Virginia Issues First COVID-19 OSHA Standard

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Thank you to my colleague, Jonathan Schaefer, for his contributions to this post. Jon focuses his practice on environmental compliance counseling, occupational health and safety, permitting, site remediation, and litigation related to federal and state regulatory programs.

While Federal OSHA has issued numerous COVID-related guidance documents, it has declined to issue an enforceable COVID standard. Instead, OSHA continues to reference numerous other statutory and regulatory standards that potentially apply to what OSHA may determine are COVID-related deficiencies in the workplace.

Recently, the Commonwealth of Virginia took matters into its own hands and passed the first COVID-19 OSHA standard that codifies, and in some cases exceeds, guidance from OSHA and the Center for Disease Control. Virginia is a “state-plan” state, meaning it has been approved by OSHA to develop and implement its own worker safety and health program. Virginia’s actions may be a signal to the many
other “state-plan” states to do the same.

Virginia’s COVID-19 standard gives much of what is found in OSHA’s guidance documents the force of law. It requires all employers to, among other things:

- Assess the workplace for COVID-19 hazards and classify tasks according to the risk of exposure,
- Develop and implement policies and procedures for employees to report COVID-19 symptoms,
- Develop and implement policies for employees with a known or suspected case of COVID-19 to return to work,
- Ensure that employees observe physical distancing,
- Clean and disinfect certain workplace areas;
- Control or close access to common areas, such as breakrooms or lunchrooms.

The standard makes it clear that cloth face coverings do not qualify as PPE, but it does require them in certain instances, such as when employees are unable to physically distance or when an employee is in a customer-facing job.

Employers with job tasks that are classified as “very high” or “high,” or employers with “medium” risk job tasks and 11 or more employees must also develop and implement a written infectious disease preparedness and response plan within 60 days of the effective date of the standard.

The emergency temporary standard, which goes into effect on July 27, 2020, will expire after 6 months.

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