VIRGINIA'S COVID-19 WORKPLACE REGULATIONS
DUNLAP LAW'S GUIDE FOR SMALL BUSINESS OWNERS

HELPING BUSINESS LEADERS THRIVE

On July 15, 2020, Virginia became the first state to approve binding regulations related to COVID-19 workplace safety. The regulations are comprehensive and very broad – covering every business no matter how small so long as it has at least one employee. Given that the definition of "employee" is also very broad, few businesses in Virginia will escape this burden.

Dunlap Law is Virginia's first and only B-Corp certified law firm which means that we care about and are committed to creating a positive impact on society. Our small business clients are Virginia's backbone and our nation's heart and soul. We are fortunate to have nurtured long and enriching relationships with our clients. Maybe that's because they know how much we care about them and their success. We can confidently say that not one single Dunlap Law client is cavalier with employee safety and health. From the earliest days when coronavirus first began disrupting all our lives, we took their anxious phone calls and counseled them on how to adapt operations and administration to reduce risks and keep everyone safe.

As we reviewed these regulations to prepare this guide, we came away alarmed at the burden they place on small businesses that are fortunate to have survived – so far. While some of these rules are reasonable (employees sick or suspected to be sick must stay home), many of them go too far: the Exposure Risk Assessment, the PPE Assessment, drafting the Infectious Disease Plan, and employee training and re-training are all incredibly onerous mandates that most of our clients do not have the time or resources to meet. We fear they will cripple small businesses in Virginia, even if no employee ever brings a complaint. If these regulations are enforced as written, then we fear small businesses will fail and permanently close.

Never before have we provided editorial comment in one of our guides as we have done here. We have never felt compelled to do so. You will notice additional comments, in red, throughout which represent our editorial concerns and do not reflect the regulations, themselves.

We are providing this information for free in hopes of helping small business leaders through Virginia. As always, be sure to consult an attorney before acting on anything you read here. Please let us know if we can help.

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I. WHAT ARE THE *EMERGENCY TEMPORARY STANDARDS*?

- Officially called "Emergency Temporary Standards"and found at §16VAC25-220, the Virginia Department of Labor and Industry's ("DOLI") Safety and Health Codes Board ("SHCB") approved the regulations on July 15, 2020 in response to Governor Northam's directive. Virginia Occupational Safety and Health ("VOSH") will enforce the rules. The Emergency Standards are available at https://www.doli.virginia.gov/wp-content/uploads/2020/07/COVID-19-Emergency-Temporary-Standard-FOR-PUBLIC-DISTRIBUTION-FINAL-7.17.2020.pdf
- DOLI's stated goal is to protect employees from the coronavirus.
- Employers do NOT have to conduct contact tracing.
- For simplicity, we'll call them "Emergency Standards" or "ES".

II. WHICH BUSINESSES ARE SUBJECT TO THE EMERGENCY STANDARDS? WHICH EMPLOYEES ARE PROTECTED?

- The regulations apply to **every employer, employee, and place of employment** in Virginia with one exception . . . the federal government is not subject to the regulations and those employed by the federal government are not protected by them.
- All employees are protected, including temporary or contract employees even if those employees are provided to your business by another business. According to DOLI guidance, "employees" include the following people if they are working on site and exposed to the hazard:
    - An employer's family members
    - Shareholders
    - A partner in a partnership
    - Officers of the company (president, vice president, etc.)

  So long as they are the only ones exposed to a hazard, self-employed people / sole proprietors are not considered "employees" for purposes of regulating workplace hazards.
- In addition to the health and safety rules, employees are also protected from employer discrimination because they exercised their rights granted by the ES ("ES Rights"). Employers cannot fire or "in any way discriminate" against employees who exercise their

ES Rights or participate in an enforcement proceeding against brought by another employee. In addition, employers may not fire or discriminate against employees who:

- Provide and wear their own PPE if the employer does not provide it, so long as the employee's PPE does not create a "greater hazard" to the employee or a "serious hazard" to other employees.
  - Note: the ES do not specify how to measure "greater hazard" (greater than what – the ES? Specificity is essential.) Further, the ES do not define "serious hazard."
- Raise a "reasonable concern" about their employer's compliance with the ES to: (i) the employer or employer's agent; (ii) other employees; (iii) a government agency; or (iv) the general public (including social media posts or other online forums).

- **Employees may refuse to do work or enter a location they feel is unsafe**. Employers who fire or discipline an employee who refused to work or enter a location must do so according to § 16 VAC 25-60-110 and other applicable laws and regulations.
- Employees who believe their employer violated their ES rights have 60 days from the date the alleged violation occurred to file a complaint with DOLI.
- In addition to having to comply if they have employees, commercial landlords are also subject to common-area cleaning and tenant-notification rules for every building where they control management and record keeping functions. (see paragraph VII, below).

III. WHEN DO THEY GO INTO EFFECT? FOR HOW LONG?

- The regulations go into effect on the day when they are published in a Richmond newspaper sometime the week of July 27th. We do not yet have a definitive day.
- They will be in force until the first of these events happens:
  - six months from the effective date, OR
  - until the Governor's State of Emergency declaration expires, OR
  - when DOLI supersedes the Emergency Standards by adopting permanent standards.
- Thirty and sixty days after the Emergency Standards go into effect, most employers must also have employee training in place and a written Infectious Disease Preparedness and Response Plan (more on that, below).

IV. WHAT ARE POTENTIAL CONSEQUENCES FOR NOT COMPLYING WITH THE ES?

Fines are based on the gravity of the violation, the size of the business, the good faith of the employer and the employer's history of previous violations. Beginning in 2018, Virginia indexed the penalty amount shown below to the United States Average Consumer Price Index for all Urban Consumers ("CPI-U"). Therefore, the amounts shown in the table below are adjusted upward every August 1 to reflect the CPI-U. As shown here, they are approximate and based on 2018 figures found in Virginia Code § 40.1-49.4.

Type of Penalty	Severity of Violation	Discretionary?	Penalty Amount
Citation	Not Serious	Yes	Up to $12,471
Citation	Serious	No	$12,471
Citation for failure to timely abate pervious violation	n/a	Yes	Up to $12,471 per day for each day that the violation continues
Willful or repeated violation	n/a	Yes	Up to $124,709
Willful violation causing employee death	n/a	No	Fine up to $70,000, or imprisonment up to six months, or both.

V. WHAT IF MY BUSINESS CANNOT AFFORD TO COMPLY?

Businesses can claim "economic infeasibility" but that claim will not be a factor in VOSH's determination of whether or not your business complied. If your businesses' level of compliance "lags significantly behind that of its industry" then DOLI will not accept your claim of economic infeasibility.

We are unaware of any means or method of tracking the degree to which entire industries are complying with COVID-19 related safety standards or the ES.

I. WHAT ABOUT OTHER, EXISTING WORKPLACE SAFETY REGULATIONS?

The Emergency Standards supplement existing workplace safety standards. If there is a conflict between existing standards and the Emergency Standards, then whichever standard is more stringent/ more protective of employees will govern.

II. WHAT KINDS OF CONTROLS IS MY BUSINESS EXPECTED TO IMPLEMENT?

The ES include three kinds of controls to mitigate risks:

"Administrative controls" control or manipulate the work schedule or manner in which work is performed.

> *For example, altering shifts so that fewer employees are in one location at the same time or, for a shared employee shuttle, requiring multiple trips from Worksite A to Worksite B so that fewer people are in the van at the same time.*

"Work practice controls" are a type of administrative control which employers can use to modify the manner in which employees perform work. Work practice controls include changing work habits, improving sanitation practices, or making other changes to the ways in which employees perform their jobs.

> *For example, providing cashier-employees with approved cleaning solutions, training them in how to apply the cleaning solutions, and enforcing a requirement that they clean the credit card keypad after each customer.*

"Engineering controls" include using substitution, isolation, ventilation, and equipment modification to reduce coronavirus risks.

> *Plexiglass shields between cashiers and customers are an example of an engineering control.*

III. WHAT IF MY BUSINESS IS COMPLYING WITH CDC GUIDELINES?

If you are one of the many employers who responsibly adapted your operations to minimize the coronavirus threat, then you will likely benefit from that hard work if only because your employees are more likely to trust you and therefore less likely to file complaints against your business. Here's how the Emergency Standards views it:

- If an employer:
  - *Actually complies* with CDC guidelines, and
  - *if* CDC guidelines provide equivalent or greater protection than the Emergency Standards, then
  - DOLI will consider that employer to be in compliance with the Emergency Standards.

- If the DOLI brings an Emergency Standards enforcement proceeding against an employer:
    - And that employer has *actually complied* with CDC guidelines;
    - Then DOLI will consider that compliance as evidence of good faith. This can help an employer survive an enforcement proceeding with minimal or no consequences.

This does not significantly relieve the ES burden because an employer cannot use this safe harbor unless it has first invested the resources to fully understand both CDC and ES standards so it can then determine that CDC guidance protects employees as much or more than the ES do.

IV. WHAT ABOUT COLLEGES/ UNIVERSITIES AND ELEMENTARY/ SECONDARY SCHOOLS?

- For colleges and universities (public and private), with re-opening plans approved by the State Council of Higher Education of Virginia:
    - DOLI will presume them to be in compliance with the Emergency Standards so long as
        - they actually operate according to their plan and
        - their plan provides equal or greater employee protection as do these Emergency Standards.
- The same rule applies to elementary and secondary schools (public and private). If the Virginia Department of Education:
    - Approved a reopening plan that is aligned with CDC guidance and
    - That provides employee protection equal or greater than the Emergency Standards, then
    - DOLI will consider the school to be in compliance with the Emergency Standards so long as it actually operates in compliance with its approved plan.
    - This is also evidence of good faith if an enforcement proceeding is brought against a school/ school division.

V. WHAT ARE EMPLOYERS' RESPONSIBILITIES FOR MONITORING EMPLOYEE HEALTH?

The Emergency Standards require employers to exercise "reasonable diligence". Employers must develop and implement policies and HIPAA-compliant procedures for employees, subcontractors, contract employees, and temporary employees to:

- Report when they are experiencing COVID-19 symptoms and no alternative diagnosis is made.
- Report test results (both positive and negative because reporting negative test results is one option for returning to work).
- Access their own employee records related to coronavirus and COVID-19.
- Return to work once they meet one of the three tests outlined in paragraph VIII, below.

These mandates trickle down to subcontractors that provide employees at your worksites and to any temporary employee companies that you rely on for temporary staff. You are responsible for communicating to your subs and/ or temp staffing agencies about the mandate that Suspected Sick Employees and Sick Employees stay home.

VI. WHAT IF AN EMPLOYEE HAS COVID-19 SYMPTOMS?

"Symptoms" means 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, or diarrhea.

If an employee (i) has COVID-19 symptoms but (ii) has not tested positive for COVID-19 and (iii) no alternative diagnosis (e.g. flu) has been made, then that employee is "suspected" to be infected. For simplicity, we'll call this person a "**Suspected Sick Employee**."

You **MUST NOT** allow the Suspected Sick Employee to remain or come to work or engage in work at a customer/ client location until cleared to return (more on that below). If teleworking and they are able to work, then they may continue working.

Note: the notification requirements in paragraph VII (below) that apply to Sick Employees do not apply to Suspected Sick Employees.

VII. WHAT IF AN EMPLOYEE TESTS POSITIVE FOR COVID-19?

For employees that have tested positive, it's not quite as simple as a positive test. Here's the standard: an employee (i) tests positive for COVID-19 (ii) within 14 days of (iii) being physically present at work. For simplicity, we'll call this a "**Sick Employee**."

- You **MUST NOT** allow the Sick Employee to remain or come to work or engage in work at a customer/ client location until cleared to return (more on that below). If teleworking and they are able to work, then they may continue working.
- Within 24-hours of learning about the Sick Employee, you MUST NOTIFY:
    - all employees who may have been exposed, about their possible exposure
    - other employers whose employees may have been exposed because they were present at your work site when the Sick Employee was there
    - the building/ facility owner – defined as whomever has control over maintenance and record-keeping functions. *Even if you lease your building, if you control maintenance and record-keeping for that building, then you are the "building/ facility owner."*
    - the Virginia Department of Health
- If you have three or more Sick Employees at work within a 14-day period, you must notify the DOLI.
- You MUST safeguard the Sick Employee's identity to comply with HIPAA and other health privacy laws.
- Vacate the building areas that were accessed by the Sick Employee. Then:
    - If feasible, leave those building areas vacant and wait 24-hours before cleaning.
    - If waiting 24-hours is not feasible, then those building areas must be cleaned and disinfected before employees can return.
    - This cleaning requirement does not apply if the area(s) accessed by the Sick Employee have been unoccupied for 7 days or more.
    - Note: Except for common areas, the regulations do not specify whether the employer has a duty to clean and disinfect or if this duty falls on the commercial landlord. This may depend on the terms in your lease. We can help you with this question.
- If you're the "building/ facility owner" (either a landlord or a tenant that controls maintenance and record-keeping functions for the building in question), then you must:
    - Sanitize the building common areas
    - Notify all other employer-tenants in that building and include information about the floor or work area where the Sick Employee was located.

VIII. WHEN CAN A SICK EMPLOYEE OR A SUSPECTED SICK EMPLOYEE RETURN TO WORK?

You should adopt a written policy regarding the Suspected Sick Employee or Sick Employee's return to work. Rely on one of these three protocols to ensure compliance with the Emergency Standards:

- **Symptom-Based clearance** – The Sick or Suspected Sick Employee must have:
    - Three days (72 hours) without fever (and with no fever-reducing medications); AND
    - Three days of improvement in respiratory symptoms (e.g. cough and shortness of breath); AND
    - At least 10 days have passed since COVID-19 symptoms first appeared.
    - *Note*: If an employer consults with a health professional about whether a Sick or Suspected Sick Employee meets the symptom-based tests and is cleared to return, then the employer is deemed to have complied.
    - *Note*: You cannot use this test if the Sick or Suspected Sick Employee was asymptomatic.
- **Test-Based clearance** – The Sick or Suspected Sick Employee must have:
    - No fever (and no fever-reducing medications); AND
    - Improvement in respiratory symptoms; AND
    - At least two negative COVID-19 test results with the tests at least 24-hours apart
- If the Sick Employee is asymptomatic (*note:* this does not apply to Suspected Sick Employees), then use either the Test-Based clearance protocol or a **Time-Based clearance**:
    - At least 10 days have passed since the date of the Sick Employee's positive test results.
    - *Note*: If an employer consults with a health professional about whether a Sick Employee meets the Time-based test and is cleared to return, then the employer is deemed to have complied.

Employers MAY NOT rely on antibody testing to determine whether an employee may return to work.

IX. CAN AN EMPLOYER REQUIRE AN EMPLOYEE TO BE TESTED FOR COVID-19? MUST THE EMPLOYEE PAY FOR THE TEST? WHAT IF THE EMPLOYEE REFUSES THE TEST?

Yes, an employer can require an employee to be tested but, no, an employer cannot require the employee to pay the cost of the test.

If you require an employee to be tested and that employee refuses then you can use either the Symptom-Based or Time-Based clearance protocols, as appropriate.

X. WHAT ABOUT MASKS?

This rule will make you nostalgic for the day when masks were merely a political debate.

First, let's define what we mean. The ES uses the term **"face covering"** for what is commonly called a "mask". Either term means a cloth cover over the mouth and nose, held onto our faces by ties or elastic around our ears, and worn primarily to protect others from our own respiratory droplets. Masks/ face coverings are not tested or approved by any governmental agency. For simplicity, we will use the terms "mask" and "face covering" interchangeably.

The ES DO NOT define the term "respiratory protection" even though this term is used in the ES mandates. However, the term is defined elsewhere in both federal and VOSH regulations. It is too elaborate a definition to summarize here.

The ES include three other relevant definitions:

- "**surgical masks**" means masks approved by the FDA as a form of PPE. *NOTE: The ES DO NOT consider surgical masks a form of "respiratory protection equipment."* More info here.
- "**respirators**" cover the nose and mouth or the entire face or head to protect the person wearing it against hazards. Respirators are certified by the National Institute for Occupational Safety and Health. More info here. Under the ES, a respirator is the only equipment that qualifies as "respiratory protection equipment".
- A "**face shield**", is a form of PPE made of transparent, impermeable materials intended to protect the entire face or portions of it from droplets or splashes. The ES do not say whether a face shield qualifies as "respiratory protection equipment."

Second, here's (more) bad news…. The ES expressly state that masks DO NOT qualify as "respiratory protection equipment" or personal protective equipment ("PPE").

So, in the ES, **neither masks nor surgical masks qualify as "respiratory protection equipment"**; **only respirators qualify as "respiratory protection."**

Third, in workplaces where social distancing is not possible, the ES require "respiratory protection" and PPE in compliance with your industry standards.

BUT the ES do not tell us which "industry standards" employers should reference to know what kind of respiratory protection and PPE to use. Because VOSH's industry standards mirror the federal government's OSHA standards and include "general industry" standards and also standards for specialized industries (e.g. construction or tree trimming), we assume that "industry standards" refers to OSHA's general industry standards for respiratory protection and PPE.

Wait, there's more . . .

If an employee has a medical condition that contraindicates wearing masks, surgical masks, or respirators, then the regulations do not force the employee to do so BUT employers still must comply with the "respiratory protection" and PPE requirements applicable to its industry.

Yes, you read that right. Employers face a Hobson's choice if worksites do not permit social distancing and therefore "respiratory protection" is required but an employee has a medical condition that prevents wearing respiratory protection. This creates a nasty thicket of conflicting legal obligations.

For employees with religious objections to masks, DOLI may grant an exemption. The regulations do not specify whether the employer or the employee must apply for the exemption and, at this point, there is no public information on the exemption process.

We are providing additional guidance on these issues to our clients, based on our interpretation of these regulations. Please let us know if you need help.

XI. WHAT ABOUT SOCIAL DISTANCING AND COMMON AREAS?

Employers must ensure that employees are socially distant while on the job and during breaks on employer property. If the nature of the employee's work or the work area do not permit 6-foot social distancing, then the job tasks are classified as at least "Medium" exposure risk. See paragraphs XV and XVIII.

Common areas must be closed or access to them controlled.

You should decrease worksite density (e.g. limit non-employee access; restrict access to certain worksite areas) and use verbal announcements, signs, and visual cues to promote social distancing. If you are in compliance with the occupancy limits in an applicable executive order from Governor Northam, then your business is in compliance with this requirement.

If your worksite is not configured or does not allow employees to take their breaks or eat at their desk/ in their office/ in isolation, then you may permit employees to rest/ eat in common areas if you control the use by:

- Clearly posting policy signs at the room's entrance that
    - limit the number of occupants in the space
    - note the social distancing requirement
    - note that hand washing/ sanitizing is required
- Cleaning and disinfecting the shared surfaces or requiring employees to do so prior to leaving
- Limiting occupancy so that occupants can maintain at least 6 feet of distance from one another and ENFORCING the occupancy limit
- Providing hand washing facilities
    - Hand sanitizer may also be provided where feasible (e.g. not in a hot environment where it can be a hazard)

Provided all these requirements are met, then you may:

- Designate alternative spaces where employees may congregate; or
- Reconfigure common areas to allow for social distancing; or
- Alternate use of the common area (with cleaning in between "shifts" of employees using the space) so that the number of employees using it at any one time is at or below applicable capacity limits.

It is not enough to have a policy, signs, and training. Employers must make sure these cleaning protocols are followed. Be sure to **enforce all of these policies because employers are liable if the cleaning mandates are not met even if you provided the cleaning solutions, trained employees on their use, and adopted a policy requiring them to do it**.

XII. WHAT ABOUT SHARED VEHICLES?

If more than one employee is in a company vehicle for work purposes, then they all must wear masks and other personal protective equipment as applicable in your industry while in the vehicle.

One risk here is that employers will create a mandatory-mask policy for these circumstances and one or more employees will ignore the policy. If that happens, and the employer fails to enforce the policy, then the employer may be liable if an employee complains to DOLI.

XIII. WHAT ARE EMPLOYER RESPONSIBLITIES FOR CLEANING & DISINFECTION?

As a starting point, be sure you comply with the Virginia Occupational Safety and Health ("VOSH") standard for cleaning/ disinfecting and hazard communication applicable to your industry. Employees must have permission and easy, frequent access to hand washing facilities AND (where technically and economically feasible) to hand sanitizer.

> *Note: in high-heat environments, hand sanitizer is dangerous. That's why the regulations say "where feasible".*

Provide hand sanitizer to mobile crews unless it would be hazardous to do so, and ensure they have transportation to nearby handwashing facilities.

You must: (i) provide employees with "ready access" to cleaning supplies approved by the EPA for use against SARS-CoV-2 ("List N" is available here); (ii) ensure that manufacturer's instructions are followed (List N has details on this) and (iii) require the following disinfecting practices:

- Employees who interact with the general public, contractors, and other people must clean surfaces between interactions.
- Employees leaving any common areas at the end of a break must clean frequently touched surfaces and doors.
    - If you choose to have common areas professionally cleaned, then you must have the area cleaned at "regular intervals" throughout the workday and between "shifts" of employee use.
- Employees finished with a shared tool or equipment must clean it before returning it to storage or transferring it to another employee.

- Employees finished with a shared vehicle must clean the vehicle's frequently touched surfaces and doors before returning it to storage or transferring it to another employee.

Simply providing the cleaning supplies and training is not sufficient to comply with this regulation. Employers are liable if this cleaning mandate is not followed, regardless of the level of support provided to employees.

XIV. WHAT ELSE SHOULD I BE AWARE OF?

At the tail end of §16 VAC 25-220-50 is the following catchall regulation that is giving us nightmares:

> *"Unless otherwise provided in this standard, when engineering, work practice, and administrative controls are **not feasible** or do not provide **sufficient protection**, employers shall provide personal protective equipment to their employees and ensure its proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment." (emphasis added)*

DOLI defined **"feasible" as technically and economically feasible (or "capable of being done" according to Merriam-Webster) but what does "sufficient protection" mean?** We do not know – the ES does not define it or give us criteria to measure against. Employers and employees are left to define it for themselves. We will not be surprised if their definitions vary wildly. We note that the ES expressly state that facial coverings and surgical masks are not "respiratory protection equipment" or PPE. Only NIOSH-certified respirators qualify as respiratory protection. We note that Amazon restricts purchasing of NIOSH-certified respirators to only health care facilities and first responders.

XV. EMPLOYERS MUST PERFORM EXPOSURE RISK ASSESSMENTS FOR EVERY JOB TASK:

Employers must perform "exposure risk level" assessments ("Risk Assessments") to evaluate the possibility that an employee could be exposed to the hazards associated with the coronavirus and COVID-19 disease at work. This Risk Assessment should address all risks and all modes of transmission – including airborne transmission, and transmission by asymptomatic and pre-symptomatic individuals. The Risk Assessment should evaluate the risk level associated with every job task your employees perform.

The Risk Assessment also must include an evaluation of employee PPE needs (the "PPE Assessment") based on whether (i) coronavirus or COVID-19 hazards exist in the workplace, or (ii) are likely to exist, or (iii) job task hazards exist. Employers must determine if the degree of hazard presented by the virus or COVID-19 is high enough to warrant use of PPE by employees. **Employers must provide for "employee and employee representative" involvement** in its PPE Assessment. To determine the degree of hazard, consider:

- Where, how, and to what sources of coronavirus or COVID-19 employees might be exposed at work, including:
    - The general public, customers, other employees, patients, and other persons
    - Sick Employees, Suspected Sick Employees, or people at particularly high risk of infection (e.g. people who have traveled to locations with ongoing community transmission)
    - Situations with employees who work other jobs and may encounter hazards or perform job tasks that present "very high", "high" or "medium" exposure risks
- Employees' individual risk factors – to the extent permitted by law, including HIPAA. Consider employees with chronic diseases, immunocompromised states; obesity; serious heart conditions; asthma; cerebrovascular disease; cystic fibrosis; high blood pressure; neurologic conditions; liver disease; pregnancy; damaged or scarred lung tissue, smoking.

We note that this mandate places employers in a Catch-22, given other laws that prohibit discrimination based on medical conditions. More specifically, it directly conflicts with the Virginia Values Act that requires employers to treat pregnant women the same as employees who are not pregnant but are similar in abilities and disabilities. Further, as we explained in this blog, the Virginia Values Act (paragraph B6) prohibits employers from using an employee's pregnancy as a motivating factor for ANY EMPLOYEMENT PRACTICE, EVEN IF OTHER FACTORS ALSO MOTIVATE THE EMPLOYER'S DECISION. Employers who comply with the ES mandate to consider employee pregnancies in the PPE Assessments may be liable under the Virginia Values Act.

- Necessary controls to address the risks: engineering, administrative, work practice, and PPE.

Note: You will need the PPE Assessment analysis for the Infectious Disease Preparedness and Response Plan (see paragraph XIX).

There are four identified risk categories: "very high", "high", "medium", and "lower" exposure risk. It is possible that workers in the same workplace might perform job tasks across the entire risk exposure hierarchy or that one employee might perform tasks ranging from "very

high" to "lower". Tasks that are similar can be grouped, then you can assign a risk level to that particular group of job tasks.

Following completion of the Risk Assessment, employers must certify in writing that the Risk Assessment was completed. In your certification:

- Identify the document as a certification of hazard assessment
- Identify the workplace evaluated
- Name the person certifying that the evaluation was performed
- Provide the date of the assessment

DOLI provided a list of factors that employers should consider in grading the risk category for each job task. The list is not definitive – if a particular workplace has a unique factor materially related to COVID-19 risk, then the employer should also consider that factor.

The factors include:

1. The job tasks undertaken;
2. The work environment (e.g. indoors or outdoors);
3. The known or suspected presence of coronavirus;
4. The number of employees and/ or other persons in relation to the size of the work area;
5. The working distance between an employee and other employees or persons;
6. The length of time an employee is closer than six feet to another employee or person;
7. The frequency with which an employee is closer than six feet to another employee or person;
8. The type of hazards encountered, including potential airborne exposure to coronavirus;
9. Contact with contaminated surfaces or objects and shared spaces (e.g. tools, workstations, break rooms and break room tables, entrances/ exits, shared work vehicles). If you're an employer who sponsors shared employee transportation such as ride-share vans, or employer-sponsored public transit then you should also consider risks related to these programs.

"Very high" exposure risk job tasks are those in workplaces with (i) high potential for employee exposure to coronavirus from (ii) sources or people known or suspected to be carrying coronavirus. This includes (but isn't limited to) specific medical, postmortem, or laboratory procedures. Examples of very high-risk job tasks include:

- Aerosol-generating procedures such as intubation, procedures that induce coughing, bronchoscopies, some dental procedures and exams, or invasive specimen collections on . . .
- Collecting or handling specimens from . . .
- Performing an autopsy on . . .

someone who is known or suspected to be infected with coronavirus.

"High" exposure risk job tasks are in workplaces with (i) high potential for employee exposure inside six feet of space with (ii) sources or people known or suspected to be carrying coronavirus but that are not classified as "very high" exposure risk. This includes (but isn't limited to):

- Healthcare and home health care settings with a person known or suspected to carry coronavirus. Examples:
  - providing care in field hospitals
  - delivery of mental, dental, physical, or chiropractic healthcare in an institutional or home setting
  - providing medical support services such as hospice, physical assistance, rehabilitation, or memory care
  - providing skilled nursing services, outpatient medical services, or clinical services (COVID-19 testing)
  - blood donation or contact tracing services.
- First responder and/ or medical transport services provided to a person known or suspected to be infected with coronavirus.
- Mortuary services for preparing the body of a person known or suspected to be infected with coronavirus for burial or cremation.

"Medium" risk job tasks do not meet the criteria for "very high" or "high" exposure risk but are in workplaces that require (i) more than minimal contact (ii) inside of six feet (iii) with other people who may be infected with coronavirus but ARE NOT known or suspected to be infected. Medium risk job tasks include or are found at:

- Healthcare services in home, medical office, or institutional settings and first responder / contact tracing services where the services or associated support services are provided to people who are not known or suspected to be infected.
- Poultry, meat, and seafood processing

- Agricultural and hand labor
- Commercial transportation (e.g. bus driver, flight attendant)
- On campus educational settings
- Daycare and after-school care settings
- Restaurants and bars
- Retail stores, grocery stores, convenience stores, food banks, drug stores and pharmacies
- Manufacturing settings
- Indoor and outdoor construction settings
- Correctional facilities, jails, detention centers
- Work performed in customers' homes or businesses
- Call centers
- Package processing settings
- Veterinary offices
- Personal care businesses (hair or nail salons, spas)
- Mass gathering locations (sports venues, movie theaters, concert halls, churches)
- Homeless shelters
- Gyms
- Airports, train and bus stations

"Lower" exposure risk job tasks do not meet any of the criteria above and (i) do not require contact inside six feet (ii) with other people. These employees have minimal contact with other employees, other people, and the general public or may be able to eliminate or limit contact with others through engineering controls (such as physical barriers, e.g. a clear plastic wall protecting one cashier in a convenience store from contact with others), or administrative/ workplace controls (remote working, staggered shifts; note - facial coverings do NOT qualify). If contact with others inside of 6 feet is brief, then a face covering is required.

We note that if your workplace is configured so that social distancing is impossible, then the job tasks performed in that portion of your workplace cannot be classified as "lower" exposure risk even if employees working in that portion of your workplace wear masks. Facial coverings are not administrative or work practice controls and therefore do not allow employers to reduce the risk exposure rating from "medium" to "lower" in settings where social distancing is not possible.

XVI. WHAT DO EMPLOYERS HAVE TO COMMUNICATE TO EMPLOYEES?

Employers must inform employees about the following:

- Methods of detecting COVID-19 and its symptoms.

- Encourage your employees to self-monitor for signs and symptoms if they suspect possible exposure or start to feel sick.

- Be sure that your sick leave policies are flexible and consistent with public health guidance and laws (including the FFCRA – see our guide to that, here). Educate employees on your sick leave policies and their rights under the FFCRA.
- Within 24-hours of discovering that one of your employees was at work within 14 days of having a positive COVID-19 test, you must inform all employees who may have been exposed BUT keep the COVID-19-positive employee's identity confidential.
- Policies regarding social distancing, common areas, masks, cleaning, and other PPE requirements.
- See paragraphs XIX and XX.

XVII. REQUIREMENTS FOR "VERY HIGH" AND "HIGH" JOB TASKS:

The ES includes extensive requirements to protect employees engaged in "Very high" or "High" exposure risk job tasks. They are too elaborate to summarize here. Please see pages 22 – 26 of the Emergency Standards available at https://www.doli.virginia.gov/wp-content/uploads/2020/07/COVID-19-Emergency-Temporary-Standard-FOR-PUBLIC-DISTRIBUTION-FINAL-7.17.2020.pdf

XVIII. REQUIREMENTS FOR EMPLOYERS WITH "MEDIUM" EXPOSURE RISK JOB TASKS:

The ES includes extensive requirements to protect employees engaged in "Medium" exposure risk job tasks. They are summarized below and can be found on pages 26 – 29. The ES reference the U.S. Occupational Safety and Health Administration's ("OSHA") worker safety standards found in the Code of Federal Regulations. For most businesses, OSHA's general industry standards and respiratory protection standards control. For businesses in the following industries, OSHA's industry-specific regulations control: construction, agriculture, shipyards, marine terminals, and longshoring.

You must implement the following:

Engineering Controls:

Ensure that HVAC systems are appropriate to address coronavirus/ COVID-19 hazards, including ensuring that:

- HVAC systems are maintained in accordance with the manufacturer's instructions

- HVAC systems meet minimum ANSI/ ASHRAE standards 62.1 and 62.2 (or 2019a and 2019b). For healthcare facilities, standard 170 or 2017a, apply.

Administrative/ Work Practice Controls. To the extent feasible, implement the following:

- Before each shift, screen employees for COVID-19 signs and symptoms
- If, during a work shift, an employee becomes a Suspected Sick Employee or a Sick Employee, then provide a mask until the employee is able to leave
- Flexible worksites / remote work / virtual meetings
- Flexible work hours / staggered shifts
- Increase physical distance between employees and between employees and customers to at least six feet
    - If this is not physically possible, but your Risk Assessment determined that PPE and respiratory protection is not required for the job task, then require employees to wear masks; or
    - If this is not physically possible, and your hazard assessment determined that PPE/ respiratory protection equipment are required, then you must provide PPE and a respirator, fit them to your employee, and train your employee on their use.
- Install physical barriers such as Plexiglas panels between employees and between employees and customers
- Deliver services to customers remotely
- Deliver products through curbside pick-up or delivery

PPE Requirements. If your Risk Assessment led you to conclude that coronavirus or COVID-19 hazards are high enough to merit use of PPE, then you should also do the following:

- Select the types of PPE that will protect the affected employee from the coronavirus or COVID-19
- Communicate your selection decisions to your employees
- Ensure the PPE properly fits each employee
- Have each affected employee use the PPE

XIX. INFECTIONS DISEASE PREPAREDNESS AND RESPONSE PLAN:

This mandate is effective 60 days after the ES go into effect – so approximately September 27th. Any employer with "very high" or "high" job tasks must prepare this plan. Employers with "medium" job tasks and 11 or more employees must also prepare this plan.

You have to designate someone to be responsible for implementing the Plan.

The Plan must:

- Identify the name(s) of the person(s) responsible for administering the Plan. This person must be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.
- Provide for employee involvement in development and implementation of the Plan.
- Include the PPE Assessment analysis that we explained in paragraph XV.
- Consider contingency plans that may result from outbreaks, such as:
    - Increased employee absenteeism
    - The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures (elimination/ substitution, engineering controls, administrative and work practice controls, and PPE – respirators, surgical masks, etc.)
    - Options for conducting essential operations with a reduced workforce (e.g. cross-training employees)
    - Interrupted supply chains or delayed deliveries
- Identify basic infection prevention measures to be implemented:
    - Provide hand washing facilities to employees, customers, the general public. If hand washing isn't feasible, provide hand sanitizers
    - Clean and disinfect on a regular schedule
    - Create policies and procedures for managing and educating visitors
- Provide for prompt identification and isolation of Sick Employees, and Suspected Sick Employees; also, provide an employee reporting system
- Document how you address all of these issues with outside businesses that deploy their employees to your worksite – contractors, temporary staffing agencies, etc.
- If you are complying with any CDC or other Virginia guidelines or regulations instead of complying with the ES, note them and identify which ES standard is being replaced.

- Ensure compliance with any mandatory requirements of any applicable Virginia executive order or public health emergency order

XX. TRAINING REQUIREMENTS:

Every employer with any job task meeting the "very high", "high", or "medium" exposure risk levels must train ALL employees, even if some employees perform "lower" risk job tasks. If all of an employee's job tasks are "lower" risk, then their training is streamlined – see below.

Training must occur no later than 30 days after the ES effective date – so, **no later than approximately August 27th**. Training must teach employees (i) how to recognize coronavirus hazards, (ii) the signs and symptoms of COVID-19, and (iii) procedures to follow to minimize these hazards. Training must include:

- The requirements in the ES
- If you are complying with any CDC or other Virginia guidelines or regulations instead of complying with the ES, note them and identify which ES standard is being replaced.
- Coronavirus characteristics and how it is transmitted
- Signs and symptoms of COVID-19
- Risk factors of COVID-19 with underlying health conditions
- The ability of people sick with COVID-19 but who pre-symptomatic and asymptomatic to transmit the disease
- Safe and healthy work practices (social distancing, disinfection procedures, disinfecting frequency, ventilation, noncontact greetings, etc.)
- PPE
    - When it is required
    - What PPE is required
    - How to properly put it on, adjust it, wear it, and take it off
    - PPE limitations
    - Proper care, maintenance, useful life, and disposal of PPE
    - Heat-related illness prevention (including signs and symptoms of heat-related illness)

- We note that the mandate to train on PPE does not vary even if your PPE Assessment concluded that PPE is unnecessary – you still have to train employees on PPE.

- The anti-discrimination provisions in the ES
- The Infectious Disease Preparedness and Response Plan (note: you have 60 days from the ES effective date to train on the Plan)

Employers must verify compliance by preparing a written certification record and must maintain the record. All employees with job tasks classified "very high", "high", or "medium" must sign (e-signature is acceptable) to verify they completed the training. The certification must include:

- Employee name
- Employee signature
- Training date(s)
- Trainer's name or, if computer-based, the name or the person or entity that prepared the training materials.
- If Employer A relied on Employer B to train Employer A's workforce, then Employer A shall certify the date when it determined that the training by Employer B was adequate.

Retraining is required if an employer "has reason to believe" that an employee did not master the knowledge and skills the training is intended to impart (for example, if an employee fails to clean the common area at the end of his lunch break). Retraining may be required if the previous training is inadequate because of:

- Changes in the workplace
- Changes in the hazards from coronavirus or COVID-19 faced by employees in the workplace
- Changes in an employee's job tasks that alter the exposure risk assessment for that employee
- Changes to your Plan
- Employee inadequacy; the employee's failure to act in accordance with training indicates that the employee did not retain the information or master the skills.

Employees whose job tasks are all "lower" exposure risk may receive written or oral information on:

- The hazards, characteristics, and transmission of coronavirus

- Measures to minimize exposure
- The requirements in the ES
- Signs and symptoms of COVID-19
- The ability of people sick with COVID-19 but who pre-symptomatic and asymptomatic to transmit the disease
- Safe and healthy work practices (social distancing, disinfection procedures, disinfecting frequency, ventilation, noncontact greetings, etc.)
- The anti-discrimination provisions in the ES

XXI. APPENDIX A – OSHA'S GENERAL WORKPLACE SAFETY REQUIREMENTS

For your convenience, we have reproduced OSHA's general requirements for workplace PPE, applicable to most industries, below which VOSH cites as the controlling regulations for jobs tasks rated at "Medium" exposure risk. We are not providing OSHA's regulations on respiratory protection because they are approximately 50 pages long. They can be found in 29 CFR Part 1910 §1910.134 available here.

§1910.132 General requirements.

(a) *Application.* Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(b) *Employee-owned equipment.* Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(c) *Design.* All personal protective equipment shall be of safe design and construction for the work to be performed.

(d) *Hazard assessment and equipment selection.* (1) The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

(i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(ii) Communicate selection decisions to each affected employee; and,

(iii) Select PPE that properly fits each affected employee.

NOTE: Non-mandatory appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

(2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

(e) *Defective and damaged equipment.* Defective or damaged personal protective equipment shall not be used.

(f) *Training.* (1) The employer shall provide training to each employee who is required by this section to use PPE. Each such employee shall be trained to know at least the following:

(i) When PPE is necessary;

(ii) What PPE is necessary;

(iii) How to properly don, doff, adjust, and wear PPE;

(iv) The limitations of the PPE; and,

(v) The proper care, maintenance, useful life and disposal of the PPE.

(2) Each affected employee shall demonstrate an understanding of the training specified in paragraph (f)(1) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

(3) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (f)(2) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

(i) Changes in the workplace render previous training obsolete; or

(ii) Changes in the types of PPE to be used render previous training obsolete; or

(iii) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

(g) Paragraphs (d) and (f) of this section apply only to §§1910.133, 1910.135, 1910.136, 1910.138, and 1910.140. Paragraphs (d) and (f) of this section do not apply to §§1910.134 and 1910.137.

(h) *Payment for protective equipment.* (1) Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) The logging boots required by 29 CFR 1910.266(d)(1)(v);

(ii) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(iii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(6) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (h)(2) through (h)(5) of this section.

(7) This paragraph (h) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

NOTE TO §1910.132(h): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

XXII. APPENDIX B – OSHA'S GUIDANCE ON HOW TO PERFORM A WORKPLACE HAZARD ASSESSMENT

For your convenience, we have reproduced OSHA's "Appendix B to Subpart I of Part 1910 -- Nonmandatory Compliance Guidelines For Hazard Assessment And Personal Protective Equipment Selection."

This appendix is intended to provide compliance assistance for employers and employees in implementing requirements for a hazard assessment and the selection of personal protective equipment.

1. *Controlling hazards.* PPE devices alone should not be relied on to provide protection against hazards, but should be used in conjunction with guards, engineering controls, and sound manufacturing practices.

2. *Assessment and selection.* It is necessary to consider certain general guidelines for assessing the foot, head, eye and face, and hand hazard situations that exist in an occupational or educational operation or process, and to match the protective devices to the particular hazard. It should be the responsibility of the safety officer to exercise common sense and appropriate expertise to accomplish these tasks.

3. *Assessment guidelines.* In order to assess the need for PPE the following steps should be taken:

a. *Survey.* Conduct a walk-through survey of the areas in question. The purpose of the survey is to identify sources of hazards to workers and co-workers. Consideration should be given to the basic hazard categories:

(a) Impact

(b) Penetration

(c) Compression (roll-over)

(d) Chemical

(e) Heat

(f) Harmful dust

(g) Light (optical) radiation

b. *Sources.* During the walk-through survey the safety officer should observe: (a) sources of motion; i.e., machinery or processes where any movement of tools, machine elements or particles could exist, or movement of personnel that could result in collision with stationary objects; (b) sources of high temperatures that could result in burns, eye injury or ignition of protective equipment, etc.; (c) types of chemical exposures; (d) sources of harmful dust; (e) sources of light radiation, i.e., welding, brazing, cutting, furnaces, heat treating, high intensity lights, etc.; (f) sources of falling objects or potential for dropping objects; (g) sources of sharp objects which might pierce the feet or cut the hands; (h) sources of rolling or pinching objects which could crush the feet; (i) layout of workplace and location of co-workers; and (j) any electrical hazards. In addition, injury/accident data should be reviewed to help identify problem areas.

c. *Organize data.* Following the walk-through survey, it is necessary to organize the data and information for use in the assessment of hazards. The objective is to prepare for an analysis of the hazards in the environment to enable proper selection of protective equipment.

d. *Analyze data.* Having gathered and organized data on a workplace, an estimate of the potential for injuries should be made. Each of the basic hazards (paragraph 3.a.) should be reviewed and a determination made as to the type, level of risk, and seriousness of potential injury from each of the hazards found in the area. The possibility of exposure to several hazards simultaneously should be considered.

4. *Selection guidelines.* After completion of the procedures in paragraph 3, the general procedure for selection of protective equipment is to: a) Become familiar with the potential hazards and the type of protective equipment that is available, and what it can do; i.e., splash protection, impact protection, etc.; b) compare the hazards associated with the environment; i.e., impact velocities, masses, projectile shape, radiation intensities, with the capabilities of the available protective equipment; c) select the protective equipment which ensures a level of protection greater than the minimum required to protect employees from the hazards; and d) fit the user with the protective device and give instructions on care and use of the PPE. It is very important that end users be made aware of all warning labels for and limitations of their PPE.

5. *Fitting the device.* Careful consideration must be given to comfort and fit. PPE that fits poorly will not afford the necessary protection. Continued wearing of the device is more likely if it fits the wearer comfortably. Protective devices are generally available in a variety of sizes. Care should be taken to ensure that the right size is selected.

6. *Devices with adjustable features.* Adjustments should be made on an individual basis for a comfortable fit that will maintain the protective device in the proper position. Particular care should be taken in fitting devices for eye protection against dust and chemical splash to ensure that the devices are sealed to the face. In addition, proper fitting of helmets is important to ensure that it will not fall off during work operations. In some cases a chin strap may be necessary to keep the helmet on an employee's head. (Chin

straps should break at a reasonably low force, however, so as to prevent a strangulation hazard). Where manufacturer's instructions are available, they should be followed carefully.

7. *Reassessment of hazards.* It is the responsibility of the safety officer to reassess the workplace hazard situation as necessary, by identifying and evaluating new equipment and processes, reviewing accident records, and reevaluating the suitability of previously selected PPE.

8. *Selection chart guidelines for eye and face protection.* Some occupations (not a complete list) for which eye protection should be routinely considered are: carpenters, electricians, machinists, mechanics and repairers, millwrights, plumbers and pipe fitters, sheet metal workers and tinsmiths, assemblers, sanders, grinding machine operators, lathe and milling machine operators, sawyers, welders, laborers, chemical process operators and handlers, and timber cutting and logging workers. The following chart provides general guidance for the proper selection of eye and face protection to protect against hazards associated with the listed hazard "source" operations.

Eye and Face Protection Selection Chart

Source	Assessment of Hazard	Protection
IMPACT—Chipping, grinding machining, masonry work, woodworking, sawing, drilling, chiseling, powered fastening, riveting, and sanding	Flying fragments, objects, large chips, particles sand, dirt, etc	Spectacles with side protection, goggles, face shields. See notes (1), (3), (5), (6), (10). For severe exposure, use faceshield.
HEAT—Furnace operations, pouring, casting, hot dipping, and welding	Hot sparks	Faceshields, goggles, spectacles with side protection. For severe exposure use faceshield. See notes (1), (2), (3).
	Splash from molten metals	Faceshields worn over goggles. See notes (1), (2), (3).
	High temperature exposure	Screen face shields, reflective face shields. See notes (1), (2), (3).
CHEMICALS—Acid and chemicals handling, degreasing plating	Splash	Goggles, eyecup and cover types. For severe exposure, use face shield. See notes (3), (11).
	Irritating mists	Special-purpose goggles.
DUST—Woodworking, buffing, general dusty conditions	Nuisance dust	Goggles, eyecup and cover types. See note (8).
LIGHT and/or RADIATION—		
Welding: Electric arc	Optical radiation	Welding helmets or welding shields. Typical shades: 10-14. See notes (9), (12)
Welding: Gas	Optical radiation	Welding goggles or welding face shield. Typical shades: gas welding 4-8, cutting 3-6, brazing 3-4. See note (9)

Cutting, Torch brazing, Torch soldering	Optical radiation	Spectacles or welding face-shield. Typical shades, 1.5-3. See notes (3), (9)
Glare	Poor vision	Spectacles with shaded or special-purpose lenses, as suitable. See notes (9), (10).

Notes to Eye and Face Protection Selection Chart:

(1) Care should be taken to recognize the possibility of multiple and simultaneous exposure to a variety of hazards. Adequate protection against the highest level of each of the hazards should be provided. Protective devices do not provide unlimited protection.

(2) Operations involving heat may also involve light radiation. As required by the standard, protection from both hazards must be provided.

(3) Faceshields should only be worn over primary eye protection (spectacles or goggles).

(4) As required by the standard, filter lenses must meet the requirements for shade designations in §1910.133(a)(5). Tinted and shaded lenses are *not* filter lenses unless they are marked or identified as such.

(5) As required by the standard, persons whose vision requires the use of prescription (Rx) lenses must wear either protective devices fitted with prescription (Rx) lenses or protective devices designed to be worn over regular prescription (Rx) eyewear.

(6) Wearers of contact lenses must also wear appropriate eye and face protection devices in a hazardous environment. It should be recognized that dusty and/or chemical environments may represent an additional hazard to contact lens wearers.

(7) Caution should be exercised in the use of metal frame protective devices in electrical hazard areas.

(8) Atmospheric conditions and the restricted ventilation of the protector can cause lenses to fog. Frequent cleansing may be necessary.

(9) Welding helmets or faceshields should be used only over primary eye protection (spectacles or goggles).

(10) Non-sideshield spectacles are available for frontal protection only, but are not acceptable eye protection for the sources and operations listed for “impact.”

(11) Ventilation should be adequate, but well protected from splash entry. Eye and face protection should be designed and used so that it provides both adequate ventilation and protects the wearer from splash entry.

(12) Protection from light radiation is directly related to filter lens density. See note (4) . Select the darkest shade that allows task performance.

9. *Selection guidelines for head protection.* All head protection (helmets) is designed to provide protection from impact and penetration hazards caused by falling objects. Head protection is also available which provides protection from electric shock and burn. When selecting head protection, knowledge of potential electrical hazards is important. Class A helmets, in addition to impact and penetration resistance, provide electrical protection from low-voltage conductors (they are proof tested to 2,200 volts). Class B helmets, in addition to impact and penetration resistance, provide electrical protection from high-voltage conductors (they are proof tested to 20,000 volts). Class C helmets provide impact and penetration resistance (they are usually made of aluminum which conducts electricity), and should not be used around electrical hazards.

Where falling object hazards are present, helmets must be worn. Some examples include: working below other workers who are using tools and materials which could fall; working around or under conveyor belts which are carrying parts or materials; working below machinery or processes which might cause material or objects to fall; and working on exposed energized conductors.

Some examples of occupations for which head protection should be routinely considered are: carpenters, electricians, linemen, mechanics and repairers, plumbers and pipe fitters, assemblers, packers, wrappers, sawyers, welders, laborers, freight handlers, timber cutting and logging, stock handlers, and warehouse laborers.

Beginning with the ANSI Z89.1-1997 standard, ANSI updated the classification system for protective helmets. Prior revisions used type classifications to distinguish between caps and full brimmed hats. Beginning in 1997, Type I designated helmets designed to reduce the force of impact resulting from a blow only to the top of the head, while Type II designated helmets designed to reduce the force of impact resulting from a blow to the top or sides of the head. Accordingly, if a hazard assessment indicates that lateral impact to the head is foreseeable, employers must select Type II helmets for their employees. To improve comprehension and usefulness, the 1997 revision also redesignated the electrical-protective classifications for helmets as follows: “Class G—General”; helmets designed to reduce the danger of contact with low-voltage conductors; “Class E—Electrical”; helmets designed to reduce the danger of contact with conductors at higher voltage levels; and “Class C—Conductive”; helmets that provide no protection against contact with electrical hazards.

10. *Selection guidelines for foot protection.* Safety shoes and boots which meet the ANSI Z41-1991 Standard provide both impact and compression protection. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal protection should be provided, and in other special situations electrical conductive or insulating safety shoes would be appropriate.

Safety shoes or boots with impact protection would be required for carrying or handling materials such as packages, objects, parts or heavy tools, which could be dropped; and, for other activities where objects might fall onto the feet. Safety shoes or boots with compression protection would be required for work activities involving skid trucks (manual material handling carts) around bulk rolls (such as paper rolls) and around heavy pipes, all of which could potentially roll over an employee's feet. Safety shoes or boots with puncture protection would be required where sharp objects such as nails, wire, tacks, screws, large staples, scrap metal etc., could be stepped on by employees causing a foot injury. Electrically conductive shoes would be required as a supplementary form of protection for work activities in which there is a danger of fire or explosion from the discharge of static electricity. Electrical-hazard or dielectric footwear would be required as a supplementary form of protection when an employee standing on the ground is exposed to hazardous step or touch potential (the difference in electrical potential between the feet or between the hands and feet) or when primary forms of electrical protective equipment, such as rubber

insulating gloves and blankets, do not provide complete protection for an employee standing on the ground.

Some occupations (not a complete list) for which foot protection should be routinely considered are: Shipping and receiving clerks, stock clerks, carpenters, electricians, machinists, mechanics and repairers, plumbers and pipe fitters, structural metal workers, assemblers, drywall installers and lathers, packers, wrappers, craters, punch and stamping press operators, sawyers, welders, laborers, freight handlers, gardeners and grounds-keepers, timber cutting and logging workers, stock handlers and warehouse laborers.

11. *Selection guidelines for hand protection.* Gloves are often relied upon to prevent cuts, abrasions, burns, and skin contact with chemicals that are capable of causing local or systemic effects following dermal exposure. OSHA is unaware of any gloves that provide protection against *all* potential hand hazards, and commonly available glove materials provide only limited protection against many chemicals. Therefore, it is important to select the most appropriate glove for a particular application and to determine how long it can be worn, and whether it can be reused.

It is also important to know the performance characteristics of gloves relative to the specific hazard anticipated; e.g., chemical hazards, cut hazards, flame hazards, etc. These performance characteristics should be assessed by using standard test procedures. Before purchasing gloves, the employer should request documentation from the manufacturer that the gloves meet the appropriate test standard(s) for the hazard(s) anticipated.

Other factors to be considered for glove selection in general include:

(A) As long as the performance characteristics are acceptable, in certain circumstances, it may be more cost effective to regularly change cheaper gloves than to reuse more expensive types; and,

(B) The work activities of the employee should be studied to determine the degree of dexterity required, the duration, frequency, and degree of exposure of the hazard, and the physical stresses that will be applied.

With respect to selection of gloves for protection against chemical hazards:

(A) The toxic properties of the chemical(s) must be determined; in particular, the ability of the chemical to cause local effects on the skin and /or to pass through the skin and cause systemic effects;

(B) Generally, any “chemical resistant” glove can be used for dry powders;

(C) For mixtures and formulated products (unless specific test data are available), a glove should be selected on the basis of the chemical component with the shortest breakthrough time, since it is possible for solvents to carry active ingredients through polymeric materials; and,

(D) Employees must be able to remove the gloves in such a manner as to prevent skin contamination.

12. *Cleaning and maintenance.* It is important that all PPE be kept clean and properly maintained. Cleaning is particularly important for eye and face protection where dirty or fogged lenses could impair vision.

For the purposes of compliance with §1910.132 (a) and (b), PPE should be inspected, cleaned, and maintained at regular intervals so that the PPE provides the requisite protection.

It is also important to ensure that contaminated PPE which cannot be decontaminated is disposed of in a manner that protects employees from exposure to hazards.