



Update on COVID-19 Laws, Orders, and Regulations Affecting Virginia Banks

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- I. Employee Retention Credit
- II. Emergency Temporary Standard
- III. Executive Order 72
- IV. Vaccinations

Employee Retention Credit

- Created by the CARES Act
- Credit equal to 50% of qualified wages that an employer pays in a calendar quarter
- Cap of \$5,000 payroll tax credit per quarter/\$10,000 total for wages paid from March 13, 2020 through December 31, 2020

How ERC applies to banks

- To be eligible for the credit, either:
 - The Bank's operations must be fully or partially suspended as a result of a government shutdown order or
 - The Bank must satisfy a 50% reduction in gross receipts test

- Misconception that essential business are excluded.

- IRS FAQs provide that if a government order requires an employer to close its workplace for certain purposes, then the employer is considered to have a “partial suspension” of operations if the modifications have more than a nominal effect on operations.

How ERC applies to banks (cont.)

- Did the Bank have to close its lobby to comply with social distancing orders? Or reduce operations in other ways?
- If the bank has 100 or fewer employees, “qualified wages” are wages paid to any employee.
- For banks that employ more than 100 employees, the credit applies with respect to “qualified wages” paid to an employee that is not “providing services” due to full or partial shutdown of bank operations.
 - So tracking is required for larger employers.

Emergency Temporary Standard

- Effective July 27, 2020
- Expires January 27, 2021

1. Assess and categorize job tasks: lower risk; medium risk; high risk; very high risk.
2. Establish and implement a system for employee self-assessment and screening for COVID-19.
3. Provide flexible sick leave policies, telework, staggered shifts, and other administrative practice controls to eliminate contact with others inside 6 feet.
4. Implement procedures to prevent sick employees and other persons from infecting healthy employees.

5. Develop return-to-work protocols for employees who have COVID-19 or are suspected of having COVID-19.
 - Symptomatic:
 - Symptom-based strategy: 72 hours symptom free; 10 days since symptoms began
 - Test-based strategy: Symptom free; 2 negative tests
 - Asymptomatic:
 - Time-based strategy: 10 days after first positive test
 - Test-based strategy: 2 negative tests
6. Notification of confirmed cases to:
 - Employees
 - Other employers
 - Building/facility owner
 - VDOH
 - VOSH – 3 or more cases at worksite

7. Anti-discrimination
8. Infectious Disease Preparedness and Response Plan (higher and high risk; medium risk with 11 employees)
9. Training for higher, high, and medium risk; information sharing for lower risk

- Risk Assessment Across Multiple Worksites

- Notification to VDOH and VOSH:
 - Online reporting portal (went live September 28, 2020)
 - “Place of employment” means single site of employment
 - *De minimis* violation for failure to report single case

- CDC Safeharbor: “equivalent or greater protection”
 - 72 hour symptom free (ETS) vs. 24 hour symptom free (CDC)

- Quarantine
 - Not covered by ETS.
 - VDOH: 14 days is still gold standard; but CDC’s new guidance (10 days; 7 days with test) is okay if the individual is not able to stay home the full 14 days.

ETS: What's Next?

- Permanent Virginia Standard
- Likely Federal OSHA ETS

- Effective December 14, 2020

- Modified Stay at Home Order (12 a.m. to 5 a.m.):
exception for work.

- Essential Retail Businesses -- Continued compliance with
“Guidelines for All Business Sectors”
 - Policies and practices for maintaining appropriate physical distance
 - Clear communication and signage for physical distancing
 - Limit occupancy to ensure adequate physical distancing
 - Encourage telework whenever possible
 - Move or stagger workstations to ensure 6 feet of separation between co-workers and between members of the public
 - Limit in-person work-related gatherings (conferences, trainings, etc.)

- Restriction on public and private in-person gatherings
 - 10 people.
 - Does not apply to employees.
 - Does not apply to retail setting as long as individuals do not congregate.

- Face Coverings:
 - Indoors: age 5 or older.
 - Outdoors: age 5 or older if unable to maintain 6 feet of distance.
 - Employees: Must wear while working at their place of employment (no exception for non-customer facing positions).
 - Exception for medical conditions and disabilities; cannot require medical documentation or identification of specific medical condition.

- Requiring employee vaccinations?
 - Awaiting guidance from EEOC (medical test, ADA, religious accommodations, etc.)
 - Workers Compensation considerations
 - OSHA retaliation considerations
 - Employee Relations and Public Relations considerations

- Incentivizing/Encouraging vaccinations?
 - Wellness programs

- Best to take a wait-and-see approach. . .

Thank you!

Hunton Andrews Kurth Labor and Employment Pandemic
Resource Center:

<https://www.huntonak.com/en/coronavirus-resource-center/labor-and-employment-business-immigration.html>

Hunton Employment & Labor Perspectives Blog:
Analysis and Development in Employment & Labor Issues

<https://www.huntonlaborblog.com/>

