

Virginia Becomes the First State to Issue an OSHA Emergency Temporary Standard for COVID-19

On July 15, 2020, Virginia adopted the first in the nation [OSHA Emergency Temporary Standard \(ETS\) to protect workers from COVID-19](#).¹ The standard was the result of a worker-based effort, led by a coalition of worker advocacy groups led by the Virginia AFL-CIO, Legal Aid Justice Center, and the Virginia Interfaith Center for Public Policy. Governor Northam recognized that Virginia must step up to protect workers during a pandemic. On May 26, the governor issued an executive order that directed the Virginia Department of Labor and Industry (DOLI) to create and issue a state OSHA COVID-19 ETS across industries and begin plans for a permanent standard.² In Virginia, DOLI administers the federally approved state OSHA plan and adopts new standards through its Safety and Health Codes Board.

The standard was created by Virginia's Department of Labor and Industry (DOLI), received public comment, and then was strengthened and approved by Virginia's Safety and Health Codes Board. The Board voted overwhelmingly to issue the strong science-driven standard that is in effect as of July 27, 2020 when published, except for training (30 days after publication) and the written plan (60 days after publication).

The strong enforceable standard requires employers to develop and implement an infectious disease preparedness and response plan specific to their workplace, using clear, science-driven protection measures.

KEY PROVISIONS OF THE STANDARD REQUIRE EMPLOYERS TO:

- Assess the risks in their workplace by job task and create a written plan for controlling those risks to virus exposures.
- Implement specific preventive methods for each occupational risk level that are based on longstanding and effective occupational safety practices.
- Establish specific procedures when employees are infected, symptomatic, or suspected positive when at home or at the worksite, including flexible sick leave when feasible.
- Report known infected employee cases of COVID-19 to the Department of Health and any outbreaks of three or more workers within a two week period to Virginia OSHA—both within 24 hours and whether or not the cases are work-related.
- Notify other employees within 24 hours that a coworker has tested positive, whether or not it is work-related.
- Follow specific procedures before infected employees can return to work.
- Implement physical distancing requirements and sanitation and disinfection protocols.
- Provide adequate PPE required including gloves, a gown, a face shield or goggles, and a respirator for health care workers.

¹ <http://www.doli.virginia.gov/wp-content/uploads/2020/07/COVID-19-Emergency-Temporary-Standard-FOR-PUBLIC-DISTRIBUTION-FINAL-7.17.2020.pdf>

² Executive Order 63 states: The Commissioner of the Virginia Department of Labor and Industry shall promulgate emergency regulations and standards to control, prevent, and mitigate the spread of COVID-19 in the workplace. The regulations and standards adopted in accordance with §§ 40.1-22(6a) or 2.2-4011 of the Code of Virginia shall apply to every employer, employee, and place of employment within the jurisdiction of the Virginia Occupational Safety and Health program as described in 16 Va. Admin. Code § 25-60-20 and Va. Admin. Code § 25-60-30. These regulations and standards must address personal protective equipment, respiratory protective equipment, and sanitation, access to employee exposure and medical records and hazard communication. Further, these regulations and standards may not conflict with requirements and guidelines applicable to businesses set out and incorporated into Amended Executive Order 61 and Amended Order of Public Health Emergency Three.

- Provided face coverings when workers cannot physically distance and respirators or other PPE are not required.
- Provide comprehensive training for workers at greatest risk of exposure to COVID-19 and awareness training for workers at lower risk of exposure.
- Ensure that workers are not discriminated against when they exercise their right to a safe workplace, discuss workplace hazards to coworkers, government agencies, the public, or social media, or when they need to use their own PPE.

PENALTIES:

The maximum penalty for violating the rules is set at \$13,000, but “willful and repeat” violations could result in fines up to \$130,000.

HOW THE STANDARD IMPACTS EDUCATION:

All public and private schools (k-12 and higher ed) must follow this OSHA standard. If they already rely on plans submitted to the Virginia Department of Education based on the [Virginia guidelines](#) for reopening schools, the plans must be at least as protective as the state OSHA requirements in order to be compliant with this standard. School plans must follow the requirements under sections of the OSHA standard that are mandatory for all employers (section 40) and the medium risk requirements (section 60). The OSHA standard requires social distancing, training and other protective measures that were only recommendations under the guidelines, requires notification to local authorities and to staff if there is a case in the school, and requires a return to work plan in the event a staff member has COVID-19.

This is a great victory for working people in Virginia to help protect our communities and families from this virus and reopen the economy safely. Strong enforcement by Virginia DOLI will hold employers accountable for keeping working people safe on the job, prevent the virus from spreading and save lives.