

Legal Update Article

Virginia Repeals Workplace COVID-19 Standard, Replaces It With Guidance

March 21, 2022

Related Services

COVID-19

Workplace Safety and Health

Virginia has repealed its first-in-the-nation standard on COVID-19 in the workplace.

On July 15, 2020, the Virginia Safety and Health Codes Board (which included author Courtney Malveaux) made Virginia the first state in the nation to promulgate an [Emergency Temporary Standard](#) to address COVID-19 in workplaces, and it [made the standard permanent](#) on January 27, 2021. The Board voted to repeal that standard, effective March 23, 2022.

Virginia will replace the standard with [guidance](#) that makes clear the agency's and the Commonwealth's policy to "support and respect the rights of individuals to choose whether to wear masks or to not wear masks in non-federally mandated environments, unless required by law or as medically appropriate in cases of acute illness or in certain healthcare environments."

The guidance also makes clear Virginia Occupational Safety and Health (VOSH) and the Commonwealth "will not allow or condone illegal discrimination based on wearing or not wearing masks, and people should not be fired or terminated for not wearing a mask" in most circumstances.

Further, the guidance indicates that employers should engage workers to mitigate COVID-19 transmission by:

- Facilitating employee vaccinations;
- Encouraging workers with COVID-19 symptoms to stay home from work and seek a physician's advice on testing and treatment;
- Requiring workers infected with COVID-19 to stay home;
- Providing workers with face coverings or surgical masks;
- Encouraging personal hygiene, including frequent handwashing;
- Educating workers on employers' COVID-19 policies in languages employees understand;
- Operating and maintaining ventilation systems in accordance with manufacturers' specifications;
- Recording and reporting work-related COVID-19 infections when required under long-standing OSHA recordkeeping standards; and
- Following other applicable VOSH standards, including those governing respiratory protection, personal protective equipment, sanitation, bloodborne pathogens, and Virginia's General Duty Clause, which requires employers to provide employment and a place of employment that is free of recognized hazards.

The guidance does not clarify whether VOSH will enforce Virginia's General Duty Clause if employers fail to follow generally recognized hazards related to COVID-19, including failure to follow guidance provided by the U.S. Centers for Disease Control and Prevention. It also does not clarify whether VOSH will continue its two-year-long practice of initiating Rapid Response Inquiries in which the agency asks employers to answer complaints by employees or others of COVID-19 hazards in workplaces.

If you have questions or need assistance in an Occupational Safety and Health Administration or VOSH matter, please reach out to a member of the [Workplace Safety and Health Practice Group](#).

©2022 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.