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Follow Up on Mask Mandate

Yesterday we furnished information on enhanced enforcement of mandatory mask requirements for customers. Today we are re-sending the requirements for mandatory masks for your employees which are covered under [Executive Order 61](#). To summarize, your employees are required to wear a mask, and increased enforcement by Virginia ABC and Department of Health is coming.

Following is further clarification from association general counsel Bruce Arkema on what do in case of an employee who has a medical condition that precludes them from wearing a mask:

Executive Order No. 63, which is the governor's order requiring wearing masks in essential businesses requires, as you know:

B. Face Coverings Required-Employees of Essential Retail Businesses

All employees of essential retail businesses as listed in Amended Executive Order 61 and Amended Order of Public Health Emergency Three (2020), section C, paragraph 1 shall wear a face covering whenever working in customer facing areas. Amended Executive Order 61 and Amended Order of Public Health Emergency Three (2020) is so further amended.

The first issue then is whether the employee is working in customer facing areas. Assuming so, the exceptions in the same order state:

6. Persons with health conditions that prohibit wearing a face covering. Nothing in this Order shall require the use of a face covering by any person for whom doing so would be contrary to his or her health or safety because of a medical condition. Any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.

My advice is that if an employee declines to wear a mask for a health condition, that you tell that employee to document in writing that they are declining to wear a mask for health reasons so that you can put it in the HR file. I would then ask the employee to wear a full face shield that you provide or wear PPE that they provide. If you are not comfortable with that person interacting with the public with a face shield or other PPE that they supply, then you should reassign them to another position, if possible.

On July 15, 2020 the Virginia Board for the Department of Labor and Industry adopted Emergency Temporary Standard/Emergency Regulations of Infectious Disease Prevention: SARS-CoV-2 Virus that Causes COVID-19.

Section 90 (see below) prevents discharge and discrimination against employees related to COVID-19 regulations including the Executive Orders from Governor Northam, so we need to be careful when it comes to discharging employees if they have a medical reason not to wear a mask.

Coronavirus Workplace Safety Regulations

Acting this week at the direction of Governor Northam, the state's Safety and Health Codes Board voted to implement a first in the nation Coronavirus workplace safety regulations. The rule is expected to take effect in the near-term, and remain in effect for a minimum of six months.

Among the rule's provisions::

- Notification to the Department of Public Health of all positive COVID-19 tests
- Employees must be notified within 24 hours if a co-workers tests positive
- Employers must assess hazard levels of all job tasks
- Mandatory flexible sick leave policies, telework and staggered shifts when feasible
- Employers are required to conduct mandatory training on the provisions of the rule within 30 days
- Employees who are known or suspected to be positive for COVID -19 cannot return to work for 10 days our until they receive two consecutive negative tests
- Requirements for social distancing and mask wearing at work.
- Mandatory employee access to hand sanitizer and frequent cleaning of high contacted services.

A link to the **draft** regulation is [found here](#). As soon as the final regulation is printed it will be forwarded.

The Virginia Chamber of Commerce is holding a zoom compliance webinar on these new mandates on the business community. The webinar will be held on July 28 from 10-11am. Registration information may be [found here](#).