

COVID-19 Emergency Temporary Standard Toolkit

The following is a summary checklist for employers to use as a reference when beginning to implement new requirements contained in the Emergency Temporary Standard (ETS) for COVID-19 prevention and mitigation. The Department of Labor and Industry will be providing information brochures, sample training materials, and industry-specific preparedness plan templates in the coming weeks. The ETS goes into effect on or the week of July 27th, 2020, the exact date still to be determined.

- I. Employers must classify each job task as very high, high, medium, or lower, depending on the risk to the employee associated with the job task.
 - a. Very high and high classifications are primarily reserved for health care settings with high potential for exposure to SARS-CoV-2.
 - b. Most job tasks will fall into the medium category, meaning the job task will require contact other people within six feet, but the potential for exposure can be mitigated through reasonable measures.
 - c. The lower category applies mainly to job tasks that do not require much or any contact with other individuals within six feet, whether due to the nature of the job or through reasonable workplace controls other than facial coverings (e.g. physical barriers, staggered shifts, telework).

- II. Employers must ensure compliance with the following:
 - a. Encourage employee self-monitoring;
 - b. Develop and adopt policies and procedures for employees to report when they are experiencing COVID-19 symptoms and no alternative diagnosis has been made;
 - c. Prohibit known or suspected COVID-19 employees from working;
 - d. Ensure sick leave policies are flexible and consistent with public health guidance and applicable laws;
 - e. Discuss with subcontractors and other companies that provide employees the company's practices and policies to address suspected and known COVID-19 cases;
 - f. To the extent permitted by law, including HIPAA, establish a system to receive reports of positive SARS-CoV-2 tests and notify its own employees, employers of other employees present, the building/facility owner, the Virginia Department of Health within 24 hours of a positive result, and the Virginia Department of Labor and Industry (DOLI) within 24 hours of discovery of three or more positive results within a 14 day period;

- g. Notify employees and others when a co-worker tests positive for COVID-19 within certain time frames and in compliance with applicable federal and state confidentiality laws;
- h. Ensure employee access to SARS-CoV-2 and COVID-19 exposure and medical records in accordance with OSHA standards;
- i. Control access to breakrooms and common areas, limiting occupancy and clearly posting handwashing, distancing, and sanitation policy;
- j. Ensure compliance with industry standards for respiratory protection and PPE when more than one employee is occupying a vehicle or when an employee's workspace does not allow for physical distancing;
- k. Ensure cleaning products, sanitation equipment, handwashing, and hand sanitizing materials are readily available where feasible;
- l. Ensure that any shared equipment, instruments, vehicles, and workplaces are sanitized prior to transfer to another employee; and
- m. Ensure common areas are sanitized before the beginning of the next shift.

III. Employers must develop a return to work policy

- a. For **known or suspected** COVID-19 positive employees to return to work the employer shall develop policies and procedures using **either** a symptom-based or test-based strategy depending on local healthcare and testing circumstances.”
 - i. symptom-based strategy excludes an employee from returning to work until at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.
 - ii. test-based strategy excludes an employee from returning to work until resolution of fever without the use of fever-reducing medications, and improvement in respiratory symptoms (e.g., cough, shortness of breath), and negative results from at least two consecutive respiratory specimens collected ≥ 24 hours apart (total of two negative specimens).
- b. For **known asymptomatic** COVID-19 employees to return to work the employer shall develop policies and procedures using **either** a time-based or test-based strategy depending on local healthcare and testing circumstances.
 - i. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test.
 - ii. The test-based strategy excludes an employee from returning to work until negative results from at least two consecutive respiratory specimens collected ≥ 24 hours apart (total of two negative specimens).

- IV. Requirements for employers with job tasks classified as very high or high:
 - a. Ensure appropriate air handling and control systems are in place and that airborne infection isolation rooms are available where feasible.
 - b. Implement administrative and work practice controls, including pre-screening employees, isolating infected individuals, limiting non-employee access to certain areas, posting signage regarding symptoms and reporting, providing employee training, providing hand sanitizers, providing facial coverings, implementing flexible work schedules, and implementing physical distancing protocols.
 - c. Provide appropriate PPE for employees and implement a respiratory protection program.

- V. Requirements for employers with job tasks classified as medium:
 - a. Ensure appropriate air handling and control systems are in place.
 - b. Implement administrative and work practice controls, including pre-screening employees, providing face coverings to employees, implementing flexible work schedules, implementing physical distancing protocols, installing physical barriers, and delivering services remotely.

- VI. Employers with job tasks categorized as “very high,” “high,” or “medium” with 11 or more employees must develop and implement a written “Infectious Disease Preparedness and Response Plan.”
 - a. Employers must designate a qualified person to be responsible for implementing the plan. The plan must address the levels of risk associated with various work locations as well as the nature and extent of potential employee exposures to known or suspected sources of SARS-CoV-2. The document must also include a contingency plan in case of an outbreak, and it must detail the basic infection prevention measures being implemented in the workplace.
 - b. Employers must have the plan in place and employees trained on the plan within 60 days of the effective date of the standard.

- VII. Employers with job tasks categorized as “very high,” “high,” or “medium” must provide a training program for all employees (regardless of risk classification) which includes ten specific categories of information such as the requirements of the standard, identifying COVID-19 symptoms, and procedures to minimize risk. Employers must have employees sign a written certification of training. All training except that associated with the Infectious Disease and Response Plan must be completed within 30 days of the effective date of this standard. DOLI will provide sample PowerPoint presentations and certification forms for employers to use.

- VIII. Employers may not discharge or discriminate against an employee for exercising their rights under the ETS. In addition, no employee can be discharged or discriminated against for voluntarily providing their own PPE, if such equipment is not provided for by the employer, “provided that the PPE does not create a

greater hazard to the employee or create a serious hazard for other employees.” Lastly, no employee can be discharged or discriminated against for raising a reasonable concern about COVID-19 infection control to the employer, other employees, or to the public “such as through print, online, social or any other media.” If adopted, most Virginia employers will need to update existing anti-discrimination and perhaps social media policies to comply with the new requirements.

*This document is intended for educational purposes only and not as legal advice. We encourage you to seek the advice of counsel before making decisions in response to the ETS.