

Virginia Bankers Association August 6, 2020 Conference Call Q&A
Virginia Department of Labor & Industry (DOLI) Workplace
Emergency Temporary COVID-19 Standard

This communication has been prepared for informational purposes only and is not legal advice. This information does not create an attorney-client or similar relationship. You should consult with your legal counsel if you have a legal matter requiring attention.

Important Links:

- Virginia Department of Health local department locator - <https://www.vdh.virginia.gov/health-department-locator/>
- How to report multiple positive cases to DOLI - <https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>
- DOLI Compliance & Training Resources - <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>
- DOLI hazard assessment tool - <http://www.doli.virginia.gov/wp-content/uploads/2020/07/Hazard-Assessment.docx>
- Lower Risk Training from DOLI: <http://www.doli.virginia.gov/wp-content/uploads/2020/07/Lower-Risk-Training-1.pdf>
- CDC Workplace Guidance & Resources - <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
- VDH Business Resources and Template Signage - <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/businesses/>
- Regulation text of § 16 VAC 25-220, Emergency Temporary Standard Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 - <https://www.doli.virginia.gov/wp-content/uploads/2020/07/COVID-19-Emergency-Temporary-Standard-FOR-PUBLIC-DISTRIBUTION-FINAL-7.17.2020.pdf>

Questions and Answers

Q: Does the Virginia regulation overrule the 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 use the CDC standard and be in compliance with the Virginia standard.

Q: Will rapid testing fulfill the obligation for test-based strategy?

A: Yes.

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Q: What about a face shield for employees unable to wear a mask?

A: A face shield is a potential accommodation for employees who are unable to wear a mask.

Q: What is PPE?

A: "Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits. See also Section C of § 16VAC 25-220-50. Requirements for hazards or job tasks classified at "very high" or "high" exposure risk.

Q: Is a retail bank branch and teller positions considered "medium" or "low" risk exposure?

A: "Lower" exposure risk hazards or job tasks do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, including, but not limited to, plastic barriers and mandatory physical distancing of employees from other employees, other persons, and the general public. Thus, a bank branch or bank teller position that meets the above criteria may fall under the "lower" exposure risk. A bank branch located in a public place like a grocery store that requires more than minimal occupational contact inside six feet with other employees, other persons, or the general public may fall under "medium" exposure risk hazards or job tasks.

See the Hazard Assessment tool on DOLI's [Outreach, Education and Training webpage](#).

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Q: Our tellers cannot physically social distance from one another due to a small work area but they do wear masks at all times. Is it necessary to install physical barriers between tellers?

A: Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

Q: Do all of these requirements apply to all companies regardless of size?

A: Yes, the regulations apply to Virginia employers. Note, however, that employers with hazards or job tasks classified as “medium” but who have ten or less employees are not required to develop and implement a written Infectious Disease Preparedness and Response Plan.

Q: In your opinion, can you make employee provided PPE comply with dress code? E.g. if not medical type, must be solid or tasteful print.

A: Yes. The regulation defines “face covering” as “an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth). A face covering is not intended to protect the wearer, but it may reduce the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards. However, the regulations prohibit any person from discharging or in any way discriminating against an employee who voluntarily provides and wears his or her own personal protective equipment, including but not limited to a respirator, face shield, or gloves, or face covering if such equipment is not provided by the employer, provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees. Thus, an employer may want to provide alternative face coverings for employees to use when their face covering doesn’t comply with the employer’s dress code.

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Q: Must employees obtain two negative COVID-19 test results before returning to work? Does this requirement apply only to employees or also to their family members who have tested positive for COVID19 (test-based) or those who have exhibited symptoms (time-based) or both?

A: For known or suspected to be infected with the SARS-CoV-2 virus employees the 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; and, at least 10 days have passed since symptoms first appeared. 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, and negative results from at least two consecutive respiratory specimens collected ≥ 24 hours apart (total of two negative specimens) tested using an FDA-authorized molecular viral assay to detect SARS-CoV-2 RNA.

Q: Shouldn't we all use the same standards, since bank branch operations are so similar?

A: Each employer is required to conduct an individual assessment of their workplace(s) for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Although branch operations are similar, differences across branches (e.g. in the building floorplan or the implementation of engineering, administrative and work practice controls by an employer) could result in different workplace hazards and, therefore, different standards.

Q: As far as the training for medium level jobs, can the bank send employees the DOLI training slides or does the bank have to develop a webinar?

A: Employers with hazards or job tasks classified at "very high", "high" or "medium" exposure risk at a place of employment shall provide training to all employee(s) working at the place of employment regardless of employee risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease. The Virginia Department of Labor has a [training presentation](#) and other compliance tools on its [Outreach, Education, and Training webpage](#). The training can be conducted in person or be computer-based. Sending employees the DOLI slides, alone, is likely insufficient to meet the training requirement.

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Q: When does training for employees have to be completed?

A: With the exception of § 16 VAC 25-220-80(B)(10) regarding training required on infectious disease preparedness and response plans, the training requirements in § 16 VAC 25-220-80 take effect thirty (days) after the effective date of the standard or August 26, 2020. The training required on infectious disease preparedness and response plans is required sixty (60) days after the effective date of the standard or September 25, 2020.

Q: Can the employee certification of training be an electronic signature?

A: Yes. Employers covered by § 16 VAC 25-220-50 (those with hazards or job tasks classified as “very high” or “high” exposure risk) are required to verify compliance with the training requirement by preparing a written certification record for those employees exposed to hazards or job tasks classified at “very high,” “high,” or “medium” exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee’s physical or electronic signature, the date(s) of the training, and the name of the person who conducted the training, or for computer-based training, the name of the person or entity that prepared the training materials.

Q: If all job tasks and hazards are determined to be “low” risk, does the employer still need written certification or can the employer attest that this information was shared?

A: Only employers covered by § 16 VAC 25-220-50 (those with hazards or job tasks classified as “very high” or “high” exposure risk) are required to verify compliance with the training requirement by preparing a written certification record.

Q: Does the low risk training content need to include the one-page DOLI handout that was developed, or can the employer develop their own training, as long as they cover the required elements?

A: Employers can use the DOLI handout or develop their own training.

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Q: Are we to risk rate employee positions after workplace controls are in place or before (which is what Federal OSHA requires)?

A: After controls are in place. The regulation defines “lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls. The factors that will be considered in determining exposure risk level include, but are not limited to: The job tasks being undertaken; the work environment (e.g. indoors or outdoors); the known or suspected presence of the SARS-CoV-2 virus; the presence of a person known or suspected to be infected with the SARS-CoV-2 virus; the number of employees and/or other persons in relation to the size of the work area; the working distance between employees and other employees or persons; the duration and frequency of employee exposure through contact inside of six feet with other employees or persons (e.g., including shift work exceeding 8 hours per day); The type of hazards encountered, including potential exposure to the airborne transmission of SARS-CoV-2 virus; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances/exits to the facility; shared work vehicles; industries or places of employment where employer sponsored shared transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.

Q: Can employees attest that if they report to work, they have self-assessed their health and do not have COVID-19 symptoms or does the employer have to conduct the prescreening or surveying?

A: For employers with hazards or job tasks classified as “medium”, “high”, or “very high” exposure risk, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19 prior to the commencement of each work shift. The regulation does not specify who must conduct the daily prescreening or surveying. An employee self-health assessment may meet the prescreening or surveying requirement.

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Q: Can you address the daily self-monitoring section?

A: The regulation requires employers to inform all employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness. The [CDC](#) and [Virginia Department of Health](#) have symptom self-check guides.

Q: Do employers have to require employees complete a self-check health assessment and document that check before coming into the workplace, or only require employees to report if they are having symptoms of COVID?

A: Section 16 VAC 25-220-40(A)(2) requires that employers inform all employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness. Employers with hazards or job tasks classified as “very high” or “high” or “medium” exposure risk are required, prior to the commencement of each work shift, to verify each covered employee does not have signs or symptoms of COVID-19 by prescreening or surveying. Prescreening of employees is not expressly required when an employer has all “lower” risk hazards or job tasks.

Q: We receive one set of instructions from the local health department regarding COVID-19 questions that don't match the VDH guidelines. Can we follow local health department instructions?

A: No, you should follow the regulation.

Q: Any guidance on "flexible" and "public health guidance" sick leave if the FFCRA doesn't apply?

*A: See the U.S. Department of Labor resources and CDC Guidance for Businesses:
<https://www.dol.gov/agencies/whd/pandemic>
<https://www.dol.gov/general/topic/workhours/sickleave>
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>*

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Q: Can the app outlined by the Governor be utilized for notification of confirmed or suspected COVID-19 cases?

A: Not at this time. The Virginia Department of Health has a COVIDWISE app that provides exposure notifications: <https://www.vdh.virginia.gov/covidwise/>

An employer must notify VDH within 24 hours of being alerted by an employee of a positive COVID-19 test and the employer cannot rely upon an employee's or healthcare provider's notification to VDH.

Q: Is there an app or other known software that employers can utilize to meet requirements under this temporary mandate?

A: Yes, there are apps available to aid compliance with the regulation and the VBA is currently researching app options to recommend to member banks.

Q: When do the reporting requirements take effect?

A: The reporting requirements became effective on July 27, 2020.

Q: On the Infectious Disease Response Plan, would our retail branches require us to include the "Retail Store Regulations" from the industry specific guidelines?

A: "Retail stores" are not defined in the regulation; however, banks were included in the Governor's Executive Orders as essential brick and mortar retail businesses. A retail branch that provides services to customers may fall within the retail store category and be subject to retail store regulations.

Q: What if the employee meets the more vulnerable to COVID, and they are unable/unwilling to return to the branch or does not have the ability to work from home, does that fall under the Americans with Disabilities Act? What are the options on requiring them to return to work?

A: An employer is required to provide reasonable accommodation to employees with a disability unless the employer can demonstrate that doing so creates an undue hardship to the employer or poses a direct threat to the safety of the employee or others. The EEOC has stated there may be reasonable accommodations that could offer protection to an individual whose disability puts him at greater risk from COVID-19 and who therefore requests such actions to eliminate possible exposure. Even with the constraints imposed by a pandemic, some

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accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer. An employee who was already receiving a reasonable accommodation prior to the COVID-19 pandemic may be entitled to an additional or altered accommodation, absent undue hardship. For example, an employee who is teleworking because of the pandemic may need a different type of accommodation than what he [uses in the workplace](#). The employer [may discuss](#) with the employee whether the same or a different disability is the basis for this new request and why an additional or altered accommodation is needed.

See [EEOC guidance](#) on COVID-19.

Q: Any suggested modifications for bank branches?

A: The regulation lists the following examples of engineering, administrative and work practice controls: Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time); Telecommuting; Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public; Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and Mandatory physical distancing of employees from other employees, other persons, and the general public.

Q: Are masks required even if you are six feet apart?

A: Yes, employees in customer facing jobs are required to wear face coverings.

Q: Please clarify the "floor to ceiling" barrier language vs. sneeze shields. We have 15-foot ceilings in some branches. Floor to ceiling barriers conflict with the design parameters of HVAC systems.

A: The plastic barrier does not need to be 15 feet tall. Employers are, only to the extent feasible, required to install physical barriers where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission. Thus, the barriers must be tall enough to prevent the spread of COVID-19 from one employee to another or between employee and customer.

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Q: What is the meaning of a "shift change" in the context of an early shift teller who leaves at, say 10 AM, and then another teller comes in for the late drive-thru shift at, say, 3 PM. The bulk of the staff is there from 8:30 to 5. Is this a "shift change" that requires a complete cleaning and disinfecting of the entire branch?

A: "Shift" is not defined in the regulation; however, all shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another. All common spaces, including bathrooms, frequently touched surfaces and doors, shall at a minimum be cleaned and disinfected at the end of each shift. Employees that interact with customers, the general public, contractors, etc., shall be provided with and immediately use supplies to clean and disinfectant surfaces contacted during the interaction where there is the potential for exposure to SARSCoV-2 virus by themselves or other employees. Employers are also required to comply with VOSH sanitation applicable to its industry. See also CDC Guidance for [Cleaning and Disinfecting Workplaces](#).

Q: If a doctor has released employee to return to work and says they do not have COVID-19 symptoms, are we still obligated to follow the symptom or test based to return to work?

A: No, an employee may return to work if an alternative diagnosis has been made (e.g., the employee tested positive for influenza).

Q: Enforcement and inspections: how do we verify the validity of someone claiming to come in to do an inspection? How intrusive are they permitted to be - for example, can an inspector get in behind our teller lines or cash processing rooms? Can we require appointments?

A: Virginia Department of Health employees will display proper credentials and may enter your bank without an appointment.

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Q: What guidance can you give regarding employees who indicate that they will not come back to a work location ‘until there is a vaccine’ because they are afraid of catching COVID-19? The bank is following the mandated workplace requirements and the employee has not requested an ADA accommodation.

A: Employees may refuse to do work or enter a location they feel is unsafe. See § 16 VAC 25-60-110 for requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death. An employee is not permitted to refuse to return to work based upon an unreasonable fear of injury or death.

Q: We have medium risk job hazards at our bank so we will need to implement an Infectious Disease Preparedness and Response Plan. Would you please clarify whether the notation in the *Infectious Disease Preparedness and Response Plan template* (‘IDRP) regarding travel by airplane; is the 14-day quarantine guidance or required?

A: The regulation requires that the Infectious disease preparedness and response plan consider and address the level(s) of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to and job tasks employees perform at those sites, including local, state, national, and international travelers who have visited locations with ongoing COVID-19 community transmission. Thus, the 14-day quarantine is guidance.

See the CDC [recommendations for travel](#) during COVID-19.

Q: Do we have to notify the Virginia Department of Health within 24 hours of discovering a COVID-19 positive case?

A: Yes, within 24 hours, an employer must notify the Virginia Department of Health of a positive COVID-19 test and if three or more employees test positive within a 14-day period, the employer must notify the Virginia Department of Labor and Industry.

Q: Are the 10 days referenced in the guidelines ten calendar days or 10 business days? I have been following the CDC guidelines of 14 calendar days.

A: Calendar days. Ten business days would also be permitted because it is more restrictive than ten calendar days.