



Virginia Creates Nation's First Mandatory COVID-19 Workplace Safety Rules Effective July 27 – Look For Other States To Follow Suit (UPDATED)

Insights

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Virginia just adopted the nation's first enforceable regulatory mandate regarding COVID-19 safety measures in the workplace. While the emergency standard adopted today by the Virginia Safety and Health Code Board will only be applicable to and enforceable against employers in Virginia, it sets the groundwork for other state plan states to adopt similar enforcement measures, including California, North Carolina, Oregon, and Michigan. What do Virginia employers – and employers around the country – need to know about this development?

[Ed. Note: This standard will be effective on July 27, 2020.]

Background

The federal Occupational Safety and Health Act gives states an opportunity to administer their own workplace safety and health programs upon approval by the federal Occupational Safety and Health Administration (OSHA). Virginia has elected to administer its own occupational and safety health program, and has developed an OSHA-approved State Plan. Therefore, Virginia enforces its own health and safety regulations, which largely mirror the federal standards. The Virginia State Plan applies to most private sector workplaces in the state and state and local government workers.

Voicing frustration that the federal OSHA has failed to adopt nationwide COVID-19 standards, Governor Ralph Northam requested that the Board act on its own. The Board followed through with an approved a COVID-19 emergency temporary workplace standard that will be enforceable as part of the Virginia Occupational Safety and Health (VOSH) program.

Adopted Standard

The standard provides detailed coronavirus-related safety mandates that all companies under the jurisdiction of VOSH must abide by. According to the standard, it is “designed to establish requirements for employers for to control, prevent, and mitigate the spread of” COVID-19 “to and among employees and employers.”

The standard requires employers to determine the exposure risk level for each job task that their employees perform and tailor their COVID-19 protections based on the exposure risk level. The required protections range from mandatory personal protective equipment, engineering controls, and mandatory training.

Notably, employers with hazard or job tasks classified as “very high,” and “high,” and employers with hazards or job tasks classified as “medium” with 11 or more employees, must develop and implement a written infectious disease preparedness and response plan. Employers have 60 days from the effective date of the standard to develop and implement the required plan.

The standard will become effective and enforceable immediately upon publication in a newspaper of general circulation and expire six months after its effective date, upon expiration of the Governor’s State of Emergency, or when a permanent standard is adopted, whichever occurs first.

[Ed. Note: The standard is slated to be published in the Richmond Times-Dispatch on Monday, July 27, and will therefore become effective on that day.]

Enforcement

VOSH compliance safety and health officers will be responsible for enforcing the new emergency standard in a similar fashion to their normal compliance actions. Therefore, VOSH may cite employers for violations based on the normal scale of violations, ranging from Other-Than-Serious to Willful, with maximum penalties ranging from \$13,494 per violation to \$134,937 per violation. Further, VOSH has indicated that it may exercise their power to shutter an employer’s operations if necessary to ensure employee safety.

Conclusion

Employers in Virginia should be prepared to comply with the emergency standard. Fisher Phillips will continue to monitor the Board’s decision and will be ready to assist you with the development and/or review of your current policies to ensure they are in compliance with the Virginia emergency standard once officially adopted.

We will continue to monitor this rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips’ alert system](#) to gather the most up-to-date information. If you have questions about the new Virginia law or its effect upon your business, please contact your Fisher Phillips attorney or any attorney in our [Washington, D.C. metro office](#) in Arlington.

This Legal Alert provides an overview of a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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