

MEMORANDUM

TO: Members of Virginia Petroleum & Convenience Marketers Association
FROM: Bruce E. Arkema, Esquire, Durette, Arkema, Gerson & Gill, PC
DATE: Date: July 31, 2020
SUBJECT: What Petroleum & Convenience Stores Businesses Should Know About The New Virginia Department of Labor and Industry Temporary Standards/Emergency COVID-19 Regulations
(Privileged Attorney/Client Work Product. Not for Non-Member Distribution.)

Background to Promulgation of the Regulations:

Executive Order No. 63 directed Virginia Department of Labor and Industry to adopt regulations that prevent the spread of COVID-19 in the workplace that are applicable to all Virginia employers. On July 15, 2020, the Virginia Department of Labor and Industry approved Temporary Standards/Emergency Regulations (“the Regulations”) aimed at preventing the spread of COVID-19 in the workplace. Those regulations became effective on July 27, 2020 and are applicable for six (6) months or until made permanent.¹

The Regulations require that employers classify their employees’ risk exposure to COVID-19 as “very high”, “high”, “medium” or “lower”. The “very high” and “high” classifications are directed at jobs where the employee interacts with persons known to have or suspected to have COVID-19 which are primarily healthcare workers and first responders. The Regulations state that job tasks and risk hazards in convenience stores “may” fall in the “medium” risk classification. The “lower” classification involves employees that have minimal occupational contact with other employees, the public or other persons.

We believe that the majority of employees working in convenience stores fall within the “medium” classification, accordingly this Memorandum is focused on the requirements in the Regulations applicable to those employees.

THESE MATERIALS ARE FOCUSED ON BUSINESS ACTIVITIES THAT INVOLVE EMPLOYEES THAT HAVE REGULAR CONTACT WITH CUSTOMERS, VENDORS AND MEMBERS OF THE GENERAL PUBLIC THAT ARE **NOT KNOWN TO HAVE OR SUSPECTED TO HAVE THE COVID-19 VIRUS.**

IF YOU COMPLY WITH THESE RULES FOR EMPLOYEES THAT DO NOT HAVE REGULAR CONTACT WITH ANYONE OTHER THAN OTHER EMPLOYEES, THEN YOU

¹ The regulations can be found online at: <https://www.doli.virginia.gov/wp-content/uploads/2020/07/COVID-19-Emergency-Temporary-Standard-FOR-PUBLIC-DISTRIBUTION-FINAL-7.17.2020.pdf>

WILL COMPLY WITH THE REGULATIONS APPLICABLE TO THOSE EMPLOYEES SO LONG AS YOU ENFORCE MANDATORY PHYSICAL DISTANCING BETWEEN EMPLOYEES--THE USE OF FACE COVERINGS IS NOT AN ACCEPTABLE METHOD OF ACHIEVEING THE MANDATORY MINIMUM OCCUPATIONAL CONTACT FOR THESE EMPLOYEES

A. REQUIRED NOTICES:

1. REQUIRED NOTICE TO EMPLOYEES TO SELF-MONIITOR²

You are required to give written notice that informs your employees of the signs and symptoms of COVID-19. The Regulations defines COVID-19 symptoms as including fever and/or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea, vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.³

The Regulations require that you establish a system to receive reports that an employee has received a positive test indicating they have COVID-19. Although not required by the Regulations we suggest the Notice identify who within the company (name address, telephone number and email address) the employee should report that they are experiencing symptoms and/or if they have been diagnosed with having contracted the virus.

SEE THE ATTACHED CHECLIST FOR A SAMPLE FORM

2. NOTICE REQUIRED IF ONE OF YOUR EMPLOYEES CONTRACTS COVID-19⁴

If one of your employees contracts the virus or if you become aware someone was in the store within the last 14 days before being diagnosed with the virus (i.e. have a positive test result) then you must, within 24 hours of learning of that fact, send a written notice to: (1) your employees who may have been exposed to that person or the area that they worked; (2) to vendors or suppliers (i.e. the employers) whose employees were in the store during the 14 day period prior to diagnosis; (3) to the building owner or their agent; (4) The Virginia Department of Health; and (5) only if three (3) or more employees test positive within a 14 day period to the Virginia Department of Labor and Industry. The Notice shall not identify the name of the person that became infected but shall inform them that such an infection occurred.

SEE THE ATTACHED CHECLIST FOR A SAMPLE FORM

² 16 VAC25-220-40 (A)(2)

³ 16 VAC25-220-30

⁴ 16 VAC25-220-40 (A)(8)

B. REQUIRED TRAINING FOR ALL EMPLOYEES⁵

All employees must receive training from their employer that enables them to recognize the hazards of COVID-19 and the signs and symptoms of the virus and how to minimize the hazard of the virus. The training must cover the following topics:

1. The requirements of the Regulations.
2. If applicable, the mandatory and non-mandatory recommendations in any CDC guidelines or State of Virginia guidance documents the employer is complying with, in lieu of the Regulations.
3. The characteristics and methods of transmission of the virus.
4. The signs and symptoms of the COVID-19 virus.
5. Risk factors of severe COVID-19 illness with underlying health conditions.
6. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus.
7. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.
8. Personal Protective Equipment:
 - a. When PPE is required.
 - b. What PPE is required.
 - c. How to properly don, doff, adjust, and wear PPE.
 - d. The limitations of PPE.
 - e. The proper care, maintenance, useful life, and disposal of PPE.
 - f. Heat-related illness prevention including the signs and symptoms of heat-related illness.
9. The anti-discrimination provisions of this standard in the Regulations (see below).
10. The employer's Infectious Disease Preparedness and Response Plan, where applicable.
11. If you have reason to believe that any affected employee or any other employee that you have trained does not fully understand the facts that they must know, or if you modify your Disease Preparedness and Response Plan, then you must retrain those employees.

⁵ 16 VAC 25-220-80

SEE THE ATTACHED CHECLIST FOR A SAMPLE FORM

C. REQUIRED PROCEEDURE IF AN EMPLOYEE CONTRACTS COVID-19⁶ AND HAS SYMPTOMS

If an employee contracts COVID-19, then you must follow the following procedures:

1. Do not allow the employee to return to work until:
 - a. at least three (3) days after not having a fever without the use of fever reducing medications coupled with improvement of respiratory symptoms or at least 10 days after the symptoms first appeared; or
 - b. after not having a fever without the use of fever reducing medications coupled with improvement of respiratory symptoms and having negative results on an FDA approved COVID-19 detection test from at least two (2) consecutive specimens collected more than 24 hours apart. If an employee refuses to have the tests, then they must comply with (a) above. An employee shall not be required to pay for the tests.
 - c. If the employee refuses the test under (b) above, then you need to comply with the time periods in (a) above.

2. Comply with the Notice requirement outlined in A(2) above. SEE THE ATTACHED CHECLIST FOR A SAMPLE FORM

D. RELYING ON ANTIBODIES TESTS⁷

Antibody tests are deemed unreliable by the Board. If you are notified that an employee has tested positive for COVID-19 antibodies (i.e., may have had the virus in the past) through a serologic test, the Regulations prohibits you from using that test when making decisions about allowing an employee who has previously tested positive or suspected to have had the virus to return to work. In other words, you must follow the *REQUIRED PROCEEDURE IF AN EMPLOYEE HAS A POSTIVE TEST RESULT FOR COVID-19 BUT HAS NO SYMPTOMS* in the next section, before letting an employee with known or suspected COVID-19 and you cannot use the serologic test to clear an employee to return to work.

⁶ 16 VAC25-220-40 (B)

⁷ 16 VAC25-220-40 (A)(3)

E. REQUIRED PROCEEDURE IF AN EMPLOYEE HAS A POSTIVE TEST RESULT FOR COVID-19 BUT HAS NO SYMPTOMS⁸

1. If one of your employees has tested positive for COVID-19 but has no symptoms, then do not allow that employee to come to work until:
 - a. at least ten (10) days after having positive results from an FDA approved COVID-19 detection test assuming no symptoms have developed
 - b. after not having a fever without the use of fever reducing medications coupled with improvement of respiratory symptoms and having negative results on an FDA approved COVID-19 detection test from at least two (2) consecutive specimens collected more than 24 hours apart. You may require the employee to be tested as set forth herein or if the employee refuses to be tested then they must comply with (a) above. An employee shall not be required to pay for the tests.
 - c. If the employee refuses the test under (b) above, then you need to comply with the time periods in (a) above.
2. Comply with the Notice requirement outlined in A(2) above. SEE THE ATTACHED CHECLIST FOR A SAMPLE FORM

F. THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Keep in mind that if you have less than 500 employees, then you are subject to The Families First Coronavirus Response Act which requires you to continue payroll for employees that contract the virus. That Act is mentioned in the Regulations and requires you to make employees aware of the provisions of the Act.⁹ You may be exempt from certain provisions of that Act if you have 50 or fewer employees.

G. REQUIRED WORKPLACE CONDITIONS AND RULES¹⁰

NOTE: The Regulations state “...to the extent feasible...” you are required to comply with this section. The burden will be on you to prove that they are not feasible in your business.

You are required by the Regulations, to the extent feasible, to do the following:

⁸ 16 VAC25-220-40 (B)(2)

⁹ 16 VAC25-220-40 (A)(6)

¹⁰ 16 VAC25-220-60(B)

1. Require all employees, while at work, who come in regular contact with the public to wear a face covering. If that employee cannot wear a face covering because of their health or safety due to a medical condition, then they must not interact with the public.
2. Provide all employees that interact with customers or other persons with supplies to immediately clean and disinfect surfaces that were contacted during the interaction where there is a potential exposure to the COVID-19 causing virus.
3. Make sure that all areas that were accessed or worked at by known COVID-19 or suspected COVID-19 persons shall be disinfected prior to allowing employees to return to those areas except if they were unoccupied for at least 7 consecutive days. Where feasible you should wait 24 hours before cleaning and disinfecting those areas.
4. Make sure that all provided cleaning supplies must be approved by the EPA (List N) as suitable for use against the virus and used according to directions. The EPA website is found online at <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>
5. Make sure that all employees have easy access to and permission to frequently wash their hands with soap and water and hand sanitizer. If an employee works regularly inside of six (6) feet of others, then they must have hand sanitizer at their workstation.
6. Make sure that air-handling equipment: (a) are appropriate to address COVID-19 disease related hazards; (b) are maintained according to manufacturer's instructions and comply with minimum ANSI and ASHRAE standards including outdoor air ventilation. You should request your HVAC contractor to certify this to you.
7. To the extent feasible, you must install physical barriers (e.g. plexiglass sneeze guards) where those barriers aid in mitigating the spread of the virus.
8. Prior to each shift, you must screen or survey each employee to verify they do not have COVID-19 symptoms.

9. You must provide face coverings to patrons and non-employees that are suspected to have COVID-19 until they leave the site.
10. You must restrict and enforce access to areas by employees and non-employees where feasible. Common areas, breakrooms or lunchrooms should be closed or controlled by numbers of persons and social distancing and signage listing the number of occupants permitted at a time. You must post signs at breakrooms or lunchrooms requiring social distancing (staying at least 6 feet from others), wash hands frequently, contact and clean and sanitize shared surfaces regularly;
11. You must always try and increase physical distancing between employees and between employees and patrons to six feet or more.
12. Use signs, floor markings, verbal announcements, and other cues to promote physical distancing.
13. You must provide employees with properly fitting suitable PPE such as face coverings.
14. You must at the end of each shift or more frequently, clean and disinfect common spaces, bathrooms, and frequently touched surfaces.
15. You must make sure that all shared tools, equipment and workspaces are disinfected and cleaned prior to being transferred from one employee to another.
16. Where feasible, deliver products to customers curbside.
17. You must make sure that you are enforcing all Executive Orders related to COVID-19 that require the employer to enforce.

H. REQUIRED PLANS, RECORD KEEPING AND CERTIFICATIONS

The Regulations mandate the following plans, record keeping and certifications:

1. Keep copies of all notices sent or delivered as set forth herein.
2. Keep all test results or doctors' notes regarding employees.
3. Document all employee reports of tests related COVID-19.

4. Regularly conduct an assessment of compliance with the regulations, certify and document (i.e. keep a written record): (a) the place assessed; (b) the date of the assessment, (c) the person performing the assessment.
5. If you have more than eleven (11) employees then you must implement a written *Infectious Disease Preparedness and Response Plan*. That Plan must have the following:
 - a. The name of the employee implementing the Plan.
 - b. Identify the names and titles of the persons responsible for administering the Plan. Those employees must be knowledgeable about infection control principals and practices as they apply to the worksite.
 - c. Employee involvement in developing the Plan.
 - d. Address the risk of COVID-19 exposure at various places of employment and the level of exposure the employees they are exposed to, which includes:
 - i. Exposure to patrons and other persons.
 - ii. Exposure to persons who are high risk of COVID-19 exposure or infection.
 - iii. To the extent permitted by HIPAA, assess individual employees risk factors based on their conditions
 - e. Plan for increased employee absenteeism.
 - f. The need for social distancing, staggered shifts, downsizing.
 - g. Identify basic infection preventative measures such as providing employees and customers with a place to wash their hands or provide hand sanitizer; schedule routine cleaning and disinfecting procedures and develop a plan to educate and manage employees and customers to the business about such measures.
 - h. Provide for the prompt identification and isolation of known or suspected to be infected employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.

- i. Address infectious disease preparedness and response with outside businesses, such as vendors and suppliers that enter the place of employment, as well as other persons accessing the place of employment to comply with the requirements of the employer's plan.
 - j. If applicable, identify the mandatory and non-mandatory recommendations in any CDC guidelines or Commonwealth of Virginia guidance documents that the employer is complying with in place of the Regulations.
 - k. Ensure compliance with mandatory requirements of any applicable Virginia Executive Order or Order of Public Health Emergency related to the SARS-CoV-2 virus or COVID-19 disease, which has previously been provided to you.
6. You must keep written certification that you have trained your employees as set forth in Section B above.

SEE THE ATTACHED CHECKLIST FOR A SAMPLE FORMS TO COMPLY WITH THESE REQUIREMENTS

I. DISCHARGING EMPLOYEES FOR VIOLATING THE REGULATIONS AND ANTI-DISCRIMINATION PROVISIONS OF THE REGULATION¹¹

The regulations protect employees from discrimination for exercising rights under the Regulation. You should consult with an attorney before discharging an employee for any reason that may involve COVID-19. The anti-discrimination provisions are as follows:

1. No employee shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of the Regulation for themselves or others.
2. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears their own personal protective equipment, including but not limited to a respirator, face shield, or gloves, or face covering if such equipment is not provided by the employer, provided that the PPE does not create a greater hazard to the employee, or create a serious hazard for other employees.

¹¹ 16 VAC 25-220-90

3. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.
4. An employee may refuse to do work or enter a location they feel is unsafe.
5. Employee whistleblower activities, protected by §16VAC25-60-110 and Va. Code § 40.1-51.2:1 include (a) Making any complaint to his employer or any other person under or related to the safety and health provisions of Title 40.1 of the Code of Virginia; (b) Exercising on his own behalf or on behalf of any other employee any right afforded by the safety and health provisions of Title 40.1 of the Code of Virginia.
6. Generally speaking, disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations **shall not be regarded** as *retaliatory action* prohibited by Va. Code § 40.1-51.2:1 Discharge or discipline of an employee who has refused to complete an assigned task or wear a face mask or covering because of a reasonable fear of injury or death will be considered retaliatory only if the employee has sought abatement of the hazard from the employer and the statutory procedures for securing abatement would not have provided timely protection. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, an abatement of the dangerous condition.

NOTE: FORM A THAT IS IN THE ATTACHED CHECKLIST CONTAINS THE DEPARTMENT'S ANTI-DISCRIMINATION SUMMARY

DISCLAIMER

The information provided in this Memorandum and the attached checklist does not, and is not intended to, constitute legal advice; instead, all information, content, and materials are for general informational purposes for the members of the Association. Every attempt was made to provide the most up-to-date legal or other information. This memorandum contains links to other third-party websites. Such links are only for the convenience of the reader, user or browser.

Members should contact their attorney to obtain advice with respect to any particular legal matter. Use of the memorandum and the attached checklist, does not create an attorney-client relationship between the reader, and the law firm. All liability with respect to actions taken or not taken based on the contents of this memorandum are hereby expressly disclaimed. The content is provided "as is;" no representations are made that the content is error-free.

CHECK-LIST

Important Dates for the Virginia Department of Labor and Industry Temporary Standards/Emergency COVID-19 Regulations

1. **July 27, 2020:** (As soon as reasonably practicable after July 27, 2020)
 - Provide employees with the Notice to Employees to Self-Monitor for Covid-19. Suggested Form is attached as “Form A”
 - Document that you gave the Notice. Suggested Form is attached as “Form B”
 - Provide the Notice required IF any employee or person that came into the workplace is known or suspected of having Covid-19. Suggested Form is attached as “Form C”.
 - Document any Notices sent in your records. Suggested Form is attached as “Form D”.
 - Keep copies of any reports that a Covid-19 infection was confirmed or suspected at the workplace.
 - To the extent feasible, institute the Required Workplace Conditions and Rules as outlined in attached “Form E”

2. **August 26, 2020:**
 - Provide required training of all employees as outlined attached “Form F”. Much of the information required is in “Form A” which you can review in the training session.
 - Document that the training has occurred using “Form G”.

Exception: If you have more than eleven (11) employees and are required to develop an Infectious Disease Preparedness and Response Plan your training does not have to include that Plan because it does not have to be completed until September 25, 2020.

3. **September 25, 2020:** **NOTE:** This applies only if you have 11 or more employees:
 - Infectious Disease Preparedness and Response Plan must be completed. “Form H” is a template developed by the Va. Dept of Labor and Industry that has been modified for convenience stores for you to review. It can be found online at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>
 - You must train your employees on the contents of that Plan.

4. **Termination Date of Regulations:**

February 27, 2021 or when the Governor’s State of Emergency expires, when repealed by the Virginia Safety and Health Codes Board or when superseded by a permanent standard--whichever if first.

NOTE ON THE USE OF THIS CHECK LIST AND FORMS

You are encouraged to read the regulations yourself which may be found online at: <https://www.doli.virginia.gov/wp-content/uploads/2020/07/RIS-filed-RTD-Final-ETS-7.24.2020.pdf>.

In addition, you may find forms and other resource materials that the Virginia Department of Labor and Industry has published in order to assist you in complying with the Regulations at their website: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

FORM A

NOTICE TO ALL EMPLOYEES TO SELF-MONITOR FOR COVID-19

The Virginia Department of Labor and Industry Has issued temporary regulations related to the spread of COVID-19 in workplaces. The following information was adapted and edited from a template that the Department provided on its website.

PLEASE READ THE FOLLOWING AND ASK QUESTIONS IF YOU DO NOT UNDERSTAND ANY OF THE INFORMATION.

The Characteristics and methods of transmission of the SARS-CoV-2 virus

Coronaviruses are named for the crown-like spikes on their surface. It is spread mainly through close contact from person-to-person (inside 6 feet), by way of airborne transmission of respiratory droplets produced when an infected person coughs, sneezes, or talks.

The signs and symptoms of the COVID-19 disease

COVID-19 can affect each person differently, with symptoms ranging from mild to severe. COVID-19 symptoms may appear 2-14 days after exposure to the virus. Employees need to be able to recognize the most common COVID-19 symptoms. Stay home if you are sick or experiencing any of these symptoms.

Signs of COVID-19 include trouble breathing, persistent pain or pressure in the chest, new confusion, inability to wake or stay awake, bluish lips or face.

Symptoms include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea.

COVID-19 can be deadly

People of any age with the following conditions are at increased risk of severe illness from COVID-19: chronic kidney disease; COPD (chronic obstructive pulmonary disease); immunocompromised state (weakened immune system) from solid organ transplant; obesity (body mass index [BMI] of 40 or higher); serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; type 2 diabetes mellitus.

The ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus

There are indications that some infected people may not exhibit signs or symptoms of COVID-19. There is emerging evidence that pre-symptomatic (SARS-CoV-2 detected before symptom onset) and asymptomatic people (SARS-CoV-2 detected but symptoms never develop) can unknowingly spread COVID 19 to others.

Worksite safe and healthy work practices and control measures

You must tell your employer if you are experiencing any of the signs and symptoms of COVID-19 so that we can, if possible, help protect others. **No employees or other persons known or suspected to be infected with SARS-CoV-2 virus is permitted to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work.** While at work, avoid physical contact with other workers and our customers (maintaining a distance of at least 6 feet from employees, customers and other individuals).

You are required to wear a mask or face covering whenever you come face-to-face with our customers, vendors or other persons. Always wear a mask or face covering whenever 6 feet distancing cannot be achieved and/or maintained. **WE WILL PROVIDE YOU WITH A MASK AT NO COST TO YOU** or you may wear one that you own.

Required Mask: You must wear a covering of your nose and mouth with either elastic band or ties that secures the mask to your face. If you cannot wear a mask for any reason, then please tell us immediately. A face covering is not intended to protect you but may prevent the spread of virus from you to others. You should regularly wash a cloth mask and follow the directions that come with any other mask. Please wear a clean or new mask each day you come to work. If you are experiencing any issues related to wearing a mask, please let us know immediately.

Wash your hands frequently with soap and water for at least 20 seconds, if soap and water are not immediately available, use alcohol-based hand sanitizer that contains at least 60% alcohol and rub hands until they are completely dry.

Ensure that frequently touched work tools, equipment, vehicles, and contracted equipment is routinely cleaned and disinfected. Cleaning can be achieved utilizing soap and water. Disinfecting can be achieved utilizing bleach intended for disinfection and has a sodium hypochlorite concentration of 5%–6% or a disinfectant listed on the EPA “N” list.

For cleaning guidelines: <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

For disinfection guidelines: Utilize the EPA “N” list for products that meet EPA’s criteria for use against SARS-CoV-2, the virus that causes COVID-19. <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>

Always cover coughs and sneezes in your arm. Avoid touching your eyes, nose, or mouth (face in general) with unwashed hands.

Where feasible we will install physical barriers, such as clear plastic (Plexiglas).

To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, we will ensure that our sick leave policies are flexible and consistent with public health guidance and that you are aware of these policies. If you are not sure of the policies, then please ask.

The Anti-discrimination in the Regulation

The Regulation provides that no person shall discharge or in any way discriminate against an employee because the employee has:

- exercised rights under the safety and health provisions of this standard Title 40.1 of the Code of Virginia and implementing regulations under 16VAC25-60-110 for themselves or others.
- voluntarily provided and wears their own personal protective equipment, provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees.
- raised a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, other employees, a government agency, or to the public such as through print, online, social or any other media.

FORM B

CERTIFICATION

I certify that on July _____, 2020, I either mailed/hand-delivered/ or sent by electronic mail a copy of the attached Notice (Form A) to all my employees and posted it at the workplace.

Date: _____

Signature

Print Name

SUGGESTED "FORM C"

[use if an employee or any person with known or suspected COVID-19 was at your workplace]

Send this Notice within twenty-four (24) hours of learning an employee or any other person was at the workplace with or suspected to have Covid-19, to the following:

- (1) All employees that may have been exposed to the infected person or the person suspected to have Covid-19;
- (2) Any other employer of a person at your place of business (e.g. vendors, suppliers);
- (3) To the owner of the building where your business is located;
- (4) To the Department of Health in your locality only if there is a confirmed positive case;
- (5) To the Virginia Dept. Of Labor and Industry, Main Street Center,600 East Main Street, Suite 207, Richmond, VA 23219--only if three or more employees at the workplace test positive during a 14-day period.

NOTICE OF COVID-19 EXPOSURE AT WORKPLACE

It has come to our attention that an employee or another person known or suspected of being infected with the covis-19 virus was at our place of employment located at _____ on or about ____ (insert date) _____.

You are being given notice of this known or suspected case as required by the regulations of the Virginia Department of Labor and Industry.

You can be assured that we have already thoroughly cleaned, disinfected and sanitized the areas of our business where this person was located or may have been, in accordance with applicable best practices and the regulations. We will continue to monitor the employees at the workplace and will take with all reasonable steps to contain this exposure.

If you have any questions, then please contact_____.

Sincerely,

FORM D

CERTIFICATION

I certify that on July _____, 2020, I either mailed / hand-delivered / or sent by electronic mail a copy of the attached Notice (Form C) to the persons who names and addresses appear on the notice.

Date: _____

Signature

Print Name

FORM E

REQUIRED WORKPLACE CONDITIONS AND RULES

NOTE: The Regulations state “...to the extent feasible...” you are required to comply with these workplace rules. The burden will be on you to prove that they are not feasible in your business.

You are required by the Regulations, to the extent feasible, to do the following:

1. Require all employees, while at work, who come in regular contact with the public to wear a face covering. If that employee cannot wear a face covering because of their health or safety due to a medical condition, then they must not interact with the public.
2. Provide all employees that interact with customers or other persons with supplies to immediately clean and disinfect surfaces that were contacted during the interaction where there is a potential exposure to the COVID-19 causing virus.
3. Make sure that all areas that were accessed or worked at by known COVID-19 or suspected COVID-19 persons shall be disinfected prior to allowing employees to return to those areas except if they were unoccupied for at least 7 consecutive days. Where feasible you should wait 24 hours before cleaning and disinfecting those areas.
4. Make sure that all provided cleaning supplies must be approved by the EPA (List N) as suitable for use against the virus and used according to directions. The EPA website is found online at <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>
5. Make sure that all employees have easy access to and permission to frequently wash their hands with soap and water and hand sanitizer. If an employee works regularly inside of six (6) feet of others, then they must have hand sanitizer at their workstation.
6. Make sure that air-handling equipment: (a) are appropriate to address COVID-19 disease related hazards; (b) are maintained according to manufacturer’s instructions and comply with minimum ANSI and ASHRAE standards including outdoor air ventilation. You should request your HVAC contractor to certify this to you.

7. To the extent feasible, you must install physical barriers (e.g. plexiglass sneeze guards) where those barriers aid in mitigating the spread of the virus.
8. Prior to each shift, you must screen or survey each employee to verify they do not have COVID-19 symptoms.
9. You must provide face coverings to patrons and non-employees that are suspected to have COVID-19 until they leave the site.
10. You must restrict and enforce access to areas by employees and non-employees where feasible. Common areas, breakrooms or lunchrooms should be closed or controlled by numbers of persons and social distancing and signage listing the number of occupants permitted at a time. You must post signs at breakrooms or lunchrooms requiring social distancing (staying at least 6 feet from others), wash hands frequently, contact and clean and sanitize shared surfaces regularly.
11. You must always try and increase physical distancing between employees and between employees and patrons to six feet or more.
12. Use signs, floor markings, verbal announcements, and other cues to promote physical distancing.
13. You must provide employees with properly fitting suitable PPE such as face coverings.
14. You must at the end of each shift or more frequently, clean and disinfect common spaces, bathrooms, and frequently touched surfaces.
15. You must make sure that all shared tools, equipment and workspaces are disinfected and cleaned prior to being transferred from one employee to another.
16. Where feasible, deliver products to customers curbside.
17. You must make sure that you are enforcing all Executive Orders issued by the Governor of Virginia related to COVID-19 that they require the employer to enforce. You can find the Governor's Executive Orders online here: <https://www.governor.virginia.gov/executive-actions/>

FORM F

REQUIRED TRAINING FOR ALL EMPLOYEES

All employees must receive training from their employer that enables them to recognize the hazards of COVID-19 and the signs and symptoms of the virus and how to minimize the hazard of the virus. The training must cover the following topics:

1. The requirements of the Regulations.
2. If applicable, the mandatory and non-mandatory recommendations in any CDC guidelines or State of Virginia guidance documents the employer is complying with, in lieu of the Regulations.
3. The characteristics and methods of transmission of the virus.
4. The signs and symptoms of the COVID-19 virus.
5. Risk factors of severe COVID-19 illness with underlying health conditions.
6. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus.
7. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.
8. Personal Protective Equipment:
 - a. When PPE is required.
 - b. What PPE is required.
 - c. How to properly don, doff, adjust, and wear PPE.
 - d. The limitations of PPE.
 - e. The proper care, maintenance, useful life, and disposal of PPE.
 - f. Heat-related illness prevention including the signs and symptoms of heat-related illness.
9. The anti-discrimination provisions of this standard in the Regulations.
10. The employer's Infectious Disease Preparedness and Response Plan, if you have eleven (11) or more employees.
11. If you have reason to believe that any affected employee or any other employee that you have trained does not fully understand the facts that they must know, or if you modify your Disease Preparedness and Response Plan, then you must retrain those employees.



§16VAC25-220, Emergency Temporary Standard for COVID-19 Infectious Disease Prevention

Training Certification	
Instructor	
Date	

Employee	Signature

I certify that the above listed employees received training in accordance with VOSH 16VAC25-220	
Instructor Signature	

FORM H

Employer Logo (Insert Here)

Employer Name (Insert Here)

**Infectious Disease (COVID-19)
Preparedness and Response Plan Template**

I. Purpose

This plan describes the implementation of mandatory health and safety requirements established by the Virginia Department of Labor and Industry, Governor Northam's COVID-19 Executive Order and subsequent Addendum as well as guidelines from the Centers for Disease Control.

II. Responsibilities

[Employer Name] has assigned the following individual(s) to serve in the role of health officer. The health officer has the authority to stop or alter activities to ensure that all work practices conform to the mandatory safety and health requirements applicable to COVID-19 as well as any other infectious disease hazards.

[Name(s) and title(s) of health officer(s)]

The following table is an example.

Health Officer(s)			
Name	Title	Department	Phone Number

For the purpose of ensuring compliance with the most recent safety and health requirements, **[Name and title]** is responsible for administering this plan, monitoring agencies for new requirements, updating this plan, communicating any changes to

employees, and monitoring the overall effectiveness of the plan. This person is also responsible for providing employees with a copy of this plan upon request.

III. Determination of Exposure Risk by Job Duty

We have determined the COVID-19 exposure risk level of all worksite functions to ensure that we apply appropriate hazard controls – including training, equipment, and personal protective equipment (PPE) – to protect employees’ safety and health. This assessment is based on OSHA Publication 3990. Classes of employees have been assigned to risk categories as follows:

Exposure Risk Level means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. Hazards and job tasks have been divided into four risk exposure levels: “Very High”, “High”, “Medium”, and “Lower”.

“Very High” exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARSCoV-2 virus and the COVID-19 disease including, but not limited to, during specific medical, postmortem, or laboratory procedures (refer to page 8 of the 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation for a more detailed description).

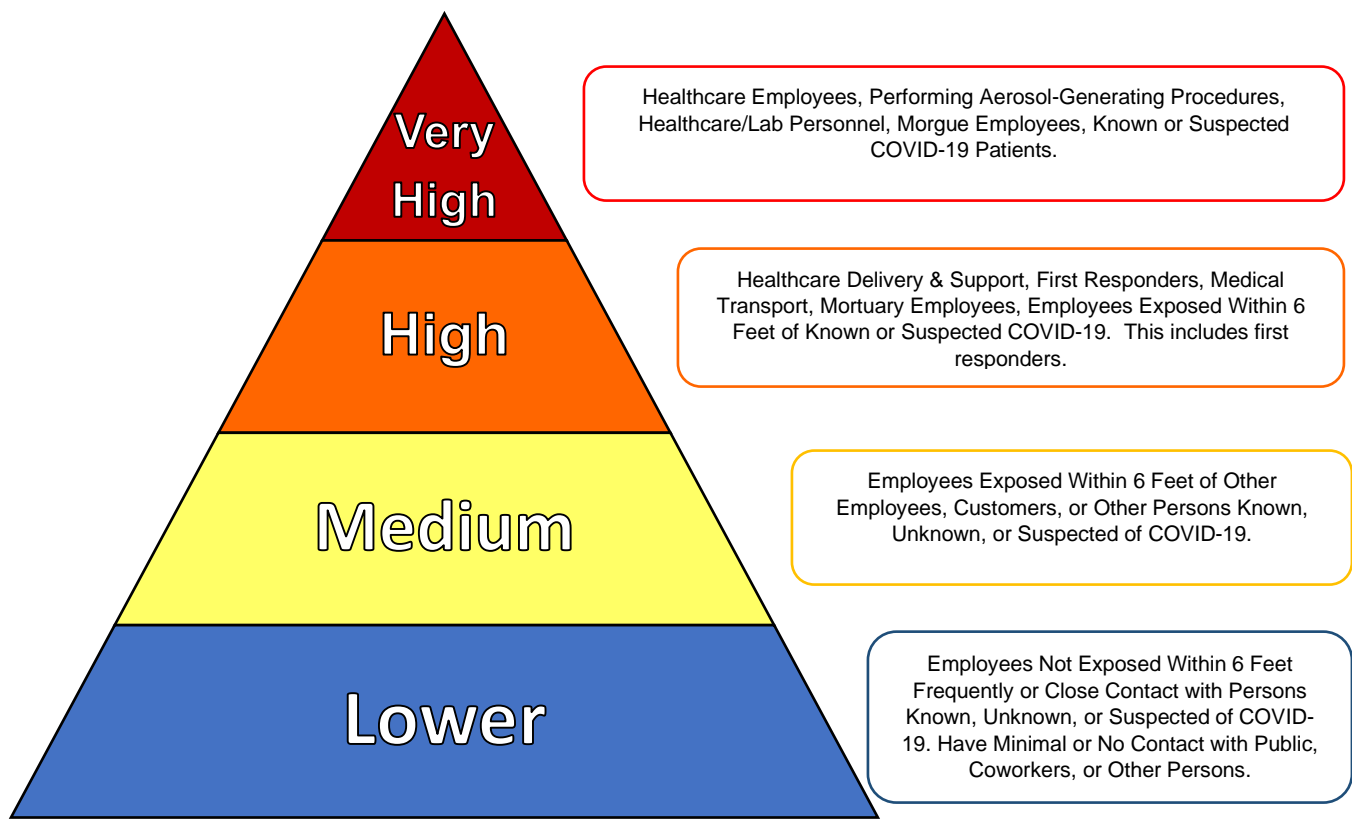
“High” exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure within six feet with known or suspected sources of SARS-CoV-2 that are not otherwise classified as “very high” exposure risk (refer to page 8 of the 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation for a more detailed description).

“Medium” exposure risk hazards or job tasks that are not labeled as “very high” or “high” (refer to pages 9-10 of the 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation for a more detailed description).

“Lower” exposure risk hazards or job tasks are those not otherwise classified as “very high”, “high”, or “medium” exposure risk that do not require contact within six feet of persons known to be, or suspected of being, or who may be infected with SARS-CoV-2;

nor contact within six feet with other employees, other persons, or the general public except as otherwise provided in this definition (refer to page 10 of the 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation for a more detailed description).

The following graph relates to job tasks that pose a risk level to employees. The job tasks that are listed are not an all-inclusive list.



Consult the definition of “Exposure risk level” of the Emergency Temporary Standard for COVID-19 by the Virginia Department of Labor and Industry. Also, consult pages 18 - 21 of the OSHA document “Guidance on Preparing Workplaces for COVID-19” which is available at <http://www.osha.gov/Publications/OSHA3990.pdf> and determine the risk level of each employee or class of employee based on their type of work and duties. Some jobs may have more than one type of exposure risk depending on the task or qualifying factors.

When you have determined the risk level of all your employees and officials, list the work area, job/job tasks, employee exposure risk, and qualifying factors in the table.

The following table is an example.

Work Area	Job Tasks	Exposure Risk Determination	Qualifying Factors (Example: No Public Contact, Public Contact)

IV. Contingency Plan in the Event of an Infectious Disease Outbreak

In the event that an outbreak or pandemic due to an infectious disease, **[Employer Name]** has set up contingency plans for addressing the workplace needs as well as employee safety and health during the outbreak.

These plans are as follows:

[Insert Contingency Plans] *These plans should address increased absenteeism, need for physical distancing, telework options, engineering, administrative, and PPE controls. in addition, the plans should address the need for essential operations and the use of reduced workforce through lower numbers of employees on site or the need to have employees cross-trained in the event of incident occurring.*

V. Basic Infectious Disease Prevention and Control Measures

To control the spread of infectious diseases such as COVID 19, basic prevention and control measures must be implemented to ensure that all employees are protected against the hazards of infectious disease.

To control the spread of infectious disease it is important to keep up general housekeeping in the workplace. Additional housekeeping actions must also be implemented to ensure the safety and health of employees and decreasing the chances of spread of an infectious disease such as: All restrooms, common areas that remain in use, door knobs/handles, tools, equipment, and other frequently touched surfaces are disinfected before, in the middle of, and at the end of each shift. All contact surfaces of vehicles used by more than one person are disinfected at the end of each person's use. All disinfectants are EPA-approved or otherwise comply with [CDC disinfection guidance](#). *[If reasonable, name(s) or title(s) of person(s) responsible for disinfecting each area]. The employer must make sure that adequate disinfection products are on hand, safety data sheets (SDSs) are obtained and retained, and employees using the products are aware of any personal protective equipment that is required for use.*

Additional precautions and actions to take are **[Insert Employer name] specific actions being taken:**

- Large gatherings are minimized whenever possible; staff meetings are postponed, cancelled or held remotely;
- Employees are encouraged to maintain physical distance even when on break, as well as before and after working hours;
- Employees are required to maintain physical distance when reporting to work, clocking in, leaving work, and clocking out;
- Employee work stations are greater than six feet apart;
- The employer may utilize flexible work hours, wherever possible, to limit the number of employees simultaneously working on-site; and
- Employee interactions with the general public are modified to allow for additional physical space between parties.

VI. Identification and Isolation of Sick and/or Exposed Employees

Risk and exposure determinations are made without regard to employees protected characteristics as defined by local, state, and federal law.

Any health-related information and documentation gathered from employees is maintained confidentially and in compliance with state and federal law. Specifically, medical documentation is stored separate from employee's personnel documentation.

1. Employee Self-Monitoring

The following employees should **not** report to work and, upon notification to **[Employer name]**; will be removed from the regular work schedule:

- Employees who display COVID-19 symptoms, such as fever, cough, shortness of breath, sore throat, new loss of smell or taste, and/or gastrointestinal problems, including nausea, diarrhea, and vomiting, whether or not accompanied by a formal COVID-19 diagnosis;
- Employees who, in the last 14 days, have had close contact with and/or live with any person having a confirmed COVID-19 diagnosis; and
- Employees who, in the last 14 days, have had close contact with and/or live with any person displaying COVID-19 symptoms, such as fever, cough, shortness of breath, sore throat, new loss of smell or taste, and/or gastrointestinal problems, including nausea, diarrhea, and vomiting.

Such employees may only resume in-person work upon meeting all return-to-work requirements, defined below.

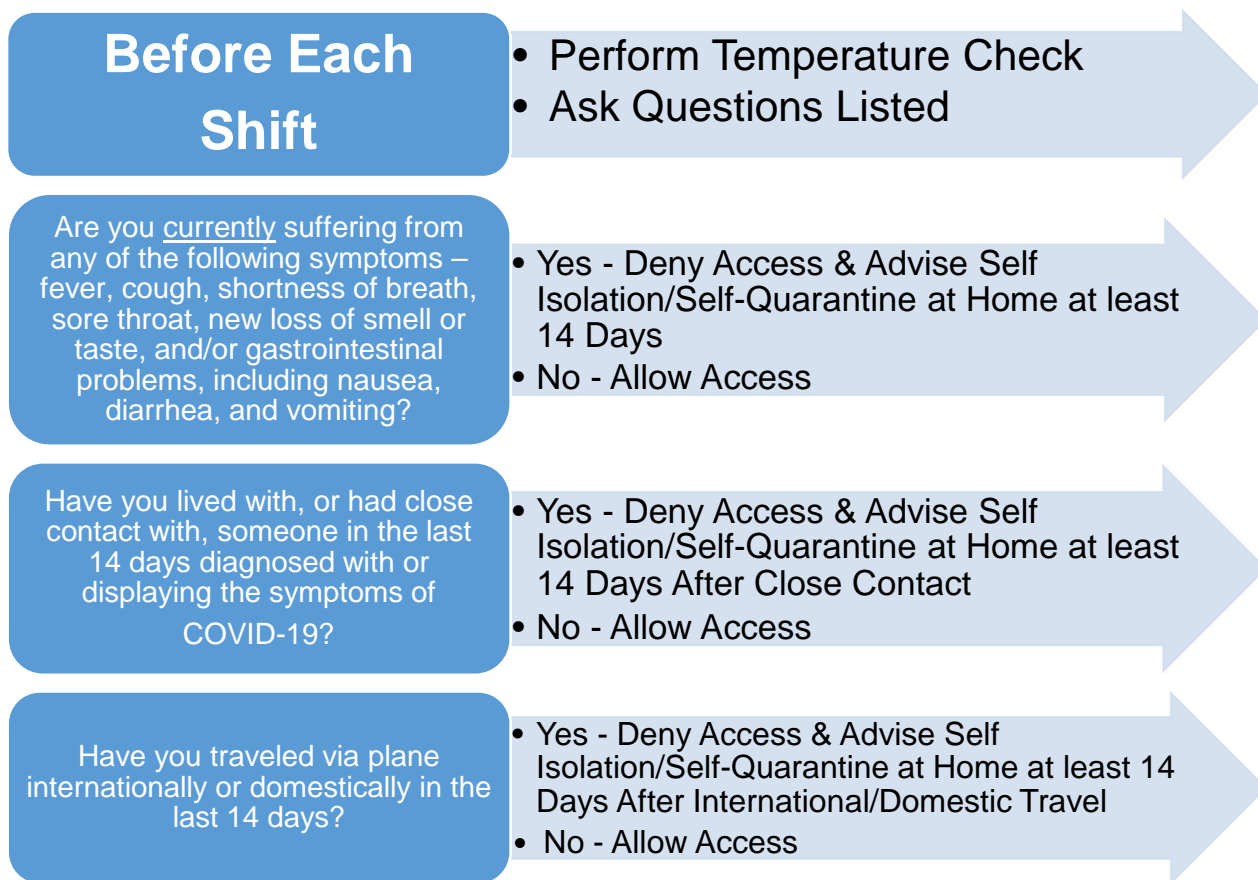
2. Daily Screenings

To prevent the spread of COVID-19 and reduce the potential risk of exposure, **[Employer name]** screens employees on a daily basis.

Employees are asked the following questions before entering the worksite:

1. Are you currently suffering from any of the following symptoms – fever, cough, shortness of breath, sore throat, new loss of smell or taste, and/or gastrointestinal problems, including nausea, diarrhea, and vomiting?
 - a. If a touchless thermometer is available, temperature checks are performed.
 - b. If yes, access is denied, and employee is advised to self-isolate/self-quarantine at home, until employee is permitted to return to work as defined below.
2. Have you lived with, or had close contact with, someone in the last 14 days diagnosed with or displaying the symptoms of COVID-19?
 - a. If yes, access is denied, and employee is advised to self-isolate/self-quarantine at home, until at least 14 days after the close contact.
3. Have you traveled via airplane internationally or domestically in the last 14 days?
 - a. If yes, access is denied, and employee is advised to self-isolate/self-quarantine at home, until at least 14 days after the international or domestic travel.

A reference chart of the above daily screening questions is listed below.



Employees who develop symptoms during their shift must immediately report to their supervisor and/or Human Resources.

3. *Return-to-Work Requirements*

Employees who were themselves diagnosed with COVID-19 may only return to work upon confirmation of the cessation of symptoms and contagiousness, proof of which may be acquired via the test-based strategy or the non-test-based strategy.

The test-based strategy is preferred but relies upon the availability of testing supplies and laboratory capacity. Under this strategy, employees may discontinue isolation and return to work upon achieving the following conditions:

- Resolution of fever without the use of fever-reducing medications;
- Improvement in respiratory symptoms (e.g., cough, shortness of breath); and

- Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from two consecutive nasopharyngeal swab specimens collected at least 24 hours apart.

Under the non-test-based strategy, employees may discontinue isolation and return to work upon achieving the following conditions:

- At least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications;
- Improvement in respiratory symptoms (e.g., cough, shortness of breath); and
- At least 7 days have passed since symptoms first appeared.

Employees who come into close contact with or who may live with an individual with a confirmed diagnosis or symptoms may return to work after either 14 days have passed since the last close contact with the diagnosed and/or symptomatic individual. This includes the diagnosed and/or symptomatic individual receiving a negative COVID-19 test.

Employees are typically required to submit a release to return to work from a healthcare provider; given the current stressors on the healthcare system, **[Employer name]** may accept written statements from employees confirming all the factors supporting their release.

Actively encourage sick employees to stay home:

- Include a statement regarding your PTO program. The Families First Coronavirus Response Act Policies and Posters are to be posted in common places as well as on the employee shared IT drives (if employees have questions regarding use of emergency paid sick time, employees should contact **[Name of Contact]**).
- **[Employer Name]** will follow state and federal guidance for return to work guidance.
 - Guidance from the employee's health care provider will also be considered.

VII. Procedures for Minimizing Exposure from Outside of Workplace

[Employer Name] business practices are evaluated to ensure the safety and health of all individuals. This is done on a phased approach. Beginning with appointment only onsite meetings, virtual meetings, and finally transitioning to onsite meetings with appropriate precautions when that time comes.

- Social distancing practices to be observed: ***[Include all that apply]***
 - 6-foot distances are marked in areas where customers might gather/wait
 - In person meetings are to be made by appointments only
 - Limit the number of customers allowed into workplace
 - Minimize face to face contact

Information is posted throughout the worksite educating individuals on ways to reduce the spread of COVID-19.

Any individual entering one of **[Employer Name]** facilities may have their temperature checked and/or a questionnaire completed prior to entry.

To minimize exposure from visitors or vendors: ***[Include all that apply]***

- *All business partners that work within **[Employer Name]** have been provided this Plan.*
- *When possible, **[Employer Name]** will limit the number of visitors in the facility.*
- *Possible statement about protection - Any individual entering one of the **[Employer Name]** facilities may have their temperature checked and/or a questionnaire completed prior to entry.*
- *Possible statement about protection: Masks may be available to visitors/vendors as well as appropriate disinfectants so individuals can clean work areas before and after use.*
- *Possible statement about protection - All deliveries will be handled through curbside pick-up or delivery.*

Minimizing exposure from the general public:

- Social distancing practices to be observed: ***[Include all that apply]***

- 6-foot distances are marked in areas where individuals might gather/wait.
- Limit number of individuals allowed into workplace.
- Minimize face to face contact:
 - Computer workstations positioned at least 6 feet apart
- Information is posted at **[Employer Name's]** facility educating individuals on ways to reduce the spread of COVID-19.
- Any individual entering **[Employer Name]** may have their temperature checked and/or a questionnaire completed prior to entry.
- Individual symptoms may be assessed of COVID-19 and individuals with symptoms will be removed from the workplace.
- Possible statement about protection with General Public - Physical barriers between **[Employer Name]** employees and the public will be considered in high impact areas (i.e. shielding at the front desk areas).
- Possible statement about protection with General Public – Masks may be available to the general public as well as appropriate disinfectants so individuals can clean work areas before and after use.

VIII. Training

All employees at **[Employer Name]** will be required to have training on the hazards and characteristics of SARS-CoV-2 virus and COVID-19 disease. This training will ensure that all employees recognize the hazards of SARS-CoV-2 and COVID-19 as well as the procedures to minimize the hazards related to the infectious diseases and help prevent the spread of the infectious disease.

The training material will cover the following:

- Requirements of the COVID-19 Emergency Regulation.
- Companies Infectious Disease Preparedness and Response Plan.

- Characteristics and methods of spread of SARS-CoV-2 virus.
- Symptoms of COVID-19 disease as well as the asymptomatic reactions of some persons to the SARS-CoV-2 virus.
- Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, and noncontact methods of greeting.
- PPE
 - When PPE is required
 - What PPE is required
 - How to properly don, doff, adjust and wear PPE
 - Limitations of PPE
 - Proper care, maintenance, useful life and disposal of PPE

All employees in the workplace will be trained on this subject and procedures. All training will be certified and recorded according to the Emergency Regulations for COVID-19 by the Virginia Department of Labor and Industry.

Training Records will be certified by the following requirements (see example below):

- Employee name
- Employee’s signature (physical or electronic)
- Date
- Signature of Trainer

The following table is an example.

Date:		Trainer:	
Employee Name (Printed)	Employee Name (Signature)	Work Area	COVID-19 Risk Level

Retention of training records must be retained in employee files. These records are located *(Insert format and location used by employer)*. The most recent training records will be maintained.