hand washing facilities, and hand sanitizer where feasible, are available to employees.

E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.

F. Where the nature of an employee's work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.

G. Nothing in this section shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to their health or safety because of a medical condition; however, nothing in this

**Commented [WJ(31):** Change made in response to comments to provide more clarity of what cleaning and disinfecting is required

**Commented [WJ(32):** In the event of greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

**standard/regulation** shall negate an employer’s obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.<sup>55</sup>

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

I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH sanitation **standard/regulation** applicable to its industry.<sup>56 57</sup>  
58 59 60 61 62

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

3. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH hazard communication standard applicable to its industry.<sup>63</sup>  
64 65 66 67 68

**Commented [WJ(33)]:** Change made in response to comments to clarify that this section only applies to such requests made directly to the Department, not employers

**Commented [WJ(34)]:** Change made in response to comments to make clear that any requirement is tied to employee occupational exposure, not customer/general public exposure, which is outside VOSH jurisdiction

<sup>55</sup> General Industry §§1910.132, 1910.133, 1910.138, and 1910.134; Construction §§1926.28, 1926.95, 1926.102, and 1926.103; Public Sector Shipyard §§1915.152, 1915.153, 1915.157, and 1915.154; Public Sector Marine Terminals §§ 1917.91, 1917.95, and 1917.1(a)(2)(x), 1917.92; and Public Sector Longshoring §§1918.101, 1918.102.

<sup>56</sup> General Industry: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

<sup>57</sup> Temporary Labor Camps: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142>

<sup>58</sup> Agriculture, Field Sanitation: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-180-10>

<sup>59</sup> Construction: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-160-10>

<sup>60</sup> Public Sector Shipyards: <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.88>

<sup>61</sup> Public Sector Marine Terminals: <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.127>

<sup>62</sup> Public Sector Longshoring: <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.95>

<sup>63</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>

<sup>64</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.59>

<sup>65</sup> Agriculture, <https://www.osha.gov/laws-regs/regulations/standardnumber/1928/1928.21>

<sup>66</sup> Public Sector Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1200>

<sup>67</sup> Public Sector Marine Terminals, <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.28>

<sup>68</sup> Public Sector Longshoring, <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.90>

4. Areas in the place of employment where known COVID-19 and suspected COVID-19 employees or other persons accessed or worked shall be disinfected prior to allowing other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.<sup>69</sup>

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. Where feasible, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

6. Employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.<sup>70 71</sup>

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).<sup>72</sup>

8. Employees shall have easy, frequent access, and permission to use soap and water, and hand sanitizer ~~where feasible, during~~ 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 their work station. Mobile crews shall be provided with hand sanitizer ~~where feasible for use during~~ the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

9. It is recognized that various hazards or job tasks at the same place of employment can be designated as "very high", "high", "medium", or "lower" as presenting potential exposure risk for purposes of application of the requirements of this

**Commented [WJ(35):** In the event of greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

<sup>69</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

<sup>70</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>

<sup>71</sup> <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>

<sup>72</sup> *Id.*

**standard/regulation.** In situations other than emergencies, the employer shall ensure that protective measures are put in place to prevent cross-contamination.

J. Anti-Discrimination.

The employer shall ensure compliance with the anti-discriminations provisions of **§90.**

K. Unless otherwise provided in this **standard/regulation,** 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

**§50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in **§§40, 70, and 80.**

A. Engineering Controls.

1. Ensure appropriate air-handling systems:

- a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected COVID-19, and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>73</sup>

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<sup>73</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)



2. For employers not covered by §50.A.1, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:
    - a. Are maintained in accordance with the manufacturer's instructions; and
    - b. Comply with §50.A.1.b.
  3. Hospitalized patients with known or suspected COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
  4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19.
  5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected COVID-19 persons at the time of their death.
  6. 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 known or suspected COVID-19 patients or persons.<sup>74</sup>
  7. To the extent feasible, employers shall install physical barriers, ~~(e.g., such as~~ clear plastic sneeze guards, ~~etc.)~~, where such barriers will aid in mitigating the spread of SARS-CoV-2 ~~and COVID-19~~ virus transmission.
- B. Administrative and Work Practice Controls.
1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.
  2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
  3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.

<sup>74</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 23-24

4. Limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable [Virginia](#) executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with [§80](#).
8. [To the extent feasible, E](#)nsure that psychological and behavioral support is available to address employee stress.<sup>75</sup>
9. In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol<sup>76</sup> 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.<sup>77</sup>
10. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).
11. Where feasible:
  - a. Use verbal announcements, signage, and visual cues to promote physical distancing;
  - b. Implement flexible worksites (e.g., telework);
  - c. Implement flexible work hours (e.g., staggered shifts);
  - d. Increase physical distancing between employees at the worksite to six feet;
  - e. Increase physical distancing between employees and other persons to six feet;

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<sup>75</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

<sup>76</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

<sup>77</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

- f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- g. 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.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

C. Personal Protective Equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease hazard assessment, and personal protective equipment selection:<sup>78</sup>

a. The employer 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, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the standard/regulation, select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;
- ii. Communicate selection decisions to each affected employee; and,
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that

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<sup>78</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, ~~which identifies~~ 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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

5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.

D. Employee training shall be provided in accordance with the requirements of §80 of this standard/regulation.

**§60 Requirements for hazards or job tasks classified at “medium” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:

- a. Are maintained in accordance with the manufacturer’s instructions, and
- ~~b.~~ Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards

62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>79</sup>

b.

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

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#### B. Administrative and Work Practice Controls.

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

a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;

b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);

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

d. Implement flexible worksites (e.g., telework);

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

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

<sup>79</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

- g. Increase physical distancing between employees and other persons, including customers to six feet (e.g., drive-through, ~~partitions~~physical barriers where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.) ~~to six feet~~;
- h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- i. Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postponing non-essential travel or events; etc.);
- j. Deliver services remotely (e.g. phone, video, internet, etc.);
- k. Deliver products through curbside pick-up or delivery;
- l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;<sup>80</sup>
- m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.

C. Personal Protective Equipment.

- 1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment, and personal protective equipment selection:<sup>81</sup>
  - a. The employer 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, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:
    - i. Except as otherwise required in the standard [regulation], select, and have each affected employee use, the types of PPE that will protect the affected

<sup>80</sup> Source: LAJC Exhibit A

<sup>81</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

- ii. Communicate selection decisions to each affected employee; and
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, ~~which identifies~~ 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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

**§70 Infectious disease preparedness and response plan.<sup>82</sup>**

- A. Employers with hazards or job tasks classified as:
  - 1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;
  - 2. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.
- B. The plan and training requirements tied to the plan shall only apply to those employees classified as “very high,” “high,” and “medium” covered by this section.
- C. Employers shall designate a person to be responsible for implementing their Plan. The Plan shall:

<sup>82</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>, starting at page 7

1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.

1-2. Provide for employee involvement in development and implementation of the plan.

2-3. Consider and address the level(s) of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to 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:

- i. The general public, customers, other employees, patients, and other persons;
- ii. Known or suspected COVID-19 persons 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, healthcare employees who have had unprotected exposures to known COVID-19 or suspected COVID-19 persons); and
- iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.

b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., people with chronic lung disease or moderate to severe asthma, or serious heart conditions; people who are immunocompromised; people with severe obesity (body mass index [BMI] of 40 or higher), diabetes, chronic kidney disease undergoing dialysis, liver disease~~older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy; etc.~~).<sup>83</sup>

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**Commented [WJ(36):** Language updated to reflect CDC definition of risk factors.

<sup>83</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>



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

~~3.4.~~ Consider contingency plans for situations that may arise as a result of outbreaks, such as:

- a. Increased rates of employee absenteeism;
- b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, and personal protective equipment, (including e.g., respirators, surgical/medical procedure masks, etc. and face coverings);
- c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
- d. Interrupted supply chains or delayed deliveries.

~~4.5.~~ Identify basic 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.

~~5.6.~~ Provide for the prompt identification and isolation of known COVID-19 and suspected COVID-19 employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.

~~6.~~ Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors that enter the place of employment, businesses that provide or contract or temporary employees to the employer, as

**Commented [WJ(37):** Error correction. "Face coverings" do not qualify as either PPE or respirators because they are not subject to independent testing to assure effectiveness

well as other persons accessing the place of employment to comply with the requirements of this standard/regulation and the employer's plan.

7. ~~Provide for training of employees classified as "very high" or "high" risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this standard/regulation, and requirements of the employer's Infectious Disease Preparedness and Response Plan.~~

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#### §80 Training.

A. Employers with hazards or job tasks classified at "very high" or "high" exposure risk at a place of employment shall provide training to all employee(s) working at the place of employment regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The program shall enable each employee to recognize the hazards of the SARS-CoV-2 virus and symptoms of COVID-19 disease and shall train each employee in the procedures to be followed in order to minimize these hazards.<sup>84</sup>

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B. Employees shall be trained on:

1. The requirements of this standard/regulation;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The symptoms of the COVID-19 disease;
4. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
5. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
6. PPE:
  - a. When PPE is required;
  - b. What PPE is required;
  - c. ~~W~~How to properly don, doff, adjust, and wear PPE;
  - d. When limitations of PPE; and

<sup>84</sup> 1926.503(a)(1)

- e. The proper care, maintenance, useful life, and disposal of PPE;<sup>85</sup>
  - 7. The anti-discrimination provisions of this **standard/regulation** in **§90**; and
  - 8. The employer's Infectious Disease Preparedness and Response Plan, where applicable.
- C. Employers covered by **§50** of this **standard/regulation** shall verify compliance with **§80.A** by preparing a written certification record for those employees exposed to hazards or job tasks classified at "very high," "high," or "medium" exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee's physical or electronic signature, the date(s) of the training, and the ~~signature~~name of the person who conducted the training, ~~or for computer-based training, the signature of the employer~~the name of the person or entity that prepared the training materials. If the employer relies on training conducted by another employer or completed prior to the effective date of this **standard/regulation**, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.<sup>86</sup>
- D. The latest training certification shall be maintained.<sup>87</sup>
- E. "Retraining." When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by **§80.A**, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:
1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;
  2. Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or

**Commented [WJ(41):** In response to comment to give employers flexibility in training delivery to employees

<sup>85</sup> Source: 1910.134(f), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

<sup>86</sup> 1926.503(b)(1)

<sup>87</sup> 1926.503(b)(2)

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.<sup>88</sup>

**§90 Discrimination against an employee for exercising rights under this standard/regulation is prohibited.**

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard/regulation or Title 40.1 of the Code of Virginia for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face mask, face shield, or gloves, if such equipment is not provided by the employer,<sup>89</sup> provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

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.<sup>90</sup>

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<sup>88</sup> 1926.503(c)

<sup>89</sup> Source: LAJC Exhibit A with modification

<sup>90</sup> Source: LAJC Exhibit A with modification

**16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation  
Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

**June 12, 2020**



Contact Person:

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**NOTE: Items highlighted in yellow are subject to change.**

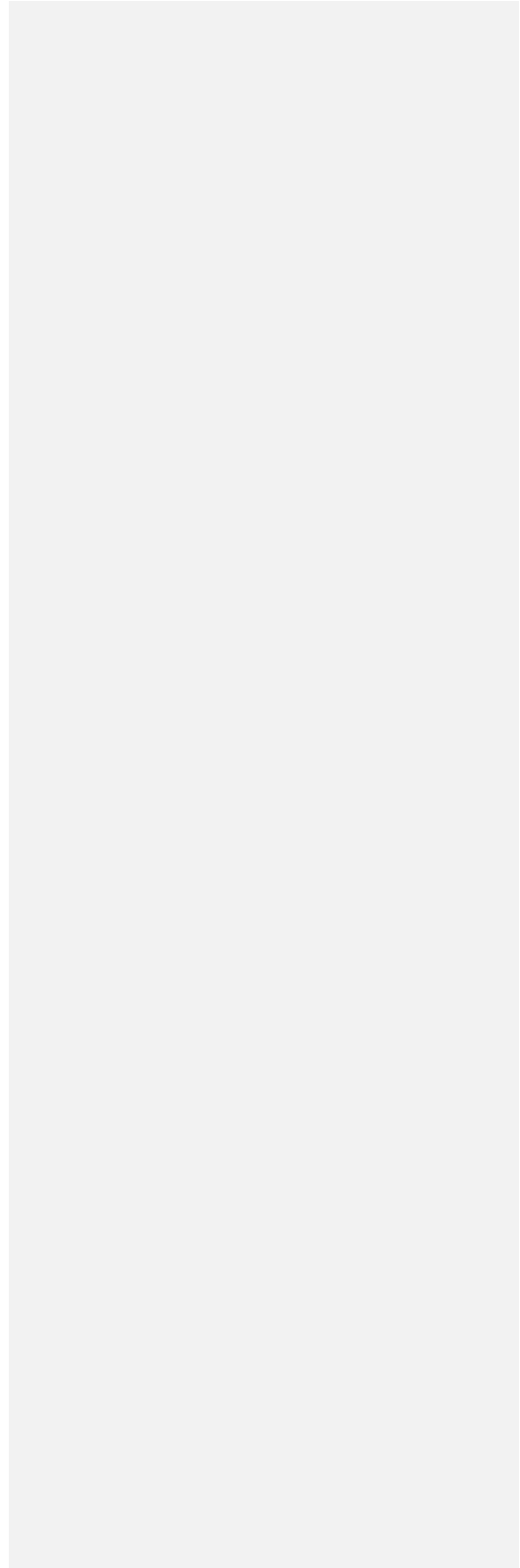
**RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation,



Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of

The Department also recommends that the Board state in any motion it may make regarding this emergency temporary standard/emergency regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.



**16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation  
Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

As Adopted by the  
Safety and Health Codes Board

Date: [REDACTED]



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR  
AND INDUSTRY

Effective Date: [REDACTED]

16 VAC 25-220



**Emergency Temporary Standard/Emergency Regulation**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

**16 VAC 25-220**

**§10 Purpose, scope, and applicability.**

A. This emergency temporary standard/emergency regulation is designed to establish requirements for employers to control, prevent, and mitigate the spread of COVID-19 to and among employees and employers.<sup>1</sup>

~~A.B.~~ This standard/regulation shall not be extended or amended without public participation in accordance with the Virginia Administrative Process Act, Va. Code §§ 2.2-4000 et seq. and 16 VAC 25-60-170.

~~B.C.~~ This standard/regulation adopted in accordance with Va. Code § 40.1-22(6)(a) or §2.24011 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<sup>2</sup> and 16VAC25-60-30<sup>3</sup>.

~~C.D.~~ This standard/regulation 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, Va. Code §40.1-51.1.A<sup>4</sup>, etc. Should this standard/regulation conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.

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

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<sup>1</sup> SOURCE: Michigan Occupational Safety and Health (MIOSHA) draft Emergency Rule

<sup>2</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-20>

<sup>3</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-30>

<sup>4</sup> <https://law.lis.virginia.gov/vacode/40.1-51.1/>

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

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

- a. The job tasks being undertaken; the known or suspected presence of the SARS-CoV-2 virus; the presence of a known or suspected COVID-19 person; the number of employees in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through close contact (i.e., inside of six feet) with other employees or persons (e.g., including shift work exceeding 8 hours per day);
- b. The type of contact, including potential exposure to the SARS-CoV-2 virus through respiratory droplets in the air; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.<sup>5</sup>

E. Reference to the term “employee” in this standard/regulation includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.

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

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<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

G. To the extent that an employer complies with requirements contained in CDC publications to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.

**§20 Dates.**

[Under §40.1-22(6)]

This emergency temporary standard shall take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia. This emergency temporary standard shall expire within six months of its effective date, upon expiration of the Governor's State of Emergency or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

[Under §2.2-4011]

This emergency regulation shall become effective upon approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012. This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

**§30 Definitions.**

“Administrative Control” means any procedure which 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.<sup>6</sup>

“Airborne infection isolation room (AIIR)”, formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide negative pressure in the room (so that air flows under the door gap into the

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<sup>6</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

room); *and* an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); *and* direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.<sup>7</sup>

“Asymptomatic” means an employee that has tested positive for SARS-CoV-2 but who is not symptomatic.

“Building/facility owner”<sup>8</sup> means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.

“CDC” means Centers for Disease Control.

“Cleaning” means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection.<sup>9</sup>

“Community transmission”, also called “community spread” means people have been infected with the virus in an area, including some who are not sure how or where they became infected.<sup>10</sup> The level of community transmission is classified by the CDC as:

1. “None to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facility, school, mass gathering);
2. “Moderate” is where there is widespread or sustained transmission with high likelihood or confirmed exposure within communal settings with potential for rapid increase in suspected cases; or

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<sup>7</sup> <https://www.cdc.gov/infectioncontrol/guidelines/isolation/glossary.html>

<sup>8</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1101>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>10</sup> Answer to question “What is community spread?”,

[https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vvtMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs\\_lcp=CgZwc3ktYWIQAzIECAAQQ1AAWABg5EBoAHAAeACAAYQBiAGEAZIBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKEwigkabqr7pAhXeI3IEHjgDh4Q4dUDCAw&uact=5](https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vvtMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs_lcp=CgZwc3ktYWIQAzIECAAQQ1AAWABg5EBoAHAAeACAAYQBiAGEAZIBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKEwigkabqr7pAhXeI3IEHjgDh4Q4dUDCAw&uact=5)

3. “Substantial” is where there is large scale community transmission, healthcare staffing significantly impacted, multiple cases within communal settings like healthcare facilities, schools, mass gatherings, etc.<sup>11</sup>

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

“Disinfecting” means using chemicals approved for use against SARS-CoV-2<sup>12</sup>, for example EPA-registered disinfectants, to kill germs on surfaces. This process 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.<sup>13</sup>

“Duration and frequency of employee exposure” means how long (“duration”) and how often (“frequency”) an employee is potentially exposed to SARS-CoV-2 or COVID-19. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 or COVID-19 situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

“Economic feasibility” means the employer is financially able to undertake the measures necessary to<sup>14</sup> comply with one or more requirements in this standard/regulation. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this standard/regulation has occurred. If an employer’s level of

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<sup>11</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>, Table 3.

<sup>12</sup> <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

<sup>13</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>14</sup> Federal OSHA FOM, Chapter 3, <https://www.osha.gov/enforcement/directives/cpl-02-00-164/chapter-3>

compliance lags significantly behind that of its industry, an employer’s claim of economic infeasibility will not be accepted.<sup>15</sup>

“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.

“Engineering control” means the use of substitution, isolation, ventilation, and equipment modification<sup>16</sup> to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

“Exposure risk level” means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease.

Hazards and job tasks have been divided into four risk exposure levels: “very high”, “high”, “medium”, and “lower”:

“Very high”<sup>17</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus and the COVID-19 disease including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person;
2. Collecting or handling specimens from a known or suspected COVID-19 patient or person (e.g., manipulating cultures from known or suspected COVID-19 patients);
3. Performing an autopsy, which generally involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

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<sup>15</sup> VOSH FOM, Chapter 5, pages 72-73, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>16</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>17</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

“High”<sup>18</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2 that are not otherwise classified as “very high” exposure risk including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient ~~in a hospital like setting~~, including field hospitals (e.g., doctors, nurses, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services<sup>19</sup>, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, contact tracer services, and chiropractic services;
3. First responder services ~~provided by police, fire, paramedic, search and rescue, recovery, and emergency medical services~~ provided to a known or suspected COVID-19 patient, resident, or other person;
4. Medical transport services (loading, transporting, unloading, etc.) provided to known or suspected COVID-19 patients (e.g., ground or air emergency transport, staff, operators, drivers, or pilots, etc.);
5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium”<sup>20</sup> exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than

<sup>18</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

<sup>19</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

<sup>20</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 20



minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to operations and services in:

~~6.—Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings, indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salons, and spas; sports, entertainment, movie, theater, etc., venues ; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and~~

~~7.1. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities, outpatient medical facilities, clinics, drug treatment programs, medical outreach services<sup>21</sup>, non-medical support services, mental health facilities, home health care, nursing homes, assisted living facilities, memory care facilities, hospice care, rehabilitation centers, doctors, dentists, chiropractors, first responders such as police, fire, paramedic and emergency medical services providers, medical transport; and contact tracers, etc.~~

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; nor contact inside six feet with other employees, other persons, or the general public except as otherwise provided in this definition.

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<sup>21</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

Employees in this category have minimal occupational contact with other employees, other persons, or the general public;<sup>22</sup> or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc.;
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for close contact (inside six feet of) with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

“Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to potentially contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth)<sup>23</sup>. A face covering is not intended to protect the wearer, but it may prevent the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from airborne particles.<sup>24</sup>

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<sup>22</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 18 to 20

<sup>23</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>24</sup> <https://www.osha.gov/SLTC/etools/eyeandface/ppe/impact.html#faceshields>

“Feasible” means both “technical” and “economic” feasibility as defined in this standard/regulation.

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

“Hand sanitizer” means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this standard/regulation.<sup>25</sup>

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

1. Contact inside six feet with a known COVID-19 person within the last 14 days,
2. Contact inside six feet with a suspected COVID-19 person within the last 14 days,
3. Being a resident of a locality, city, town, or county with moderate or substantial SARS-CoV-2 ongoing community transmission, or
4. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.

“Occupational exposure” means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards during job tasks.

“Personal protective equipment” means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.<sup>26</sup>

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<sup>25</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 8

<sup>26</sup> <https://www.osha.gov/SLTC/personalprotectiveequipment/>

“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons.<sup>27</sup> Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

3. Air-purifying, which remove contaminants from the air; and
4. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.<sup>28</sup>

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this standard/regulation.<sup>29</sup>

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV.<sup>30</sup> Coronaviruses are named for the crown-like spikes on their surface.<sup>31</sup> The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

“Surgical/Medical procedure mask” means a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing

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<sup>27</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

<sup>28</sup> <https://www.osha.gov/Publications/OSHA3079/osha3079.html>

<sup>29</sup> <https://www.dir.ca.gov/title8/5199.html>

<sup>30</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>

<sup>31</sup> <https://www.cdc.gov/coronavirus/types.html>

others in the same fashion. It protects the others from the wearer’s respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).<sup>32</sup>

“Suspected COVID-19” means a person that is COVID-19 symptomatic.

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.<sup>33</sup>

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this standard/regulation with a reasonable possibility that employee exposure to SARS-CoV-2 and COVID-19 hazards will be reduced.<sup>34</sup> If an employer’s level of compliance lags significantly behind that of their industry, allegations of technical infeasibility will not be accepted.<sup>35</sup>

“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

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<sup>32</sup> <https://www.cdc.gov/niosh/npptl/pdfs/UnderstandDifferenceInfographic-508.pdf>

<sup>33</sup> <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

<sup>34</sup> VOSH FOM, Chapter 5, pages 71-72,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>35</sup> VOSH FOM Chapter 5, pages 71-73,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

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.<sup>36</sup> **§40 Mandatory requirements for all employers.**<sup>37</sup>

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

A. 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 SARS-CoV-2 or COVID-19. Employers shall ~~classify each employee according to the hazards they are potentially exposed to and the job tasks they undertake and~~ ensure compliance with the applicable sections of this standard/-regulation for “very high,” “high,” “medium,” or “lower” risk levels of exposure.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness.<sup>38</sup>

3. Employers shall develop and implement policies and procedures for employees to report when they have tested positive for anti-SARS-CoV-2 antibodies through serologic testing:

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.

b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

<sup>36</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>37</sup> Partial source for this section: <https://labor.vermont.gov/vosha>

<sup>38</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic, [follow all requirements set forth in § 40.B \(“Return to Work”\) herein](#), and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily).

d. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19.<sup>39</sup> Such employees shall be designated by the employer as “suspected COVID-19”.

5. Employers shall not permit known COVID-19 or suspected COVID-19 employees or other persons to report to or be allowed to remain at work or on a job site until cleared for return to work or the job site (see §40.B). Nothing in this standard/regulation shall prohibit an employer from permitting a known or suspected COVID-19 employee from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to SARS-CoV-2 or COVID-19.

5. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act<sup>40</sup>, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.<sup>41</sup>

6. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home ~~and encourage them to develop non-punitive sick leave policies~~. Known COVID-19 and suspected COVID-19

<sup>39</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>40</sup> <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

<sup>41</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 11

~~subcontractor, contract,~~ or temporary employees shall not report to or be allowed to remain at work or on a job site until cleared for return to work. Subcontractors shall not allow their employees with known or suspected COVID-19 cases to report to or be allowed to remain at work or on a job site until cleared for return to work.

7. If an employer is notified of a COVID-19 positive test for one of its own employees, a subcontractor employee, contract, temporary employee, or other person who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

a. Its own employees who, upon reasonable belief of the employer may have been exposed, within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

~~b.—In the same manner as §40.A.7.a other employers whose employees were present at the work site during the same time period; and~~

~~e.b. In the same manner as §40.A.7.a the building/facility owner.~~

~~8. Each employer shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with the standard applicable to its industry.<sup>42 43 44</sup> Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.~~

## B. Return to Work.

1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee

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<sup>42</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1020>



<sup>43</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.33>

<sup>44</sup> Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1020>

has satisfied the symptoms based strategy requirements in §40.B.1.a will constitute compliance with the requirements of §40.B.<sup>45</sup>

a. For suspected or known COVID-19 employees the symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.

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

i. If a known or suspected COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.1.a symptom-based strategy.

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>46</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances.<sup>47</sup> While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.<sup>48</sup>

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<sup>45</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>46</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

<sup>47</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>48</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

- a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.
- b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected  $\geq 24$  hours apart (total of two negative specimens).
  - i. If a known asymptomatic COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.
    - . For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>49</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.
- C. Unless otherwise provided in this standard/regulation , employers shall ensure that employees observe physical distancing while on the job and during paid breaks on the employer’s property.
- D. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled.
  - 1. If the nature of an employer’s work or the work area does not allow employees to consume meals in the employee’s workspace while observing physical distancing, an employer may designate a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:
    - a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and the minimum physical distancing, hand washing/hand sanitizing, and space disinfecting requirements.

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<sup>49</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

- b. The employer shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit.
- c. Employees shall be required to wipe down their area prior to leaving, or the employer may provide for disinfecting of the area at regular intervals throughout the day, and between shifts of employees using the same work area (i.e., where an employee or groups of employees have a designated lunch period and the area can be cleaned in between occupancies).
- d. Hand washing facilities ~~and~~ or hand sanitizer are available to employees.

~~E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable executive order or order of public health emergency.~~

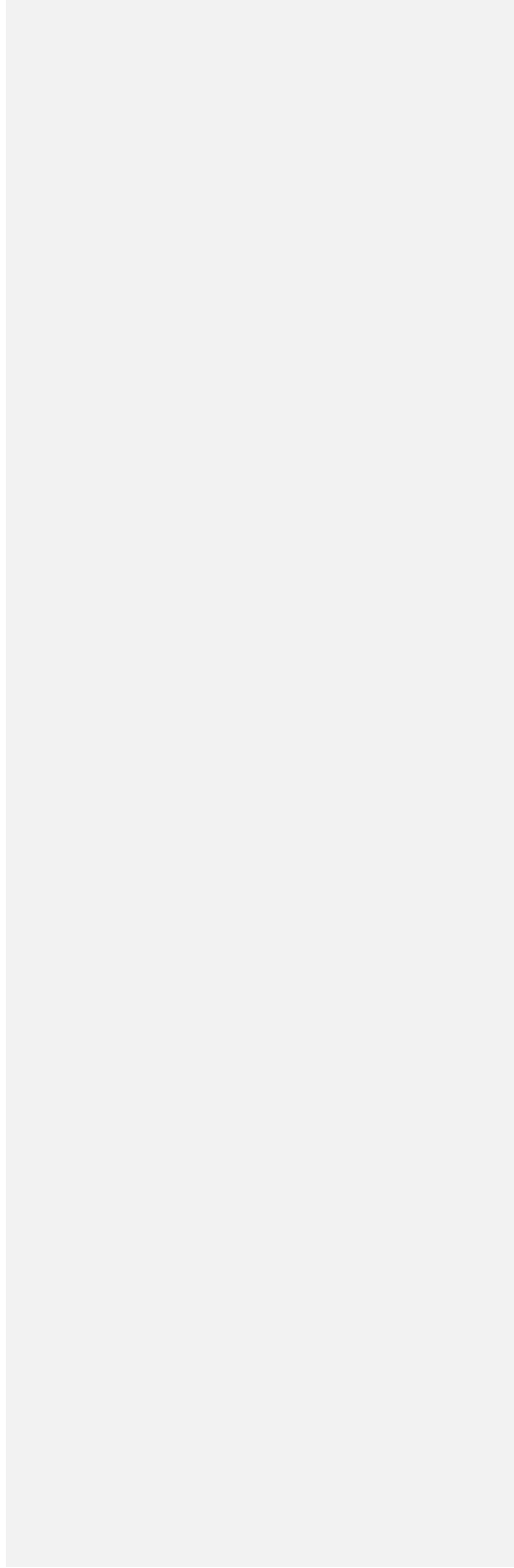
F.E. Where the nature of an employee’s work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable executive order or order of public health emergency.

G.F. Nothing in this section shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to their health or safety because of a medical condition; however, nothing in this standard/regulation shall negate an employer’s obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.<sup>50</sup>

H.G. Requests for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of

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<sup>50</sup> General Industry §§1910.132, 1910.133, 1910.138, and 1910.134; Construction §§1926.28, 1926.95, 1926.102, and 1926.103; Public Sector Shipyard §§1915.152, 1915.153, 1915.157, and 1915.154; Public Sector Marine Terminals §§ 1917.91, 1917.95, and 1917.1(a)(2)(x), 1917.92; and Public Sector Longshoring §§1918.101, 1918.102.



applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, ~~after consultation with the Office of the Attorney General.~~

#### I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this standard/regulation , employers shall comply with the VOSH sanitation standard/regulation applicable to its industry.<sup>51 52</sup>

<sup>53 54 55 56 57</sup>

2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use disinfectant supplies to clean surfaces contacted ~~during the interaction~~ frequently.

3. In addition to the requirements contained in this standard/regulation , employers shall comply with the VOSH hazard communication standard applicable to its industry.<sup>58</sup>

<sup>59 60 61 62 63</sup>

4. Areas in the place of employment where known COVID-19 and suspected COVID-19 employees or other persons accessed or worked shall be disinfected prior to allowing other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. Where feasible, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

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<sup>51</sup> General Industry: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

<sup>52</sup> Temporary Labor Camps: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142>

<sup>53</sup> Agriculture, Field Sanitation: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-180-10>

<sup>54</sup> Construction: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-160-10>

<sup>55</sup> Public Sector Shipyards: <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.88>

<sup>56</sup> Public Sector Marine Terminals: <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.127>

<sup>57</sup> Public Sector Longshoring: <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.95>

<sup>58</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>

<sup>59</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.59>

<sup>60</sup> Agriculture, <https://www.osha.gov/laws-regs/regulations/standardnumber/1928/1928.21>

<sup>61</sup> Public Sector Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1200>

<sup>62</sup> Public Sector Marine Terminals, <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.28>

<sup>63</sup> Public Sector Longshoring, <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.90>

6. Employers shall ensure only disinfecting chemicals and products ~~are used that are approved by~~indicated in the Environmental Protection Act (EPA) ~~and listed on~~List N for use against SARS-CoV-2 ~~and emerging viral pathogens~~.<sup>64</sup>

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).<sup>65</sup>

8. Employees shall have easy, frequent access, and permission to use soap and water ~~and or~~ hand sanitizer during 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 access to soap and water or hand sanitizer for frequent use at their work station. Mobile crews shall be provided with soap and water or hand sanitizer for use during the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

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

~~J. Anti Discrimination.~~

~~The employer shall ensure compliance with the anti-discriminations provisions of §90.~~

~~L. I.~~ Unless otherwise provided in this standard/regulation, 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

<sup>64</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>

<sup>65</sup> *Id.*

**§50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk.** The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure appropriate air-handling systems:
  - a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected COVID-19, and
  - b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>66</sup>
2. For employers not covered by §50.A.1 , ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace:
  - a. Are maintained in accordance with the manufacturer’s instructions; and
  - b. Comply with §50.A.1.b.
3. Hospitalized patients with known or suspected COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19.
5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected COVID-19 persons at the time of their death.

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<sup>66</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)



6. 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 known or suspected COVID-19 patients or persons.<sup>67</sup>
7. To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.

**B. Administrative and Work Practice Controls.**

1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.
2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.
4. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with §80.

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<sup>67</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 23-24

~~8. Ensure that psychological and behavioral support is available to address employee stress.<sup>68</sup>~~

~~9.8.~~ In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol<sup>69</sup> 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.<sup>70</sup>

~~10.9.~~ Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).

~~11.10.~~ Where feasible:

- a. Use verbal announcements, signage, and visual cues to promote physical distancing;
- b. Implement flexible worksites (e.g., telework);
- c. Implement flexible work hours (e.g., staggered shifts);
- d. Increase physical distancing between employees at the worksite to six feet;
- e. Increase physical distancing between employees and other persons to six feet;
- f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- g. 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.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

<sup>68</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

<sup>69</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

<sup>70</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

C. Personal Protective Equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 and COVID-19 hazard assessment, and personal protective equipment selection:<sup>71</sup>

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the standard/regulation, select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 or COVID-19 hazards identified in the hazard assessment;
- ii. Communicate selection decisions to each affected employee; and,
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 and COVID-19 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(s) of the hazard assessment; and, which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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

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<sup>71</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.

D. Employee training shall be provided in accordance with the requirements of §80 of this standard/regulation.

**§60 Requirements for hazards or job tasks classified at “medium” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace:

- a. Are maintained in accordance with the manufacturer’s instructions, and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>72</sup>
- a. To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV2 and COVID-19 virus transmission.

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<sup>72</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

B. Administrative and Work Practice Controls.

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

- a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;
- b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);
- c. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
- d. Implement flexible worksites (e.g., telework);
- e. Implement flexible work hours (e.g., staggered shifts);
- f. Increase physical distancing between employees at the worksite to six feet;
- g. Increase physical distancing between employees and other persons, including customers (e.g., drive-through, partitions) to six feet;
- h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- i. 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.);
- j. Deliver services remotely (e.g. phone, video, internet, etc.);
- k. Deliver products through curbside pick-up or delivery;
- l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;<sup>73</sup>

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<sup>73</sup> Source: LAJC Exhibit A

m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.

C. Personal Protective Equipment.

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 and COVID-19 related hazard assessment, and personal protective equipment selection:<sup>74</sup>

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the standard [regulation], select, and have each affected employee use, the types of PPE that will protect the affected employee from the SARS-CoV-2 or COVID-19 hazards identified in the hazard assessment;
- ii. Communicate selection decisions to each affected employee; and
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 and COVID-19 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(s) of the hazard assessment; and, which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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<sup>74</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

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

**§70 Infectious disease preparedness and response plan.**<sup>75</sup>

A. Employers with hazards or job tasks classified as:

1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;
2. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.

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

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

1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.
2. Consider and address the level(s) of SARS-CoV-2 and COVID-19 risk associated with various places of employment, the hazards employees are exposed to and job tasks employees perform at those sites. Such considerations shall include: a. Where, how, and to what sources of SARS-CoV-2 or COVID-19 might employees be exposed, including:
  - i. The general public, customers, other employees, patients, and other persons;
  - ii. Known or suspected COVID-19 persons 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, healthcare employees who have had unprotected exposures to known COVID-19 or suspected COVID-19 persons); and

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<sup>75</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>, starting at page 7

- iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.
  - b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy; etc.).
  - c. Controls necessary to address those risks.
3. Consider contingency plans for situations that may arise as a result of outbreaks, such as:
- a. Increased rates of employee absenteeism;
  - b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, personal protective equipment, including respirators, surgical/medical procedure masks, and face coverings;
  - c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
  - d. Interrupted supply chains or delayed deliveries.
4. Identify basic 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 disinfecting of surfaces, equipment, and other elements of the work environment.



5. Provide for the prompt identification and isolation of known COVID-19 and suspected COVID-19 employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.
6. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors that enter the place of employment, businesses that provide or contract or temporary employees to the employer, as well as other persons accessing the place of employment to comply with the requirements of this standard/regulation and the employer's plan.
7. Provide for training of employees classified as "very high" or "high" risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this standard/regulation, and requirements of the employer's Infectious Disease Preparedness and Response Plan.

**§80 Training.**

- A. Employers with hazards or job tasks classified at "very high" or "high" exposure risk shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The program shall enable each employee to recognize the hazards of SARS-CoV-2 and symptoms of COVID-19 and shall train each employee in the procedures to be followed in order to minimize these hazards.<sup>76</sup>
- B. Employees shall be trained on:
  1. The requirements of this standard/regulation ;
  2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
  3. The symptoms of the COVID-19 disease;
  4. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
  5. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;

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<sup>76</sup> 1926.503(a)(1)

6. PPE:

- a. When PPE is required;
- b. What PPE is required;
- c. How to properly don, doff, adjust, and wear PPE;
- d. When limitations of PPE; and
- e. The proper care, maintenance, useful life, and disposal of PPE;<sup>77</sup>

7. The anti-discrimination provisions of this standard/regulation in §90; and

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

C. Employers covered by §50 of this standard/regulation shall verify compliance with §80.A by preparing a written certification record for those employees exposed to hazards or job tasks classified at "very high," "high," or "medium" exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee's physical or electronic signature, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this standard/regulation, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.<sup>78</sup>

D. The latest training certification shall be maintained.<sup>79</sup>

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

1. Changes in the workplace, SARS-CoV-2 or COVID-19 hazards exposed to or job tasks performed render previous training obsolete;

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<sup>77</sup> Source: 1910.134(f), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

<sup>78</sup> 1926.503(b)(1)

<sup>79</sup> 1926.503(b)(2)

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.<sup>80</sup>

**§90 Discrimination against an employee for exercising rights under this standard/regulation is prohibited.**

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard/regulation or Title 40.1 of the Code of Virginia for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face mask, face shield, or gloves, if such equipment is not provided by the employer,<sup>81</sup> provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

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, or~~ a government agency, ~~or to the public such as through print, online, social, or any other media.~~<sup>82</sup>

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<sup>80</sup> 1926.503(c)

<sup>81</sup> Source: LAJC Exhibit A with modification

<sup>82</sup> Source: LAJC Exhibit A with modification

16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**

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

June 12, 2020



Contact Person:

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**NOTE:** Items highlighted in yellow are subject to change.

**RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation,** Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of [REDACTED]

The Department also recommends that the Board state in any motion it may make regarding this emergency temporary standard/emergency regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.

**16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

As Adopted by the  
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date:

16 VAC 25-220

## Emergency Temporary Standard/Emergency Regulation

### Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

#### 16 VAC 25-220

#### §10 Purpose, scope, and applicability.

- A. This emergency temporary standard/emergency regulation is designed to establish requirements for employers to control, prevent, and mitigate the spread of COVID-19 to and among employees and employers.<sup>1</sup>
- B. This standard/regulation adopted in accordance with Va. Code § 40.1-22(6)(a) or §2.2-4011 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<sup>2</sup> and 16VAC25-60-30<sup>3</sup>.
- C. This standard/regulation 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, Va. Code §40.1-51.1.A<sup>4</sup>, etc. Should this standard/regulation conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- D. Application of this standard/regulation to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard/regulation (i.e., “very high”, “high”, “medium”, and “lower”).

<sup>1</sup> SOURCE: Michigan Occupational Safety and Health (MIOSHA) draft Emergency Rule

<sup>2</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-20>

<sup>3</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-30>

<sup>4</sup> <https://law.lis.virginia.gov/vacode/40.1-51.1/>

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

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

a. The job tasks being undertaken; the known or suspected presence of the SARS-CoV-2 virus; the presence of a known or suspected COVID-19 person; the number of employees in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through close contact (i.e., inside of six feet) with other employees or persons (e.g., including shift work exceeding 8 hours per day);

b. The type of contact, including potential exposure to the SARS-CoV-2 virus through respiratory droplets in the air; airborne exposures in the form of aerosols, and contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.<sup>5</sup>

b-c.

E. Reference to the term “employee” in this **standard/regulation** includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.

<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

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

~~G. To the extent that an employer complies with requirements contained in CDC publications to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.~~

### §20 Dates.

[Under §40.1-22(6)]

This emergency temporary standard shall take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia. This emergency temporary standard shall expire within six months of its effective date or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

[Under §2.2-4011]

This emergency regulation shall become effective upon approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012. This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

### §30 Definitions.

“Administrative Control” means any procedure which 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.<sup>6</sup>

“Airborne infection isolation room (AIIR)”, formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to

<sup>6</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

**Commented [TP1]:** Compliance with CDC guidelines CANNOT supersede the VA OSHA standard. As pointed out during previous SHCB meetings, it is very hard to enforce guidelines. The Virginia rule must require better protections for workers and not rely solely on CDC Guidelines. See Recommendation: **This exemption must be removed as it would undermine all of the protections required in the standard.**

minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIRRs provide negative pressure in the room (so that air flows under the door gap into the room); *and* an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); *and* direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.<sup>7</sup>

“Asymptomatic” means an employee that has tested positive for SARS-CoV-2 but who is not symptomatic.

“Building/facility owner”<sup>8</sup> means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.

“CDC” means Centers for Disease Control.

“Cleaning” means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection.<sup>9</sup>

“Community transmission”, also called “community spread” means people have been infected with the virus in an area, including some who are not sure how or where they became infected.<sup>10</sup> The level of community transmission is classified by the CDC as:

1. “None to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facility, school, mass gathering);
2. “Moderate” is where there is widespread or sustained transmission with high likelihood or confirmed exposure within communal settings with potential for rapid increase in suspected cases; or

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<sup>7</sup> <https://www.cdc.gov/infectioncontrol/guidelines/isolation/glossary.html>

<sup>8</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1101>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>10</sup> Answer to question “What is community spread?”, [https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vvtMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs\\_lcp=CgZwc3ktYWIQAziECAAAQQ1AAWABg5EBoAHAAeACAAYQBiAGEAZiBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKewigkabqrd7pAhXel3IEHfigDh4Q4dUDCAw&uact=5](https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vvtMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs_lcp=CgZwc3ktYWIQAziECAAAQQ1AAWABg5EBoAHAAeACAAYQBiAGEAZiBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKewigkabqrd7pAhXel3IEHfigDh4Q4dUDCAw&uact=5)

3. “Substantial” is where there is large scale community transmission, healthcare staffing significantly impacted, multiple cases within communal settings like healthcare facilities, schools, mass gatherings, etc.<sup>11</sup>

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

“Disinfecting” means using chemicals approved for use against SARS-CoV-2<sup>12</sup>, for example EPA-registered disinfectants, to kill germs on surfaces. This process 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.<sup>13</sup>

“Duration and frequency of employee exposure” means how long (“duration”) and how often (“frequency”) an employee is potentially exposed to SARS-CoV-2 or COVID-19. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 or COVID-19 situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

“Economic feasibility” means the employer is financially able to undertake the measures necessary to<sup>14</sup> comply with one or more requirements in this **standard/regulation**. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this **standard/regulation** has occurred. If an employer’s level of

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<sup>11</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>, Table 3.

<sup>12</sup> <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

<sup>13</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>14</sup> Federal OSHA FOM, Chapter 3, <https://www.osha.gov/enforcement/directives/cpl-02-00-164/chapter-3>

compliance lags significantly behind that of its industry, an employer’s claim of economic infeasibility will not be accepted.<sup>15</sup>

“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.

“Engineering control” means the use of substitution, isolation, ventilation, and equipment modification<sup>16</sup> to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

“Exposure risk level” means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. Hazards and job tasks have been divided into four risk exposure levels: “very high”, “high”, “medium”, and “lower”:

“Very high”<sup>17</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus and the COVID-19 disease including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person;
2. Collecting or handling specimens from a known or suspected COVID-19 patient or person (e.g., manipulating cultures from known or suspected COVID-19 patients);
3. Performing an autopsy, which generally involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

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<sup>15</sup> VOSH FOM, Chapter 5, pages 72-73, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>16</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>17</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

“High”<sup>18</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2 that are not otherwise classified as “very high” exposure risk including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient in a hospital like setting, including field hospitals (e.g., doctors, nurses, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services<sup>19</sup>, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, contact tracer services, and chiropractic services;
3. First responder services provided by police, fire, paramedic, search and rescue, recovery, and emergency medical services provided to a known or suspected COVID-19 patient, resident, or other person;
4. Medical transport services (loading, transporting, unloading, etc.) provided to known or suspected COVID-19 patients (e.g., ground or air emergency transport, staff, operators, drivers, or pilots, etc.);
5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium”<sup>20</sup> exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than

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<sup>18</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

<sup>19</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

<sup>20</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 20

minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings, indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salons, and spas; sports, entertainment, movie, theater, etc., venues ; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and
2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities, outpatient medical facilities, clinics, drug treatment programs, medical outreach services<sup>21</sup>, non-medical support services, mental health facilities, home health care, nursing homes, assisted living facilities, memory care facilities, hospice care, rehabilitation centers, doctors, dentists, chiropractors, first responders such as police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; nor contact inside six feet with other employees, other persons, or the general public except as otherwise provided in this definition.

**Commented [TP2]:** These workers should be placed the high risk classification at a minimum. Meatpacking plants have become COVID-19 hotspots across the U.S. and there have been specific reports of problems with meatpacking plants in Virginia. We have had reports of workers having trouble receiving information, working in close proximity to each other, increased lines speeds, and lack of training.

<sup>21</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

Employees in this category have minimal occupational contact with other employees, other persons, or the general public;<sup>22</sup> or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc.;
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for close contact (inside six feet of) with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

“Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to potentially contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth)<sup>23</sup>. A face covering is not intended to protect the wearer, but it may prevent the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from airborne particles.<sup>24</sup>

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<sup>22</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 18 to 20

<sup>23</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>24</sup> <https://www.osha.gov/SLTC/etools/eyeandface/ppe/impact.html#faceshields>

“Feasible” means both “technical” and “economic” feasibility as defined in this [standard/regulation](#).

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

“Hand sanitizer” means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this [standard/regulation](#).<sup>25</sup>

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

1. Contact inside six feet with a known COVID-19 person within the last 14 days,
2. Contact inside six feet with a suspected COVID-19 person within the last 14 days,
3. Being a resident of a locality, city, town, or county with moderate or substantial SARS-CoV-2 ongoing community transmission, or
4. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.

“Occupational exposure” means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards during job tasks.

“Personal protective equipment” means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.<sup>26</sup>

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<sup>25</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 8

<sup>26</sup> <https://www.osha.gov/SLTC/personalprotectiveequipment/>



“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons.<sup>27</sup> Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

3. Air-purifying, which remove contaminants from the air; and
4. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.<sup>28</sup>

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this **standard/regulation**.<sup>29</sup>

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV.<sup>30</sup> Coronaviruses are named for the crown-like spikes on their surface.<sup>31</sup> The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

“Surgical/Medical procedure mask” means a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing

<sup>27</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

<sup>28</sup> <https://www.osha.gov/Publications/OSHA3079/osha3079.html>

<sup>29</sup> <https://www.dir.ca.gov/title8/5199.html>

<sup>30</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>

<sup>31</sup> <https://www.cdc.gov/coronavirus/types.html>

others in the same fashion. It protects the others from the wearer’s respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).<sup>32</sup>

“Suspected COVID-19” means a person that is COVID-19 symptomatic.

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.<sup>33</sup>

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this **standard/regulation** with a reasonable possibility that employee exposure to SARS-CoV-2 and COVID-19 hazards will be reduced.<sup>34</sup> If an employer’s level of compliance lags significantly behind that of their industry, allegations of technical infeasibility will not be accepted.<sup>35</sup>

“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

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<sup>32</sup> <https://www.cdc.gov/niosh/npptl/pdfs/UnderstandDifferenceInfographic-508.pdf>

<sup>33</sup> <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

<sup>34</sup> VOSH FOM, Chapter 5, pages 71-72,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>35</sup> VOSH FOM Chapter 5, pages 71-73,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

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.<sup>36</sup>

**§40 Mandatory requirements for all employers.<sup>37</sup>**

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

- A. 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 SARS-CoV-2 or COVID-19. Employers shall classify each employee according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this **standard/regulation** for “very high,” “high,” “medium,” or “lower” risk levels of exposure.
  - 2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness.<sup>38</sup>
  - 3. Employers shall develop and implement policies and procedures for employees to report when they have tested positive for anti-SARS-CoV-2 antibodies through serologic testing:
    - a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.
    - b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

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<sup>36</sup> VOSH FOM Chapter 5, page 71,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>37</sup> Partial source for this section: <https://labor.vermont.gov/vosha>

<sup>38</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily).

d. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19.<sup>39</sup> Such employees shall be designated by the employer as “suspected COVID-19”.

5. Employers shall not permit known COVID-19 or suspected COVID-19 employees or other persons to report to or be allowed to remain at work or on a job site until cleared for return to work or the job site (see §40.B). Nothing in this standard/regulation shall prohibit an employer from permitting a known or suspected COVID-19 employee from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to SARS-CoV-2 or COVID-19.

5. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act<sup>40</sup>, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.<sup>41</sup>

6. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected COVID-19

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<sup>39</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>40</sup> <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

<sup>41</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 11

subcontractor, contract, or temporary employees shall not report to or be allowed to remain at work or on a job site until cleared for return to work.

7. If an employer is notified of a COVID-19 positive test for one of its own employees, a subcontractor employee, contract, temporary employee, or other person who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

a. Its own employees within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable Virginia laws and regulations;

b. In the same manner as §40.A.7.a other employers whose employees were present at the work site during the same time period; and

c. In the same manner as §40.A.7.a the building/facility owner.

8. Each employer shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with the standard applicable to its industry.<sup>42 43 44</sup> Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.

#### B. Return to Work.

1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee

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<sup>42</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1020>

<sup>43</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.33>

<sup>44</sup> Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1020>

has satisfied the symptoms based strategy requirements in §40.B.1.a will constitute compliance with the requirements of §40.B.<sup>45</sup>

a. For suspected or known COVID-19 employees the symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.

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

i. If a known or suspected COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.1.a symptom-based strategy.

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>46</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances.<sup>47</sup> While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.<sup>48</sup>

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<sup>45</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>46</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

<sup>47</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>48</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

- a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.
- b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected ≥24 hours apart (total of two negative specimens).
  - i. If a known asymptomatic COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.
  - ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>49</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.
- C. Unless otherwise provided in this **standard/regulation**, employers shall ensure that employees observe physical distancing while on the job and during paid breaks on the employer’s property.
- D. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled.
  - 1. If the nature of an employer’s work or the work area does not allow employees to consume meals in the employee’s workspace while observing physical distancing, an employer may designate a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:
    - a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and the minimum physical distancing, hand washing/hand sanitizing, and space disinfecting requirements.

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<sup>49</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

- b. The employer shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit.
  - c. Employees shall be required to wipe down their area prior to leaving, or the employer may provide for disinfecting of the area at regular intervals throughout the day, and between shifts of employees using the same work area (i.e., where an employee or groups of employees have a designated lunch period and the area can be cleaned in between occupancies).
  - d. Hand washing facilities and hand sanitizer are available to employees
- E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable executive order or order of public health emergency.
- F. Where the nature of an employee’s work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable executive order or order of public health emergency.
- G. Nothing in this section shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to their health or safety because of a medical condition; however, nothing in this **standard/regulation** shall negate an employer’s obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.<sup>50</sup>
- H. Requests for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of

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<sup>50</sup> General Industry §§1910.132, 1910.133, 1910.138, and 1910.134; Construction §§1926.28, 1926.95, 1926.102, and 1926.103; Public Sector Shipyard §§1915.152, 1915.153, 1915.157, and 1915.154; Public Sector Marine Terminals §§ 1917.91, 1917.95, and 1917.1(a)(2)(x), 1917.92; and Public Sector Longshoring §§1918.101, 1918.102.



applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after consultation with the Office of the Attorney General.

I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this [standard/regulation](#), employers shall comply with the VOSH sanitation [standard/regulation](#) applicable to its industry.<sup>51 52</sup>

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2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use disinfectant supplies to clean surfaces contacted during the interaction.

3. In addition to the requirements contained in this [standard/regulation](#), employers shall comply with the VOSH hazard communication standard applicable to its industry.<sup>58</sup>

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4. Areas in the place of employment where known COVID-19 and suspected COVID-19 employees or other persons accessed or worked shall be disinfected prior to allowing other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. Where feasible, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

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<sup>51</sup> General Industry: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

<sup>52</sup> Temporary Labor Camps: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142>

<sup>53</sup> Agriculture, Field Sanitation: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-180-10>

<sup>54</sup> Construction: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-160-10>

<sup>55</sup> Public Sector Shipyards: <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.88>

<sup>56</sup> Public Sector Marine Terminals: <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.127>

<sup>57</sup> Public Sector Longshoring: <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.95>

<sup>58</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>

<sup>59</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.59>

<sup>60</sup> Agriculture, <https://www.osha.gov/laws-regs/regulations/standardnumber/1928/1928.21>

<sup>61</sup> Public Sector Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1200>

<sup>62</sup> Public Sector Marine Terminals, <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.28>

<sup>63</sup> Public Sector Longshoring, <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.90>

6. Employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.<sup>64</sup>

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).<sup>65</sup>

8. Employees shall have easy, frequent access, and permission to use soap and water and hand sanitizer during 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 at their work station. Mobile crews shall be provided with hand sanitizer for use during the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

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

J. Anti-Discrimination.

The employer shall ensure compliance with the anti-discriminations provisions of **§90**.

K. Unless otherwise provided in this **standard/regulation**, 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

**§50 Requirements for hazards or job tasks classified at "very high" or "high" exposure risk.**

<sup>64</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>

<sup>65</sup> *Id.*

The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure appropriate air-handling systems:
  - a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected COVID-19, and
  - b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>66</sup>
2. For employers not covered by §50.A.1, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace:
  - a. Are maintained in accordance with the manufacturer’s instructions; and
  - b. Comply with §50.A.1.b.
3. Hospitalized patients with known or suspected COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19.
5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected COVID-19 persons at the time of their death.

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<sup>66</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

6. 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 known or suspected COVID-19 patients or persons.<sup>67</sup>
  7. To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.
- B. Administrative and Work Practice Controls.
1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.
  2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
  3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.
  4. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
  5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
  6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
  7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with §80.

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<sup>67</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 23-24

8. Ensure that psychological and behavioral support is available to address employee stress **at no cost to the employee**.<sup>68</sup>

9. In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol<sup>69</sup> 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.<sup>70</sup>

10. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).

11. Where feasible:

- a. Use verbal announcements, signage, and visual cues to promote physical distancing;
- b. Implement flexible worksites (e.g., telework);
- c. Implement flexible work hours (e.g., staggered shifts);
- d. Increase physical distancing between employees at the worksite to six feet;
- e. Increase physical distancing between employees and other persons to six feet;
- f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- g. 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.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

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<sup>68</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

<sup>69</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

<sup>70</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

C. Personal Protective Equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 and COVID-19 hazard assessment, and personal protective equipment selection:<sup>71</sup>

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the **standard/regulation**, select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 or COVID-19 hazards identified in the hazard assessment;
- ii. Communicate selection decisions to each affected employee; and,
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 and COVID-19 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(s) of the hazard assessment; and, which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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

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<sup>71</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.

D. Employee training shall be provided in accordance with the requirements of §80 of this standard/regulation.

**§60 Requirements for hazards or job tasks classified at “medium” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace:

- a. Are maintained in accordance with the manufacturer’s instructions, and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>72</sup>
- a. To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV2 and COVID-19 virus transmission.

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<sup>72</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

B. Administrative and Work Practice Controls.

1. To the extent feasible, employers shall implement the following administrative and work practice controls:
  - a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;
  - b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);
  - c. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
  - d. Implement flexible worksites (e.g., telework);
  - e. Implement flexible work hours (e.g., staggered shifts);
  - f. Increase physical distancing between employees at the worksite to six feet;
  - g. Increase physical distancing between employees and other persons, including customers (e.g., drive-through, partitions) to six feet;
  - h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
  - i. 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.);
  - j. Deliver services remotely (e.g. phone, video, internet, etc.);
  - k. Deliver products through curbside pick-up or delivery;
  - l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;<sup>73</sup>

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<sup>73</sup> Source: LAJC Exhibit A



m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.

C. Personal Protective Equipment.

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 and COVID-19 related hazard assessment, and personal protective equipment selection:<sup>74</sup>

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the standard [regulation], select, and have each affected employee use, the types of PPE that will protect the affected employee from the SARS-CoV-2 or COVID-19 hazards identified in the hazard assessment;
- ii. Communicate selection decisions to each affected employee; and
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 and COVID-19 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(s) of the hazard assessment; and, which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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<sup>74</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

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

**§70 Infectious disease preparedness and response plan.<sup>75</sup>**

- A. Employers with hazards or job tasks classified as:
  - 1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;
  - 2. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.
- B. The plan and training requirements tied to the plan shall only apply to those employees classified as “very high,” “high,” and “medium” covered by this section.
- C. Employers shall designate a person to be responsible for implementing their Plan. The Plan shall:
  - 1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.
  - 2. Consider and address the level(s) of SARS-CoV-2 and COVID-19 risk associated with various places of employment, the hazards employees are exposed to and job tasks employees perform at those sites. Such considerations shall include:
    - a. Where, how, and to what sources of SARS-CoV-2 or COVID-19 might employees be exposed, including:
      - i. The general public, customers, other employees, patients, and other persons;
      - ii. Known or suspected COVID-19 persons 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, healthcare employees who have had unprotected exposures to known COVID-19 or suspected COVID-19 persons); and

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<sup>75</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>, starting at page 7

- iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.
  - b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy; etc.).
  - c. Controls necessary to address those risks.
3. Consider contingency plans for situations that may arise as a result of outbreaks, such as:
- a. Increased rates of employee absenteeism;
  - b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, personal protective equipment, including respirators, surgical/medical procedure masks, and face coverings;
  - c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
  - d. Interrupted supply chains or delayed deliveries.
4. Identify basic 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 disinfecting of surfaces, equipment, and other elements of the work environment.

5. Provide for the prompt identification and isolation of known COVID-19 and suspected COVID-19 employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.
6. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors that enter the place of employment, businesses that provide or contract or temporary employees to the employer, as well as other persons accessing the place of employment to comply with the requirements of this **standard/regulation** and the employer's plan.
7. Provide for training of employees classified as "very high" or "high" risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this **standard/regulation**, and requirements of the employer's Infectious Disease Preparedness and Response Plan.

**§80 Training.**

- A. Employers with hazards or job tasks classified at "very high" or "high" that create potential COVID-19-exposure risk shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The program shall enable each employee to recognize the hazards of SARS-CoV-2 and symptoms of COVID-19 and shall train each employee in the procedures to be followed in order to minimize these hazards.<sup>76</sup>
- B. Employees shall be trained on:
  1. The requirements of this **standard/regulation**;
  2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
  3. The symptoms of the COVID-19 disease;
  4. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
  5. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;

**Commented [TP3]:** All employees with potential exposure must receive training.

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<sup>76</sup> 1926.503(a)(1)

6. PPE:
    - a. When PPE is required;
    - b. What PPE is required;
    - c. How to properly don, doff, adjust, and wear PPE;
    - d. When limitations of PPE; and
    - e. The proper care, maintenance, useful life, and disposal of PPE;<sup>77</sup>
  7. The anti-discrimination provisions of this **standard/regulation in §90**; and
  8. The employer's Infectious Disease Preparedness and Response Plan, where applicable.
- C. Employers covered by **§50** of this **standard/regulation** shall verify compliance with **§80.A** by preparing a written certification record for those employees exposed to hazards or job tasks classified at "very high," "high," or "medium" exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee's physical or electronic signature, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this **standard/regulation**, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.<sup>78</sup>
- D. The latest training certification shall be maintained.<sup>79</sup>
- E. "Retraining." When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by **§80.A**, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:
1. Changes in the workplace, SARS-CoV-2 or COVID-19 hazards exposed to or job tasks performed render previous training obsolete;

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<sup>77</sup> Source: 1910.134(f), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

<sup>78</sup> 1926.503(b)(1)

<sup>79</sup> 1926.503(b)(2)

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.<sup>80</sup>

**§90 Discrimination against an employee for exercising rights under this standard/regulation is prohibited.**

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard/regulation or Title 40.1 of the Code of Virginia for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face mask, face shield, or gloves, if such equipment is not provided by the employer,<sup>81</sup> provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

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.<sup>82</sup>

D. Add a section of cross-reference employees' right to refuse unsafe work.  
C-E.

**Commented [TP4]:** A.Recommendation: Include a cross-reference to existing Federal OSHA rule or VA equivalent rule to refuse unsafe work. <https://www.osha.gov/right-to-refuse.html> or <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-110&000+reg+16VAC25-60-110> <https://www.doli.virginia.gov/vosh-programs/whistleblower/> (Refusal to Work)

<sup>80</sup> 1926.503(c)

<sup>81</sup> Source: LAJC Exhibit A with modification

<sup>82</sup> Source: LAJC Exhibit A with modification

16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**

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

June 12, 2020



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**NOTE:** Items highlighted in yellow are subject to change.

**RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation,** Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of [REDACTED]

The Department also recommends that the Board state in any motion it may make regarding this emergency temporary standard/emergency regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.



**16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

As Adopted by the  
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date:

16 VAC 25-220

## Emergency Temporary Standard/Emergency Regulation

### Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

#### 16 VAC 25-220

#### §10 Purpose, scope, and applicability.

- A. This emergency temporary standard/emergency regulation is designed to establish requirements for employers to control, prevent, and mitigate the spread of COVID-19 to and among employees and employers.<sup>1</sup>
- B. This standard/regulation adopted in accordance with Va. Code § 40.1-22(6)(a) or §2.2-4011 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<sup>2</sup> and 16VAC25-60-30<sup>3</sup>.
- C. This standard/regulation 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, Va. Code §40.1-51.1.A<sup>4</sup>, etc. Should this standard/regulation conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- D. Application of this standard/regulation to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard/regulation (i.e., “very high”, “high”, “medium”, and “lower”).

<sup>1</sup> SOURCE: Michigan Occupational Safety and Health (MIOSHA) draft Emergency Rule

<sup>2</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-20>

<sup>3</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-30>

<sup>4</sup> <https://law.lis.virginia.gov/vacode/40.1-51.1/>

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

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

- a. The job tasks being undertaken; the known or suspected presence of the SARS-CoV-2 virus; the presence of a known or suspected COVID-19 person; the number of employees in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through close contact (i.e., inside of six feet) with other employees or persons (e.g., including shift work exceeding 8 hours per day);
- b. The type of contact, including potential exposure to the SARS-CoV-2 virus through respiratory droplets in the air; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.<sup>5</sup>

E. Reference to the term “employee” in this **standard/regulation** includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.

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

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<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

~~G. To the extent that an employer complies with requirements contained in CDC publications to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.~~

Commented [WJ(1)]: Submitted by Millie Rodriguez

#### §20 Dates.

[Under §40.1-22(6)]

This emergency temporary standard shall take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia. This emergency temporary standard shall expire within six months of its effective date or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

[Under §2.2-4011]

This emergency regulation shall become effective upon approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012. This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

#### §30 Definitions.

“Administrative Control” means any procedure which 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.<sup>6</sup>

“Airborne infection isolation room (AIIR)”, formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide negative pressure in the room (so that air flows under the door gap into the

<sup>6</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

room); *and* an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); *and* direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.<sup>7</sup>

“Asymptomatic” means an employee that has tested positive for SARS-CoV-2 but who is not symptomatic.

“Building/facility owner”<sup>8</sup> means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.

“CDC” means Centers for Disease Control.

“Cleaning” means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection.<sup>9</sup>

“Community transmission”, also called “community spread” means people have been infected with the virus in an area, including some who are not sure how or where they became infected.<sup>10</sup> The level of community transmission is classified by the CDC as:

1. “None to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facility, school, mass gathering);
2. “Moderate” is where there is widespread or sustained transmission with high likelihood or confirmed exposure within communal settings with potential for rapid increase in suspected cases; or

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<sup>7</sup> <https://www.cdc.gov/infectioncontrol/guidelines/isolation/glossary.html>

<sup>8</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1101>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>10</sup> Answer to question “What is community spread?”, [https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vvtMP-MG78AE&q=community+transmission+definition&og=community+transmission+definition&gs\\_lcp=CgZwc3ktYWIQAziECAAQ1AAWABg5EB0AHAAeACAAYQBIAGEAZIBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKewigkabqrd7pAhXel3IEHfigDh4Q4dUDCAw&uact=5](https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vvtMP-MG78AE&q=community+transmission+definition&og=community+transmission+definition&gs_lcp=CgZwc3ktYWIQAziECAAQ1AAWABg5EB0AHAAeACAAYQBIAGEAZIBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKewigkabqrd7pAhXel3IEHfigDh4Q4dUDCAw&uact=5)

3. “Substantial” is where there is large scale community transmission, healthcare staffing significantly impacted, multiple cases within communal settings like healthcare facilities, schools, mass gatherings, etc.<sup>11</sup>

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

“Disinfecting” means using chemicals approved for use against SARS-CoV-2<sup>12</sup>, for example EPA-registered disinfectants, to kill germs on surfaces. This process 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.<sup>13</sup>

“Duration and frequency of employee exposure” means how long (“duration”) and how often (“frequency”) an employee is potentially exposed to SARS-CoV-2 or COVID-19. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 or COVID-19 situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

“Economic feasibility” means the employer is financially able to undertake the measures necessary to<sup>14</sup> comply with one or more requirements in this **standard/regulation**. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this **standard/regulation** has occurred. If an employer’s level of

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<sup>11</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>, Table 3.

<sup>12</sup> <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

<sup>13</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>14</sup> Federal OSHA FOM, Chapter 3, <https://www.osha.gov/enforcement/directives/cpl-02-00-164/chapter-3>

compliance lags significantly behind that of its industry, an employer’s claim of economic infeasibility will not be accepted.<sup>15</sup>

“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.

“Engineering control” means the use of substitution, isolation, ventilation, and equipment modification<sup>16</sup> to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

“Exposure risk level” means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. Hazards and job tasks have been divided into four risk exposure levels: “very high”, “high”, “medium”, and “lower”:

“Very high”<sup>17</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus and the COVID-19 disease including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person;
2. Collecting or handling specimens from a known or suspected COVID-19 patient or person (e.g., manipulating cultures from known or suspected COVID-19 patients);
3. Performing an autopsy, which generally involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

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<sup>15</sup> VOSH FOM, Chapter 5, pages 72-73, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>16</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>17</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

“High”<sup>18</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2 that are not otherwise classified as “very high” exposure risk including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient in a hospital like setting, including field hospitals (e.g., doctors, nurses, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services<sup>19</sup>, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, contact tracer services, and chiropractic services;
3. First responder services provided by police, fire, paramedic, search and rescue, recovery, and emergency medical services provided to a known or suspected COVID-19 patient, resident, or other person;
4. Medical transport services (loading, transporting, unloading, etc.) provided to known or suspected COVID-19 patients (e.g., ground or air emergency transport, staff, operators, drivers, or pilots, etc.);
5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium”<sup>20</sup> exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than

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<sup>18</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

<sup>19</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

<sup>20</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 20



minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings, indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salons, and spas; sports, entertainment, movie, theater, etc., venues ; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and
2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities, outpatient medical facilities, clinics, drug treatment programs, medical outreach services<sup>21</sup>, non-medical support services, mental health facilities, home health care, nursing homes, assisted living facilities, memory care facilities, hospice care, rehabilitation centers, doctors, dentists, chiropractors, first responders such as police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; nor contact inside six feet with other employees, other persons, or the general public except as otherwise provided in this definition.

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<sup>21</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

Employees in this category have minimal occupational contact with other employees, other persons, or the general public;<sup>22</sup> or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc.;
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for close contact (inside six feet of) with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

“Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to potentially contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth)<sup>23</sup>. A face covering is not intended to protect the wearer, but it may prevent the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from airborne particles.<sup>24</sup>

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<sup>22</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 18 to 20

<sup>23</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>24</sup> <https://www.osha.gov/SLTC/etools/eyeandface/ppe/impact.html#faceshields>

“Feasible” means both “technical” and “economic” feasibility as defined in this **standard/regulation**.

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

“Hand sanitizer” means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this **standard/regulation**.<sup>25</sup>

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

1. Contact inside six feet with a known COVID-19 person within the last 14 days,
2. Contact inside six feet with a suspected COVID-19 person within the last 14 days,
3. Being a resident of a locality, city, town, or county with moderate or substantial SARS-CoV-2 ongoing community transmission, or
4. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.

“Occupational exposure” means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards during job tasks.

“Personal protective equipment” means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.<sup>26</sup>

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<sup>25</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 8

<sup>26</sup> <https://www.osha.gov/SLTC/personalprotectiveequipment/>

“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons.<sup>27</sup> Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

3. Air-purifying, which remove contaminants from the air; and
4. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.<sup>28</sup>

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this **standard/regulation**.<sup>29</sup>

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV.<sup>30</sup> Coronaviruses are named for the crown-like spikes on their surface.<sup>31</sup> The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

“Surgical/Medical procedure mask” means a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing

<sup>27</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

<sup>28</sup> <https://www.osha.gov/Publications/OSHA3079/osha3079.html>

<sup>29</sup> <https://www.dir.ca.gov/title8/5199.html>

<sup>30</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>

<sup>31</sup> <https://www.cdc.gov/coronavirus/types.html>

others in the same fashion. It protects the others from the wearer’s respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).<sup>32</sup>

“Suspected COVID-19” means a person that is COVID-19 symptomatic.

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.<sup>33</sup>

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this **standard/regulation** with a reasonable possibility that employee exposure to SARS-CoV-2 and COVID-19 hazards will be reduced.<sup>34</sup> If an employer’s level of compliance lags significantly behind that of their industry, allegations of technical infeasibility will not be accepted.<sup>35</sup>

“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

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<sup>32</sup> <https://www.cdc.gov/niosh/npptl/pdfs/UnderstandDifferenceInfographic-508.pdf>

<sup>33</sup> <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

<sup>34</sup> VOSH FOM, Chapter 5, pages 71-72,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>35</sup> VOSH FOM Chapter 5, pages 71-73,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

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.<sup>36</sup>

**§40 Mandatory requirements for all employers.<sup>37</sup>**

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

- A. 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 SARS-CoV-2 or COVID-19. Employers shall classify each employee according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this **standard/regulation** for “very high,” “high,” “medium,” or “lower” risk levels of exposure.
  - 2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness.<sup>38</sup>
  - ~~3.—Employers shall develop and implement policies and procedures for employees to report when they have tested positive for anti-SARS-CoV-2 antibodies through serologic testing:
    - d.—Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.
    - e.—Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.~~

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<sup>36</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>37</sup> Partial source for this section: <https://labor.vermont.gov/vosha>

<sup>38</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

~~f.—Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily).~~

~~g.—There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.~~

**Commented [WJ(3):** Submitted by Millie Rodriguez

~~8-3.~~ Employers shall develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19.<sup>39</sup> Such employees shall be designated by the employer as “suspected COVID-19”.

~~9-4.~~ Employers shall not permit known COVID-19 or suspected COVID-19 employees or other persons to report to or be allowed to remain at work or on a job site until cleared for return to work or the job site (see §40.B). Nothing in this standard/regulation shall prohibit an employer from permitting a known or suspected COVID-19 employee from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to SARS-CoV-2 or COVID-19.

5. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act<sup>40</sup>, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.<sup>41</sup>

6. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at work or on a job site until cleared for return to work.

7. If an employer is notified of a COVID-19 positive test for one of its own employees, a subcontractor employee, contract, temporary employee, or other person who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

- a. Its own employees within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable Virginia laws and regulations;

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<sup>39</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>40</sup> <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

<sup>41</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 11



b. In the same manner as §40.A.7.a other employers whose employees were present at the work site during the same time period; and

c. In the same manner as §40.A.7.a the building/facility owner.

d. The Virginia Department of Health within 24 hours of the discovery of a positive case.

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three (3) or more employees present at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day time period.

8. If an employer is notified of the results of an anti-SARS-CoV-2 antibody test for an employee, the employer shall not utilize the results of that test to make decisions about returning to work or other work-related determinations for that individual employee:

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.

b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

c. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.<sup>42</sup>

9. Each employer shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with the standard applicable to its industry.<sup>43 44 45</sup> Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.

## B. Return to Work.

<sup>42</sup> <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>

<sup>43</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1020>

<sup>44</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.33>

<sup>45</sup> Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1020>

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1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in §40.B.1.a will constitute compliance with the requirements of §40.B.<sup>46</sup>

a. For suspected or known COVID-19 employees the symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.

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

i. If a known or suspected COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.1.a symptom-based strategy.

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>47</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances.<sup>48</sup> While an

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<sup>46</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>47</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

<sup>48</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.<sup>49</sup>

a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.

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

i. If a known asymptomatic COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>50</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

C. Unless otherwise provided in this standard/regulation, employers shall ensure that employees observe physical distancing while on the job and during paid breaks on the employer’s property.

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

1. If the nature of an employer’s work or the work area does not allow employees to consume meals in the employee’s workspace while observing physical distancing, an employer may designate a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:

<sup>49</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>50</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

- a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and the minimum physical distancing, hand washing/hand sanitizing, and space disinfecting requirements.
  - b. The employer shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit.
  - c. Employees shall be required to wipe down their area prior to leaving, or the employer may provide for disinfecting of the area at regular intervals throughout the day, and between shifts of employees using the same work area (i.e., where an employee or groups of employees have a designated lunch period and the area can be cleaned in between occupancies).
  - d. Hand washing facilities and hand sanitizer are available to employees
- E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable executive order or order of public health emergency.
- F. Where the nature of an employee's work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable executive order or order of public health emergency.
- G. Nothing in this section shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to their health or safety because of a medical condition; however, nothing in this

**standard/regulation** shall negate an employer’s obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.<sup>51</sup>

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

I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH sanitation **standard/regulation** applicable to its industry.<sup>52 53</sup>  
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2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use disinfectant supplies to clean surfaces contacted during the interaction.

3. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH hazard communication standard applicable to its industry.<sup>59</sup>  
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4. Areas in the place of employment where known COVID-19 and suspected COVID-19 employees or other persons accessed or worked shall be disinfected prior to allowing

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<sup>51</sup> General Industry §§1910.132, 1910.133, 1910.138, and 1910.134; Construction §§1926.28, 1926.95, 1926.102, and 1926.103; Public Sector Shipyard §§1915.152, 1915.153, 1915.157, and 1915.154; Public Sector Marine Terminals §§ 1917.91, 1917.95, and 1917.1(a)(2)(x), 1917.92; and Public Sector Longshoring §§1918.101, 1918.102.

<sup>52</sup> General Industry: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

<sup>53</sup> Temporary Labor Camps: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142>

<sup>54</sup> Agriculture, Field Sanitation: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-180-10>

<sup>55</sup> Construction: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-160-10>

<sup>56</sup> Public Sector Shipyards: <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.88>

<sup>57</sup> Public Sector Marine Terminals: <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.127>

<sup>58</sup> Public Sector Longshoring: <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.95>

<sup>59</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>

<sup>60</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.59>

<sup>61</sup> Agriculture, <https://www.osha.gov/laws-regs/regulations/standardnumber/1928/1928.21>

<sup>62</sup> Public Sector Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1200>

<sup>63</sup> Public Sector Marine Terminals, <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.28>

<sup>64</sup> Public Sector Longshoring, <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.90>

other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. Where feasible, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

6. Employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.<sup>65</sup>

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).<sup>66</sup>

8. Employees shall have easy, frequent access, and permission to use soap and water and hand sanitizer during 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 at their work station. Mobile crews shall be provided with hand sanitizer for use during the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

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

J. Anti-Discrimination.

The employer shall ensure compliance with the anti-discriminations provisions of **§90**.

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<sup>65</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>

<sup>66</sup> *Id.*

K. Unless otherwise provided in this **standard/regulation**, 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

**§50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in **§§40, 70, and 80.**

A. Engineering Controls.

1. Ensure appropriate air-handling systems:
  - a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected COVID-19, and
  - b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>67</sup>
2. For employers not covered by **§50.A.1**, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace:
  - a. Are maintained in accordance with the manufacturer’s instructions; and
  - b. Comply with **§50.A.1.b.**

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<sup>67</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

3. Hospitalized patients with known or suspected COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
  4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19.
  5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected COVID-19 persons at the time of their death.
  6. 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 known or suspected COVID-19 patients or persons.<sup>68</sup>
  7. To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.
- B. Administrative and Work Practice Controls.
1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.
  2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
  3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.
  4. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.

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<sup>68</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 23-24



5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with §80.
8. Ensure that psychological and behavioral support is available to address employee stress.<sup>69</sup>
9. In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol<sup>70</sup> 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.<sup>71</sup>
10. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).
11. Where feasible:
  - a. Use verbal announcements, signage, and visual cues to promote physical distancing;
  - b. Implement flexible worksites (e.g., telework);
  - c. Implement flexible work hours (e.g., staggered shifts);
  - d. Increase physical distancing between employees at the worksite to six feet;
  - e. Increase physical distancing between employees and other persons to six feet;
  - f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
  - g. 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.);

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<sup>69</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

<sup>70</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

<sup>71</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

C. Personal Protective Equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 and COVID-19 hazard assessment, and personal protective equipment selection:<sup>72</sup>

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the **standard/regulation**, select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 or COVID-19 hazards identified in the hazard assessment;
- ii. Communicate selection decisions to each affected employee; and,
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 and COVID-19 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(s) of the hazard assessment; and, which identifies 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

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<sup>72</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

COVID-19 disease (e.g., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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

5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.

D. Employee training shall be provided in accordance with the requirements of §80 of this standard/regulation.

**§60 Requirements for hazards or job tasks classified at “medium” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace:

- a. Are maintained in accordance with the manufacturer’s instructions, and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner

project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>73</sup>

- a. To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV2 and COVID-19 virus transmission.

**B. Administrative and Work Practice Controls.**

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

- a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;
- b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);
- c. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
- d. Implement flexible worksites (e.g., telework);
- e. Implement flexible work hours (e.g., staggered shifts);
- f. Increase physical distancing between employees at the worksite to six feet;
- g. Increase physical distancing between employees and other persons, including customers (e.g., drive-through, partitions) to six feet;
- h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;

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<sup>73</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

- i. 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.);
  - j. Deliver services remotely (e.g. phone, video, internet, etc.);
  - k. Deliver products through curbside pick-up or delivery;
  - l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;<sup>74</sup>
  - m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.
- C. Personal Protective Equipment.
1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 and COVID-19 related hazard assessment, and personal protective equipment selection:<sup>75</sup>
    - a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:
      - i. Except as otherwise required in the standard [regulation], select, and have each affected employee use, the types of PPE that will protect the affected employee from the SARS-CoV-2 or COVID-19 hazards identified in the hazard assessment;
      - ii. Communicate selection decisions to each affected employee; and
      - iii. Select PPE that properly fits each affected employee.
    2. The employer shall verify that the required SARS-CoV-2 and COVID-19 workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed;

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<sup>74</sup> Source: LAJC Exhibit A

<sup>75</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

the date(s) of the hazard assessment; and, which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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

**§70 Infectious disease preparedness and response plan.<sup>76</sup>**

~~A. Employers with hazards or job tasks classified as:~~

~~1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;~~

~~2.A. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.~~

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

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

1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.
2. Consider and address the level(s) of SARS-CoV-2 and COVID-19 risk associated with various places of employment, the hazards employees are exposed to and job tasks employees perform at those sites. Such considerations shall include:
  - a. Where, how, and to what sources of SARS-CoV-2 or COVID-19 might employees be exposed, including:

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<sup>76</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>, starting at page 7

- i. The general public, customers, other employees, patients, and other persons;
    - ii. Known or suspected COVID-19 persons 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, healthcare employees who have had unprotected exposures to known COVID-19 or suspected COVID-19 persons); and
    - iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.
  - b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy; etc.).
  - c. Controls necessary to address those risks.
3. Consider contingency plans for situations that may arise as a result of outbreaks, such as:
- a. Increased rates of employee absenteeism;
  - b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, personal protective equipment, including respirators, surgical/medical procedure masks, and face coverings;
  - c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
  - d. Interrupted supply chains or delayed deliveries.
4. Identify basic 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 disinfecting of surfaces, equipment, and other elements of the work environment.
5. Provide for the prompt identification and isolation of known COVID-19 and suspected COVID-19 employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.
  6. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors that enter the place of employment, businesses that provide or contract or temporary employees to the employer, as well as other persons accessing the place of employment to comply with the requirements of this **standard/regulation** and the employer's plan.
  7. Provide for training of employees classified as "very high" or "high" risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this **standard/regulation**, and requirements of the employer's Infectious Disease Preparedness and Response Plan.

#### **§80 Training.**

- A. Employers ~~with hazards or job tasks classified at "very high" or "high" exposure risk~~ shall provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. [The training shall be tailored to employee's exposure risk levels.](#) The program shall enable each employee to recognize the hazards of SARS-CoV-2 and symptoms of COVID-19 and shall train each employee in the procedures to be followed in order to minimize these hazards.<sup>77</sup>
- B. Employees shall be trained on:
  1. The requirements of this **standard/regulation**;

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<sup>77</sup> 1926.503(a)(1)



2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
  3. The symptoms of the COVID-19 disease;
  4. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
  5. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
  6. PPE:
    - a. When PPE is required;
    - b. What PPE is required;
    - c. How to properly don, doff, adjust, and wear PPE;
    - d. When limitations of PPE; and
    - e. The proper care, maintenance, useful life, and disposal of PPE;<sup>78</sup>
  7. The anti-discrimination provisions of this **standard/regulation** in §90; and
  8. The employer's Infectious Disease Preparedness and Response Plan, where applicable.
- C. Employers covered by §50 of this **standard/regulation** shall verify compliance with §80.A by preparing a written certification record for those employees exposed to hazards or job tasks classified at "very high," "high," or "medium" exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee's physical or electronic signature, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this **standard/regulation**, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.<sup>79</sup>
- D. The latest training certification shall be maintained.<sup>80</sup>

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<sup>78</sup> Source: 1910.134(f), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

<sup>79</sup> 1926.503(b)(1)

<sup>80</sup> 1926.503(b)(2)

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

1. Changes in the workplace, SARS-CoV-2 or COVID-19 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.<sup>81</sup>

**§90 Discrimination against an employee for exercising rights under this standard/regulation is prohibited.**

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard/regulation or Title 40.1 of the Code of Virginia for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face mask, face shield, or gloves, if such equipment is not provided by the employer,<sup>82</sup> provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

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.<sup>83</sup>

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<sup>81</sup> 1926.503(c)

<sup>82</sup> Source: LAJC Exhibit A with modification

<sup>83</sup> Source: LAJC Exhibit A with modification

## General Observations

- Clearly and consistently refer to airborne and asymptomatic transmission
- Clearly and consistently refer to respirators and masks
- Add a section on employee and employee representative participation

## Specific Suggestions

### §10 G. CDC Guidelines

I suggest removing this section. The regulation/standard should not consider following the CDC guidelines to be in compliance with the regulation/standard. The CDC publishes guidance which employer can choose to follow, but they are not requirements. The CDC guidelines have been changed and unfortunately do not always follow the current science.

### §40.A.3. Serologic testing

Section 40.A.3 of the draft standard requires that all employers develop and implement policies and procedures for employees to report positive results from antibody testing. This provision fails to recognize the severe limitations of serologic tests and conflicts with CDC guidelines that the results of serologic tests should not be used for individual determinations due to the lack of sensitivity and specificity of many of these tests. <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>. The final standard should eliminate the requirement for employers to develop reporting policies and procedures for these tests. Reporting of the results of these tests should not be required given their lack of reliability and utility, and the great potential for misuse. To be consistent with current CDC guidelines, the introduction to section 40.A.3 should be amended to read: “ If an employer is notified of the results of an anti-SARS-CoV-2 antibody test for an employee, the employer shall not utilize the results of that test to make decisions about returning to work or other work-related determinations for that individual employee.” Subparagraphs a, b, and d should be retained. Subparagraph c should be deleted, since these are general recommendations that apply to all who are working, whether they test positive by serologic testing or not. I also recommend moving amended Section 40.A.3 to the end of Section 40.A. after section 40.A.7.

### §40.A.7. Employer Reporting of COVID-19 Positive Cases

In order to facilitate prompt follow-up and contact tracing for positive cases, the employer reporting requirements under Section 40.A.7 need to be expanded to include prompt reporting of individual cases to the Virginia Department of Health within 24 hours of discovery of the case. In addition, in order to identify and investigate outbreaks that may be related to workplace exposures, the standard should require employer reporting to the Virginia Department of Labor and Industry of all outbreaks of 3 or more employees present at the place of employment within a 14 day period testing positive for COVID-19 during that 14 day time period whether the cases are determined to be work-related or not. Positive cases among workers pose a potential exposure risk to other workers in the workplace whether or not the cases are work-related. Notification of positive cases to the Health Department and outbreaks to the Department of Labor and Industry is critical in order to prevent further exposures and infections at the workplace.

Suggested amendment language:

In section 40.A.7 insert the following new subparagraphs d and e:

“d. The Virginia Department of Health within 24 hours of the discovery of a positive case.”

“e. The Virginia Department of Labor and Industry within 24 hours of the discovery of 3 or more employees present at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day time period.”

**§70. Response Plan:** Should apply to all risk categories

**§80. Training:** Should apply to all risk categories with training tailored to the exposure/risk level

16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**

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

June 12, 2020



Contact Person:

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**NOTE:** Items highlighted in yellow are subject to change.

**RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation,** Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of [REDACTED]

The Department also recommends that the Board state in any motion it may make regarding this emergency temporary standard/emergency regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.

**16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

As Adopted by the  
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date:

16 VAC 25-220

## Emergency Temporary Standard/Emergency Regulation

### Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

#### 16 VAC 25-220

#### §10 Purpose, scope, and applicability.

- A. This emergency temporary standard/emergency regulation is designed to establish requirements for employers to control, prevent, and mitigate the spread of COVID-19 to and among employees and employers.<sup>1</sup>
- B. This standard/regulation adopted in accordance with Va. Code § 40.1-22(6)(a) or §2.2-4011 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<sup>2</sup> and 16VAC25-60-30<sup>3</sup>.
- C. This standard/regulation 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, Va. Code §40.1-51.1.A<sup>4</sup>, etc. Should this standard/regulation conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- D. Application of this standard/regulation to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard/regulation (i.e., “very high”, “high”, “medium”, and “lower”).

<sup>1</sup> SOURCE: Michigan Occupational Safety and Health (MIOSHA) draft Emergency Rule

<sup>2</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-20>

<sup>3</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-30>

<sup>4</sup> <https://law.lis.virginia.gov/vacode/40.1-51.1/>



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

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

- a. The job tasks being undertaken; [the work environment \(e.g. indoors or outdoors\)](#); the known or suspected presence of the SARS-CoV-2 virus; the presence of a known or suspected COVID-19 person; the number of employees [and/or other persons](#) in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through close contact (i.e., inside of six feet) with other employees or persons (e.g., including shift work exceeding 8 hours per day);
- b. The type of contact, including potential exposure to the SARS-CoV-2 virus through respiratory droplets in the air; [airborne transmission; as well as transmission by asymptomatic and presymptomatic individuals](#); contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; [shared work vehicles](#); industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.<sup>5</sup>

E. Reference to the term “employee” in this **standard/regulation** includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.

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<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

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

G. ~~To the extent that an employer complies with requirements contained in CDC publications to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.~~

#### §20 Dates.

[Under §40.1-22(6)]

This emergency temporary standard shall take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia. This emergency temporary standard shall expire within six months of its effective date or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

[Under §2.2-4011]

This emergency regulation shall become effective upon approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012. This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

#### §30 Definitions.

“Administrative Control” means any procedure which 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.<sup>6</sup>

“Airborne infection isolation room (AIIR)”, formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to

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<sup>6</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIRRs provide negative pressure in the room (so that air flows under the door gap into the room); *and* an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); *and* direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.<sup>7</sup>

“Asymptomatic” means an employee that has tested positive for SARS-CoV-2 but who is not symptomatic.

“Building/facility owner”<sup>8</sup> means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.

“CDC” means Centers for Disease Control.

“Cleaning” means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection.<sup>9</sup>

“Community transmission”, also called “community spread” means people have been infected with the virus in an area, including some who are not sure how or where they became infected.<sup>10</sup> The level of community transmission is classified by the CDC as:

1. “None to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facility, school, mass gathering);
2. “Moderate” is where there is widespread or sustained transmission with high likelihood or confirmed exposure within communal settings with potential for rapid increase in suspected cases; or

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<sup>7</sup> <https://www.cdc.gov/infectioncontrol/guidelines/isolation/glossary.html>

<sup>8</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1101>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>10</sup> Answer to question “What is community spread?”, [https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6svytMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs\\_lcp=CgZwc3ktYWIQAziECAAQ1AAWABg5EBoAHAAeACAAYQBiAGEAZiBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKEwigkabqrd7pAhXel3IEHfigDh4Q4dUDCAw&uact=5](https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6svytMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs_lcp=CgZwc3ktYWIQAziECAAQ1AAWABg5EBoAHAAeACAAYQBiAGEAZiBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKEwigkabqrd7pAhXel3IEHfigDh4Q4dUDCAw&uact=5)

3. “Substantial” is where there is large scale community transmission, healthcare staffing significantly impacted, multiple cases within communal settings like healthcare facilities, schools, mass gatherings, etc.<sup>11</sup>

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

“Disinfecting” means using chemicals approved for use against SARS-CoV-2<sup>12</sup>, for example EPA-registered disinfectants, to kill germs on surfaces. This process 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.<sup>13</sup>

“Duration and frequency of employee exposure” means how long (“duration”) and how often (“frequency”) an employee is potentially exposed to SARS-CoV-2 or COVID-19. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 or COVID-19 situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

“Economic feasibility” means the employer is financially able to undertake the measures necessary to<sup>14</sup> comply with one or more requirements in this **standard/regulation**. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this **standard/regulation** has occurred. If an employer’s level of

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<sup>11</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>, Table 3.

<sup>12</sup> <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

<sup>13</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>14</sup> Federal OSHA FOM, Chapter 3, <https://www.osha.gov/enforcement/directives/cpl-02-00-164/chapter-3>

compliance lags significantly behind that of its industry, an employer’s claim of economic infeasibility will not be accepted.<sup>15</sup>

“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.

“Engineering control” means the use of substitution, isolation, ventilation, and equipment modification<sup>16</sup> to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

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

“Very high”<sup>17</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus and the COVID-19 disease including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person;

<sup>15</sup> VOSH FOM, Chapter 5, pages 72-73, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>16</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>17</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

2. Collecting or handling specimens from a known or suspected COVID-19 patient or person (e.g., manipulating cultures from known or suspected COVID-19 patients);
3. Performing an autopsy, which generally involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

“High”<sup>18</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure ~~inside six feet~~ with known or suspected sources of SARS-CoV-2 that are not otherwise classified as “very high” exposure risk including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient in a hospital like setting, including field hospitals (e.g., doctors, nurses, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, [a patient/client/customer with unknown COVID-19 status](#), resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services<sup>19</sup>, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, [blood donation services](#), contact tracer services, and chiropractic services;
3. First responder services provided by police, [corrections](#), fire, paramedic, search and rescue, recovery, and emergency medical services provided to a known or suspected COVID-19 patient, resident, or other person;

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<sup>18</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

<sup>19</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

4. Medical transport services (loading, transporting, unloading, etc.) provided to known or suspected COVID-19 patients (e.g., ground or air emergency transport, staff, operators, drivers, or pilots, etc.);

5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium”<sup>20</sup> exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings, indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; work performed in customer premises, such as homes or businesses; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salons, and spas; sports, entertainment, movie, theater, etc., venues ; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and
2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities, outpatient medical facilities, clinics, drug treatment programs, medical

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<sup>20</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 20

outreach services<sup>21</sup>, non-medical support services, mental health facilities, home health care, nursing homes, assisted living facilities, memory care facilities, hospice care, rehabilitation centers, doctors, dentists, chiropractors, first responders such as police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact ~~inside six feet~~ with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; nor contact ~~inside six feet~~ with other employees, other persons, or the general public except as otherwise provided in this definition.

Employees in this category have minimal occupational contact with other employees, other persons, or the general public;<sup>22</sup> or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc.;
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for close contact (inside six feet of) with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

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<sup>21</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

<sup>22</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 18 to 20



“Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to potentially contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth)<sup>23</sup>. A face covering is not intended to protect the wearer, but it may prevent the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from airborne particles.<sup>24</sup>

“Feasible” means both “technical” and “economic” feasibility as defined in this **standard/regulation**.

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

“Hand sanitizer” means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this **standard/regulation**.<sup>25</sup>

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

1. Contact ~~inside six feet~~ with a known COVID-19 person within the last 14 days,
2. Contact ~~inside six feet~~ with a suspected COVID-19 person within the last 14 days,
3. Being a resident of a locality, city, town, or county with moderate or substantial SARS-CoV-2 ongoing community transmission, or

<sup>23</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>24</sup> <https://www.osha.gov/SLTC/etools/eyeandface/ppe/impact.html#faceshields>

<sup>25</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 8

4. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person [inside six feet](#) while doing so.

“Occupational exposure” means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards during job tasks.

“Personal protective equipment” means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.<sup>26</sup>

“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons.<sup>27</sup> Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

3. Air-purifying, which remove contaminants from the air; and

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<sup>26</sup> <https://www.osha.gov/SLTC/personalprotectiveequipment/>

<sup>27</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

4. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.<sup>28</sup>

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this **standard/regulation**.<sup>29</sup>

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV.<sup>30</sup> Coronaviruses are named for the crown-like spikes on their surface.<sup>31</sup> The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

“Surgical/Medical procedure mask” means a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. It protects the others from the wearer’s respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).<sup>32</sup>

“Suspected COVID-19” means a person that is COVID-19 symptomatic.

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.<sup>33</sup>

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<sup>28</sup> <https://www.osha.gov/Publications/OSHA3079/osha3079.html>

<sup>29</sup> <https://www.dir.ca.gov/title8/5199.html>

<sup>30</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>

<sup>31</sup> <https://www.cdc.gov/coronavirus/types.html>

<sup>32</sup> <https://www.cdc.gov/niosh/npptl/pdfs/UnderstandDifferenceInfographic-508.pdf>

<sup>33</sup> <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this **standard/regulation** with a reasonable possibility that employee exposure to SARS-CoV-2 and COVID-19 hazards will be reduced.<sup>34</sup> If an employer’s level of compliance lags significantly behind that of their industry, allegations of technical infeasibility will not be accepted.<sup>35</sup>

“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.<sup>36</sup>

**§40 Mandatory requirements for all employers.<sup>37</sup>**

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

- A. 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 SARS-CoV-2 or COVID-19. Employers shall classify each employee according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this

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<sup>34</sup> VOSH FOM, Chapter 5, pages 71-72, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>35</sup> VOSH FOM Chapter 5, pages 71-73, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>36</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>37</sup> Partial source for this section: <https://labor.vermont.gov/vosha>

standard/regulation for “very high,” “high,” “medium,” or “lower” risk levels of exposure.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness.<sup>38</sup>

3. ~~Employers shall develop and implement policies and procedures for employees to report when they have tested positive for anti-SARS-CoV-2 antibodies through~~ Serologic testing:

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.

b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid close contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily).

d. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19.<sup>39</sup> Such employees shall be designated by the employer as “suspected COVID-19”.

5. Employers shall not permit known COVID-19 or suspected COVID-19 employees or other persons to report to or be allowed to remain at work or on a job site until cleared

<sup>38</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>39</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

for return to work or the job site (see §40.B). Nothing in this standard/regulation shall prohibit an employer from permitting a known or suspected COVID-19 employee from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to SARS-CoV-2 or COVID-19.

5. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act<sup>40</sup>, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.<sup>41</sup>

6. Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at work or on a job site until cleared for return to work.

7. If an employer is notified of a COVID-19 positive test for one of its own employees, a subcontractor employee, contract, temporary employee, or other person who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

a. Its own employees within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable Virginia laws and regulations;

b. In the same manner as §40.A.7.a other employers whose employees were present at the work site during the same time period; and

c. In the same manner as §40.A.7.a the building/facility owner.

8. Each employer shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with the standard applicable to its

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<sup>40</sup> <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

<sup>41</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 11

industry.<sup>42 43 44</sup> Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.

B. Return to Work.

1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in §40.B.1.a will constitute compliance with the requirements of §40.B.<sup>45</sup>

a. For suspected or known COVID-19 employees the symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.

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

i. If a known or suspected COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.1.a symptom-based strategy.

<sup>42</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1020>

<sup>43</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.33>

<sup>44</sup> Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1020>

<sup>45</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

- ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>46</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.
2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances.<sup>47</sup> While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.<sup>48</sup>
- a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.
- b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected ≥24 hours apart (total of two negative specimens).
- i. If a known asymptomatic COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.
- ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>49</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

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<sup>46</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

<sup>47</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>48</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>49</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>



- C. Unless otherwise provided in this **standard/regulation**, employers shall ensure that employees observe physical distancing while on the job and during paid breaks on the employer's property.
- D. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled.
1. If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical distancing, an employer may designate a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:
    - a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and the minimum physical distancing, hand washing/hand sanitizing, and space disinfecting requirements.
    - b. The employer shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit.
    - c. Employees shall be required to wipe down their area prior to leaving, or the employer may provide for disinfecting of the area at regular intervals throughout the day, and between shifts of employees using the same work area (i.e., where an employee or groups of employees have a designated lunch period and the area can be cleaned in between occupancies).
    - d. Hand washing facilities and hand sanitizer are available to employees
- E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable executive order or order of public health emergency.
- F. Where the nature of an employee's work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its

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

G. Nothing in this section shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to their health or safety because of a medical condition; however, nothing in this **standard/regulation** shall negate an employer's obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.<sup>50</sup>

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

I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH sanitation **standard/regulation** applicable to its industry.<sup>51 52</sup>

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2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use disinfectant supplies to clean surfaces contacted during the interaction.

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<sup>50</sup> General Industry §§1910.132, 1910.133, 1910.138, and 1910.134; Construction §§1926.28, 1926.95, 1926.102, and 1926.103; Public Sector Shipyard §§1915.152, 1915.153, 1915.157, and 1915.154; Public Sector Marine Terminals §§ 1917.91, 1917.95, and 1917.1(a)(2)(x), 1917.92; and Public Sector Longshoring §§1918.101, 1918.102.

<sup>51</sup> General Industry: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

<sup>52</sup> Temporary Labor Camps: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142>

<sup>53</sup> Agriculture, Field Sanitation: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-180-10>

<sup>54</sup> Construction: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-160-10>

<sup>55</sup> Public Sector Shipyards: <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.88>

<sup>56</sup> Public Sector Marine Terminals: <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.127>

<sup>57</sup> Public Sector Longshoring: <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.95>

3. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH hazard communication standard applicable to its industry.<sup>58</sup>

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4. Areas in the place of employment where known COVID-19 and suspected COVID-19 employees or other persons accessed or worked shall be disinfected prior to allowing other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. ~~Where feasible,~~ **All** shared tools, equipment, **workspaces** and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

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6. Employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.<sup>64</sup>

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).<sup>65</sup>

8. Employees shall have easy, frequent access, and permission to use soap and water and hand sanitizer during 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 at their work station. Mobile crews shall be provided with hand sanitizer for use during the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing

<sup>58</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>

<sup>59</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.59>

<sup>60</sup> Agriculture, <https://www.osha.gov/laws-regs/regulations/standardnumber/1928/1928.21>

<sup>61</sup> Public Sector Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1200>

<sup>62</sup> Public Sector Marine Terminals, <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.28>

<sup>63</sup> Public Sector Longshoring, <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.90>

<sup>64</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>

<sup>65</sup> *Id.*

facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

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

J. Anti-Discrimination.

The employer shall ensure compliance with the anti-discriminations provisions of **§90**.

K. Unless otherwise provided in this **standard/regulation**, 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment. [Nothing in this section shall limit an employee from refusing to do work or enter a location they feel is unsafe.](#)

**§50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in **§§40, 70, and 80**.

A. Engineering Controls.

1. Ensure appropriate air-handling systems:

- a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected COVID-19, and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in

healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>66</sup>

2. For employers not covered by §50.A.1, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace:
    - a. Are maintained in accordance with the manufacturer's instructions; and
    - b. Comply with §50.A.1.b.
  3. Hospitalized patients with known or suspected COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
  4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19.
  5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected COVID-19 persons at the time of their death.
  6. 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 known or suspected COVID-19 patients or persons.<sup>67</sup>
  7. To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.
- B. Administrative and Work Practice Controls.
1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.

<sup>66</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

<sup>67</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 23-24

2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.
4. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with §80.
8. Ensure that psychological and behavioral support is available to address employee stress.<sup>68</sup>
9. In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol<sup>69</sup> 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.<sup>70</sup>
10. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).
11. ~~Where feasible:~~ **Employer shall**
  - a. Use verbal announcements, signage, and visual cues to promote physical distancing;
  - b. Implement flexible worksites (e.g., telework);

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<sup>68</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

<sup>69</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

<sup>70</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

- c. Implement flexible work hours (e.g., staggered shifts);
- d. Increase physical distancing between employees at the worksite to six feet;
- e. Increase physical distancing between employees and other persons to six feet;
- f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- g. 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.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

C. Personal Protective Equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 and COVID-19 hazard assessment, and personal protective equipment selection:<sup>71</sup>

- a. The employer [and workers \(to include Labor Unions/Associations\)](#) shall [mutually](#) assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:
  - i. Except as otherwise required in the [standard/regulation](#), select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 or COVID-19 hazards identified in the hazard assessment;

<sup>71</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

- ii. Communicate selection decisions to each affected employee; and,
  - iii. Select PPE that properly fits each affected employee.
2. The employer shall verify that the required SARS-CoV-2 and COVID-19 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(s) of the hazard assessment; and, which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.
4. The employer shall implement a respiratory protection program in accordance with §1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required to use a respirator.
5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.
- D. Employee training shall be provided in accordance with the requirements of §80 of this standard/regulation.

**§60 Requirements for hazards or job tasks classified at “medium” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

- A. Engineering Controls.
  - 1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace:



- a. Are maintained in accordance with the manufacturer’s instructions, and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>72</sup>
- a. To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV2 and COVID-19 virus transmission.

B. Administrative and Work Practice Controls.

- 1. ~~To the extent feasible~~, Employers shall implement the following administrative and work practice controls:
  - a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;
  - b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);
  - c. 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 executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.
  - d. Implement flexible worksites (e.g., telework);

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<sup>72</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

- e. Implement flexible work hours (e.g., staggered shifts);
- f. Increase physical distancing between employees at the worksite to six feet;
- g. Increase physical distancing between employees and other persons, including customers (e.g., drive-through, partitions) to six feet;
- h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- i. 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.);
- j. Deliver services remotely (e.g. phone, video, internet, etc.);
- k. Deliver products through curbside pick-up or delivery;
- l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;<sup>73</sup>
- m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.

C. Personal Protective Equipment.

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 and COVID-19 related hazard assessment, and personal protective equipment selection:<sup>74</sup>
  - a. The employer and workers (or Labor Unions/Associations) shall mutally assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:
    - i. Except as otherwise required in the standard [regulation], select, and have each affected employee use, the types of PPE that will protect the affected

<sup>73</sup> Source: LAJC Exhibit A

<sup>74</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

employee from the SARS-CoV-2 or COVID-19 hazards identified in the hazard assessment;

- ii. Communicate selection decisions to each affected employee; and
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 and COVID-19 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(s) of the hazard assessment; and, which identifies 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. PPE ensembles for employees in the “medium” exposure risk category will vary by work task, the results of the [employer’s mutual](#) hazard assessment, and the types of exposures employees have on the job.

#### **§70 Infectious disease preparedness and response plan.<sup>75</sup>**

A. Employers with hazards or job tasks classified as:

- 1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;
- 2. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.

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

~~C.B.~~ Employers shall designate a person to be responsible for implementing their Plan.

The Plan shall:

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<sup>75</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>, starting at page 7

1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.
2. Consider and address the level(s) of SARS-CoV-2 and COVID-19 risk associated with various places of employment, the hazards employees are exposed to and job tasks employees perform at those sites. Such considerations shall include:
  - a. Where, how, and to what sources of SARS-CoV-2 or COVID-19 might employees be exposed, including:
    - i. The general public, customers, other employees, patients, and other persons;
    - ii. Known or suspected COVID-19 persons 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, healthcare employees who have had unprotected exposures to known COVID-19 or suspected COVID-19 persons); and
    - iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.
  - b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy; etc.).
  - c. Controls necessary to address those risks.
3. Consider contingency plans for situations that may arise as a result of outbreaks, such as:
  - a. Increased rates of employee absenteeism;
  - b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, personal protective

- equipment, including respirators, surgical/medical procedure masks, and face coverings;
- c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
  - d. Interrupted supply chains or delayed deliveries.
4. Identify basic 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 disinfecting of surfaces, equipment, and other elements of the work environment.
  5. Provide for the prompt identification and isolation of known COVID-19 and suspected COVID-19 employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.
  6. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors that enter the place of employment, businesses that provide or contract or temporary employees to the employer, as well as other persons accessing the place of employment to comply with the requirements of this **standard/regulation** and the employer's plan.
  7. Provide for training of employees classified as "very high" or "high" risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this **standard/regulation**, and requirements of the employer's Infectious Disease Preparedness and Response Plan.

**§80 Training.**

- A. ~~Employers with hazards or job tasks classified at "very high" or "high" exposure risk shall~~ provide training to all employee(s) regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The program

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shall enable each employee to recognize the hazards of SARS-CoV-2 and symptoms of COVID-19 and shall train each employee in the procedures to be followed in order to minimize these hazards.<sup>76</sup>

B. Employees shall be trained on:

1. The requirements of this **standard/regulation**;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The signs and symptoms of the COVID-19 disease;
- ~~3-4.~~ Risk factors of severe COVID-19 illness for people with underlying health conditions;
- 4-5. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
- 5-6. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
- 6-7. PPE:
  - a. When PPE is required;
  - b. What PPE is required;
  - c. How to properly don, doff, adjust, and wear PPE;
  - d. When limitations of PPE; and
  - e. The proper care, maintenance, useful life, and disposal of PPE;<sup>77</sup>
  - f. Heat stress hazards, signs and symptoms, and precautions when wearing PPE;
- 7-8. The anti-discrimination provisions of this **standard/regulation** in **§90**; and
- 8-9. The employer's Infectious Disease Preparedness and Response Plan, where applicable.

C. Employers covered by **§50** of this **standard/regulation** shall verify compliance with **§80.A** by preparing a written certification record for those employees exposed to hazards or

<sup>76</sup> 1926.503(a)(1)

<sup>77</sup> Source: 1910.134(f), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

job tasks classified at “very high,” “high,” or “medium” exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee’s physical or electronic signature, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this **standard/regulation**, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.<sup>78</sup>

D. The latest training certification shall be maintained.<sup>79</sup>

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

1. Changes in the workplace, SARS-CoV-2 or COVID-19 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.<sup>80</sup>

**§90 Discrimination against an employee for exercising rights under this **standard/regulation** is prohibited.**

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this **standard/regulation** or Title 40.1 of the Code of Virginia for themselves or others.

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<sup>78</sup> 1926.503(b)(1)

<sup>79</sup> 1926.503(b)(2)

<sup>80</sup> 1926.503(c)

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face mask, face shield, or gloves, if such equipment is not provided by the employer,<sup>81</sup> provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

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.<sup>82</sup>

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<sup>81</sup> Source: LAJC Exhibit A with modification

<sup>82</sup> Source: LAJC Exhibit A with modification



16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**

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

**VOSH PROPOSED AMENDMENTS: June 4, 2020**

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Contact Person:

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**NOTE: Items highlighted in yellow are subject to change.**

**RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of **July 15, 2020**.

The Department also recommends that the Board state in any motion it may make regarding this **Emergency Temporary Standard/Emergency Regulation** that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.

**16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

As Adopted by the  
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date:

16 VAC 25-220

**Emergency Temporary Standard/Emergency Regulation**

**Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19**

**16 VAC 25-220**

**§10 Purpose, scope, and applicability.**

- A. This **emergency temporary standard/emergency regulation** 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.<sup>1</sup>
- B. This **standard/regulation** adopted in accordance with Va. Code **§ 40.1-22(6)(a) or §2.2-4011** 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<sup>2</sup> and 16VAC25-60-30<sup>3</sup>.
- C. This **standard/regulation** 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, Va. Code §40.1-51.1.A<sup>4</sup>, etc. Should this **standard/regulation** conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- D. Application of this **standard/regulation** to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this **standard/regulation** (i.e., “very high”, “high”, “medium”, and “lower”).

<sup>1</sup> SOURCE: Michigan Occupational Safety and Health (MIOSHA) draft Emergency Rule

<sup>2</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-20>

<sup>3</sup> <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-30>

<sup>4</sup> <https://law.lis.virginia.gov/vacode/40.1-51.1/>

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

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

- a. The job tasks being undertaken; the known or suspected presence of the SARS-CoV-2 virus; the presence of a **known or suspected COVID-19 person**; the number of employees in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through ~~close contact (i.e., inside of six feet)~~ with other employees or persons (e.g., including shift work exceeding 8 hours per day);
- b. The type of ~~hazards encountered~~~~contact~~, including potential exposure to the ~~airborne transmission (including droplets or airborne droplet nuclei)~~ **of** SARS-CoV-2 virus ~~through respiratory droplets in the air~~; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.<sup>5</sup>

E. ~~Reference to the term “employee” in this standard/regulation includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.~~

**Commented [RJ(1):** Recommend replacing "known or suspected COVID-19 person" throughout with "person known or suspected to be infected with SARS-CoV-2 virus" or "person confirmed or suspected to have COVID-19."

**Commented [WJ(2):** Change made in response to comment, “airborne transmission” is a broader term to address a number of methods of transmission.

<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

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

G. To the extent that an employer actually complies with requirements contained in CDC publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.

H. Nothing in the standard/regulation shall be construed to require employers to engage in contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

#### §20 Dates.

[Under §40.1-22(6)]

This emergency temporary standard shall ~~take~~ take immediate effect on July 15, 2020 upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia.

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this standard. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this standard.

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this standard.

This emergency temporary standard shall expire within six months of its effective date or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

[Under §2.2-4011]

This emergency regulation shall ~~become~~ take effective twenty-one (21) days after ~~upon~~ approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012.

Commented [WJ(3)]: Change made in response to Comment period.

Commented [WJ(4)]: Effective date added for regulation

Commented [WJ(5)]: Effective date added for training requirements

Commented [WJ(6)]: Effective date added for Infectious disease preparedness and response plan

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With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this regulation. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this regulation.

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this regulation.

This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

### §30 Definitions.

“Administrative Control” means any procedure which 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.<sup>6</sup>

“Airborne infection isolation room (AIIR)”, formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide negative pressure in the room (so that air flows under the door gap into the room); *and* an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); *and* direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.<sup>7</sup>

“Asymptomatic” means an employee that has tested positive for SARS-CoV-2 but who is not symptomatic.

**Commented [RJ(7):** Asymptomatic just means a person who does not have symptoms. A person can be asymptomatic because they are either infected and not showing symptoms or not infected. Consider not limiting the definition to only persons who have tested positive; the clarity on those who are infected but not experiencing symptoms can be described when the term is used throughout the document.

<sup>6</sup> VOSH FOM Chapter 5, page 71, [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>7</sup> <https://www.cdc.gov/infectioncontrol/guidelines/isolation/glossary.html>

“Building/facility owner”<sup>8</sup> means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.

“CDC” means Centers for Disease Control and Prevention.

“Cleaning” means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection.<sup>9</sup>

“Community transmission”, also called “community spread” means people have been infected with ~~the virus~~ SARS-CoV-2 in an area, including some who are not sure how or where they became infected.<sup>10</sup> The level of community transmission is classified by the CDC as:

1. “~~None~~ to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., e.g., healthcare facilities, schools, mass gatherings, etc.);
2. “~~M~~oderate” is where there is ~~widespread or~~ sustained community transmission with high likelihood or confirmed exposure within communal settings ~~with~~ and potential for rapid increase in ~~suspected~~ cases; or
3. “Substantial, controlled” is where there is large scale, controlled community transmission, ~~healthcare staffing significantly impacted, multiple cases within~~ including

**Commented [RJ(8)]:** Recommend adding the definition of “close contact” to this list: A close contact is any individual within 6 feet of an infected person for at least 15 minutes starting from 2 days before the person became sick (or 2 days before specimen collection, if asymptomatic) until the person was isolated.

<sup>8</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1101>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>10</sup> Answer to question “What is community spread?”, [https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vvtMP-MG78AE&q=community+transmission+definition&og=community+transmission+definition&gs\\_lcp=CgZwc3ktYWIQAziECAAQ1AAWABg5EB0AHAAeACAAYQBiAGEAZiBAzAuMzgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKewigkabqrd7pAhXel3IEHfigDh4Q4dUDCAw&uact=5](https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vvtMP-MG78AE&q=community+transmission+definition&og=community+transmission+definition&gs_lcp=CgZwc3ktYWIQAziECAAQ1AAWABg5EB0AHAAeACAAYQBiAGEAZiBAzAuMzgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKewigkabqrd7pAhXel3IEHfigDh4Q4dUDCAw&uact=5)



communal settings (e.g., like healthcare facilities, schools, mass gatherings, workplaces,

4. “Substantial, uncontrolled” is where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).<sup>12</sup>

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

“Disinfecting” means using chemicals approved for use against SARS-CoV-2<sup>13</sup>, for example EPA-registered disinfectants, to kill germs on surfaces. This process 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.<sup>14</sup>

“Duration and frequency of employee exposure” means how long (“duration”) and how often (“frequency”) an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

“Economic feasibility” means the employer is financially able to undertake the measures necessary to<sup>15</sup> comply with one or more requirements in this standard/regulation. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this standard/regulation has occurred. If an employer’s level of compliance lags significantly behind that of its industry, an employer’s claim of economic infeasibility will not be accepted.<sup>16</sup>

<sup>13</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>, Table 3.

<sup>12</sup> Table 1. Level of mitigation needed by level of community transmission and community characteristics.

Commented [WJ(10)]: CDC language change

Commented [WJ(11)]: Change made in response to a comment noting that some presentations of the disease may be “primarily through gastrointestinal, neurologic, etc.”

Commented [RJ(12)]: Recommend noting that disinfection should occur after cleaning.

“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.<sup>17</sup> Reference to the term “employee” in this standard/regulation also includes, but is not limited to, temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

**Commented [WJ(13):** Language from Title 40.1 of the Code of Virginia

**Commented [WJ(14):** Change in response to comment concerns about what legal sources would be used to determine the definition of “employee” in VOSH cases.

“Engineering control” means the use of substitution, isolation, ventilation, and equipment modification<sup>18</sup> to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

“Exposure risk level” means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. Hazards and job tasks have been divided into four risk exposure levels: “very high”, “high”, “medium”, and “lower”:

“Very high”<sup>19</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or and the known COVID-19 or suspected COVID-19 disease persons including, but not limited to, during specific medical, postmortem, or laboratory procedures:

**Commented [WJ(15):** Language added to specifically reference the defined terms of “known COVID-19” and “suspected COVID-19”

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

<sup>13</sup> <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

<sup>14</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>15</sup> Federal OSHA FOM, Chapter 3, <https://www.osha.gov/enforcement/directives/cpl-02-00-164/chapter-3>

<sup>16</sup> VOSH FOM, Chapter 5, pages 72-73,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>17</sup> <https://law.lis.virginia.gov/vacode/title40.1/chapter3/section40.1-49.3/>

<sup>18</sup> VOSH FOM Chapter 5, page 71,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>19</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person;
2. Collecting or handling specimens from a known or suspected COVID-19 patient or person (e.g., manipulating cultures from known or suspected COVID-19 patients);
3. Performing an autopsy, ~~that which generally~~ involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

**Commented [RJ(16):** Aerosol-generating procedures should not be performed on a body known or suspected of having COVID-19 prior to death.

“High”<sup>20</sup> exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, ~~or known COVID-19 or suspected COVID-19~~ persons that are not otherwise classified as “very high” exposure risk including, but not limited to:

**Commented [WJ(17):** Language added to specifically reference the defined terms of “known COVID-19” and “suspected COVID-19”

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient in a hospital like setting, including field hospitals (e.g., doctors, nurses, cleaners, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services<sup>21</sup>, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, contact tracer services, and chiropractic services;
3. First responder services provided by police, fire, paramedic, search and rescue, recovery, and emergency medical services ~~provided~~ to a known or suspected COVID-19 patient, resident, or other person;

<sup>20</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

<sup>21</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

4. Medical transport services (loading, transporting, unloading, etc.) provided to known or suspected COVID-19 patients –(e.g., ground or air emergency transport, staff, operators, drivers, ~~or~~ pilots, etc.);

5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium”<sup>22</sup> exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings;~~;~~ indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salons, and spas ~~settings; venues for~~ sports, entertainment, movies, theaters, ~~and other forms of mass gatherings etc., venues;~~ homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and

2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities;~~;~~ outpatient medical facilities;~~;~~ clinics, drug treatment programs, ~~and~~

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<sup>22</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 20

medical outreach services<sup>23</sup>; non-medical support services; mental health facilities; home health care, nursing homes, assisted living facilities, memory care facilities, and hospice care; rehabilitation centers, doctors' offices, dentists' offices, and chiropractors' offices; first responders ~~services provided by such as~~ police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

"Lower" exposure risk hazards or job tasks are those not otherwise classified as "very high", "high", or "medium" exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2; ~~nor contact inside six feet with other employees, other persons, or the general public except as otherwise provided in this definition.~~

Employees in this category have minimal occupational contact with other employees, other persons, or the general public;<sup>24</sup> or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

**Commented [WJ(18):** This language was deleted to make a clear distinction between "medium" risk classification which applies when employees are exposed inside six feet to persons "who may be infected with SARS-CoV-2".

**Commented [WJ(19):** Added to assure consistency within the definition

<sup>23</sup> List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

<sup>24</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 18 to 20

Employee use of face coverings for ~~close~~ contact ~~(inside six feet of)~~ with coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

“Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to ~~potentially~~ contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth)<sup>25</sup>. A face covering is not intended to protect the wearer, but it may ~~prevent~~~~reduce~~ the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

**Commented [WJ(20)]:** In response to comment

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from ~~airborne~~ ~~particles~~~~droplets~~ or ~~splashes~~.<sup>26</sup>

**Commented [WJ(21)]:** Change made in response to comment noting that face shields are not designed to be fully effective against airborne particles but are designed to serve as splash guards.

“Feasible” means both “technical” and “economic” feasibility as defined in this **standard/regulation**.

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

“Hand sanitizer” means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this **standard/regulation**.<sup>27</sup>

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

<sup>25</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>26</sup> <https://www.osha.gov/SLTC/etools/eyeandface/ppe/impact.html#faceshields>

<sup>27</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 8

1. Contact inside six feet with a known or suspected COVID-19 person within the last 14 days,

~~2. Contact inside six feet with a suspected COVID-19 person within the last 14 days,~~

~~3.~~ Being a resident of a locality, city, town, or county with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission, or

~~4.~~ Having traveled through a locality, city, town, or county, state, or country with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.

**Commented [WJ(22):** Consolidation into 1. above

**Commented [WJ(23):** Reflects change in CDC language.

“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 work during job tasks.

**Commented [WJ(24):** Change made in response to comment as not consistent with traditional OSHA position on “exposure” – situations where an employee is exposed but not actually conducting a job task.

“Personal protective equipment” means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.<sup>28</sup>

“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons.<sup>29</sup> Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

<sup>28</sup> <https://www.osha.gov/SLTC/personalprotectiveequipment/>

<sup>29</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

- ~~3-1.~~ 1. Air-purifying, which remove contaminants from the air; and
- ~~4-2.~~ 2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.<sup>30</sup>

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this **standard/regulation**.<sup>31</sup>

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV.<sup>32</sup> Coronaviruses are named for the crown-like spikes on their surface.<sup>33</sup> The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

“Surgical/Medical procedure mask” means a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. It protects the others from the wearer’s respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).<sup>34</sup>

<sup>30</sup> <https://www.osha.gov/Publications/OSHA3079/osha3079.html>

<sup>31</sup> <https://www.dir.ca.gov/title8/5199.html>

<sup>32</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>

<sup>33</sup> <https://www.cdc.gov/coronavirus/types.html>

<sup>34</sup> <https://www.cdc.gov/niosh/npptl/pdfs/UnderstandDifferenceInfographic-508.pdf>



“Suspected COVID-19” means a person that is COVID-19 symptomatic but has not tested positive for SARS-CoV-2 and no alternative diagnosis has been made (e.g., tested positive for influenza).<sup>35</sup>

**Commented [WJ(25)]:** In response to comments to make clear that an alternative diagnosis can be used to avoid classifying an employee as “suspected COVID-19”

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.<sup>36</sup>

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this standard/regulation with a reasonable possibility that employee exposure to the SARS-CoV-2 virus and COVID-19 disease hazards will be reduced.<sup>37</sup> If an employer’s level of compliance lags significantly behind that of their industry, allegations of technical infeasibility will not be accepted.<sup>38</sup>

“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.<sup>39</sup>

**§40 Mandatory requirements for all employers.**<sup>40</sup>

<sup>35</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>36</sup> <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

<sup>37</sup> VOSH FOM, Chapter 5, pages 71-72,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>38</sup> VOSH FOM Chapter 5, pages 71-73,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>39</sup> VOSH FOM Chapter 5, page 71,

[https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc\\_DOLI\\_5354\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf)

<sup>40</sup> Partial source for this section: <https://labor.vermont.gov/vosha>

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

- A. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.
  - 1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each employee according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this standard/regulation for “very high,” “high,” “medium,” or “lower” risk levels of exposure. Employees exposed to the same hazards or performing the same job tasks may be grouped for classification purposes.
  - 2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness.<sup>41</sup>
  - 3. Employers shall develop and implement policies and procedures to address a situation where they are notified that an~~for~~ employees to report when they have~~as~~ tested positive for anti-SARS-CoV-2 antibodies through serologic testing.<sup>42</sup>
    - a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.
    - b. Serologic test results shall not be used to make decisions concerning employees that were previously classified as known or suspected COVID-19 about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.
    - c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands

**Commented [WJ(26):** In response to comment requesting more flexibility for employers to not have to conduct “individual” assessments for each employee in situations where groups of employees have the same job duties

**Commented [RJ(27):** Why does this focus only on serologic testing? Antibody testing is a marker of past infection, so it shouldn't play a big role in any decisions related to the employee (assuming the employee doesn't also have a positive viral test, the employee is no longer symptomatic, etc). However, viral testing (which isn't mentioned) would indicate a current infection and should certainly be a part of deciding when to exclude an ill employee. Furthermore, this blurb talks about how serologic testing can't be used to make decisions about things. Why is serologic testing mentioned at all if it doesn't change any recommendations?  
  
Recommend removing or altering to include language about viral testing instead.

<sup>41</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>42</sup> <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>

often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid ~~close~~ contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily). However, nothing in this paragraph shall be construed to require an employer to allow an employee who tested positive by serologic testing to return to work.

**Commented [WJ(28):** Change made to assure those employers that want to take extra precautions about returning employees to work

d. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19<sup>43</sup> and no alternative diagnosis has been made (e.g., tested positive for influenza).<sup>44</sup> Such employees shall be designated by the employer as “suspected COVID-19”.

**Commented [WJ(29):** See comment above

5. Employers shall not permit known COVID-19 or suspected COVID-19 employees or other persons to report to or ~~be allowed to remain at the work or on a job site~~ until cleared for return to work ~~or the job site~~ (see §40.B). Nothing in this standard/regulation shall prohibit an employer from permitting a known or suspected 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 ~~or COVID-19~~.

~~56.~~ To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act<sup>45</sup>, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.<sup>46</sup>

~~67.~~ Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected COVID-19

<sup>43</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

<sup>44</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>45</sup> <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

<sup>46</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 11

subcontractor, contract, or temporary employees shall not report to or be allowed to remain at the work or on a job site until cleared for return to work.

78. If an employer is notified of a COVID-19 SARS-CoV-2 positive test for one of its own employees, a subcontractor employee, a contract employee, a temporary employee, or other person (excluding patients hospitalized on the basis of being known or suspected COVID-19) who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

- a. Its own employees at the same place of employment within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable Virginia laws and regulations;
- b. In the same manner as §40.A.7.a other employers whose employees were present at the work site during the same time period; and
- c. In the same manner as §40.A.7.a the building/facility owner.

89. Each employer shall ensure employees access to their own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry.<sup>47 48 49</sup> Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employees access to their own SARS-CoV-2 virus and COVID-19 diseases related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.

## B. Return to Work.

1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves

**Commented [RJ(30):** Recommend reflecting CDC guidance here, which states in some cases in long-term care settings, only if the facility has exhausted all other staffing options and is in Crisis Capacity Strategies, staff with suspected or confirmed COVID-19 may be allowed to work while following certain criteria (do not interact with others, work with confirmed COVID-19 patients, etc.). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/mitigating-staff-shortages.html>

**Commented [WJ(31):** Change made to differentiate between “employees” and “independent contractors”

**Commented [WJ(32):** Change made in response to comment

**Commented [RJ(33):** It isn't clear here that only people exposed will be notified of a positive case. Here it suggests anyone who was on-site at the same time will be notified, but being in the same building doesn't necessarily constitute an exposure. If a person were in a given building with 15 floors and went directly to their office, didn't use the elevator, didn't leave the floor for the day, would every floor need to be notified? That may be unnecessary. Recommend limiting notifications to those who were potentially exposed.

**Commented [WJ(34):** In response to comment to clarify which employees need to be notified – those that could have been exposed

**Commented [WJ(35):** In response to comment to make clear that there are no HIPAA or confidentiality concerns

<sup>47</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1020>

<sup>48</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.33>

<sup>49</sup> Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1020>

consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in §40.B.1.a will constitute compliance with the requirements of §40.B.<sup>50</sup>

a. For suspected or known COVID-19 employees the symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.

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

i. If a known or suspected COVID-19 employee refuses to be tested, ~~then the employer shall compliance with §40.B.1.a, symptom-based strategy, will be considered in compliance with this standard/regulation. Nothing in this standard/regulation shall be construed to prohibit an employer from requiring a known or suspected COVID-19 employee to be tested in accordance with §40.B.1.b.~~

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>51</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances.<sup>52</sup> While an

<sup>50</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>~~<https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>~~

<sup>51</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

<sup>52</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>~~<https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>~~

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**Commented [WJ(36):** Change made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “...employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

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employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.<sup>53</sup>

- a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.
- b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected ≥24 hours apart (total of two negative specimens).

i. ~~If a known asymptomatic COVID-19 employee refuses to be tested, employer compliance with §40.B.2.a, symptom-based strategy, will be considered in compliance with this standard/regulation. Nothing in this standard/regulation shall be construed to prohibit an employer from requiring a known asymptomatic COVID-19 employee to be tested in accordance with §40.B.2.b. If a known asymptomatic COVID-19 employee refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.~~

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.<sup>54</sup> The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

C. Unless otherwise provided in this standard/regulation, employers shall establish and implement policies and procedures designed to ensure that employees observe physical distancing while on the job and during paid breaks on the employer’s property.

**Commented [RJ(37)]:** This says if a known asymptomatic employee refuses to be tested, employer compliance with a symptom-based strategy for return to work would qualify as compliance. However, you can’t have a symptom-based strategy for an asymptomatic person. This should be a time-based strategy, not symptom-based.

**Commented [WJ(38)]:** Change made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “...employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

**Commented [WJ(39)]:** Change made in response to comment to provide flexibility for employers with large open campuses

<sup>53</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

<sup>54</sup> <https://law.lis.virginia.gov/vacode/40.1-28/>

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

1. If the nature of an employer’s work or the work area does not allow employees to consume meals in the employee’s workspace while observing physical distancing, an employer may designate a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:

a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and

~~requirements for the minimum~~ physical distancing, hand washing/hand sanitizing, and ~~space cleaning and disinfecting of shared surfaces requirements.~~

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

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

d. Hand washing facilities, and hand sanitizer where feasible, are available to employees.

E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.

F. Where the nature of an employee’s work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its

**Commented [WJ(40):** Change made in response to comments to provide more clarity of what cleaning and disinfecting is required

**Commented [WJ(41):** In the event of greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

**Commented [RJ(42):** This statement is true and should be made on its own, separate from a blurb about vehicle occupancy. Recommend stating this in its own bullet, as it should apply to all plans.

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

G. Nothing in this section shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to their health or safety because of a medical condition; however, nothing in this standard/regulation shall negate an employer's obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.<sup>55</sup>

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

I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this standard/regulation, employers shall comply with the VOSH sanitation standard/regulation applicable to its industry.<sup>56 57</sup>  
58 59 60 61 62

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

**Commented [WJ(43)]:** Change made in response to comments to clarify that this section only applies to such requests made directly to the Department, not employers

**Commented [WJ(44)]:** Change made in response to comments to make clear that any requirement is tied to employee occupational exposure, not customer/general public exposure, which is outside VOSH jurisdiction

<sup>55</sup> General Industry §§1910.132, 1910.133, 1910.138, and 1910.134; Construction §§1926.28, 1926.95, 1926.102, and 1926.103; Public Sector Shipyard §§1915.152, 1915.153, 1915.157, and 1915.154; Public Sector Marine Terminals §§ 1917.91, 1917.95, and 1917.1(a)(2)(x), 1917.92; and Public Sector Longshoring §§1918.101, 1918.102.

<sup>56</sup> General Industry: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

<sup>57</sup> Temporary Labor Camps: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142>

<sup>58</sup> Agriculture, Field Sanitation: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-180-10>

<sup>59</sup> Construction: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-160-10>

<sup>60</sup> Public Sector Shipyards: <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.88>

<sup>61</sup> Public Sector Marine Terminals: <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.127>

<sup>62</sup> Public Sector Longshoring: <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.95>



3. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH hazard communication standard applicable to its industry.<sup>63</sup>

64 65 66 67 68

4. **Areas in the place of employment where known COVID-19 and suspected COVID-19 employees or other persons accessed or worked shall be disinfected prior to allowing other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.**<sup>69</sup>

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. Where feasible, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

6. Employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.<sup>70 71</sup>

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).<sup>72</sup>

8. Employees shall have easy, frequent access, and permission to use soap and water, and hand sanitizer **where feasible, during** 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 their work station.

Mobile crews shall be provided with hand sanitizer **where feasible** for **use during** the

**Commented [RJ(45)]:** Strongly encourage that this adhere to CDC guidelines to wait 24 hours after the person was last there to clean, if possible, to reduce the risk of transmission to the cleaning crew.

<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

**Commented [WJ(46)]:** In the event of greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

<sup>63</sup> General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>

<sup>64</sup> Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.59>

<sup>65</sup> Agriculture, <https://www.osha.gov/laws-regs/regulations/standardnumber/1928/1928.21>

<sup>66</sup> Public Sector Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1200>

<sup>67</sup> Public Sector Marine Terminals, <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.28>

<sup>68</sup> Public Sector Longshoring, <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.90>

<sup>69</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

<sup>70</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>

<sup>71</sup> <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>

<sup>72</sup> *Id.*

duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

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

J. Anti-Discrimination.

The employer shall ensure compliance with the anti-discriminations provisions of **§90**.

K. Unless otherwise provided in this **standard/regulation**, 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

**§50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in **§§40, 70, and 80**.

A. Engineering Controls.

1. Ensure appropriate air-handling systems:

- a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected COVID-19, and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in

healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>73</sup>

2. For employers not covered by §50.A.1, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:
    - a. Are maintained in accordance with the manufacturer's instructions; and
    - b. Comply with §50.A.1.b.
  3. Hospitalized patients with known or suspected COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
  4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19.
  5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected COVID-19 persons at the time of their death.
  6. 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 known or suspected COVID-19 patients or persons.<sup>74</sup>
  7. To the extent feasible, employers shall install physical barriers, (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.
- B. Administrative and Work Practice Controls.
1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.

**Commented [RJ(47)]:** Aerosol-generating procedures should not be performed on a body known or suspected of having COVID-19 prior to death.

<sup>73</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

<sup>74</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 23-24

2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.

3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.

**Commented [RJ(48)]:** Recommend removing this statement, as it is not applicable to employees.

4. Limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable [Virginia](#) executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.

5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.

6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.

7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with [§80](#).

8. ~~To the extent feasible, E~~ensure that psychological and behavioral support is available to address employee stress.<sup>75</sup>

9. In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol<sup>76</sup> 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.<sup>77</sup>

**Commented [RJ(49)]:** Recommend defining healthcare settings in the definitions section.

10. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).

11. Where feasible:

- a. Use verbal announcements, signage, and visual cues to promote physical distancing;
- b. Implement flexible worksites (e.g., telework);

<sup>75</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

<sup>76</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

<sup>77</sup> <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

- c. Implement flexible work hours (e.g., staggered shifts);
- d. Increase physical distancing between employees at the worksite to six feet;
- e. Increase physical distancing between employees and other persons to six feet;
- f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- g. 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.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

E.C. Personal Protective Equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease hazard assessment, and personal protective equipment selection:<sup>78</sup>
  - a. The employer 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, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:
    - i. Except as otherwise required in the standard/regulation, select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;
    - ii. Communicate selection decisions to each affected employee; and,

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<sup>78</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, ~~which identifies~~ 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

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

5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.

D. Employee training shall be provided in accordance with the requirements of §80 of this standard/regulation.

**§60 Requirements for hazards or job tasks classified at “medium” exposure risk.**

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:

**Commented [RJ(50):** The 'depending on the hazards they are exposed to or their job tasks and exposure risk' part of the previous version of this document is very important. Not everyone in the high or very high risk groups can or should wear all this PPE unless it is indicated for the task they are doing. Recommend adding this blurb back into this version of the document.

a. Are maintained in accordance with the manufacturer's instructions, and  
~~a.~~ Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.<sup>79</sup>

b.

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

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#### D-B. Administrative and Work Practice Controls.

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

a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;

b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);

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

Commented [RJ(51)]: Recommend changing this phrase throughout to say "does not have signs and or/symptoms of COVID-19."

<sup>79</sup> [https://www.ashrae.org/file%20library/about/position%20documents/pd\\_infectiousaerosols\\_2020.pdf](https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

- d. Implement flexible worksites (e.g., telework);
- e. Implement flexible work hours (e.g., staggered shifts);
- f. Increase physical distancing between employees at the worksite to six feet;
- g. Increase physical distancing between employees and other persons, including customers to six feet (e.g., drive-through, ~~partitions~~physical barriers where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.) ~~to six feet~~;
- h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- i. Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postpone non-essential travel or events; etc.);
- j. Deliver services remotely (e.g. phone, video, internet, etc.);
- k. Deliver products through curbside pick-up or delivery;
- l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;<sup>80</sup>
- m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.

**Commented [RJ(52):** Physical barriers are not a form of physical distancing to six feet; recommend moving the second example to another spot.

E.C. Personal Protective Equipment.

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment, and personal protective equipment selection:<sup>81</sup>
  - a. The employer 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, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

<sup>80</sup> Source: LAJC Exhibit A

<sup>81</sup> Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>



- i. Except as otherwise required in the standard [regulation], select, and have each affected employee use, the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;
  - ii. Communicate selection decisions to each affected employee; and
  - iii. Select PPE that properly fits each affected employee.
2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, ~~which identifies~~ 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., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.
4. PPE ensembles for employees in the “medium” exposure risk category will vary by work task, the results of the employer’s hazard assessment, and the types of exposures employees have on the job.

**§70 Infectious disease preparedness and response plan.**<sup>82</sup>

- A. Employers with hazards or job tasks classified as:
  - 1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;
  - 2. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.
- B. The plan and training requirements tied to the plan shall only apply to those employees classified as “very high,” “high,” and “medium” covered by this section.

**Commented [RJ(53)]:** The lower risk category doesn't have any specific guidance outlined for them in this document (other than in the definitions section where it gives some suggestions about how to achieve minimal occupational contact). It seems prudent for anyone in any business setting to evaluate the risk exposures for their setting, assess whether vulnerable populations are at risk, etc. Perhaps the lower risk category does not need to have a written plan, but these considerations should still be thought through for every business setting. For instance, if a person working at large corporate office becomes ill, the employer should still have an idea of how they are going to handle that. Additionally, telework should still be recommended for these groups (which the document only provides as one of the suggestions for minimal occupational contact in the “lower risk” definitions section, since there isn't a specific section for requirements to adhere to for lower risk settings).

<sup>82</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>, starting at page 7

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

1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.

~~1-2.~~ Provide for employee involvement in development and implementation of the plan.

~~2-3.~~ Consider and address the level(s) of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to 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:
  - i. The general public, customers, other employees, patients, and other persons;
  - ii. Known or suspected COVID-19 persons 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, healthcare employees who have had unprotected exposures to known COVID-19 or suspected COVID-19 persons); and
  - iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.
- b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., people with chronic lung disease or moderate to severe asthma, or serious heart conditions; people who are immunocompromised; people with severe obesity (body mass index [BMI] of 40 or higher), diabetes, chronic kidney

~~disease undergoing dialysis, liver disease, older age, presence of chronic medical~~

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

~~3-4.~~ Consider contingency plans for situations that may arise as a result of outbreaks, such as:

- a. Increased rates of employee absenteeism;
- b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, and personal protective equipment, ~~(~~ including g. respirators, surgical/medical procedure masks, etc. ~~and face coverings~~);

- c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
- d. Interrupted supply chains or delayed deliveries.

~~4-5.~~ Identify basic 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.

~~5-6.~~ Provide for the prompt identification and isolation of known COVID-19 and suspected COVID-19 employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.

**Commented [WJ(56):** Error correction. "Face coverings" do not qualify as either PPE or respirators because they are not subject to independent testing to assure effectiveness

**Commented [RJ(57):** Consider adding language that that facilities should establish policies and procedures for managing and educating all visitors. Additionally, reflect Executive Order guidance that states signs must be posted at entrances describing infection control measures, employees should be screened for symptoms prior to shifts, etc. Add language that visitors should be screened prior to entering LTCFs for fever and COVID-19 symptoms.

<sup>83</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

6.—Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors that enter the place of employment, businesses that provide or contract or temporary employees to the employer, as well as other persons accessing the place of employment to comply with the requirements of this standard/regulation and the employer’s plan.

7. ~~Provide for training of employees classified as “very high” or “high” risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this standard/regulation, and requirements of the employer’s Infectious Disease Preparedness and Response Plan.~~

#### §80 Training.

- A. Employers with hazards or job tasks classified at “very high” or “high” exposure risk at a place of employment shall provide training to all employee(s) working at the place of employment regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The program shall enable each employee to recognize the hazards of the SARS-CoV-2 virus and symptoms of COVID-19 disease and shall train each employee in the procedures to be followed in order to minimize these hazards.<sup>84</sup>
- B. Employees shall be trained on:
1. The requirements of this standard/regulation;
  2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
  3. The symptoms of the COVID-19 disease;
  4. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
  5. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
  6. PPE:
    - a. When PPE is required;

**Commented [WJ(58)]:** Deleted as language was repetitive of training requirements in §80.B.8.

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<sup>84</sup> 1926.503(a)(1)

- b. What PPE is required;
  - c. ~~W~~H~~H~~ow to properly don, doff, adjust, and wear PPE;
  - d. When limitations of PPE; and
  - e. The proper care, maintenance, useful life, and disposal of PPE;<sup>85</sup>
7. The anti-discrimination provisions of this **standard/regulation** in §90; and
8. The employer's Infectious Disease Preparedness and Response Plan, where applicable.
- C. Employers covered by §50 of this **standard/regulation** shall verify compliance with §80.A by preparing a written certification record for those employees exposed to hazards or job tasks classified at "very high," "high," or "medium" exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee's physical or electronic signature, the date(s) of the training, and the ~~signature name~~ of the person who conducted the training, ~~or for computer-based training, the signature of the employer~~ the name of the person or entity that prepared the training materials. If the employer relies on training conducted by another employer or completed prior to the effective date of this **standard/regulation**, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.<sup>86</sup>
- D. The latest training certification shall be maintained.<sup>87</sup>
- E. "Retraining." When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by §80.A, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:
- 1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;
  - 2. Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or

**Commented [WJ(61):** In response to comment to give employers flexibility in training delivery to employees

<sup>85</sup> Source: 1910.134(f), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

<sup>86</sup> 1926.503(b)(1)

<sup>87</sup> 1926.503(b)(2)

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.<sup>88</sup>

**§90 Discrimination against an employee for exercising rights under this standard/regulation is prohibited.**

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard/regulation or Title 40.1 of the Code of Virginia for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face mask, face shield, or gloves, if such equipment is not provided by the employer,<sup>89</sup> provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

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.<sup>90</sup>

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<sup>88</sup> 1926.503(c)

<sup>89</sup> Source: LAJC Exhibit A with modification

<sup>90</sup> Source: LAJC Exhibit A with modification