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From: **Larkin, Matthew**

Date: Tue, Jul 27, 2021 at 4:00 PM

Subject: Comments for the Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19.

To: princy.doss@doli.virginia.gov <princy.doss@doli.virginia.gov>

Comments for the Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19.

The Emergency Temporary standard and the Final Permanent Standard, since their inception, have lagged behind the CDC guidance issued. As the guidance changed employers across the state have had to visit the FAQ page on a daily basis to find the VOSH interpretations of the standard as it deals with the workplace. Not all questions sent to DOLI addressed the workplace concerns of employers and left them to make determinations based on their interpretation of items contained within it. Some definitions that were critical to notification of cases was not addressed in the FAQs and answers from VOSH reps was very limited. A common reply to questions was “ ... seek the consultation services offered by VOSH” (paraphrased). This is not applicable to large organizations, using VOSH consultation services is an option and a choice for employers but should not be the only method VOSH uses to address/respond to questions that address inadequacies/difficult determinations inherent to the standard.

In the revised Final Permanent and amendments Section 16VAC25-220-40, Mandatory requirements for all employers, Paragraph B(1) states that employers can rely on an employee's representation of being fully vaccinated and that there is nothing that prohibits the employer from asking for proof of vaccination. This begs the question: How can VOSH state that an employer can rely on the employee's representation of vaccination status and then within the same standard stress instances where the employer can be cited if an employee is not following the standards for those that are unvaccinated. For fines that range from \$13K to \$130K, reliance on an employee's word is not acceptable and, in our opinion, is not value-added to this standard.

In the SHCB meeting Mr. Withrow alluded to the fact that the standard issued by VOSH could be/should be used as a tool to get more people vaccinated. We disagree with this approach and do not believe the standard should be used to motivate employees to get vaccinated (although we agree with the premise of all employees getting vaccinated). Regardless, this is an individual's personal decision. We do not believe creating harsher standards and requirements for those that are not vaccinated will be what drives people to get vaccinated. Education on the SARS-CoV-2 disease and vaccines and a final full approval from the FDA will help to drive the number of vaccinated individuals, not a VOSH Standard. In Virginia the percentage of individuals that are vaccinated is over 70% so the state should be able to follow CDC/OSHA recommended guidance for employers.

If the VOSH Standard places the emphasis on relying on the employee's representation of vaccination status as acceptable, the standard must contain verbiage that emphatically states that and should also state, in such instances, there would be no citation issued to the employer if the employee has misrepresented themselves.

If VOSH wants to set the bar and make a name for a higher standard then put some expectation on the employee, not just the employers. There are many requirements for the employer to follow but the standard is lacking strong verbiage on Employee responsibilities. There should be

an equal responsibility for the employee.

Due to personal, individual interpretations and rights, asking employers to verify vaccination status-potentially puts employers, supervisors, and coworkers at risk of unnecessary confrontation and possibly workplace violence due to the angst and high stress of this specific issue (people thinking individuals believe their vaccination status is protected HIPAA information, others are not entitled to ask about their status, etc.). Also stating that the employer can require employees to get vaccinated is also crossing the boundary of what VOSH should be expecting an employer to do. The standard does not say that specifically but during the SHCB meeting that perspective was expressed by Mr. Withrow as well as other members of the SHCB.

In addition, the revised amended standard includes the third change to reporting cases to VDH and to VOSH. This has led to difficulties with trying to provide consistent compliance, communication, training, and direction to a 16,000+ employee base. We recommend going forward that VOSH select, and remain consistent, with what they determine to be reportable cases.

It would benefit all employers if there was only one reporting requirement. VOSH and VDH should combine their web resources and make one consolidated portal to report the cases. Having two different forms, one with a report number and one without, is too cumbersome and certainly not intuitive or user friendly.

It is our belief that the Virginia Final Permanent Standard be revoked and that any further guidance and interpretation on SARS-CoV-2 or other infectious diseases come from the CDC and OSHA.

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