

Virginia Bankers Association December 16th Conference Call Q&A
Update on COVID-19 Laws, Orders & Regulations

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Employee Retention Credit under the CARES Act and FFCRA

Questions and Answers

Q: We instituted a Bank Approved Paid Leave (since we are more than 500 employees) and used it extensively to keep employees out of the office (and branch). This was a large amount of loss in productivity. Would that qualify as "qualified wages were paid to only employees who were not providing services" for the tax credit?

A: Possibly, but the loss of productivity is not enough. However, if the bank closed those offices or those locations to comply with a government order, whether it was social distancing or otherwise that, in and of itself, could qualify the wages under the ERC.

Q: Is there any update to when and if the Families First Coronavirus Response Act (FFCRA) will be extended?

A: As of now, the FFCRA leave provisions will expire on 12/31/20.

COVID-19 Laws, Orders & Regulations

Questions and Answers

Q: Does the Virginia regulation overrule the Centers for Disease Control and Prevention (CDC) exception for suspected COVID-19 critical infrastructure persons who are not symptomatic to be able to return to work with additional precautions?

A: If the CDC standard does not offer as much protection as the Virginia standard, you must comply with the Virginia standard. If the CDC standard is the same or greater than the Virginia standard, you can follow the CDC standard and be in compliance with the Virginia standard.

Q: My bank uses the time-based and system-based strategies for returning employees to work under the Virginia Department of Labor & Industry (DOLI) Workplace Emergency Temporary Standards, [16 VAC 25-220](#) (ETS), but we would like to understand the

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requirements for test-based. Can we use the test-based strategy to bring employees back to work and what is required?

A: For symptomatic employees, an employer can either use a symptom-based or test-based strategy. For asymptomatic employees, an employer can either use a time-based or test-based strategy. Many employers are using the symptom-based strategy for symptomatic employees and the time-based strategy for asymptomatic employees, mainly because it's more administratively feasible and less time consuming to use those processes, as opposed to a test-based process.

For known or suspected to be infected with the SARS-CoV-2 virus, the 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 of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARSCoV-2 RNA from at least two consecutive respiratory specimens collected ≥ 24 hours apart (total of two negative specimens). For asymptomatic employees, the test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected ≥ 24 hours apart (total of two negative specimens).

Q: Have you seen employers start to utilize a negative test to return employees to work in event of that employee having had "close contact" versus direct infection?

A: The ETS does not address employees who have had "close contact" with a person infected with COVID-19 but who has not tested positive for COVID-19 or exhibits no symptoms. In the absence of ETS guidance, employers should follow the Virginia Department of Health guidance which provides that people who have had close contact with someone with COVID-19 should quarantine for 14 days after the last exposure. If, however, the individual is not able to quarantine for the full 14 days, there are 2 options: (1) Quarantine can end after Day 10 without testing and if no symptoms have developed; OR (2) Quarantine can end after Day 7 if a viral test (e.g., PCR or antigen test) performed on or after Day 5 is negative and if no symptoms have developed. .

Q: If an employer uses a test-based return to work strategy, do the two negative COVID-19 tests have to be a certain timeframe apart?

A: Yes, the two tests must be taken at least 24 hours apart.

Q: Is the VDH 14-day quarantine a required rule or just guidance, since it's not part of the ETS?

A: The Virginia Department of Health 14-day quarantine requirement is the rule in Virginia. As noted above, if the individual is not able to quarantine for the full 14 days, there are 2 options: (1) Quarantine can end after Day 10 without testing and if no symptoms have developed; OR (2)

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Quarantine can end after Day 7 if a viral test (e.g., PCR or antigen test) performed on or after Day 5 is negative and if no symptoms have developed.

Q: Can we bring employees back to work after 10 days of quarantine?

A: The Virginia Department of Health and the CDC still recommend that close contacts quarantine (stay home) for 14 days after their last exposure. However, VDH has stated that if an individual is not able to quarantine for 14 days, there are 2 options: (1) Quarantine can end after Day 10 without testing and if no symptoms have developed; OR (2) Quarantine can end after Day 7 if a viral test (e.g., PCR or antigen test) performed on or after Day 5 is negative and if no symptoms have developed.

Q: In a corporate setting, who is liable if there is an issue with not following the Executive Order. Is it an individual liability or a corporate liability and if it is a corporate liability what are the repercussions?

A: Every person is responsible for complying with the Governor's Executive Order. The Virginia Department of Health and the Virginia Alcoholic Beverage Control Authority have authority to enforce the face covering requirements of the Order. Any willful violation or refusal, failure, or neglect to comply with the Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of the Order, pursuant to § 32.1-27 of the Code of Virginia.

Q: What are banks doing when someone tests positive in a branch where all employees are wearing masks? Are they quarantining the entire branch in those situations?

A: The ETS does not address employees who have had "close contact" with a person infected with COVID19 but who has not tested positive for COVID-19 or exhibits no symptoms. "Close contact" is defined by the CDC as someone who was within 6 feet of an infected person for at least 15 minutes starting from 2 days before illness onset (or, for asymptomatic clients, 2 days prior to positive specimen collection) until the time the infected person is isolated. In the absence of ETS guidance, employers should follow the Virginia Department of Health guidance which provides that people who have had close contact with someone with COVID-19 should quarantine for 14 days after the last exposure. If, however, the individual is not able to quarantine for the full 14 days, there are 2 options: (1) Quarantine can end after Day 10 without testing and if no symptoms have developed; OR (2) Quarantine can end after Day 7 if a viral test (e.g., PCR or antigen test) performed on or after Day 5 is negative and if no symptoms have developed. .

Q: Health care providers have told me not to report positive COVID-19 cases to the Virginia Department of Health because they report, and it would be double reporting. Does the bank need to report positive COVID-19 cases?

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A: The ETS requires that employers notify the Virginia Department of Health each and every time there's an infection. VDH has established an online portal:

<https://apps.vdh.virginia.gov/pocreporting/login/login.aspx>

The site is secure for reporting confidential employee health information and it is the preferred method for reporting cases. The ETS also requires that the employer notify other employees who may have been exposed to the infected employee. That notification has to be given within 24 hours of when the employer first becomes aware of the infection. Notification cannot identify the infected employee and needs to be given in a way that keeps that health information confidential, as it's protected under the Americans with Disabilities Act. For those banks who operate branches or other locations that are owned by a building owner or landlord, the bank must notify the building owner anytime and employee is infected with COVID-19. Additionally, if another employer has employees that work at the same work site, that employer must be notified of the positive COVID-19 infection.

Q: We currently require the Virginia Department of Health or a physician release to work note for an employee to return to work. Does this fulfill the Symptomatic and Asymptomatic Return to Work Protocol?

A: Yes, assuming the time periods have also been satisfied, this would satisfy the time-based or symptom-based return to work requirements.

Q: When it was said "cannot require a note to not wear a covering" is that for clients only or is it also for employees? Can you require a note for an accommodation for an employee?

A: Executive Order 72 provides that any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.

Q: What is the mask requirement for corporate bank locations? Are corporate locations considered retail or would we fall within the business office definition. We have no customer facing interaction.

A: Executive Order 72 provides that all employees shall wear a face covering while working at their place of employment. There's no distinction between a retail branch or an operations location. If employees are in the workplace, regardless of whether it's open to the public or is customer facing, the employee must wear a face covering.

Q: What about wearing masks while in a cube or office space? Can they be removed when employees are working alone in those spaces? If an employee is in their own office, with their door closed, do they still have to wear the face covering?

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A: Executive Order 72 does not list an exception to the face covering requirement for employees working in a cubicle or in an office with the door closed.

Q: If a customer wants to enter branch lobby without a mask - do we allow them entry?

A: Executive Order 72 contains several exceptions to the face covering requirement. Face coverings are not required by any person for whom wearing one would be contrary to his or her health or safety because of a medical condition. Adaptations and alternatives for individuals with health conditions or disabilities should be considered whenever possible to increase the feasibility of wearing a mask or to reduce the risk of COVID-19 spreading if it is not possible to wear one. Any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.

The bank can offer alternatives to the customer like suggesting that they could be helped in the drive through, over the phone, or online.

Q: With the no exception for face coverings is the acceptable accommodation for medical reasons a leave of absence?

A: Executive Order 72 contains several exceptions to the face covering requirement. Face coverings are not required by any person for whom doing so would be contrary to his or her health or safety because of a medical condition. Adaptations and alternatives for individuals with health conditions or disabilities should be considered whenever possible to increase the feasibility of wearing a mask or to reduce the risk of COVID-19 spreading if it is not possible to wear one. Any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.

Q: Would a federal OSHA ETS preempt state and local standards?

A: A federal ETS would set a floor for COVID-19 standards and the states are permitted to pass more stringent standards that must be complied with. Alternatively, if a federal ETS is more stringent than Virginia's ETS, the federal ETS would be the standard.