

## **Virginia adopts nation's first COVID-19 OSHA standards**

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Recently, Virginia's Safety and Health Codes Board (the Board), the body that establishes Virginia Occupational Safety and Health regulations and standards, voted to adopt §16 VAC 25-220, Emergency Temporary Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 (COVID-19 Standards).

Virginia appears to be the first Occupational Safety and Health Administration (OSHA) state plan to adopt COVID-19 specific workplace safety regulations and may signal a trend as federal OSHA continues to receive pressure to follow suit. Oregon OSHA already has announced that it will pass its own COVID-19 safety regulations, and other states like California appear to be considering them (though there have been no formal announcements to date).

The COVID-19 emergency regulations will go into effect upon publication, which is expected to occur the week of July 27, 2020, and will expire within six months of the effective date, upon expiration of the governor's state of emergency, or when superseded by a permanent standard, whichever occurs first. The Board may also repeal the COVID-19 Standards at a later date.

The COVID-19 Standards generally apply to all private and public employers in Virginia, except where the United States is the employer or exercises exclusive jurisdiction. Covered employers will have 30 days after the COVID-19 Standards go into effect to train employees, and 60 days to develop the required infectious disease preparedness and response plan.

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### Application of the COVID-19 Standards

Application of the requirements in the COVID-19 Standards may vary within a single place of employment and will be based on the exposure risk level presented by the COVID-19 hazards. Various hazards or job tasks at the same place of employment can be designated as "very high," "high," "medium," or "lower" exposure risk. The exposure risk level will be determined by a variety of factors, including, but not limited to: the job tasks being undertaken; the work environment (e.g., indoors or outdoors); the known or suspected presence of COVID-19; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through contact (inside of six feet) with other employees or persons; the type of hazards encountered, including potential exposure to the airborne transmission (including droplets or airborne droplet nuclei) of COVID-19; and/or contact with contaminated surfaces or objects.

The following is a summary of the four risk exposure levels:

**This Alert came from the Law Firm of Nixon Peabody**

- **Very high:** the place of employment or task has a high potential for employee exposure to known or suspected sources of COVID-19 (e.g., intubation, on a person known or suspected to have COVID-19).
  - **High:** the place of employment or task has a high potential for employee exposure inside six feet with known or suspected sources of the virus, or person known or suspected to be infected, and is not otherwise classified as “very high” (e.g., health care (physical and mental health) delivery and support services provided to a person known or suspected to have COVID-19).
  - **Medium:** the place of employment or task requires more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with COVID-19 but are not known or suspected to be infected, and is not otherwise classified as “very high” or “high” (e.g., poultry, meat, and seafood processing; agricultural labor; commercial transportation of customers; **schools**; restaurants; jails; gyms; hospitals in situations not involving exposure to known or suspected sources of COVID-19).
  - **Low:** the place of employment or task does not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with COVID-19, and is not otherwise classified as “very high,” “high,” or “medium” (e.g., office building setting).
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Mandatory requirements for all employers. All employers will be required, among other things, to:

- Assess and classify each job task according to its risk exposure
- Inform employees about methods of self-monitoring
- Develop and implement reporting procedures when employees are experiencing symptoms consistent with COVID-19
- Mandate social distancing measures
- Mandate face coverings for employees in customer-facing positions and when social distancing is not possible
- Provide frequent access to hand washing or hand sanitizer
- Regularly clean high-contact surfaces
- Notify all employees within 24 hours of the discovery of their possible exposure
- Prohibit employees who are known or suspected to be positive for COVID-19 from returning to work for ten days or until they receive two consecutive negative tests collected less than 24 hours apart.