

Commenter: Jessica Rosner, VDH Epidemiology Program Manager

Comments to the permanent standard

Comment 85536: 9/23/20 at 4:12 pm:

The Virginia Department of Health (VDH) would prefer for the standard to require adherence to current VDH/Centers for Disease Control and Prevention (CDC) standards instead of stating particular VDH/CDC guidance that should be followed in writing. This would allow the standard to remain up-to-date with current recommendations without having to employ workarounds such as going through the revision process or developing FAQs to address updates.

In the purpose, scope, and applicability section, subsection E2b should state "The type of hazards encountered, including exposure to respiratory droplets and potential exposure to the airborne transmission of SARS-CoV-2 virus..." as SARS-CoV-2 is primarily transmitted through respiratory droplets (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/non-us-settings/overview/index.html#:~:text=COVID%2D19%20is%20primarily%20transmitted,sneezes%2C%20coughs%2C%20or%20talks>).

In the definitions section, for the "community transmission" definition, #2 should read "Minimal to moderate" where there is sustained community transmission..." (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html>).

The definition for "duration and frequency of employee exposure" should read (in part): "An example of an acute SARS-CoV-2 virus or COVID-19 disease situation may be an unmasked customer, patient, or other person coughing or sneezing directly into the face of an employee."

The definition for "high exposure risk hazards or job tasks" lists as an example contact tracer services. Contact tracing is not per se healthcare delivery. For VDH local health departments, this is confusing for staff and does not match the actual risk. Contact tracing would best be listed in medium (if performed on-site at the local health department) or low (if performed remotely). Also of note, contact tracing is listed in both the high risk and medium risk definitions. Recommend removing it from the high risk category and leaving it in the medium or low risk category definition.

The "lower exposure risk hazards or job tasks" definition should read (in part): "Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact to SARS-CoV-2 through the implementation of engineering, administrative and work practice controls." Further, the definition includes reference to employee use of face coverings for contact inside of six feet of coworkers, customers, or other persons. As the face coverings language is found in the definitions section, it may not be clear to employers that this is a mandatory requirement of the ETS. VDH recommends moving this face covering requirement from the definitions section of the ETS to the "Mandatory requirements for all employers" section or, alternatively, a new ETS section entitled "Requirements for hazards or job tasks classified as lower risk exposure."

The face covering definition should read (in part): "A face covering is not intended to protect the wearer, but it may reduce the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask or respirator."

The face shield definition should read: "Face shield means a form of personal protective equipment made of transparent, impermeable materials primarily used for eye protection from droplets or splashes for the person wearing it. A face shield is not a substitute for a face covering, surgical/medical procedure mask or respirator." (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>).

The definition of "may be infected with SARS-CoV-2 virus" should remove the language "and not currently vaccinated against the SARS-CoV-2 virus," as with the projected population-level efficacy of COVID-19 vaccine to be 40-70%, we cannot definitively state that someone vaccinated will not subsequently be free from infection.

The personal protective equipment definition should read (in part): "Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, goggles, shoes, earplugs or muffs, hard hats,

respirators, surgical/medical procedure masks, impermeable gowns or coveralls, face shields, vests, and full body suits."

The physical distancing definition should read (in part): "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, for purposes of this Standard, at least six feet from other persons."

The definition of SARS-CoV-2 should read: "SARS-CoV-2 means the novel virus that causes coronavirus disease 2019, or COVID-19. Coronaviruses are named for the crown-like spikes on their surfaces."

The signs of COVID-19 definition should read: "Signs of COVID-19 are abnormalities that can be objectively observed, and may include fever, trouble breathing or shortness of breath, cough, new confusion, vomiting, bluish lips or face, etc."

The surgical/medical procedure mask should read (in part): "A surgical/medical procedure mask has a looser fitting face seal than a tight-fitting respirator."

A definition for symptoms of COVID-19 should be added that reads: "Symptoms of COVID-19" are abnormalities that are subjective to the person and not observable to others, and may include chills, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, nausea, congestion or runny nose, diarrhea, etc."

The definition of symptomatic should read: "Symptomatic means a person who is experiencing signs and/or symptoms similar to those attributed to COVID-19. A person may become symptomatic 2 to 14 days after exposure to the SARS-CoV-2 virus."

The mandatory requirements for all employers, subsection A, should read: "Employers shall ensure compliance with the requirements in this section to protect employees in all exposure risk levels from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease." In this same section, subsection B2 should read "Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if employees suspect possible exposure or are experiencing signs and/or symptoms of illness." Subsection B4 should read (in part): "Employers shall develop and implement policies and procedures for employees to report when employees are experiencing signs and/or symptoms consistent with COVID-19 and no alternative diagnosis has been made (e.g., tested positive for influenza)." In subsection B5, consider adding "and others" to the last sentence ("...that would not result in potentially exposing other employees and others to the SARS-CoV-2 virus") to encompass customers, vendors, volunteers, etc. Section B7 should read: "Employers shall discuss with subcontractors and companies that provide contract or temporary employees about the importance and requirement of employees or other persons who are known or suspected to be infected with the SARS-CoV-2 virus of staying home. Subcontractor, contract, or temporary employees known or suspected to be infected with the SARS-CoV-2 virus shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their employees known or suspected to be infected with the SARS-CoV-2 virus to report to or be allowed to remain at work or on a job site until cleared for return to work."

Subsection B8 of mandatory requirements for all employers should read: "To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within 2 days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test), and the employer shall notify..." This is important because VDH defines the infectious period of a COVID-19 case-patient as 2 days prior to symptom onset (or test positivity if the patient is asymptomatic) until 10 days after onset. This is the period established during which close contacts of case-patients should receive follow up. VDH suggests modifying the language of the standard to be consistent with the infectious period.

In regard to subsection B8d, receiving duplicative individual reports of COVID-19 from both employers and laboratories/physicians reduces VDH's ability to identify outbreaks, as VDH staff will instead be dealing with increased paperwork and having to match employer reports with reports received from physicians and laboratories. In taking on that responsibility, less time will be focused on the items that would allow VDH to most effectively intervene (e.g., case-patient interviews, employer outbreak reports). It's important to reduce

the duplicative reports VDH would receive from employers under the current ETS, while still having the opportunity to identify potential outbreaks. For that reason, the Virginia Department of Health would like to modify B8d to read: “During a declaration of an emergency by the Governor pursuant to § 44-146.17 every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health when the worksite has had two or more confirmed cases of COVID-19. The employer shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases. Employers shall continue to report all cases until the local health department has closed the outbreak. After the outbreak is closed, subsequent identification of two or more confirmed cases of COVID-19 during a declared emergency shall be reported, as above.”

In regard to subsection B8e, it's important to note that some employers (such as residential programs, daycares, schools, long-term care facilities, etc.) are required to report outbreaks to VDH per the Code of Virginia 12VAC5-90-90 . VDH feels that duplicative reporting to both VDH and DOLI may be burdensome to these employers.

In regard to section C of the mandatory requirements for all employers, VDH would prefer for this section to state that employees must be excluded from work until they have met VDH/CDC requirements for discontinuing home isolation or quarantine. VDH already governs and has the ability to require (if deemed necessary) certain isolation and quarantine periods per the Code of Virginia statutes on isolation and quarantine. Sections C1a and C2b are not consistent with current public health guidance for discontinuing isolation. Particularly, in most cases C1b is not recommended for discontinuing isolation – this is generally for transfers of patients between healthcare facilities (e.g. hospital à long-term care facility). If it is not possible to state that employees must be excluded from work until they have met VDH/CDC requirements for discontinuing home isolation or quarantine and specific return to work guidance must be stated explicitly, VDH would prefer for the language in section C1a and C1b to be changed to (for isolated persons): “Persons with COVID-19 who have symptoms may discontinue isolation and return to work when:

- At least 10 days* have passed since symptom onset and
- At least 24 hours have passed since resolution of fever without the use of fever-reducing medications and
- Other symptoms have improved.

*A limited number of persons with severe illness may produce replication-competent virus beyond 10 days, that may warrant extending duration of isolation for up to 20 days after symptom onset. Persons who are severely immunocompromised may require testing to determine when they can return to work. Consider consultation with infection control experts.

Persons infected with SARS-CoV-2 who never develop COVID-19 symptoms may discontinue isolation and other precautions 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.”

Furthermore, If return to work guidance for quarantined workers must be stated explicitly in the permanent standard, VDH recommends including this language in a separate section of the standard, such as: “XXXX. Quarantine of exposed employees.

“Quarantine” is separation of people who have been in “close contact” with a person with COVID-19 from others. People in quarantine should stay home as much as possible, limit their contact with other people, and monitor their health closely in case they become ill.

Close contact is described as being within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; providing care at home to someone who is sick with COVID-19; having direct physical contact (e.g., hugging, kissing) with a person with COVID-19; sharing eating or drinking utensils with a person with COVID-19; or being exposed to the respiratory droplets of someone with COVID-19 (e.g., being sneezed on, being coughed on).

Close contacts of a known COVID-19 case who are not experiencing symptoms should be quarantined at home until 14 days have passed since last contact with the COVID-19 case or, if contact is ongoing (such as living together in a household), 14 days after the COVID-19 patient has been released from isolation, which may result in exclusion for up to 24 days.

NOTE: If the employee is a household contact of a person with COVID-19 and the employee is able to have complete separation from the ill person (meaning no contact, no time together in the same room, no sharing of any spaces, such as the same bathroom or bedroom), the employee may follow the timeline for non-household contact.

If the employee develops symptoms of COVID-19 or tests positive for SARS-CoV-2, exclusion guidance for employees suspected or confirmed to have COVID-19 should be followed. If the employee tests negative during the quarantine period, they must continue to quarantine for the full 14 days.

However, anyone who has been exposed through close contact with someone with COVID-19 does NOT need to stay home when the exposed person:

- developed COVID-19 illness within the previous 3 months,
- has recovered, and
- remains without COVID-19 symptoms (for example, cough, shortness of breath).

It may be necessary for personnel filling essential critical infrastructure roles who are asymptomatic contacts to remain in the workplace in order to provide essential services, if the business cannot operate without them (except for education sector workers, who should quarantine for the full 14 days). These situations should be reviewed with the local health department on a case-by-case basis, with home quarantine being the preferred method of addressing close contacts. If a business is unable to operate without the critical infrastructure employee, the employee (except for education sector workers) may return to work (not undergo quarantine) as long as:

- Employers pre-screen the employee (temperature checks)
- Employers conduct regular monitoring of employee
- Employee wears a face mask at all times for 14 days after last close contact
- Employee maintains 6 feet of physical distance from all persons outside their household
- Employer ensures work space is routinely cleaned and disinfected."

Subsection C1 of the mandatory requirements for all employers states "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 subdivision 1 a of this subsection will constitute compliance with the requirements of this subsection." VDH is unclear about the intent of this statement. If the intent is to require clearance from a healthcare provider prior to returning to work, VDH has two concerns: 1. Neither CDC nor VDH require healthcare provider clearance for returning to work. Requiring clearance from a healthcare provider to return to work may burden healthcare provider offices that are inundated with cases. 2. Requiring clearance to return to work may create an equity issue, as some employees may not be able to afford to get physician clearance. If this is the intent of the statement, VDH recommends striking the statement. However, if the intent is for employees and employers to remain up-to-date on public health recommendations, VDH would recommend changing the language to "consultation with appropriate healthcare and/or public health professionals" to allow for public health input without requiring physician clearance.

Subsection C1bi states "Nothing in this standard shall be construed to prohibit an employer from requiring a known or suspected to be infected with the SARS-CoV-2 virus employee to be tested in accordance with subdivision 1 b of this subsection." Neither CDC nor VDH currently recommend the test-based strategy be employed to clear a person to return to work. As a result, this language promotes a practice that is no longer consistent with current public health recommendations. VDH would prefer to remove specific language on return to work standards in lieu of requiring employees to remain out of work until they have met VDH/CDC criteria to discontinue isolation/quarantine. However, if specific language on when an employee may return to work must be a part of the standard, VDH would recommend modifying this language to say: "Employees known or suspected to be infected with SARS-CoV-2 who have experienced symptoms should follow a

symptom-based strategy for returning to work. Employees known or suspected to be infected with SARS-CoV-2 who never developed symptoms should follow a time-based strategy for returning to work."

Subsection C2a of the mandatory requirements for all employers should read "The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of the employee's first positive COVID-19 diagnostic test assuming the employee and, for symptomatic employees, have had improvement of symptoms. If an asymptomatic employee who tested positive develops symptoms, then the symptom-based shall be used."

Regarding the section "Requirements for hazards or job tasks classified as very high or high exposure risk," since the VERY HIGH and the HIGH exposure risk jobs have the same engineering, administrative, work practice and PPE requirements, it adds burden to the employer to have to distinguish between them. Also – many of the engineering, administrative, work practice and PPE requirements between this section and the next (MEDIUM exposure risk jobs) are exactly the same. VDH recommends rewriting this so that employers can readily see what is required for all and what additional requirements are necessary for the VERY HIGH and HIGH categories. The above would make this much more customer-friendly.

In the very high or high exposure risk requirements section, subsection B6, VDH recommends modifying this language to be consistent with current guidance on laboratory testing of SARS-CoV-2 samples.

The remainder of VDH comments will be provided in a second townhall comment.

Comment 85545: 9/23/20 at 4:30 pm:

Comments to the permanent standard (comment 2)

Additional comments:

In the requirements for very high or high exposure risk section, subsection C4 should read: "An employer shall post signs requesting patients and family members to immediately report signs or symptoms of respiratory illness on arrival at the healthcare facility and use disposable face coverings."

In the same section, subsection C9 should read: "Provide face coverings to non-employees suspected to be infected with SARS-CoV-2 virus to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home)."

In the same section, subsection D5 should read: "Unless contraindicated by a hazard assessment and equipment selection requirements in subdivision 1 of this subsection, employees classified as very high or high exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and 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. *Where indicated by the hazard assessment and equipment selection requirements in subsection D of this section, such employees shall also be provided with and wear a surgical/medical procedure mask. Gowns shall be the correct size to assure protection.*" Further, the italicized part is confusing for several reasons: 1. It makes reference to subsection D, but it is subsection D. 2. The prior sentence already stipulates the provision of a respirator – requiring providing/wearing of a surgical/medical procedure mask is confusing. Perhaps what is meant is that the PATIENT should be wearing such a mask for source control – but that should not be required when not medically tolerated.

As mentioned in a previous comment, the requirements for hazards or job tasks classified as medium exposure risk section should be rewritten for simplification for employers due to the similarity of requirements in this section to the requirements for very high/high risk settings.

Subsection C1b of the requirements for medium exposure risk settings should read: "Provide face coverings to non-employees suspected to be infected with SARS-CoV-2 to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home)."

In the infectious disease preparedness and response plan section, subsection C3aii reads "Known or suspected to be infected with the SARS-CoV-2 virus 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..." VDH and CDC are now emphasizing the activities that one participates in as much as the locations one travels to. This should be addressed in this section. (Reference: <https://www.vdh.virginia.gov/coronavirus/coronavirus/travel-to-areas-with-widespread-ongoing-community-spread/> and <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>).

In the same section, subsection C3b should read (in part): "To the extent permitted by law, including HIPAA, employees' individual risk factors for severe disease. For example, people of any age with one or more of the following conditions are at increased risk of severe illness from COVID-19:...obesity (body mass index or BMI of 30 or higher)..." The BMI value has been changed from 40 to 30, and this should be reflected in the standard. (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>). Additionally, this subsection should end with the sentence "The risk for severe illness from COVID-19 also increases with age." (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>). It's essential that the ETS includes this, particularly with the advancing age of many workers.

In the same section, subsection 5 should read (in part): "Identify infection prevention measures to be implemented." Subsection 6 should read: "Provide for the prompt identification and isolation of known or suspected to be infected with the SARS-CoV-2 virus employees away from work, including procedures for employees to report when they are experiencing signs and/or symptoms of COVID-19."

In the training section, subsection B5 should read: "Risk factors of severe COVID-19 illness with underlying health conditions and advancing age";. Subsection 7 should read "Safe and healthy work practices, including but not limited to, physical distancing, wearing of face coverings, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;" The following language should be added to subsection 8: "Strategies to extend PPE supplies during limited capacity."

Subsection C makes reference to "the trained employee's physical or electronic signature." VDH recognizes that obtaining a physical or electronic signature on a document can be difficult in a telework environment. VDH suggests revising this language to indicate a physical or electronic signature is not necessary if other documentation of training completion (e.g., electronic certification through a training system) can be provided.

Subsection E4 of the training section should be added and should read: "Changes in public health's (CDC and VDH) understanding of SARS-CoV-2's transmission and impact on public health."

Subsection G3 of the training section should read: "The signs and symptoms of the COVID-19 disease". Subsection G5 should read: "Safe and healthy work practices and control measures, including but not limited to, physical distancing, wearing of face masks, sanitation and disinfection practices." Subsection G6 should be added and should read: "Requirements of any applicable Virginia executive order or order of public health emergency related to the SARS-CoV-2 virus or COVID-19 disease; and the current subsection G6 should be moved to G7.

In the discrimination against an employee for exercising rights section, subsection B should read: "No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own personal protective equipment, including but not limited to a respirator, face shield, gowns or gloves provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own face covering." As previously written, it included face covering as PPE (face coverings are not PPE) and it indicated "if provided by the employer" for PPE, when the employer MUST provide PPE.

In regard to subsection D of this section, language should be rewritten to be clearer. Employees may read and interpret that they can refuse to work, even if appropriate safeguards can be put into place, but this was clarified to mean that employees cannot refuse to work – this becomes a performance issue – if appropriate safeguards are implemented. It is important to assure that there is a whistleblower clause but, as written, this will create considerable consternation for employers-employees.