

NECA Legal Alert

Virginia Enacts First Statewide Emergency Temporary Standard for COVID-19

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Jef Fagan, NECA General Counsel

The Commonwealth of Virginia is the first in the nation to implement an emergency temporary standard (“ETS”) to address the COVID-19 pandemic. While the ETS is only applicable in Virginia, it should serve as a good template for the rest of the country.

Effective the week of July 27, 2020, the [ETS](#) covers every employer in the Commonwealth and includes mandatory requirements for all jobsites. It has additional requirements for workplaces with certain exposure risk levels, training and leave requirements, as well as an anti-discrimination provision. Once in place, employers in Virginia will have 30 days to comply with the training requirements on the ETS and 60 days to comply with the training requirements on the infectious disease preparedness and response plan that is required of all employers.

There are several mandatory duties imposed on employers by the Commonwealth. A primary requirement under the ETS is every employer’s obligation to assess the exposure risk level of disease-related hazards present or job tasks undertaken by employees at each jobsite or office. The four risk levels run from Very High to Lower, and there are definitions and instructions on this task in the ETS. Employers must then conduct an exposure assessment of all jobsites and offices and classify each task according to exposure hazards and risk level.

The employer must then publish these findings and assessments for employees and develop material to inform employees on how to identify and self-monitor for signs and symptoms of COVID-19. Employers must develop and implement employee reporting policies and procedures for COVID-19 symptoms. They must prohibit employees or outside individuals known or suspected to have the virus from reporting to or remaining at a jobsite or office until medically cleared to return to work.

Employers are directed to examine leave policies for consistency with existing requirements related to COVID-19 and make sure employees all are aware of these policies and their rights. Employers are encouraged to discuss with employees and contractors the need to stay home if sick, symptomatic, or subject to likely exposure.

To the extent permitted by law, employers must establish a system and practice designed to receive notice of any positive COVID-19 tests by employees, subcontractors, contract employees, and temporary employees who were present at the place of jobsite within the 14 days preceding any positive test. Further, employers must provide certain notifications to their own employees, the employees of others, the building/facility owner, the Virginia Department of Health, and the Virginia Department of Labor and Industry, depending on specific circumstances and consistent with the specific guidance found in the ETS.

Employers are further directed to develop and implement a return to work policy. Such a policy should contain provisions on physical distancing on the job, adherence to industry standards on PPE, controlling access to common areas and compliance with specific sanitation and disinfection requirements as set out in the ETS. The ETS has specific requirements for such controls depending on the nature of the work and the jobsite. Lastly, the ETS has detailed training requirements and an anti-discrimination provision that prohibits employ-

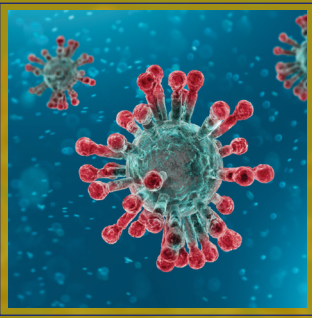


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ers from discharging or discriminating against employees exercising their rights under the ETS and voluntarily wearing their own personal protective equipment.

NECA employers in Virginia must comply with the ETS. Others are encouraged to review the ETS and consult its provisions in crafting their own policies and procedures.

We will continue to monitor the law and legislation and update guidance and alerts as the law develops during this pandemic.

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