

Virginia Administrative Code

Title 16. Labor And Employment

Agency 25. Safety And Health Codes Board

Chapter 220. Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19

## 16VAC25-220-40. Mandatory requirements for all employers.

A. Employers shall have a policy in place to ensure compliance with the requirements in this section to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease. Such policy shall have a method to receive anonymous complaints of violations. An employer that enforces its policy in good faith and resolves filed complaints shall be considered in compliance with this subsection.

B. 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. Tasks that are similar in nature and employees exposed to the same hazard may be grouped for classification purposes.

Employers may rely on an employee's representation of being fully vaccinated, as defined by this chapter without requiring proof of vaccination; however, nothing in this chapter shall be construed to preclude an employer from requiring proof that an employee is fully vaccinated.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if employees suspect possible exposure .

3. Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2 virus. It has not been determined that persons who test positive for the presence of antibodies by serological testing 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 suspected or confirmed COVID-19.

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

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

5. Employers shall not permit suspected or confirmed COVID-19 employees or other persons 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 subsection C of this section).

Nothing in this chapter shall prohibit an employer from permitting a suspected or confirmed 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.

6. Employers shall discuss with subcontractors and companies that provide contract or temporary employees the importance and requirement to exclude from work employees or other persons (e.g., volunteers) who are suspected or confirmed COVID-19. Subcontractor, contract, or temporary employees who are suspected or confirmed COVID-19 shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their suspected or confirmed COVID-19 employees to report to or be allowed to remain at work or on a job site until cleared for return to work.

7. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive COVID-19 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being suspected or confirmed COVID-19) present at the place of employment within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test). Employers shall notify:

a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees' possible exposure, while keeping confidential the identity of the confirmed COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) (42 USC § 1201 et seq.) and other applicable federal and Virginia laws and regulations;

b. In the same manner as subdivision 7 a of this subsection, other employers whose employees were present at the work site during the same time period;

c. In the same manner as subdivision 7 a of this subsection, the building or facility owner. The building or facility owner will require all employer tenants to notify the owner of the occurrence of a COVID-19 positive test for any employees or residents in the building. This notification will allow the owner to take the necessary steps to clean the common areas of the building. In addition, the building or 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;

d. The Virginia Department of Health . Every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health (VDH) when the work site has had two or more confirmed cases of COVID-19 of its own employees present at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day time period. Employers shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases. Employers shall continue to report all cases

until the local health department has closed the outbreak investigation. After the outbreak investigation is closed, subsequent identification of two or more confirmed cases of COVID-19 shall be reported, as required by this subdivision B 7 d. The following employers are exempt from this provision because of separate outbreak reporting requirements contained in 12VAC5-90-90: any residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp; and

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of two or more of its own employees present at the place of employment within a 14-day period testing positive for COVID-19 during that 14-day time period. A reported positive COVID-19 test does not need to be reported more than once and will not be used for the purpose of identifying more than one grouping of two or more cases, or more than one 14-day period.

8. Employers shall ensure employee access to the employee's 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 the employees' own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with 16VAC25-90-1910.1020, Access to Employee Exposure and Medical Records.

C. Return to work. Employers shall develop and implement policies and procedures for suspected or confirmed COVID-19 employees to return to work.

1. If the employer knows an employee is COVID-19 positive, regardless of vaccination status then the employer must immediately remove that employee from the work site and keep the employee removed until they meet the return to work criteria in subdivision C 3 of this section.

2. If the employer knows an employee is suspected COVID-19, regardless of vaccination status then the employer must immediately remove that employee from the work site and either:

a. Keep the employee removed until they meet the return to work criteria in subdivision C 3 of this section; or

b. Keep the employee removed and provide a COVID-19 polymerase chain reaction (PCR) test at no cost to the employee.

(1) If the test results are negative, the employee may return to work immediately.

(2) If the test results are positive, the employer must comply with subdivision C 1 of this section.

(3) If the employee refuses to take the test, the employer must continue to keep the employee removed from the workplace consistent with subdivision C 1 of this section. Absent undue hardship, employers must make reasonable accommodations for

employees who cannot take the test for religious or disability-related medical reasons.

3. The employer must make decisions regarding an employee's return to work after a COVID-19-related workplace removal in accordance with guidance from a licensed health care provider, a VDH public health professional, or CDC's "Isolation Guidance" (hereby incorporated by reference); and CDC's "Return to Work Healthcare Guidance" (hereby incorporated by reference). 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.

4. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. Employers shall not require employees to pay for the cost of COVID-19 testing for return to work determinations. If an employer's health insurance covers the entire cost of COVID-19 testing, use of the insurance coverage would not be considered a violation of this subdivision C 4.

D. Unless otherwise provided in this chapter, employers shall establish and implement policies and procedures that ensure employees who are not fully vaccinated and otherwise at-risk 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, or 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. 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 subsection; and
3. Provide that such requirements do not apply to fully vaccinated employees.

E. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled. This subsection does not apply to fully vaccinated employees.

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:

1. At the entrance of the designated common area or room, employers shall clearly post the policy limiting the occupancy of the space and requirements for physical distancing, hand washing and hand sanitizing, and cleaning of shared surfaces for employees who are not fully vaccinated;
2. Employers shall limit occupancy of the designated common area or room so that occupants who are not fully vaccinated can maintain physical distancing from each other. Employers shall enforce the occupancy limit;

3. When no suspected or confirmed COVID-19 persons are known to have been in a space, the employer shall clean the common area, breakroom, or lunchroom once per shift; and
4. Handwashing 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.

F. When an employee is occupying a vehicle or other form of transportation with one or more employees or other persons for work purposes, employers shall use the hierarchy of hazard controls to mitigate the hazards associated with SARS-CoV-2 and COVID-19 to prevent employee exposures in the following order. This subsection does not apply to fully vaccinated employees in areas of low to moderate community transmission and except as otherwise noted:

1. Eliminate the need for employees to share work vehicles or other transportation and arrange for alternative means for additional employees to travel to work sites.
2. Provide access to fresh air ventilation (e.g., windows). Do not recirculate cabin air.
3. When physical distancing cannot be maintained, establish procedures to maximize separation between employees as well as other persons during travel (e.g., setting occupancy limits, sitting in alternate seats, etc.).
4. When an employee who is not fully vaccinated must share a work vehicle or other transportation with one or more employees or other persons because no other alternatives are available, such employees shall be provided with and wear respiratory protection, such as an N95 filtering face piece respirator, or a face covering at the option of the employee. When an employee who is fully vaccinated must share work vehicles or other transportation with one or more employees or other persons in areas of substantial or high community transmission because no other alternatives are available, such employees shall be provided with and wear face coverings.
5. The employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry (e.g., when one or more employees is accompanying a suspected or confirmed COVID-19 person in an ambulance).
6. Until adequate supplies of respiratory protection and/or personal protective equipment become readily available for non-medical and non-first responder employers and employees, employers shall provide and employees shall wear face coverings while occupying a work vehicle or other transportation with other employees or persons.

Notwithstanding anything to the contrary in this chapter, the Secretary of Labor may exercise discretion in the enforcement of an employer's failure to provide PPE required by this chapter, if the employer demonstrates that the employer:

- a. Is exercising due diligence to come into compliance with such requirement; and
- b. Is implementing alternative methods and measures to protect employees that are

satisfactory to the Secretary of Labor after consultation with the Commissioner of Labor and Industry and the Secretary of Health and Human Services.

7. For commercial motor vehicles or trucks, if the driver is the only person in the vehicle or truck, or the vehicle or truck is operated by a team who all live in the same household and are the only persons in the vehicle, an employer of such drivers would be considered to be in compliance with subdivisions F 1 through F 5 of this section.

G. Employers shall provide and require employees that are not fully vaccinated, fully vaccinated employees in areas of substantial or high community transmission, and otherwise at-risk employees (because of a prior transplant or other medical condition) to wear face coverings or surgical masks while indoors, unless their work task requires a respirator or other PPE. Such employees shall wear a face covering or surgical mask that covers the nose and mouth to contain the wearer's respiratory droplets and help protect others and potentially themselves. This subsection does not apply to fully vaccinated employees in areas of low to moderate community transmission, and except as otherwise noted.

The following are exceptions to the requirements for face coverings, facemasks or surgical masks for employees that are not fully vaccinated and fully vaccinated employees in areas of substantial or high community transmission:

1. When an employee is alone in a room.
2. While an employee is eating and drinking at the workplace, provided each employee who is not fully vaccinated is at least six feet away from any other person, or separated from other people by a physical barrier.
3. When employees are wearing respiratory protection in accordance with 16VAC25-90-1910.134 or this chapter.
4. When it is important to see a person's mouth (e.g., communicating with an individual who is deaf or hard of hearing) and the conditions do not permit a facemask that is constructed of clear plastic or includes a clear plastic window. In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.
5. When employees cannot wear facemasks due to a medical necessity, medical condition, or disability as defined in the Americans with Disabilities Act (ADA) (42 USC § 12101 et seq.), or due to a religious belief. Exceptions must be provided for a narrow subset of persons with a disability who cannot wear a facemask or cannot safely wear a facemask, because of the disability, as defined in the ADA, including a person who cannot independently remove the facemask. The remaining portion of the subset who cannot wear a facemask may be exempted on a case-by-case basis as required by the ADA and other applicable laws. In all such situations, the employer must ensure that any such employee wears a face shield for the protection of the employee, if their condition or disability permits it. Accommodations may also need to be made for religious beliefs consistent with

Title VII of the Civil Rights Act (42 USC § 2000e et seq.). The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

6. When the employer can demonstrate that the use of a facemask presents a hazard to an employee of serious injury or death (e.g., arc flash, heat stress, interfering with the safe operation of equipment). In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. Any employee not wearing a facemask must remain at least six feet away from all other people unless the employer can demonstrate it is not feasible. The employee must resume wearing a facemask when not engaged in the activity where the facemask presents a hazard. The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

7. Where a face shield is required to comply with this subsection or is otherwise required by the employer, the employer must ensure that face shields are cleaned at least daily and are not damaged. When an employee provides a face shield that meets the definition of that term in 16VAC25-220-30, the employer may allow the employee to use it and is not required to reimburse the employee for that face shield. Notwithstanding anything to the contrary in this chapter, the Secretary of Labor may exercise discretion in the enforcement of an employer's failure to provide PPE required by this chapter if the employer demonstrates that the employer:

- a. Is exercising due diligence to come into compliance with such requirement; and
- b. Is implementing alternative methods and measures to protect employees that are satisfactory to the Secretary of Labor after consultation with the Commissioner of Labor and Industry and the Secretary of Health and Human Services.

H. Reserved.

I. When required by this chapter, face coverings shall be worn over the wearer's nose and mouth and extend under the chin.

J. Reserved.

K. Reserved.

L. Sanitation and disinfecting.

1. In addition to the requirements contained in this chapter, employers shall comply with the VOSH sanitation standard applicable to its industry.

2. Reserved.

3. In addition to the requirements contained in this chapter, employers shall comply with the VOSH hazard communication standard applicable to the employers' industry for cleaning and disinfecting materials and hand sanitizers (e.g., 16VAC25-90-1910.1200, 16VAC25-175-1926.59).

4. Areas in the place of employment where suspected or confirmed COVID-19 employees or other persons accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas as follows:

- a. The provisions in subdivisions 4 b, 4 c, and 4 d of this subsection do not apply to health care settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.
- b. If less than 24 hours have passed since the person who is sick or diagnosed with COVID-19 has been in the space, clean and disinfect the space.
- c. If more than 24 hours have passed since the person who is sick or diagnosed with COVID-19 has been in the space, cleaning is enough. Employers may choose to also disinfect depending on certain conditions or everyday practices required by the facility.
- d. If more than three days have passed since the person who is sick or diagnosed with COVID-19 has been in the space, no additional cleaning or disinfecting beyond regular cleaning practices is needed.

5. All common spaces, including bathrooms (including port-a-johns, privies, etc.), frequently touched surfaces, and doors, shall at a minimum be cleaned at least once during or at the end of the shift (where multiple shifts are employed, such spaces shall be cleaned no less than once every 12 hours), except as provided in subdivisions 5 a and 5 b of this subsection.

- a. The provision in subdivision 5 b of this subsection does not apply to health care settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.
- b. When no suspected or confirmed COVID-19 persons are known to have been in a space, clean once a day.

6. All shared tools, equipment, workspaces, and vehicles shall be cleaned prior to transfer from one employee to another. This subsection does not apply when the transfer is from one fully vaccinated employee to another fully vaccinated employee.

7. Employers shall ensure that cleaning and disinfecting products are readily available to employees to accomplish the required cleaning and disinfecting. In addition, employers shall ensure use of only disinfecting chemicals and products indicated in the Environmental Protection Agency (EPA) List N for use against SARS-CoV-2, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2.

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



9. Employees shall have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, 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 the employees work station.

10. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site or client or customer location and shall have transportation immediately available to nearby toilet facilities and handwashing facilities that 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.

11. In situations other than emergencies, employers shall ensure that protective measures are put in place to prevent cross-contamination between tasks, areas, and personnel.

M. Unless otherwise provided in this chapter, 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 the equipment's proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

**Statutory Authority**

§40.1-22 of the Code of Virginia.

**Historical Notes**

Derived from Virginia Register Volume 37, Issue 13, eff. January 27, 2021; amended, Virginia Register Volume 38, Issue 3, eff. September 8, 2021.