

16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**

Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

VOSH PROPOSED AMENDMENTS: June 12, 2020

Formatted: Highlight

Formatted: Highlight



Contact Person:

Jay Withrow, Director
Division of Legal Support, ORA, OPPPI, and OWP
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
jay.withrow@doli.virginia.gov

NOTE: Items highlighted in yellow are subject to change.

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt 16 VAC 25-220, **Emergency Temporary Standard/Emergency Regulation**, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 with an effective date of **July 15, 2020**.

Formatted: No widow/orphan control

Formatted: Font: Bold

The Department also recommends that the Board state in any motion it may make regarding this **Emergency Temporary Standard/Emergency Regulation** that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.

Formatted: No widow/orphan control

16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation

Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

As Adopted by the
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date:

16 VAC 25-220

Emergency Temporary Standard/Emergency Regulation

Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

16 VAC 25-220

§10 Purpose, scope, and applicability.

- A. This **emergency temporary standard/emergency regulation** is designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.¹
- B. This **standard/regulation** adopted in accordance with Va. Code **§ 40.1-22(6)(a) or §2.2-4011** shall apply to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program as described in §§ 16VAC25-60-20² and 16VAC25-60-30³.
- C. This **standard/regulation** is designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable directly or indirectly to SARS-CoV-2 virus or COVID-19 disease--related hazards, such as, but not limited to, those dealing with personal protective equipment, respiratory protective equipment, sanitation, access to employee exposure and medical records, occupational exposure to hazardous chemicals in laboratories, hazard communication, Va. Code §40.1-51.1.A⁴, etc. Should this **standard/regulation** conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- D. Application of this **standard/regulation** to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this **standard/regulation** (i.e., “very high”, “high”, “medium”, and “lower”).

¹ SOURCE: Michigan Occupational Safety and Health (MIOSHA) draft Emergency Rule

² <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-20>

³ <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-30>

⁴ <https://law.lis.virginia.gov/vacode/40.1-51.1/>

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as “very high”, “high”, “medium”, or “lower” exposure risk for purposes of application of the requirements of this **standard/regulation**. It is further recognized that various required job tasks prohibit an employee from being able to observe physical distancing from other persons.

2. Factors that shall be considered in determining exposure risk level include, but are not limited to:

- a. The job tasks being undertaken; the known or suspected presence of the SARS-CoV-2 virus; the presence of a known or suspected COVID-19 person; the number of employees 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 ~~close contact (i.e., inside of six feet)~~ with other employees or persons (e.g., including shift work exceeding 8 hours per day);
- b. The type of ~~hazards encountered~~~~contact~~, including potential exposure to the ~~airborne transmission (including droplets or airborne droplet nuclei)~~ of SARS-CoV-2 virus ~~through respiratory droplets in the air~~; 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; industries or places of employment where sharing transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.⁵

E. ~~Reference to the term “employee” in this standard/regulation includes temporary employees and other joint employment relationships, as well as persons in supervisory or management positions with the employer.~~

Commented [WJ(1): Change made in response to comment, “airborne transmission” is a broader term to address a number of methods of transmission.

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

F. This standard/regulation ~~may~~ shall not conflict with requirements and guidelines applicable to businesses set out in any applicable Virginia executive order or order of public health emergency.

Formatted: Highlight

G. To the extent that an employer actually complies with requirements contained in CDC publications to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.

Formatted: Highlight

Formatted: Highlight

H. Nothing in the standard/regulation shall be construed to require employers to engage in contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

Formatted: Highlight

Commented [WJ(2): Change made in response to Comment period.

§20 Dates.

[Under §40.1-22(6)]

This emergency temporary standard shall ~~take~~ take immediate effect on July 15, 2020 upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia.

Commented [WJ(3): Effective date added for regulation

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this standard. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this standard.

Formatted: Highlight

Formatted: Highlight

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this standard.

Commented [WJ(4): Effective date added for training requirements

Formatted: Highlight

This emergency temporary standard shall expire within six months of its effective date or when superseded by a permanent standard, whichever occurs first, or when repealed by the Virginia Safety and Health Codes Board.

Commented [WJ(5): Effective date added for Infectious disease preparedness and response plan

Formatted: Highlight

Formatted: Highlight

[Under §2.2-4011]

This emergency regulation shall ~~become~~ take effective twenty-one (21) days after ~~upon~~ approval by the Governor and filing with the Registrar of Regulations pursuant to § 2.2-4012.

With the exception of §80.B.8 regarding training required on infectious disease preparedness and response plans, the training requirements in §80 shall take effect thirty (days) after the effective date of this regulation. The training requirements under §80.B.8 shall take effect sixty (60) days after the effective date of this regulation.

The requirements for §70, Infectious disease preparedness and response plan, shall take effect sixty (60) days after the effective date of this regulation.

This emergency regulation shall be limited to no more than 18 months in duration, except as otherwise provided in §2.2-4011.

Formatted: Highlight

§30 Definitions.

“Administrative Control” means any procedure which significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.⁶

“Airborne infection isolation room (AIIR)”, formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide negative pressure in the room (so that air flows under the door gap into the room); *and* an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); *and* direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.⁷

“Asymptomatic” means an employee that has tested positive for SARS-CoV-2 but who is not symptomatic.

⁶ VOSH FOM Chapter 5, page 71,

https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf

⁷ <https://www.cdc.gov/infectioncontrol/guidelines/isolation/glossary.html>

“Building/facility owner”⁸ means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.

“CDC” means Centers for Disease Control and Prevention.

“Cleaning” means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection.⁹

“Community transmission”, also called “community spread” means people have been infected with ~~the virus~~ SARS-CoV-2 in an area, including some who are not sure how or where they became infected.¹⁰ The level of community transmission is classified by the CDC as:

1. “~~None~~ to minimal” is where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., ~~e.g.~~, healthcare facilities, schools, mass gatherings, etc.);
2. “~~M~~oderate” is where there is ~~widespread or~~ sustained community transmission with high likelihood or confirmed exposure within communal settings ~~with~~ and potential for rapid increase in ~~suspected~~ cases; or
3. “Substantial, controlled” is where there is large scale, controlled community transmission, ~~healthcare staffing significantly impacted, multiple cases within~~ including communal settings (e.g., ~~like healthcare facilities, schools, mass gatherings~~ workplaces, etc.).¹¹
4. “Substantial, uncontrolled” is where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).¹²

Commented [WJ(6): Changes to this definition made because of slight wording changes in CDC publications.

Commented [WJ(7): CDC language change

⁸ <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1101>

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

¹⁰ Answer to question “What is community spread?”,

https://www.google.com/search?safe=active&ei=TMXTXqC7Gt6vytMP-MG78AE&q=community+transmission+definition&oq=community+transmission+definition&gs_lcp=CgZwc3ktYWIQAzIECAAQQ1AAWABg5EBoAHAAeACAAYQBIAGEAZIBAzAuMZgBAKoBB2d3cy13aXo&scient=psy-ab&ved=0ahUKEwigkabqrd7pAhXeI3IEHfigDh4Q4dUDCAw&uact=5

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>, Table 3.

¹² Table 1. Level of mitigation needed by level of community transmission and community characteristics, <https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html>

“COVID-19” means Coronavirus Disease 2019, which is primarily a respiratory disease caused by the SARS-CoV-2 virus.

Commented [WJ(8): Change made in response to a comment noting that some presentations of the disease may be “primarily through gastrointestinal, neurologic, etc.”

“Disinfecting” means using chemicals approved for use against SARS-CoV-2¹³, for example EPA-registered disinfectants, to kill germs on surfaces. This process does not necessarily clean dirty surfaces or remove germs. But killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.¹⁴

“Duration and frequency of employee exposure” means how long (“duration”) and how often (“frequency”) an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons; or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

“Economic feasibility” means the employer is financially able to undertake the measures necessary to¹⁵ comply with one or more requirements in this standard/regulation. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this standard/regulation has occurred. If an employer’s level of compliance lags significantly behind that of its industry, an employer’s claim of economic infeasibility will not be accepted.¹⁶

¹³ <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

¹⁴ <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

¹⁵ Federal OSHA FOM, Chapter 3, <https://www.osha.gov/enforcement/directives/cpl-02-00-164/chapter-3>

¹⁶ VOSH FOM, Chapter 5, pages 72-73, https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf

“Elimination” means a method of exposure control that removes the employee completely from exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

“Employee” means an employee of an employer who is employed in a business of his employer.¹⁷ Reference to the term “employee” in this standard/regulation also includes, but is not limited to, temporary employees and other joint employment relationships, ~~as well as~~ persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

Commented [WJ(9): Language from Title 40.1 of the Code of Virginia

Commented [WJ(10): Change in response to comment concerns about what legal sources would be used to determine the definition of “employee” in VOSH cases.

“Engineering control” means the use of substitution, isolation, ventilation, and equipment modification¹⁸ to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

“Exposure risk level” means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. Hazards and job tasks have been divided into four risk exposure levels: “very high”, “high”, “medium”, and “lower”:

“Very high”¹⁹ exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or and the known COVID-19 or suspected COVID-19 disease persons including, but not limited to, during specific medical, postmortem, or laboratory procedures:

Commented [WJ(11): Language added to specifically reference the defined terms of “known COVID-19” and “suspected COVID-19”

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a known or suspected COVID-19 patient or person;
2. Collecting or handling specimens from a known or suspected COVID-19 patient or person (e.g., manipulating cultures from known or suspected COVID-19 patients);

¹⁷ <https://law.lis.virginia.gov/vacode/title40.1/chapter3/section40.1-49.3/>

¹⁸ VOSH FOM Chapter 5, page 71,

https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDdoc_DOLI_5354_v6.pdf

¹⁹ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

3. Performing an autopsy, ~~that which generally~~ involves aerosol-generating procedures, on the body of a person known to have, or suspected of having, COVID-19 at the time of their death.

“High”²⁰ exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, ~~or known COVID-19 or suspected COVID-19~~ **persons** that are not otherwise classified as “very high” exposure risk including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a known or suspected COVID-19 patient in a hospital like setting, including field hospitals (e.g., doctors, nurses, **cleaners**, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a known or suspected COVID-19 patient, resident, or other person involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services²¹, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, contact tracer services, and chiropractic services;
3. First responder services provided by police, fire, paramedic, search and rescue, recovery, and emergency medical services ~~provided~~ to a known or suspected COVID-19 patient, resident, or other person;
4. Medical transport services (loading, transporting, unloading, etc.) provided to known or suspected COVID-19 patients ~~–~~(e.g., ground or air emergency transport, staff, operators, drivers, ~~or~~ pilots, etc.);

Commented [WJ(12): Language added to specifically reference the defined terms of “known COVID-19” and “suspected COVID-19”

²⁰ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 19

²¹ List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known to have, or suspected of having, COVID-19 at the time of their death.

“Medium”²² exposure risk hazards or job tasks are those not otherwise classified as “very high” or “high” exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19. “Medium” exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience store, and food banks; drug stores and pharmacies; manufacturing settings; indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming, salons, and spas; ~~settings; venues for~~ sports, entertainment, movies, theaters, ~~and other forms of mass gatherings etc., venues;~~ homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and
2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities; ~~;~~ outpatient medical facilities; ~~;~~ clinics, drug treatment programs, ~~and~~ medical outreach services²³; ~~;~~ non-medical support services; ~~;~~ mental health facilities; ~~;~~ home health care, nursing homes, assisted living facilities, memory care facilities, ~~and~~ hospice care; ~~;~~ rehabilitation centers, doctors' ~~offices,~~ dentists' ~~offices, and~~

²² <https://www.osha.gov/Publications/OSHA3990.pdf> at page 20

²³ List of health care coverage taken in part from <https://www.dir.ca.gov/title8/5199.html>

chiropractors' ~~offices;~~ first responders, ~~services provided by such as~~ police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

"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; ~~nor contact inside six feet with other employees, other persons, or the general public except as otherwise provided in this definition.~~

Employees in this category have minimal occupational contact with other employees, other persons, or the general public;²⁴ or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. 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);
2. Telecommuting;
3. Staggered work shifts ~~that allow employees to maintain physical distancing from other employees, other persons, and the general public;~~
4. 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~~
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

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

"Face covering" means 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 ~~potentially~~

Commented [WJ(13): This language was deleted to make a clear distinction between "medium" risk classification which applies when employees are exposed inside six feet to persons "who may be infected with SARS-CoV-2".

Commented [WJ(14): Added to assure consistency within the definition

²⁴ <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 18 to 20

contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth)²⁵. A face covering is not intended to protect the wearer, but it may ~~prevent~~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.

Commented [WJ(15)]: In response to comment

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from ~~airborne particles~~droplets or splashes.²⁶

Commented [WJ(16)]: Change made in response to comment noting that face shields are not designed to be fully effective against airborne particles but are designed to serve as splash guards.

“Feasible” means both “technical” and “economic” feasibility as defined in this standard/regulation.

“Filtering facepiece” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

“Hand sanitizer” means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this standard/regulation.²⁷

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known COVID-19” means a person, whether symptomatic or asymptomatic, who has tested positive for COVID-19 and the employer knew or with reasonable diligence should have known that the person has tested positive for COVID-19.

“May be infected with SARS-CoV-2” means any person not currently a known or suspected COVID-19 person, but potentially exposed to SARS-CoV-2 through:

1. Contact inside six feet with a known or suspected COVID-19 person within the last 14 days,
2. ~~Contact inside six feet with a suspected COVID-19 person within the last 14 days,~~
3. Being a resident of a locality, city, town, or county with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission, or

Commented [WJ(17)]: Consolidation into 1. above

²⁵ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

²⁶ <https://www.osha.gov/SLTC/etools/eyeandface/ppe/impact.html#faceshields>

²⁷ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 8

43. Having traveled through a locality, city, town, or county, state, or country with moderate or substantial (controlled or uncontrolled) SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.

Commented [WJ(18): Reflects change in CDC language.

“Occupational exposure” means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards at work during job tasks.

Commented [WJ(19): Change made in response to comment as not consistent with traditional OSHA position on “exposure” – situations where an employee is exposed but not actually conducting a job task.

“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.²⁸

“Physical distancing” also called “social distancing” means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons.²⁹ Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

“Respirator” means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be:

1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or
2. Loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

3-1. Air-purifying, which remove contaminants from the air; and

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

²⁸ <https://www.osha.gov/SLTC/personalprotectiveequipment/>

²⁹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

4-2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.³⁰

“Respirator user” means an employee who in the scope of their current job may be assigned to tasks which may require the use of a respirator in accordance with this **standard/regulation**.³¹

“SARS-CoV-2” means a betacoronavirus, like MERS-CoV and SARS-CoV.³² Coronaviruses are named for the crown-like spikes on their surface.³³ The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

“Surgical/Medical procedure mask” means a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. It protects the others from the wearer’s respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).³⁴

“Suspected COVID-19” means a person that is COVID-19 symptomatic but has not tested positive for SARS-CoV-2 and no alternative diagnosis has been made (e.g., tested positive for influenza).³⁵

“Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny

Formatted: Indent: Left: 0.25", First line: 0",
Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... +
Start at: 1 + Alignment: Left + Aligned at: 0.25" +

Commented [WJ(20): In response to comments to make clear that an alternative diagnosis can be used to avoid classifying an employee as “suspected COVID-19”

³⁰ <https://www.osha.gov/Publications/OSHA3079/osha3079.html>

³¹ <https://www.dir.ca.gov/title8/5199.html>

³² <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>

³³ <https://www.cdc.gov/coronavirus/types.html>

³⁴ <https://www.cdc.gov/niosh/npptl/pdfs/UnderstandDifferenceInfographic-508.pdf>

³⁵ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.³⁶

“Technical feasibility” means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to one or more requirements in this **standard/regulation** with a reasonable possibility that employee exposure to **the SARS-CoV-2 virus** and COVID-19 **disease** hazards will be reduced.³⁷ If an employer’s level of compliance lags significantly behind that of their industry, allegations of technical infeasibility will not be accepted.³⁸

“VOSH” means Virginia Occupational Safety and Health.

“Work practice control” means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.³⁹

§40 Mandatory requirements for all employers.⁴⁰

Employers in all exposure risk levels shall ensure compliance with the following requirements to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease:

- A. 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**. Employers shall

³⁶ <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

³⁷ VOSH FOM, Chapter 5, pages 71-72, https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf

³⁸ VOSH FOM Chapter 5, pages 71-73, https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf

³⁹ VOSH FOM Chapter 5, page 71, https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\181\GDoc_DOLI_5354_v6.pdf

⁴⁰ Partial source for this section: <https://labor.vermont.gov/vosha>

classify ~~each~~ employees according to the hazards they are potentially exposed to and the job tasks they undertake and ensure compliance with the applicable sections of this **standard/regulation** for “very high,” “high,” “medium,” or “lower” risk levels of exposure. Employees exposed to the same hazards or performing the same job tasks may be grouped for classification purposes.

2. Employers shall inform 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.⁴¹

3. Employers shall develop and implement policies and procedures to address a situation where they are notified that an~~for employees to report when they have~~as tested positive for anti-SARS-CoV-2 antibodies through serologic testing:⁴²

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected COVID-19.

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

c. Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work (i.e., self-monitor for COVID-19 symptoms; wash hands often; cover coughs and sneezes; avoid touching eyes, nose, and mouth; avoid ~~close~~ contact with other persons inside six feet; clean and disinfect frequently touched surfaces daily). However, nothing in this paragraph shall be construed to require an employer to allow an employee who tested positive by serologic testing to return to work.

d. There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies.

Commented [WJ(21): In response to comment requesting more flexibility for employers to not have to conduct “individual” assessments for each employee in situations where groups of employees have the same job duties

Commented [WJ(22): Change made to assure those employers that want to take extra precautions about returning employees to work

⁴¹ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

⁴² <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>

4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19⁴³ ~~and no alternative diagnosis has been made (e.g., tested positive for influenza)~~⁴⁴ Such employees shall be designated by the employer as “suspected COVID-19”.

Commented [WJ(23)]: See comment above

5. Employers shall not permit known COVID-19 or suspected COVID-19 employees or other persons to report to or ~~be allowed to remain at the work or on a job site~~ until cleared for return to work ~~or the job site~~ (see §40.B). Nothing in this standard/regulation shall prohibit an employer from permitting a known or suspected 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 or COVID-19.~~

~~56.~~ To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act⁴⁵, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.⁴⁶

~~67.~~ Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies. Known COVID-19 and suspected COVID-19 subcontractor, contract, or temporary employees shall not report to or be allowed to remain at ~~the work or on a job site~~ until cleared for return to work.

~~78.~~ If an employer is notified of a ~~COVID-19~~SARS-CoV-2 positive test for one of its own employees, a subcontractor employee, ~~a contract~~ employee, ~~a temporary employee~~, or other person ~~(excluding patients hospitalized on the basis of being known or suspected COVID-19)~~ who was present at the place of employment within the previous 14 days from the date of positive test, the employer shall notify:

Commented [WJ(24)]: Change made to differentiate between “employees” and “independent contractors”

Commented [WJ(25)]: Change made in response to comment

⁴³ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

⁴⁴ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

⁴⁵ <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

⁴⁶ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 11

a. Its own employees at the same place of employment within 24 hours of discovery of their possible exposure while keeping confidential the identity of the known COVID-19 person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable Virginia laws and regulations;

Commented [WJ(26): In response to comment to clarify which employees need to be notified – those that could have been exposed

b. In the same manner as §40.A.7.a other employers whose employees were present at the work site during the same time period; and

c. In the same manner as §40.A.7.a the building/facility owner.

~~89.~~ Each ~~e~~Employer shall ensure employees access to their own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry.^{47 48 49} Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employees access to their own SARS-CoV-2 virus and COVID-19 diseases related exposure and medical records in accordance with §1910.1020, Access to Employee Exposure and Medical Records.

Commented [WJ(27): In response to comment to make clear that there are no HIPAA or confidentiality concerns

B. Return to Work.

1. The employer shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in **§40.B.1.a** will constitute compliance with the requirements of §40.B.⁵⁰

a. For suspected or known COVID-19 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-

⁴⁷ General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1020>

⁴⁸ Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.33>

⁴⁹ Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1020>

⁵⁰ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html><https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and, at least 10 days have passed since symptoms first appeared.

b. 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 SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected ≥24 hours apart (total of two negative specimens).

i. If a known or suspected COVID-19 employee refuses to be tested, ~~then the~~ employer ~~shall~~ ~~compliance~~ with §40.B.1.a, symptom-based strategy, ~~will be~~ ~~considered in compliance with this standard/regulation. Nothing in this~~ ~~standard/regulation~~ shall be construed to prohibit an employer from requiring a ~~known or suspected COVID-19 employee to be tested in accordance with §40.B.1.b.~~

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.⁵¹ The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

2. The employer shall develop and implement policies and procedures for known asymptomatic COVID-19 employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances.⁵² While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in §40.B.2.a will constitute compliance with the requirements of §40.B.⁵³

a. 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

Formatted: Highlight

Commented [WJ(28)]: Change made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “...employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Formatted: Highlight

⁵¹ <https://law.lis.virginia.gov/vacode/40.1-28/>

⁵² <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html><https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

⁵³ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the symptom-based or test-based strategy shall be used.

b. 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).

i. If a known asymptomatic COVID-19 employee refuses to be tested, employer compliance with §40.B.2.a, symptom-based strategy, will be considered in compliance with this standard/regulation. Nothing in this standard/regulation shall be construed to prohibit an employer from requiring a known asymptomatic COVID-19 employee to be tested in accordance with §40.B.2.b. ~~refuses to be tested, then the employer shall comply with §40.B.2.a symptom-based strategy.~~

ii. For purposes of this section, COVID-19 testing is considered a “medical examination” under Va. Code §40.1-28.⁵⁴ The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

C. Unless otherwise provided in this **standard/regulation**, employers shall establish and implement policies and procedures designed to ensure that employees observe physical distancing while on the job and during paid breaks on the employer’s property.

D. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled.

1. 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 a common area, room, or similar area where meals may be safely consumed with controlled access, provided the following conditions are met:

a. At the entrance(s) of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and

Commented [WJ(29)]: Change made in light of EEOC decision that employers can require employees to be tested: Answer to Question A.6, “....employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Commented [WJ(30)]: Change made in response to comment to provide flexibility for employers with large open campuses

⁵⁴ <https://law.lis.virginia.gov/vacode/40.1-28/>

~~requirements for the minimum~~ physical distancing, hand washing/hand sanitizing, and ~~space cleaning and disinfecting of shared surfaces~~ requirements.

b. The employer shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit.

c. Employees shall be required to ~~wipe down~~ clean and disinfect the ~~immediate~~ area in which they were located prior to leaving, or the employer may provide for ~~cleaning and~~ disinfecting of the ~~common~~ area or room at regular intervals throughout the day, and between shifts of employees using the same ~~work common~~ area or room (i.e., where an employee or groups of employees have a designated lunch period and the ~~common~~ area or room can be cleaned in between occupancies).

d. Hand washing facilities, and hand sanitizer ~~where feasible,~~ are available to employees.

E. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable ~~Virginia~~ executive order or order of public health emergency.

F. Where the nature of an employee's work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall also ensure compliance with mandatory requirements of any applicable ~~Virginia~~ executive order or order of public health emergency.

G. Nothing in this section shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to their health or safety because of a medical condition; however, nothing in this

Commented [WJ(31): Change made in response to comments to provide more clarity of what cleaning and disinfecting is required

Commented [WJ(32): In the event of greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

standard/regulation shall negate an employer’s obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.⁵⁵

H. Requests **to the Department** for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after **Department** consultation with the Office of the Attorney General.

I. Sanitation and Disinfecting.

1. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH sanitation **standard/regulation** applicable to its industry.^{56 57}
58 59 60 61 62

2. Employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use **supplies to clean and** disinfectant **supplies to clean** surfaces contacted during the interaction **where there is the potential for exposure to the SARS-CoV-2 virus by themselves or other employees.**

3. In addition to the requirements contained in this **standard/regulation**, employers shall comply with the VOSH hazard communication standard applicable to its industry.⁶³
64 65 66 67 68

Commented [WJ(33)]: Change made in response to comments to clarify that this section only applies to such requests made directly to the Department, not employers

Commented [WJ(34)]: Change made in response to comments to make clear that any requirement is tied to employee occupational exposure, not customer/general public exposure, which is outside VOSH jurisdiction

⁵⁵ General Industry §§1910.132, 1910.133, 1910.138, and 1910.134; Construction §§1926.28, 1926.95, 1926.102, and 1926.103; Public Sector Shipyard §§1915.152, 1915.153, 1915.157, and 1915.154; Public Sector Marine Terminals §§ 1917.91, 1917.95, and 1917.1(a)(2)(x), 1917.92; and Public Sector Longshoring §§1918.101, 1918.102.

⁵⁶ General Industry: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

⁵⁷ Temporary Labor Camps: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142>

⁵⁸ Agriculture, Field Sanitation: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-180-10>

⁵⁹ Construction: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-160-10>

⁶⁰ Public Sector Shipyards: <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.88>

⁶¹ Public Sector Marine Terminals: <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.127>

⁶² Public Sector Longshoring: <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.95>

⁶³ General Industry, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>

⁶⁴ Construction, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.59>

⁶⁵ Agriculture, <https://www.osha.gov/laws-regs/regulations/standardnumber/1928/1928.21>

⁶⁶ Public Sector Shipyard Employment, <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.1200>

⁶⁷ Public Sector Marine Terminals, <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.28>

⁶⁸ Public Sector Longshoring, <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.90>

4. Areas in the place of employment where known COVID-19 and suspected COVID-19 employees or other persons accessed or worked shall be disinfected prior to allowing other employees access to the areas. This requirement shall not apply if the area(s) in question have been unoccupied for seven or more days.⁶⁹

5. All common spaces, including bathrooms, frequently touched surfaces and doors shall at a minimum be cleaned and disinfected at the end of each shift. Where feasible, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

6. Employers shall ensure only disinfecting chemicals and products are used that are approved by the Environmental Protection Act (EPA) and listed on List N for use against SARS-CoV-2 and emerging viral pathogens.^{70 71}

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).⁷²

8. Employees shall have easy, frequent access, and permission to use soap and water, and hand sanitizer ~~where feasible, during~~ 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 their work station. Mobile crews shall be provided with hand sanitizer ~~where feasible for use during~~ the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities which meet the requirements of VOSH laws, standards and regulations dealing with sanitation.

9. It is recognized that various hazards or job tasks at the same place of employment can be designated as "very high", "high", "medium", or "lower" as presenting potential exposure risk for purposes of application of the requirements of this

Commented [WJ(35): In the event of greater hazard issues where the alcohol content of hand sanitizer could present a hazard in hot environments. Supply issues have occurred as well.

⁶⁹ <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

⁷⁰ <https://www.osha.gov/Publications/OSHA3990.pdf>

⁷¹ <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>

⁷² *Id.*

standard/regulation. In situations other than emergencies, the employer shall ensure that protective measures are put in place to prevent cross-contamination.

J. Anti-Discrimination.

The employer shall ensure compliance with the anti-discriminations provisions of **§90.**

K. Unless otherwise provided in this **standard/regulation,** 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 its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

§50 Requirements for hazards or job tasks classified at “very high” or “high” exposure risk.

The following requirements for employers with hazards or job tasks classified as “very high” or “high” exposure risk apply in addition to requirements contained in **§§40, 70, and 80.**

A. Engineering Controls.

1. Ensure appropriate air-handling systems:

- a. Are installed and maintained in accordance with manufacturer’s instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected COVID-19, and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.⁷³

⁷³ https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf

2. For employers not covered by §50.A.1, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:
 - a. Are maintained in accordance with the manufacturer's instructions; and
 - b. Comply with §50.A.1.b.
 3. Hospitalized patients with known or suspected COVID-19 shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
 4. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19.
 5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected COVID-19 persons at the time of their death.
 6. Use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-1112 "Biosafety in Microbiological and Biomedical Laboratories" (Dec. 2009), which is hereby incorporated by reference, when handling specimens from known or suspected COVID-19 patients or persons.⁷⁴
 7. To the extent feasible, employers shall install physical barriers, ~~(e.g., such as~~ clear plastic sneeze guards, ~~etc.)~~, where such barriers will aid in mitigating the spread of SARS-CoV-2 ~~and COVID-19~~ virus transmission.
- B. Administrative and Work Practice Controls.
1. To the extent feasible, prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic.
 2. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
 3. Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.

⁷⁴ <https://www.osha.gov/Publications/OSHA3990.pdf> at pages 23-24

4. Limit 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 of this paragraph.
5. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
6. Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
7. Provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training in accordance with [§80](#).
8. [To the extent feasible, E](#)nsure that psychological and behavioral support is available to address employee stress.⁷⁵
9. In health care settings, provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol⁷⁶ to employees at fixed work sites, and to emergency responders and other personnel for decontamination in the field when working away from fixed work sites.⁷⁷
10. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home).
11. Where feasible:
 - a. Use verbal announcements, signage, and visual cues to promote physical distancing;
 - b. Implement flexible worksites (e.g., telework);
 - c. Implement flexible work hours (e.g., staggered shifts);
 - d. Increase physical distancing between employees at the worksite to six feet;
 - e. Increase physical distancing between employees and other persons to six feet;

⁷⁵ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

⁷⁶ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

⁷⁷ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 24

- f. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- g. Implement flexible meeting and travel options (e.g., use telephone or video conferencing instead of in person meetings; postpone non-essential travel or events; etc.);
- h. Deliver services remotely (e.g. phone, video, internet, etc.);
- i. Deliver products through curbside pick-up;
- j. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.

C. Personal Protective Equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease hazard assessment, and personal protective equipment selection:⁷⁸

a. The employer shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:

- i. Except as otherwise required in the standard/regulation, select, and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;
- ii. Communicate selection decisions to each affected employee; and,
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that

⁷⁸ Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, ~~which identifies~~ the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-COV-2 virus or COVID-19 disease (e.g., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. The employer shall implement a respiratory protection program in accordance with §1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required to use a respirator.

5. Unless contraindicated by a hazard assessment and equipment selection requirements in §50.C.1 above, employees classified as “very high” or “high” exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and either a surgical/medical procedure mask or a respirator when in contact with or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2. Gowns shall be large enough to cover the areas requiring protection.

D. Employee training shall be provided in accordance with the requirements of §80 of this standard/regulation.

§60 Requirements for hazards or job tasks classified at “medium” exposure risk.

The following requirements for employers with hazards or job tasks classified as “medium” exposure risk apply in addition to requirements contained in §§40, 70, and 80.

A. Engineering Controls.

1. Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:

- a. Are maintained in accordance with the manufacturer’s instructions, and
- ~~b.~~ Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards

62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.⁷⁹

b.

~~a-c.~~ To the extent feasible, employers shall install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.

Formatted: Indent: Left: 0.75", First line: 0", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" +

Formatted: Font: (Default) Calibri, 12 pt

Formatted: Font: (Default) Calibri, 12 pt

Formatted: Font: (Default) Calibri, 12 pt

Formatted: Font: (Default) Calibri, 12 pt

B. Administrative and Work Practice Controls.

1. To the extent feasible, employers shall implement the following administrative and work practice controls:

a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee is not COVID-19 symptomatic;

b. Provide face coverings to suspected COVID-19 non-employees to contain respiratory secretions until they are able to leave the site (i.e., for medical evaluation/care or to return home);

c. Where feasible, limit 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 of this paragraph.

d. Implement flexible worksites (e.g., telework);

e. Implement flexible work hours (e.g., staggered shifts);

f. Increase physical distancing between employees at the worksite to six feet;

⁷⁹ https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf

- g. Increase physical distancing between employees and other persons, including customers to six feet (e.g., drive-through, ~~partitions~~physical barriers where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.) ~~to six feet~~;
- h. Decrease worksite density by limiting the number of non-employees accessing the worksite at any one time;
- i. Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postponing non-essential travel or events; etc.);
- j. Deliver services remotely (e.g. phone, video, internet, etc.);
- k. Deliver products through curbside pick-up or delivery;
- l. Reconfigure and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc.;⁸⁰
- m. Use verbal announcements, signage, floor markings, overhead signs, and visual cues to promote physical distancing.

C. Personal Protective Equipment.

- 1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (Part 1910), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment, and personal protective equipment selection:⁸¹
 - a. The employer shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards or job tasks are present, or likely to be present, the employer shall:
 - i. Except as otherwise required in the standard [regulation], select, and have each affected employee use, the types of PPE that will protect the affected

⁸⁰ Source: LAJC Exhibit A

⁸¹ Based on 1910.132(d), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

- ii. Communicate selection decisions to each affected employee; and
- iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, ~~which identifies~~ the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-COV-2 virus or COVID-19 disease (e.g., Parts 1926, 1928, 1915, 1917, or 1918), the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. PPE ensembles for employees in the “medium” exposure risk category will vary by work task, the results of the employer’s hazard assessment, and the types of exposures employees have on the job.

§70 Infectious disease preparedness and response plan.⁸²

- A. Employers with hazards or job tasks classified as:
 1. “Very high,” and “high,” shall develop and implement a written Infectious Disease Preparedness and Response Plan;
 2. “Medium” with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.
- B. The plan and training requirements tied to the plan shall only apply to those employees classified as “very high,” “high,” and “medium” covered by this section.
- C. Employers shall designate a person to be responsible for implementing their Plan. The Plan shall:

⁸² <https://www.osha.gov/Publications/OSHA3990.pdf>, starting at page 7

1. Identify the name(s) or titles(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.

1-2. Provide for employee involvement in development and implementation of the plan.

2-3. 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. Such considerations shall include:

a. Where, how, and to what sources of the SARS-CoV-2 virus or COVID-19 disease might employees be exposed at work, including:

- i. The general public, customers, other employees, patients, and other persons;
- ii. Known or suspected COVID-19 persons or those at particularly high risk of COVID-19 infection (e.g., local, state, national, and international travelers who have visited locations with ongoing COVID-19 community transmission, healthcare employees who have had unprotected exposures to known COVID-19 or suspected COVID-19 persons); and
- iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a “very high,” “high,” or “medium” level of exposure risk.

b. To the extent permitted by law, including HIPAA, employees’ individual risk factors (e.g., people with chronic lung disease or moderate to severe asthma, or serious heart conditions; people who are immunocompromised; people with severe obesity (body mass index [BMI] of 40 or higher), diabetes, chronic kidney disease undergoing dialysis, liver disease~~older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy; etc.~~).⁸³

Formatted: Indent: First line: 0"

Commented [WJ(36): Language updated to reflect CDC definition of risk factors.

⁸³ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

- c. Engineering, administrative, work practice, and personal protective equipment controls necessary to address those risks.

~~3.4.~~ Consider contingency plans for situations that may arise as a result of outbreaks, such as:

- a. Increased rates of employee absenteeism;
- b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination/substitution, engineering controls, administrative and work practice controls, and personal protective equipment, (including e.g., respirators, surgical/medical procedure masks, etc. and face coverings);
- c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
- d. Interrupted supply chains or delayed deliveries.

~~4.5.~~ Identify basic infection prevention measures to be implemented:

- a. Promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons to the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.
- b. Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

~~5.6.~~ Provide for the prompt identification and isolation of known COVID-19 and suspected COVID-19 employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.

~~6.~~ Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors that enter the place of employment, businesses that provide or contract or temporary employees to the employer, as

Commented [WJ(37): Error correction. "Face coverings" do not qualify as either PPE or respirators because they are not subject to independent testing to assure effectiveness

well as other persons accessing the place of employment to comply with the requirements of this standard/regulation and the employer's plan.

7. ~~Provide for training of employees classified as "very high" or "high" risk on the hazards associated with SARS-CoV-2 and COVID-19, the requirements of this standard/regulation, and requirements of the employer's Infectious Disease Preparedness and Response Plan.~~

Formatted: Not Highlight

Formatted: Indent: Left: 0.75", First line: 0"

Formatted: Not Highlight

Commented [WJ(38)]: Deleted as language was repetitive of training requirements in §80.B.8.

Formatted: Font: (Default) Calibri, 12 pt

§80 Training.

A. Employers with hazards or job tasks classified at "very high" or "high" 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 program shall enable each employee to recognize the hazards of the SARS-CoV-2 virus and symptoms of COVID-19 disease and shall train each employee in the procedures to be followed in order to minimize these hazards.⁸⁴

Commented [WJ(39)]: In response to comment to make clear

Commented [WJ(40)]: In response to comment to make clear which employees need to be trained and which do not

B. Employees shall be trained on:

1. The requirements of this standard/regulation;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The symptoms of the COVID-19 disease;
4. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
5. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, noncontact methods of greeting, etc.;
6. PPE:
 - a. When PPE is required;
 - b. What PPE is required;
 - c. ~~W~~How to properly don, doff, adjust, and wear PPE;
 - d. When limitations of PPE; and

⁸⁴ 1926.503(a)(1)

- e. The proper care, maintenance, useful life, and disposal of PPE;⁸⁵
 - 7. The anti-discrimination provisions of this **standard/regulation** in **§90**; and
 - 8. The employer’s Infectious Disease Preparedness and Response Plan, where applicable.
- C. Employers covered by **§50** of this **standard/regulation** shall verify compliance with **§80.A** 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 ~~signature~~name of the person who conducted the training, ~~or for computer-based training, the signature of the employer~~the name of the person or entity that prepared the training materials. If the employer relies on training conducted by another employer or completed prior to the effective date of this **standard/regulation**, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.⁸⁶
- D. The latest training certification shall be maintained.⁸⁷
- E. "Retraining." When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by **§80.A**, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:
1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;
 2. Changes are made to the employer’s Infectious Disease Preparedness and Response Plan; or

Commented [WJ(41): In response to comment to give employers flexibility in training delivery to employees

⁸⁵ Source: 1910.134(f), <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

⁸⁶ 1926.503(b)(1)

⁸⁷ 1926.503(b)(2)

3. Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.⁸⁸

§90 Discrimination against an employee for exercising rights under this standard/regulation is prohibited.

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard/regulation or Title 40.1 of the Code of Virginia for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face mask, face shield, or gloves, if such equipment is not provided by the employer,⁸⁹ provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

C. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.⁹⁰

⁸⁸ 1926.503(c)

⁸⁹ Source: LAJC Exhibit A with modification

⁹⁰ Source: LAJC Exhibit A with modification