VIRGINIA CHAMBER

THE VOICE of BUSINESS

June 22, 2020

Commissioner C. Ray Davenport
Virginia Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219

Re: Emergency Temporary Standard/ Emergency Regulation, Infectious Disease Prevention, SARS-CoV-2 Virus That Causes COVID-19, §16 VAC 25-220

Dear Commissioner Davenport,

The health and safety of our workforce and customers is the top priority for employers in Virginia. The business community supports clear and consistent workplace health protection protocols; however, these protocols must be flexible. Every industry and work environment are different. Defining the standards that businesses must follow will require strong public-private coordination. We encourage the Virginia Safety and Health Codes Board to consider the various industry comments that you receive to ensure effective safety protocols and eliminate any potential obstacles to reopening.

We are concerned that the draft emergency standards, as currently written, contain several inconsistencies with state and federal regulations. In order to avoid confusion and contradictions, we suggest the Board regulation better align with OSHA and CDC guidance. A few examples of these inconsistencies are:

- The definition of employee should be limited to full/part time employees who receive W-2s. (See ETS/ER COVID Regulation, Section E, Page 5)
- The definition of "Medium" risk jobs should be changed to align with the OSHA definition. (See OSHA, https://www.osha.gov/Publications/OSHA3990.pdf.)
- Regarding notifications, Section 7 on Page 18 should be limited to notifying individuals who had close contact, as defined by the CDC, in the two days prior to the onset of symptoms or, for asymptomatic individuals, two days prior to the positive test. (See CDC, p.23, https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/contact-tracing.html.)
- Regarding Return to Work, the application of the suspected definition is inconsistent. The regulation applies the Return to Work guidelines of a COVID-19 case, but then not requiring contact tracing. It should either be a case (suspected or confirmed) that is traced or not a case (Page 18).
- The definition of surgical masks is inconsistent with recently published OSHA guidance. Clarification is needed to explicitly state that surgical masks are considered a form of PPE with respect to splashes/sprays of bodily fluid, not droplets. Per OSHA, the masks

can be used to prevent the transmission of large droplets from the wearer, but they do not protect the wearer against airborne transmissible infectious agents (Pages 13-14).

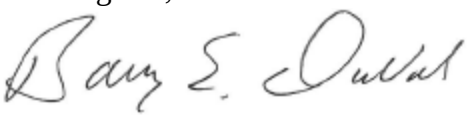
- Regarding serologic testing for COVID-19 antibodies should be removed because the CDC does not recommend employers to track or require antibody testing. Some employees may want this information, but it is unnecessarily invasive from a privacy perspective to require reporting to employers. (Section 40.A.3 on pages 16-17)
- A "suspected" case should be treated the same as a COVID-19 case, but only if other criteria are also considered. There is no standard definition for a "clinical", "suspected", "presumed", or "probable" case and those terms tend to be used interchangeably. The factors generally considered are: severity and length of symptoms, result of medical evaluation, testing availability, and current community transmission. The proposed definition of "suspected" is just the list of possible symptoms, which CDC does not say is suspected but simply says may be symptoms consistent with COVID-19. Keeping all symptoms out for 10 days regardless of other considerations, is not supported by any current standard medical guideline. The intent seems to not rely solely on testing for determination, but it is overly broad to just list the CDC symptoms as the only criteria to consider.

The Board should also consider the burden requiring the creation of an Infectious Disease Preparedness and Response Plan might have on small businesses in the Commonwealth. Most of these businesses have little to no experience in creating such a process document. This new standard will be costly for these businesses to hire outside professionals to create these plans. They will then have to take time to both implement and train their workforce to comply with the new standards. This is on top of the many other recently released regulations from federal, state and local governmental bodies.

Lastly, we believe that enforcement of these provisions should be handled with understanding and leniency. Virginia businesses, many of which have been devasted by the economic impact of this pandemic, are working hard to remain safely operational for their workforce and customers; however, the shifting regulatory landscape continues to be a significant challenge, especially for Virginia's small businesses. As the Board implements these new emergency standards, it is our hope that they will refrain from overenforcement and not penalize businesses that have given a good faith effort in following these complicated rules that continue to change.

Thank you for your consideration.

Best regards,



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