

National Right to Work Committee

A COALITION OF EMPLOYEES AND EMPLOYERS
NATIONAL HEADQUARTERS BUILDING

Mark A. Mix, *President*

July 26, 2021

VIA EMAIL: princy.doss@doli.virginia.gov

Jay Withrow, Director
Division of Legal Support, ORA, OPPPI, and OWP
Virginia Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, VA 23219

Re: Comments on Final Permanent Standard (FPS) & Proposed Amendments

Dear Mr. Withrow:

The National Right to Work Committee offers these comments to the proposed amendments to the Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19, 16 VAC25-220, as Adopted by the Virginia Safety and Health Codes Board on June 29, 2021 (“FPS”). We join other commenters in asking that the FPS be revoked.

The FPS arose out of a government declared emergency involving a virus that health care providers did not yet know how to treat. The situation thankfully is quite different today.

With developing knowledge, expertise, and resources and with a large and growing portion of the population vaccinated or having immunity following infection and recovery, emergency measures are no longer necessary. Indeed, the Governor allowed his emergency declaration to expire on June 30, 2021, removing even that “emergency” foundation from the FPS.

Should the FPS amendments proceed despite the lack of necessity, the Committee objects to the untenable position those proposed amendments place on employees and employers.

The Committee has always operated with the belief that its employees’ health affairs are their personal business. While employees sometimes voluntarily share that information, especially if it explains a performance issue or constitutes a disability needing an accommodation, we do not pry and our employees are not required to tell. We respect their personal privacy.

In stark contrast, the FPS does not.

Although the FPS amendments do not explicitly require an employer to document whether employees are fully vaccinated, they do require employers to take multiple preventive actions on that very basis, thereby impelling employers to force employees to publicly disclose their vaccination status—making employers do what DOLI does not mandate.

The result forces employees to publicly disclose their vaccination status—regardless of the employee’s personal basis for that status—not only to their employer but also to their fellow employees by wearing a face covering, maintaining physical distancing, etc.—this despite the fact they may prefer to keep their vaccination status private.

Government regulations should not force employers to discriminate against and divide their employees in such a manner and should not force employees to publicly self-label themselves, especially when the labeling concerns private health information. Doing so fosters an unhealthy workplace environment for all involved.

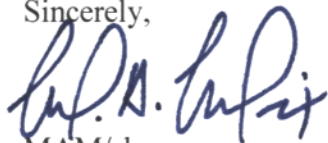
Finally, we join with those commenters who have said, “[t]he FPS is out of step with the changing dynamic of the virus and the revised CDC recommendations that have been issued.” (Letters of the Medical Society of Virginia and the Virginia Health Care Association and Virginia Center for Assisted Living.)

Indeed, the amendments ignore the impact of employees who have immunity as a result of having contracted and recovered from COVID-19, which is just one of many developing research areas. Governor Northam, in a June 14th letter to Safety and Health Codes Board Chairwoman Milagro Rodriguez, “states similarly that the FPS ‘unfortunately does not evolve with the improving conditions across the Commonwealth.’” (Letters.)

Rather than continuing out of step, we urge DOLI to rescind the FPS.

As a society, we need to revert to leaving health conditions, prevention, and treatment—including an infectious disease like COVID-19 that is a constantly evolving situation—as private matters between individual employees and their physicians. Employers and employees are quite capable of following the developing and changing guidance from the CDC and the medical community, which surely the Virginia Department of Labor and Industry likewise supports.

Sincerely,



MAM/sbw