

Virginia Issues Final Coronavirus Workplace Safety Measures: Is Your Business in Compliance?

By Jessica Summers

As we've previously blogged, last summer Virginia became the first state to enact mandatory COVID-19 workplace safety rules.

Virginia's Emergency Temporary Standard ("ETS") went into effect at the end of July 2020. Since then, the Virginia Occupational Safety and Health Program (VOSH) and the Virginia Department of Labor and Industry (DOLI) have been working through the Commonwealth's regulatory process to issue a final standard to replace the ETS. That was accomplished and the Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19 (the "Final Standard"), (16VAC25-220-40.B.7.d and -40.B.7.e) went into effect on January 27, 2021.

The good news for employers that already took steps to comply with the ETS is that relatively few changes were made between the ETS and the Final Standard. The DOLI has published a helpful summary of those changes.

However, particularly given the increased enforcement efforts that may accompany the issuance of the Final Standard – Virginia employers that were not up to speed on the ETS are well advised to take immediate action to bring themselves into compliance with the Final Standard.

This will include, among other things:

- Assessing the employer's workforce and categorizing each position based on defined risk levels. Employers with employees that are considered medium risk or higher have additional obligations under the Final Standard to provide training to such employees and develop an infectious disease preparedness plan.
- Establishing policies and procedures to identify infected or potentially infected individuals and exclude them from the workplace, respond in the event of a confirmed infection and comply with the Final Standard's rules about returning employees to work after a COVID infection.
- Reviewing the physical layout and maintenance of the workplace to ensure compliance with Final Standard's provisions on social distancing and cleaning.
- Reviewing the company's policies and procedures to ensure that any workplace in Virginia is compliant with the provisions of the Final Standard intended to prevent the spread of COVID in the workplace including requirements about social distancing, preventative signage, use of PPE; and
- Confirming that the company has made available and is enforcing the use of personal protective equipment (PPE) to the same extent as required by the Final Standard.

As with the ETS, the Final Standard makes it clear that employers will be prohibited from discriminating or taking action against an employee who raises a "reasonable concern" regarding the spread of COVID-19. This includes protections for concerns raised internally to the employer or fellow employees, as well as those raised externally to a third party, including a state or federal agency or the media.

If you are a Virginia employer who was not tuned into the ETS – do not panic. Given that many of provisions of the ETS and now the Final Standard are closely aligned with existing recommendations and guidance from the CDC and OSHA you may be pleasantly surprised to find how many of the provisions you are already in full or partial compliance with. Either way, the DOLI has put together a website with various helpful materials and your friends in our Employment Law Group are always here to answer your questions and help get your business into full compliance.