



THE VOICE of BUSINESS

September 22, 2020

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

Safety and Health Codes Board
Virginia Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219

Re: DOLI solicitation of public comments regarding the adoption of a permanent standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Dear Commissioner Davenport and Members of the Safety and Health Codes Board,

The health and safety of our workforce and customers continue to be the top priority for businesses in the commonwealth during the ongoing pandemic. The business community supports clear and consistent workplace health protection protocols; **however, we remain concerned about the impact many of the provisions of the emergency temporary standards have on businesses and encourage you to not make them permanent.**

However, if the Board does decide to move forward with a permanent standard, then several components of the standard will need to be tweaked to provide businesses with additional flexibility. We remain concerned that the emergency temporary standards, as currently written, contain several inconsistencies with state and federal regulations and some constitutional concerns.

Below are some of the areas of the ETS that need attention if a permanent standard is pursued:

1. Amend § 10G to the agency's original language providing "safe harbor" for employers who follow CDC and OSHA guidance.
2. Strike the vague language mandating "flexible" sick leave policies. It is unconstitutionally vague and it exceeds the agency's statutory authority.
3. Strike requirements of owners of buildings and facilities to report COVID cases to employer tenants. It exceeds the intent of the Occupational Safety and Health (OSH) Act to require employers to provide employment and a place of employment that is free of recognized hazards.

4. Remove hand sanitizer as a requirement. Everywhere else, it is a substitute or a best practice.
5. Change language to apply hazard levels to job tasks instead of employers or industries.
6. Change the time-based return-to-work rule requiring three days of being symptom-free (following the ten-day period since the onset of symptoms) to one, consistent with the new CDC standard.
7. Eliminate the requirement to report positive cases to the Department of Health. Health care providers are already doing this.
8. Eliminate the redundant language regarding employee refusal to work because they feel unsafe. The criteria for protected work refusals are already in the Administrative Regulatory Manual.
9. Define “minimal contact.”
10. Eliminate requirements to include business considerations (e.g., how to handle supply chain issues, cross-training to prepare for staff shortages) that have nothing to do with employee safety.
11. Ensure this regulation sunsets with the Governor’s State of Emergency the way the ETS does.

The Board should also consider the burden that making this standard permanent and adding additional provisions will have on businesses that continue to struggle with the economic consequences of this pandemic.

Lastly, we continue to believe that enforcement of these provisions should be handled with understanding and leniency. Virginia businesses, many of which have been devastated 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 considers making these standards permanent, 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,



Barry E. DuVal
President and CEO

CC: Governor Ralph Northam
Chief of Staff to the Governor, Clark Mercer
Secretary Brian Ball
Deputy Secretary Angela Navarro
Deputy Secretary Cassidy Rasnick