

CLIENT ALERT

Virginia Enacts Permanent COVID-19 Employee Health and Safety Requirements

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On January 13, 2021, the Virginia Safety and Health Codes Board voted to approve a Final Permanent Standard (Final Standard) for preventing COVID-19. The Final Standard sets forth health and safety requirements related to COVID-19 for all Virginia employers and is expected to become effective before January 27. The Final Standard largely adopts obligations already in place under the Emergency Temporary Standard (ETS) that Virginia adopted on July 15, 2020 but which expires on January 26, 2021. The Final Standard will be among the most comprehensive set of mandatory occupational health and safety regulatory standards focused on COVID-19 in the country and may serve as a benchmark for other states.

In general, the ETS and now the Final Standard require employers to take a number of steps to improve workplace protections against COVID-19, implement policies and procedures to prevent infected employees from remaining in or reporting to the workplace, and report to appropriate state agencies potential outbreaks. The Final Standard contains obligations that apply to all employers, as well as heightened requirements for employers with employees who face hazards or job tasks that would be considered “medium,” “high,” or “very high” risk of exposure to COVID-19. Among other things, all employers must take steps such as developing an infection program and training employees, mandating social distancing and face coverings, providing access to hand-washing and cleaning supplies, undertaking regular cleaning processes, and rapidly notifying all employees of a worker’s positive diagnosis of COVID-19.

The Final Standard contains a few differences from the ETS. For instance, under the ETS employers have been required to notify the Virginia Department of Health each time an employee was confirmed to be positive for the COVID-19 virus; under the Final Standard, employers need only make such notification to the Department of Health if it uncovers two cases within 14 days. It also clarifies that face shields or face masks with exhalation vents are not sufficient to meet the standards for required face coverings. And it provides guidance for employers to understand when infected employees may return to work, depending on whether the employee was symptomatic or not, based on the passage of certain amounts of time; the Final Standard no longer allows employers to rely on negative COVID-19 tests as the basis for employees to return to work.

There has been some criticism leveled by employers that the Virginia Occupational Safety and Health Program (VOSH) is using the COVID pandemic to implement what it has at times characterized as a “permanent” standard. However, in response to this criticism, VOSH has stated that it anticipates amending or repealing the Final Standard if the risks related to COVID-19 lessen or evolve.

Employers should carefully review the Final Standard to ensure compliance. While many states have been imposing COVID-19 safety requirements for the general public and workplaces, Virginia has led the way in many respects regarding employer health and safety obligations. We expect to see other jurisdictions follow in Virginia’s footsteps, and can expect that some of the Final Standard may serve as a roadmap for new COVID-19 protections considered by OSHA under the incoming Biden administration. Crowell & Moring will continue to monitor and provide updates on these developments.

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