**Virginia Standard for Infectious Disease Prevention of the SARS-CoV-2 That Causes COVID-19,**

**16 VAC 25-220, Adopted August 26, 2021**

Summary of Significant Changes Effective September 8, 2021

The amendments to the Virginia Standard for Infectious Disease Prevention of the SARS-CoV-2 That Causes COVID-19, 16 VAC 25-220 (Virginia Standard), adopted August 26, 2021 by the Virginia Safety and Health Codes Board and effective September 8, 2021, address the following issues:

Changes the primary focus of the Virginia Standard from the risk exposure level approach (very high, high, medium, lower) to one that focuses on mitigation strategies directed at protecting employees who are unvaccinated, not fully vaccinated or are otherwise at risk from the grave danger presented by the SARS-C-oV-2 virus (and its variants) and the COVID-19 disease;

The Governor's proposed amendment to 16VAC25-220-10.E;

The Center for Disease Control and Prevention's (CDC) updated guidance for fully vaccinated people issued on July 27, 2021 (requirement in certain situations for fully vaccinated employees to wear face coverings in areas of substantial or high transmission), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>;

The June 29, 2021 adoption by the Safety and Health Codes Board of federal OSHA's Emergency Temporary Standard, 29 CFR 1910.502 et seq., applicable to all settings where any employee provides health care services or health care support services (effective date of August 2, 2021), <https://www.doli.virginia.gov/emergency-temporary-standard-interim-final-rule/>;

Other minor substantive changes; and

Non-substantive error and formatting corrections.

**16VAC25-220-10.B**

Amended as follows by adding:

1. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board and take effect, application of this chapter, except for 16VAC25-220-40 B 7 d and B 7 e and 16VAC25-220-90, to such covered employers and employees subject to the chapter shall be suspended while the federal COVID-19 Emergency Temporary Standard remains in effect.

2. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502 et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed or invalidated by a state or federal court, the provisions of this chapter, including 16VAC25-220-50, shall immediately apply to such employers and employees in its place with no further action of the board required.

3. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502 et seq., applicable to all settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed by federal OSHA, or otherwise revoked, repealed, declared unenforceable, or permitted to expire, the provisions of this chapter, including 16VAC25-220-50, shall immediately apply to such employers and employees in its place with no further action of the board required. In addition, the Virginia Safety and Health Codes Board shall within 30 days notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for this chapter or whether it should be maintained, modified, or revoked.

**16VAC25-220-10.D**

Language relating to exposure risk levels was removed.

**16VAC25-220-10.E.**

Amended as follows:

E. To the extent that an employer actually complies with a recommendation contained in current CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, ~~and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard,~~ the employer's actions shall be considered in compliance with the related provisions of this standard. An employer's actual compliance with a recommendation contained in current CDC guidelines, whether mandatory or non-mandatory, to mitigate SARSCoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with current CDC guidelines.

**16VAC25-220-10.F & G**

Language relating to public or private institutions of higher education reopening plans (10.F) and public school division and private school reopening plans (1o.F) was removed.

**16VAC25-220-20**

Effective dates were revised:

B. The requirements of this chapter shall take effect on September 8, 2021 except where otherwise noted.

C. The requirements for 16VAC25-220-70 shall take effect on October 8, 2021.

D. The training requirements in 16VAC25-220-80 shall take effect on November 7, 2021.

**16VAC25-220-30**

Definitions were added for:

Aerosol-generating procedure, Ambulatory care, ASTM, Community transmission, Confirmed COVID-19, COVID-19 positive and confirmed COVID-19, COVID-19 test, Elastomeric respirator, Facemask, Fully vaccinated, Health care services, Health support care services, Otherwise at-risk, Powered air-purifying respirator, Surgical mask, Suspected COVID-19, and Vaccine.

Definitions with major revisions:

Airborne infection isolation room, Cleaning, Face covering, Face shield, Personal protective equipment, Respirator, and Signs of COVID-19.

Definitions removed:

Exposure risk level, Known to be infected with the SARS-CoV-2 virus, May be infected with SARS-CoV-2 virus, Minimal occupational contact, Surgical/medical procedure mask, and Suspected to be infected with SARS-CoV-2 virus COVID-19.

**16VAC25-220-40**

Changes were made throughout 16VAC25-220-40 to reflect revised requirements for employees who are fully vaccinated and for those employees who are not fully vaccinated or otherwise at risk; and to reflect revised CDC procedures for cleaning and/or disinfecting surfaces.

**16VAC25-220-40.A**

Amended as follows:

A. 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~~ have a policy in place to ensure compliance with the requirements in this section to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease. Such policy shall have a method to receive anonymous complaints of violations. An employer that enforces its policy in good faith and resolves filed complaints shall be considered in compliance with this subsection.

**16VAC25-220-40.B.1**

Amended as follows:

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. ~~Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure.~~ Tasks that are similar in nature and expose employees exposed to the same hazard may be grouped for classification purposes. Employers may rely on an employee’s representation of being fully vaccinated, as defined by this chapter without requiring proof of vaccination; however, nothing in this chapter shall be construed to preclude an employer from requiring proof that an employee is fully vaccinated.

**16VAC25-220-40.B.7.e**

The requirement for employers to notify the Department of Labor and Industry (DOLI) of three or more cases within a 14 day period is changed to two or more cases to be consistent with a similar requirement to report such cases to the Virginia Department of Health.

**16VAC25-220-40.C.1-3**

Amended as follows:

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~~ suspected or confirmed COVID-19 employees 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 conditions have been met:~~

~~a. The employee is fever-free (below 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.~~

~~3.~~ 1. If the employer knows an employee is COVID-19 positive, regardless of vaccination status then the employer must immediately remove that employee from the work site and keep the employee removed until they meet the return to work criteria in subdivision C 3 of this section.

2. If the employer knows an employee is suspected COVID-19, regardless of vaccination status then the employer must immediately remove that employee from the work site and either:

a. Keep the employee removed until they meet the return to work criteria in subdivision C 3 of this section; or

b. Keep the employee removed and provide a COVID-19 polymerase chain reaction (PCR) test at no cost to the employee.

(1) If the test results are negative, the employee may return to work immediately.

(2) If the test results are positive, the employer must comply with subdivision C 1 of this section.

(3) If the employee refuses to take the test, the employer must continue to keep the employee removed from the workplace consistent with subdivision C 1 of this section. Absent undue hardship, employers must make reasonable accommodations for employees who cannot take the test for religious or disability-related medical reasons.

3. The employer must make decisions regarding an employee’s return to work after a COVID-19-related workplace removal in accordance with guidance from a licensed health care provider, a VDH public health professional, or CDC’s "Isolation Guidance" (hereby incorporated by reference); and CDC’s "Return to Work Health care Guidance" (hereby incorporated by reference). If an employee has a known exposure to someone with COVID-19, the employee must follow any testing or quarantine guidance provided by a VDH public health professional.

**16VAC25-220-40.G**

Amended as follows:

G. ~~Where the nature of an employee's work or the work area does not allow the employee to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry.~~ Employers shall provide and require employees that are not fully vaccinated, fully vaccinated employees in areas of substantial or high community transmission, and otherwise at-risk employees (because of a prior transplant or other medical condition) to wear face coverings or surgical masks while indoors, unless their work task requires a respirator or other PPE. Such employees shall wear a face covering or surgical mask that covers the nose and mouth to contain the wearer's respiratory droplets and help protect others and potentially themselves. This subsection does not apply to fully vaccinated employees in areas of low to moderate community transmission, and except as otherwise noted.

The following are exceptions to the requirements for face coverings, facemasks or surgical masks for employees that are not fully vaccinated and fully vaccinated employees in areas of substantial or high community transmission:

1. When an employee is alone in a room.

2. While an employee is eating and drinking at the workplace, provided each employee who is not fully vaccinated is at least six feet away from any other person, or separated from other people by a physical barrier.

3. When employees are wearing respiratory protection in accordance with 16VAC25-90-1910.134 or this chapter.

4. When it is important to see a person's mouth (e.g., communicating with an individual who is deaf or hard of hearing) and the conditions do not permit a facemask that is constructed of clear plastic or includes a clear plastic window. In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

5. When employees cannot wear facemasks due to a medical necessity, medical condition, or disability as defined in the Americans with Disabilities Act (ADA) (42 USC § 12101 et seq.), or due to a religious belief. Exceptions must be provided for a narrow subset of persons with a disability who cannot wear a facemask or cannot safely wear a facemask, because of the disability, as defined in the ADA, including a person who cannot independently remove the facemask. The remaining portion of the subset who cannot wear a facemask may be exempted on a case-by-case basis as required by the ADA and other applicable laws. In all such situations, the employer must ensure that any such employee wears a face shield for the protection of the employee, if their condition or disability permits it. Accommodations may also need to be made for religious beliefs consistent with Title VII of the Civil Rights Act (42 USC § 2000e et seq.). The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

6. When the employer can demonstrate that the use of a facemask presents a hazard to an employee of serious injury or death (e.g., arc flash, heat stress, interfering with the safe operation of equipment). In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. Any employee not wearing a facemask must remain at least six feet away from all other people unless the employer can demonstrate it is not feasible. The employee must resume wearing a facemask when not engaged in the activity where the facemask presents a hazard. The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

7. Where a face shield is required to comply with this paragraph or is otherwise required by the employer, the employer must ensure that face shields are cleaned at least daily and are not damaged. When an employee provides a face shield that meets the definition of that term in 16VAC25-220-30, the employer may allow the employee to use it and is not required to reimburse the employee for that face shield. Notwithstanding anything to the contrary in this chapter, the Secretary of Labor may exercise discretion in the enforcement of an employer's failure to provide PPE required by this chapter 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 Labor after consultation with the Commissioner of Labor and Industry and the Secretary of Health and Human Services.

16VAC25-220-50

Requirements for healthcare services or healthcare support services were added.

Language was added to address the adoption on June 29, 2021 of the federal OSHA COVID-19 Emergency Temporary Standard (OSHA ETS) by the Virginia Safety and Health Codes Board applicable to all settings where any employee provides healthcare services or healthcare support services. See amended language in 16VAC25-220-10.B above. The OSHA ETS became effective in Virginia on August 2, 2021. <https://www.doli.virginia.gov/emergency-temporary-standard-interim-final-rule/>

When the OSHA ETS is no longer in force, 16VAC25-220-50 will apply to employers in healthcare services and healthcare support services.

16VAC25-220-50.A.5-7

Amended as follows by adding:

5. Except as otherwise provided in this subsection, this section applies to all settings where any employee provides health care services or health care support services.

6. This section does not apply to the following:

a. The provision of first aid by an employee who is not a licensed health care provider;

b. The dispensing of prescriptions by pharmacists in retail settings;

c. Nonhospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;

d. Well-defined hospital ambulatory care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;

e. Home health care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;

f. Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing); or

g. Telehealth services performed outside of a setting where direct patient care occurs.

h. VOSH does not intend to preclude the employers of employees who are unable to be vaccinated from the scope exemption in subdivisions A 6 d and A 6 e of this section. Under various anti-discrimination laws, workers who cannot be vaccinated because of medical conditions, such as allergies to vaccine ingredients or certain religious beliefs may ask for a reasonable accommodation from their employer. Accordingly, where an employer reasonably accommodates an employee who is unable to be vaccinated in a manner that does not expose the employee to COVID-19 hazards (e.g., telework, working in isolation), that employer may be within the scope exemption in subdivisions A 6 d and A 6 e of this section.

7. Where a health care setting is embedded within a non-health care setting (e.g., medical clinic in a manufacturing facility, walk-in clinic in a retail setting), this section applies only to the embedded health care setting and not to the remainder of the physical location.

16VAC25-220-60.

Requirements for higher-risk workplaces were added.

16VAC25-220-60.A

Amended as follows by adding:

A. The requirements in this section for employers with ~~hazards or job tasks classified as medium exposure risk~~ higher-risk workplaces with mixed-vaccination status employees apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-70, and 16VAC25-80.

Employers shall take the additional steps in subsections B, C, and D to mitigate the spread of COVID-19 for employees who are not fully vaccinated, employees who are fully vaccinated but work in a place of employment with substantial or high community transmission, and otherwise at-risk employees in workplaces (which include, but are not limited to, manufacturing, meat and poultry processing, high-volume retail and grocery, transit, seafood processing, correctional facilities, jails, detention centers, and juvenile detention centers) where there is heightened risk due to the following types of factors:

1. Where employees who are not fully vaccinated or otherwise at-risk employees are working close to one another, for example, on production or assembly lines. Such workers may also be near one another at other times, such as when clocking in or out, during breaks, or in locker or changing rooms.

2. Where employees who are not fully vaccinated or otherwise at-risk workers often have prolonged closeness to coworkers or potential frequent contact with members of the public who may not be fully vaccinated.

3. Where employees who are not fully vaccinated or otherwise at-risk workers work in enclosed indoor spaces with inadequate ventilation where other coworkers or members of the public are present.

4. Where employees who are not fully vaccinated or otherwise at-risk employees may be exposed to the infectious virus through respiratory droplets or aerosols in the air, for example, when working next to employees who are not fully vaccinated or otherwise at-risk employees in a manufacturing or factory setting who have the virus. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances or exits to the facility may contribute to their risk.

5. Other distinctive factors that may increase risk among these employees who are not fully vaccinated or otherwise at-risk employees include:

a. A common practice at some workplaces of sharing employer-provided transportation such as ride-share vans or shuttle vehicles; and

b. Communal housing or living quarters onboard vessels with other employees who are not fully vaccinated or otherwise at-risk individuals.