

EMPLOYMENT LAW UPDATE

Revised Virginia Standard for Infectious Disease Prevention of COVID-19 Effective September 8, 2021

In July 2020, Virginia's Department of Labor and Industry (DOLI) issued workplace safety rules for COVID-19, with its emergency temporary standard (Standard). DOLI revised the Standard and made it permanent in January 2021. Recently, DOLI adopted a third iteration of the Standard, effective September 8, 2021. Although this iteration resembles prior versions, it includes some important additional steps that all employers (regardless of size) must take, which are outlined below:

- ❖ **Written COVID-19 Policy:** Employers must have a policy that includes: (1) a method to receive anonymous complaints; (2) methods for self-monitoring after possible exposure to COVID-19; (3) methods to report signs/symptoms/diagnosis of COVID-19; (4) procedures to absent employees suspected of having COVID-19 from the workplace and to return to work; and (5) workplace safety measures to mitigate COVID-19 hazards. 16VAC25-220-40(A)-(B). Employers should review and update their policies immediately to ensure compliance with the Standard.
- ❖ **Vaccination and Exposure Assessment:** Employers must assess their workplace for hazards and job tasks that can potentially expose employees to COVID-19, including whether its workforce includes any unvaccinated employees or employees who are otherwise at-risk for COVID-19. 16VAC25-220-40(B)(1)-(D).
- ❖ **Workplace Safety for Unvaccinated and At-Risk Employees:** Employers must establish and implement policies and procedures that ensure employees who are not fully vaccinated, or who are otherwise at-risk, observe physical distancing while on the job and during paid breaks on the employer's property. Access to common areas, breakrooms, and lunchrooms must be closed or controlled. Rules must be followed when occupying vehicles or other transportation for work purposes. 16VAC25-220-40(D)-(F). Shared tools, equipment, workspaces, and vehicles must be cleaned prior to transfer from one employee to another. 16VAC25-220-40(L)(6).
- ❖ **Face Coverings:** Employers must provide and require face coverings or surgical masks while indoors for employees who are: (1) not fully vaccinated; (2) fully vaccinated but are in areas of substantial or high community transmission; and (3) otherwise at-risk for COVID-19. Certain exceptions and accommodation requirements are contained in the Standard. 16VAC25-220-40(G). As of the publication of this Client Alert, the entire Commonwealth is experiencing high community transmission; thus employees must be wearing face coverings indoors, unless an exception applies. For the most up-to-date data regarding community transmission, visit the VDH's [COVID-19 Level of Community Transmission Dashboard](#).

- ❖ **Return to Work Procedures:** Employers must remove from the worksite employees who are COVID-19 positive or who are suspected of having COVID-19, regardless of vaccination status. If an employee's test is positive, then the employee must quarantine and the employer must make decisions regarding the employee's return to work in accordance with guidance from a health care provider, a VDH public health professional, or the CDC. For employees who are suspected of having COVID-19, the employee cannot return to the workplace until: (1) the employee obtains a negative PCR test (provided at no cost to the employee); or (2) the employer makes the decision that the employee can return to work in accordance with guidance from a health care provider, a VDH public health professional, or the CDC. If an employee has a known exposure to someone with COVID-19, the employee must follow any testing or quarantine guidance provided by a VDH public health professional. 16VAC25-220-40(C).
- ❖ **Reporting:** Requirements for notification when there has been a confirmed case of COVID-19 remain largely the same, except employers must now report two or more confirmed COVID-19 cases at the worksite within a 14-day period to the VDH and DOLI. Reporting is done through the [VDH portal](#) and satisfies the reporting requirements for both the VDH and DOLI. Employers must continue to notify their own employees, and employees of other companies, who may have been exposed, within 24 hours of discovery of the possible exposure, keeping the identity of the employee with a positive case confidential. Employers must similarly notify the building owner. 16VAC25-220-40(B)(7)(d)-(e).
- ❖ **Sanitation and Disinfection:** Employers must continue to comply with the VOSH sanitation standard applicable to their industries and comply with the revised sanitation and disinfection procedures listed in the Standard. 16VAC25-220-40(L).
- ❖ **Additional Requirements for Higher-Risk Workplaces:** The Standard outlines a number of factors that may create a higher-risk workplace and includes a non-exhaustive list of higher-risk workplaces (manufacturing, meat and poultry processing, high-volume retail and grocery, transit, seafood processing, correctional facilities, jails, detention centers, and juvenile detention centers). 16VAC25-220-60(A). Additional requirements for higher-risk workplaces include:
 - **Health Assessment:** A health assessment is now *only* required in higher-risk workplaces. Prior to the commencement of each work shift, prescreening or surveying is required to verify each covered employee does not have signs or symptoms of COVID-19. 16VAC25-220-60(C)(1).
 - **Engineering, Administrative and Work Practice Controls:** The Standard also includes additional engineering, ventilation, social distancing, signage, and PPE requirements. 16VAC25-220-60.
 - **Infectious Disease Preparedness and Response Plan:** Employers with 11 or more employees (excluding fully vaccinated employees) must develop a written plan by October 8, 2021. 16VAC25-220-70.

- **Training:** Employers must train employees on the hazards and characteristics of COVID-19 by November 7, 2021. 16VAC25-220-80. (Non-higher-risk employers must continue to provide more generalized training, which can be found [here](#)).
- ❖ **Applicability to Health Care Settings or Health Care Support Services:** The federal Occupational Safety and Health Administration has implemented an Emergency Temporary Standard (Federal ETS) for health care services and support services industries. While the Federal ETS is in effect, the Virginia Standard will not apply to health care services or support services industries subject to the Federal ETS, with the exception of the Standard's *reporting requirements* (to the VDH/DOLI) and the *prohibition on discrimination* against an employee exercising rights. 16VAC25-220-50(A)(1).

Conclusion

We recommend that employers review the [Standard](#) and promptly conduct a vaccination, exposure, and risk assessment, as well as a review of their COVID-19 policies, to ensure compliance with the Standard. The DOLI also maintains a regularly updated list of [Frequently Asked Questions](#) which is a very helpful reference guide.

***More Questions?
We are here to help.***

In our Tysons Office

703-748-2690

Eddie Isler (eisler@islerdare.com)

Steve Ray (sray@islerdare.com)

Michelle Radcliffe (mradcliffe@islerdare.com)

Lori Turner (lturner@islerdare.com)

Micah Ticatch (mticatch@islerdare.com)

Ramana Briggs (rbriggs@islerdare.com)

In our Richmond Office

804-489-5500

Steve Brown (sbrown@islerdare.com)

Alison Kewer (akewer@islerdare.com)

Amy Smith (asmith@islerdare.com)

Lindsey Strachan (lstrachan@islerdare.com)

Whitney Nelson (wnelson@islerdare.com)

***Questions about employee benefits?
Our benefits team would be glad to assist***

Andrea O'Brien (aobrien@islerdare.com)

Vi Nguyen (vnguyen@islerdare.com)

Jeanne Floyd (jfloyd@islerdare.com)

Ashley Hedge (ahedge@islerdare.com)