

Final Standard for Infectious Disease Prevention of the SARS-CoV-2 That Causes COVID-19, 16 VAC 25-220

Summary of Significant Changes from the Emergency Temporary Standard to the Final Permanent Standard

16VAC25-220-10. Purpose, scope, and applicability.

Language added to 16VAC25-220-10.C:

Notwithstanding anything to the contrary in this standard, no enforcement action shall be brought against an employer or institution for failure to provide PPE required by this standard, if such PPE is not readily available on commercially reasonable terms, and the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms. The Department of Labor and Industry shall consult with the Virginia Department of Health as to the ready availability of PPE on commercially reasonable terms and, in the event there are limited supplies of PPE, whether such supplies are being allocated to high risk or very high risk workplaces.¹

16VAC25-220-20. Effective dates.

Language added as 16VAC25-220-20.B:

The requirements for 16VAC25-220-70 [Infection disease preparedness and response plan] shall take effect on March 26, 2021.² The training requirements in 16VAC25-220-80 shall take effect on March 26, 2021.

Language added as 16VAC25-220-20.C:

Within fourteen (14) days of the expiration of the Governor's COVID-19 State of Emergency and Commissioner of Health's COVID-19 Declaration of Public Emergency, the Virginia Safety and Health Codes Board shall notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for the standard.³

¹ DOLI interprets the phrase "no enforcement action" to mean that either no citation shall issue, or if a citation has already been issued it shall be vacated, "if such PPE is not readily available on commercially reasonable terms, and the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms." DOLI will still retain the right to carry out its statutory authority to conduct informal investigations or onsite inspections and verify employer compliance with this provision.

² This date assumes the permanent standard has an effective date of January 27, 2021.

³ The new language in 16VAC25-220.C requires the Board to make a "determination" of whether there is continued need for the standard. The Department has identified three "determination" options:

- That there is no continued need for the standard;
- That there is a continued need for the standard with no changes; and
- That there is a continued need for a revised standard.

Regardless of the determination, the Department and Board will provide notice and comment opportunities on any changes to or revocation of the standard.

16VAC25-220-30. Definitions.

Definition of “Disinfecting” revised:

"Disinfecting" means using chemicals approved for use against SARS-CoV-2 virus, for example EPA-registered disinfectants, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2 virus, to kill germs on surfaces. The process of disinfecting 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.

Definition of “Face covering” revised:

"Face covering" means an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape, and shall not be made of material that makes it hard to breathe, such as vinyl. A face covering is not a surgical/medical procedure mask or respirator.

Definition of “Face shield” revised:

"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.

New definition for “Minimal occupational contact” is provided:

"Minimal occupational contact" means no or very limited, brief, and infrequent contact with employees or other persons at the place of employment. Examples include, but are not limited to, remote work (i.e., those working from home); employees with no more than brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet); health care employees providing only telemedicine services; a long distance truck driver.⁴

Definition of “Physical distancing” revised:

"Physical distancing" also called "social distancing" means a person keeping space between himself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least six feet from other persons.

With regard to the phrase “notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to,” the intent of the language is to give the Board the maximum amount of flexibility to “notice” the Board meeting within 14 days even if the Board may not actually meet within 14 days.

⁴ <https://www.osha.gov/SLTC/covid-19/hazardrecognition.html>

Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall (e.g., an office setting) constitutes one form of physical distancing from an employee or other person stationed on the other side of the wall, provided that six feet of travel distance is maintained from others around the edges or sides of the wall as well.

New definition of “Severely immunocompromised” is provided:

"Severely immunocompromised" means a seriously weakened immune system that lowers the body's ability to fight infection and may increase the risk of getting severely sick from SARS-CoV-2, from being on chemotherapy for cancer, being within one year out from receiving a hematopoietic stem cell or solid organ transplant, untreated HIV infection with CD4 T lymphocyte count less than 200, combined primary immunodeficiency disorder, and receipt of prednisone greater than 20mg per day for more than 14 days. The degree of immunocompromise is determined by the treating provider, and preventive actions are tailored to each individual and situation.

Definition of “Signs of “COVID-19” revised:

"Signs of COVID-19" are medical conditions that can be objectively observed and may include fever, trouble breathing or shortness of breath, cough, vomiting, new confusion, bluish lips or face, etc.

New definition of “Symptoms of COVID-19” is provided:

"Symptoms of COVID-19" are medical conditions 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, or diarrhea, etc.

16VAC25-220-40. Mandatory requirements for all employers.

16VAC25-220-40.B.7.d [notification to VDH of positive cases] is changed to:

d. The Virginia Department of Health during a declaration of an emergency by the Governor pursuant to § 44-146.17 of the Code of Virginia. Every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health (VDH) when the work site has had two or more confirmed cases of COVID-19 of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period. Employers 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 required by this subdivision B 7 d. The following employers are exempt from this provision because of separate outbreak reporting requirements contained in 12VAC5-90-90: any residential or day program, service, or

facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp;....

16VAC25-220-40.B.7.e [notification to DOLI of positive cases] is changed to:

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three or more of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period. A reported positive SARS-CoV-2 test does not need to be reported more than once and will not be used for the purpose of identifying more than one grouping of three or more cases, or more than one 14-day period.

16VAC25-220-40.C.1 and C.2 are changed to reflect a symptoms based strategy for return to work:

C. Return to work. Employers shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work.

1. Symptomatic employees known or suspected to be infected with the SARS-CoV-2 virus are excluded from returning to work until all three of the following have been met:

- a. The employee is fever-free (less than 100.0° F) for at least 24 hours, without the use of fever-reducing medications,
- b. Respiratory symptoms, such as cough and shortness of breath have improved, and
- c. At least 10 days have passed since symptoms first appeared.

However, a limited number of employees 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. Employees who are severely immunocompromised may require testing to determine when they can return to work, and the employer shall consider consultation with infection control experts. VOSH will consult with VDH when identifying severe employee illnesses that may warrant extended duration of isolation or severely immunocompromised employees required to undergo testing.

2. Employees known to be infected with SARS-CoV-2 who never develop signs or symptoms are excluded from returning to work until 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-40.F [multiple employees occupying a vehicle] is changed to:

F. When multiple employees are occupying a vehicle for work purposes, employers shall use the hierarchy of hazard controls to mitigate the hazards associated with SARS-CoV-2 and COVID-19 to prevent employee exposures in the following order:

1. Eliminate the need for employees to share work vehicles and arrange for alternative means for additional employees to travel to work sites.
2. Provide access to fresh air ventilation (e.g., windows). Do not recirculate cabin air.
3. When physical distancing cannot be maintained, establish procedures to maximize separation between employees during travel (e.g., setting occupancy limits, sitting in alternate seats, etc.).
4. When employees must share work vehicles because no other alternatives are available, employees shall be provided with respiratory protection, such as an N95 filtering face piece respirator. The employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.
5. Until adequate supplies of respiratory protection and/or personal protective equipment become readily available for non-medical and non-first responder employers and employees, employers shall provide and employees shall wear face coverings while occupying a work vehicle with other employees or persons.

Notwithstanding anything to the contrary in this standard, the Secretary of Commerce and Trade may exercise discretion in the enforcement of an employer's failure to provide PPE required by this standard, if the employer demonstrates that the employer:

- a. Is exercising due diligence to come into compliance with such requirement; and
- b. Is implementing alternative methods and measures to protect employees that are satisfactory to the Secretary of Commerce and Trade after consultation with the commissioner and the Secretary of Health and Human Services.

16VAC25-220-40.H, the following language is added:

H. When it is necessary for employees solely exposed to lower risk hazards or job tasks to have brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet), a face covering is required.

16VAC25-220-40.J.1, the following language is added:

1. Although face shields are not considered a substitute for face coverings as a method of source control and not used as a replacement for face coverings among people without medical contraindications, face shields may provide some level of protection against contact with respiratory droplets. In situations where a face covering cannot be worn due to medical contraindications, employers shall provide and employees shall wear either:

- a. A face shield that wraps around the sides of the wearer's face and extends below the chin; or
- b. A hooded face shield.

2. To the extent feasible, employees wearing face shields in accordance with this subsection shall observe physical distancing requirements in this standard.

3. Face shield wearers shall wash their hands before and after removing the face shield and

avoid touching their eyes, nose, and mouth when removing it.

4. Disposable face shields shall only be worn for a single use and disposed of according to manufacturer instructions.

5. Reusable face shields shall be cleaned and disinfected after each use according to manufacturer instructions.

16VAC25-220-40.L.5, is changed to:

5. All common spaces, including bathrooms (including port-a-johns, privies, etc.), frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at least once during or at the end of the shift. Where multiple shifts are employed, such spaces shall be cleaned and disinfected no less than once every 12 hours.

16VAC25-220-40.L.7, is changed to:

7. Employers shall ensure that cleaning and disinfecting products are readily available to employees to accomplish the required cleaning and disinfecting. In addition, employers shall ensure use of only disinfecting chemicals and products indicated in the Environmental Protection Agency (EPA) List N for use against SARS-CoV-2, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2.

16VAC25-220-50. Requirements for hazards or job tasks classified as very high or high exposure risk.

16VA25-220-50.B.1.b and B.1.c [air handling systems] are changed by deleting references to ASHRAE and ANSI standards,⁵ and adding the following:

b. Where feasible and within the design parameters of the system, are utilized as follows:

- (1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open);
- (2) In ground transportation settings, use natural ventilation to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission to employees, and when environmental conditions and transportation safety and health requirements allow;
- (3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;
- (4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

⁵ 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).

- (5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;
- (6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);
- (7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;
- (8) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass; and
- (9) Check filters to ensure they are within service life and appropriately installed.

c. Comply with USBC and applicable referenced American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.

16VA25-220-60.B.6, the following language is added:

....Diagnostic laboratories that conduct routine medical testing and environmental specimen testing for COVID-19 are not required to operate at BSL-3.

16VAC25-220-60. Requirements for hazards or job tasks classified at medium exposure risk.

16VA25-220-60.B.1.b and B.1.c [air handling systems] are changed in the same manner as 16VA25-220-50.B.1.b and B.1.c above.

16VAC25-220-70. Infectious disease preparedness and response plan.

16VAC25-220-70.C.3.a.(4), new language is added:

C.The plan shall:

3. Consider and address the level of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to at those sites, 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:

(4) Situations where employees work during higher risk activities involving potentially large numbers of people or enclosed work areas such as at large social gatherings, weddings, funerals, parties, restaurants, bars, hotels, sporting events, concerts, parades, movie theaters, rest stops, airports, bus stations, train stations, cruise ships, river boats, airplanes, etc.⁶

⁶ <https://www.vdh.virginia.gov/coronavirus/coronavirus/travel-to-areas-with-widespread-ongoing-community-spread/>

16VAC25-220-70.C.4, is changed to:

4. Consider and address contingency plans for situations that may arise as a result of outbreaks that impact employee safety and health, such as:
 - a. Increased rates of employee absenteeism (an understaffed business can be at greater risk for accidents);
 - b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination and substitution, engineering controls, administrative and work practice controls, and personal protective equipment (e.g., respirators, surgical/medical procedure masks, etc.);
 - c. Options for conducting essential operations in a safe and healthy manner with a reduced workforce; and
 - d. Interrupted supply chains or delayed deliveries of safety and health related products and services essential to business operations.

16VAC25-220-80. Training.

16VAC25-220-80.B.8.f, new language is added:

B. The training required under subsection A of this section shall include:

....

8. Personal protective equipment (PPE):

....

- f. Strategies to extend PPE usage during periods when supplies are not available and no other options are available for protection, as long as the extended use of the PPE does not pose any increased risk of exposure. The training to extend PPE usage shall include the conditions of extended PPE use, inspection criteria of the PPE to determine whether it can or cannot be used for an extended period, and safe storage requirements for PPE used for an extended period; and

16VAC25-220-80.C.2 [written certification of training], new language is added:

2. A physical or electronic signature is not necessary if other documentation of training completion can be provided (e.g., electronic certification through a training system; security precautions that enable the employer to demonstrate that training was accessed by passwords and usernames unique to each employee, etc.).

16VAC25-220-90. Discrimination against an employee for exercising rights under this standard is prohibited.

16VAC25-220-90.B, is changed to:

B. 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, gown, or gloves, provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees. In situations where face coverings are not provided by the employer, no person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own face covering that meets the requirements of this standard, provided that the face covering does not create a greater hazard to the employee or create a serious hazard for other employees. Nothing in this subsection shall be construed to prohibit an employer from establishing and enforcing legally permissible dress code or similar requirements addressing the exterior appearance of personal protective equipment or face coverings.

16VAC25-220-90.B, is changed to:

D. Nothing in this standard shall limit an employee from refusing to do work or enter a location because of a reasonable fear of illness or death. The requirements of 16VAC25-60-110 contain the applicable requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of illness or death.