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Emergency Temporary Standard/emergency Regulation Infectious Disease Prevention 16 VAC 25-220

Director Withdraw,

The Virginia Department of Labor and Industry has announced an opportunity to provide input on *Executive Order 63 Order of Public Health Emergency Five, Requirements to Wear Face Covering While Inside Buildings, Applicable to all employers and employees covered by Virginia Occupational Safety and Health (VOSH) program jurisdiction, the Utility Workers Union of America (UWUA) is pleased to provide input below, as requested in the solicitation.*

The UWUA represents around 50,000 workers in the electric, gas, and water utility sectors. Our members maintain and operate utility infrastructure throughout the United States. In the state of Virginia UWUA members work in the natural gas industry_____

There are a number of areas in which the UWUA believes the proposed standard can, and should, be improved

1) CDC Guidance Should Not Replace VOSH Standards.

First, and perhaps most problematic, we believe that the standards proposed 10 (G) would obviate the entire standard, enabling an employer to simply ignore the new VOSH standard by following guidance issued by the National Center for Disease Control (CDC) It is axiomatic that guidance cannot supersede standards or regulations. Guidance documents are, by their nature, unenforceable, crafted without public input, and subject to no agency oversight in the workplace

If 10(G) is allowed to remain in place, the remainder of the VOSH standard will be rendered null as no matter how a given employer's practices may measure against the Virginia standard, the CDC guidance would be substantively controlling, but procedurally enforceable. Without any mechanism to require compliance, employers would effectively be given a "get out of jail free" card by merely claiming adherence to the CDC guidelines

For the same reasons, the UWUA asks that 10(G) be entirely removed, and VOSH standard made controlling and enforceable, just as any other VOSH standard, throughout the state of Virginia

2) Pre-defined Exposure Risk Categories Should Not Replace Hazard Identification and Assessment Practices

In (30) the proposed VOSH standard attempts to create broad, general categories of risk for workers in specific industries, an approach we feel undermines long-accepted occupational safety practices for hazard identification and assessment. Just as other workplace hazards are, by their nature, situational, so too can the potential risk of COVID-19 exposure depend upon many factors.

At a minimum, the risk categories would need a great deal of improvement as they are based on the federal OSHA guidelines promulgated in March, when much less was known about the COVID-19 virus and how to control it. By way of example, the meatpacking industry, based on what is now known, is in an inappropriately allow risk category of 'medium,'

The best approach, however, would be to simply follow traditional hazard identification and assessment protocols to determine whether, in any given situation, a hazard resist and, if so, what categories may evolve as outbreaks occur in a workplace, or in the surrounding community, thus necessitating additional hazard assessment.

Finally, throughout the course of a workday, many workers experience a variety of changing physical circumstances that can present different hazards. UWUA members in Virginia, for instance, may face one set of hazards while welding pipe by themselves in an open area but, another set of hazards entirely if they are in an enclosed space such as a dish or manhole for purpose of installing or repairing pipe.

For these reasons, we feel the risk categories should be removed and the COVID-19 hazard assessed situationally, just as any other workplace hazard.

3) Occupational Exposure Should Be More Broadly Defined

The proposed VOSH standard, at (30) currently defines the term 'occupational exposure' to mean the state of being actually or potentially exposed to contact with [COVID-19] disease-related hazards during job tasks. This definition, insofar as it focuses on 'job tasks' is too narrow as it does not encompass the full range of potential workplace exposures.

A more appropriate definition would replace 'during job task' with 'during the course of the employment' Though workers, naturally, spend the bulk of their time directly engaged in job tasks, this does not cover one hundred percent of their workplace time, or time spent walking between tasks, for example, all-time associated with employment should be deemed to fall within the term occupational exposure.'

4) Employer Reporting of COVID-19 Positive Test Must Include Public Health Authorities

The proposed standard at 40(a)(7) requires that an employer who is notified of a positive COVID-19 test among several categories of workers must report this fact, while maintaining confidentiality, to a) all its other employees: b) employers of other workers present on site: and c) third-party owners of the building or facility impacted.

This reporting structure, while correct in and of itself, does not go far enough as it does not provide public health authorities with its data, information vital to recreating and understanding disease vectors, known outbreak spots, and reliable case numbers. The UWUA 's ask would be to add a separate category of notice requiring that employers notify the relevant city or county health departments, the Virginia Department of Health and Department of Labor and Industry, as well as the federal OSHA and national CDC

5) Employees and Employee Representatives Must Play a Role in Ensuring Compliance

The current proposal, at (40), sets out a number of requirements that an employer must meet in order to be in compliance with the new VOSH standard. Each of these requirements, however, while correctly placing the burden of compliance on employers, leaves out any mechanism for employees or employee representatives, to be involved in the monitoring and ensuring compliance.

The UWUA asks that additional language be added to allow for sufficient transparency and inclusion that employees whether individually, or through a fellow employee designee, or through a third-party representative would be empowered to monitor each step of the process and provide input

Employees and employee representatives should be involved in the development and reviews of plans. Further, employers should make their infectious disease preparedness and response plan readily available for examination and copying, upon request, to each employee covered by this section, to their designated representative and to the Virginia Department of Labor and Industry

6) PPE Training Should Not be Limited to Employees in Very High or High-Risk Categories

The proposal, at 50(d), referencing (80), sets out a requirement for employers having any job tasks classified as 'very high' or high' by the proposal to provide training to all employees regardless of any given employee's particular risk classification on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease.

However, to maximize the potential, not only for workplace safety but to curb the spread of the see diseases generally, the UWUA asks that all employers be required to train all employees regarding these disease risks. as it is the nature of a virus not to be limited the workplace, using the workplace as one of the most readily accessible, and best-equipped channels for education can stem these pandemics generally by making the greatest number of people aware of the subjects covered by the proposal - characteristics and methods of transmission; symptoms; awareness of pre-and asymptomatic transmission possibilities; the benefits of safe

and healthy work practices including physical distancing, disinfection procedures, and frequency; and noncontact methods of greeting.

7) Recordkeeping and Reporting Requirements Must Be Added

The proposal does not currently direct or require the creation of workplace recordkeeping and reporting requirements. One of the primary limitations to understanding the spread of these diseases- where, by what victors, and among what populations - to date has been an absence of accurate, transparent information.

It is axiomatic that, just as all other workplace safety incidents are subject to recordkeeping and reporting requirements, so too must the incidences of SARS-CoV-2 virus and COVID-19 disease in the workplace be recorded by employers and reported to local, state and federal occupational safety and public health authorities

8) Conclusion

in conclusion, we thank the Department for this opportunity to provide public comment and urge that action be taken to the fullest extent necessary to protect all Virginia workers from the hazards of the SARS-CoV2 virus and COVID-19

Sincerely,

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National Safety Director
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Utility Workers Union