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DOLI Revises COVID-19 Regulations For Virginia Employers

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Who Needs to Know

All Employers in Virginia.

Why It Matters

The new Standard eliminates the prior tiered “risk classification” system, which graded employees’ risk levels from “lower” to “very high” risk. Instead, the revised Standard focuses on protecting unvaccinated, not fully vaccinated, or otherwise at-risk employees. The Standard allows employers to relax certain rules for fully vaccinated employees, but it comes at the cost of having to apply a different set of rules for the vaccinated and unvaccinated. As a result, employers may prefer to continue applying a uniform set of rules to all employees.

Early last month, Governor Northam approved a revised occupational health and safety standard for infectious disease prevention aimed at combatting COVID-19 (the “Standard”), 16VAC25-220, *et seq.* The Standard revised Virginia’s unique regulatory scheme of COVID-19 workplace restrictions.

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The Standard allows employers to relax certain rules for fully vaccinated employees, but it comes at the cost of having to apply a different set of rules for the vaccinated and unvaccinated. As a result, employers may prefer to continue applying a uniform set of rules to all employees. The Standard also adds a “higher risk” category, covering workplaces where there may be close contact between employees, the public, or frequent use of shared workspaces among those with mixed vaccination statuses and/or workplaces in an area of high/substantial community transmission.

The following highlights some Standard requirements applicable to non-health care industries:

- **Most of the old requirements remain in place.** Most of the prior rules remain in place under the new Standard, including that employers must have a compliant return-to-work policy (for permitting employees to return to the workplace after a COVID-19 outbreak), employers must follow certain protocols around cleaning and reporting after a COVID-19 outbreak, and they must enforce physical distancing policies, among others.
- **Face coverings are still required for everyone.** Face coverings must be worn indoors, so long as the

workplace is in an area of high/substantial community transmission (which presently consists of all of Virginia). After the level of community transmission recedes, fully vaccinated employees will not be required to wear face coverings indoors, but those not fully vaccinated must continue to wear them. See the CDC's [interactive map](#) to track areas of substantial/high transmission.

- **Relaxed requirements for fully vaccinated employees.** Employers are required to enforce rules relating to physical distancing and restricting access to common areas, as they relate to unvaccinated or otherwise at-risk employees. Fully vaccinated employees are exempted from these and various other requirements of the Standard.
- **Employers may rely on employees' self-certification of vaccination status.** As employers assess which of their employees are vaccinated or unvaccinated, the Standard permits employers to rely upon an employee's self-certification of his/her vaccination status to make that determination. However, employers can still require proof of vaccination status, such as a copy of the CDC's white card.
- **"Higher Risk" requirements imposed for certain workplaces.** Enhanced compliance requirements are triggered for "higher risk" workplaces. These include workplaces where there are employees of mixed vaccination status, workplaces in an area of high/substantial community transmission, and workplaces requiring employees to work in close contact with other employees or the public. These enhanced requirements include implementing staggered break times (where feasible) and pre-shift surveying for COVID-19 symptoms, among other requirements.
- **Employers must continue to pay for the cost of COVID-19 testing.** As with the old rules, the Standard notes that employers must pay for the cost of COVID-19 testing of their employees if the testing is required as a condition of employment. If the cost of testing is covered by an employee's insurance, employers do not have a further obligation to pay.
- **Safe harbor for relying on CDC guidance.** One of the critical changes to the Standard, which Governor Northam encouraged, provides that employers who comply with CDC's mandatory or nonmandatory guidance will be considered compliant under Virginia's standard.

It also appears that employers will have to retrain their employees on the new Standard, even if they previously trained their employees under the old standard. Moreover, some modifications may be required in an employer's Infectious Disease Response Plan to account for an employee's vaccination status.

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