

The Honorable Ralph S. Northam
Office of the Governor
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

Dear Governor Northam:

On behalf of the Business Coalition (“Coalition”) which is comprised of 35 business organizations and associations listed as signatories on this letter, we are seeking additional clarification regarding the conflicts between your recent Executive Order 79 lifting the mask mandate in accordance with the latest CDC guidance and lifting the 7th Amended Version of Executive Order 72 restrictions on May 28th with the Permanent Standard for COVID-19 Workplace Safety Regulations.

First, on behalf of thousands of Virginia employers our Coalition represents, we want to thank you for fully reopening Virginia two weeks earlier than expected and by the June 1st deadline our Coalition suggested a couple months ago.

For the last year and half, Virginia employers have committed themselves to protecting their employees, contractors, suppliers, customers, and communities from COVID-19 infection. They have done this by continually updating their COVID-19 protocols to ensure they are complying with the latest regulations and guidance imposed by federal, state, and local regulators. Despite the additional stress, costs and time related to compliance, business leaders and owners understood how critically important it was to do their part to reduce the risk of exposure and spread of the virus.

Now that Virginia is getting closer to fully re-opening the economy, business owners are faced with a legal predicament on whether to follow the science (CDC guidance and recent EOs) or the permanent regulations (16 VAC25-220). There are several unanswered questions about how business owners should still operate since the COVID-19 regulations passed by the Safety and Health Codes Board are permanent. Will all of 16VAC25-220 be in place after the May 28th? Will they be in effect on or after the end of the State of Emergency on June 30, 2021?

Below we have listed additional questions the Coalition has received from our business members:

- 1) If Executive Order (EO) 72 is superior to the DOLI Permanent Standard regulations, does this mean you or your Administration has directed the Department of Labor and Industry NOT to enforce the Permanent Standard?

- 2) Are all the remaining restrictions in EO 72 being rescinded with EO 79 on May 28th? If so, how does that interact with the Permanent Standard since EO 79 does not include a clause indicating the order is superior to anything in conflict with the Permanent Standard? In other words, will there be clarification or amendments to EO 79 stating it is superior to any conflicts with the Permanent Standard when the May 28th restrictions are lifted?
- 3) Does the administration consider the CDC Guidance referenced in EO 72 and the FAQs DOLI released to be “equivalent or greater protection” so as to satisfy compliance in accordance with Section 10.E of the Permanent Standard?
- 4) Regarding the FAQs DOLI posted last week incorporating the most recent CDC mask guidance, what legal opinions support compliance with updated FAQs on a website provide sufficient legal protection for businesses who may be found in violation of the Permanent Standard?
- 5) Also, related to FAQ #54, can employees who are fully vaccinated go without a face mask?

Specifically, DOLI’s answer ends with a note stating that should VOSH conduct an inspection of an employer where there are allegations of violating the Permanent Standard because one or more exposed employees were not fully vaccinated, no citation shall be issued with regard to an exposed employee **where the employer can demonstrate that the employee was fully vaccinated** at the time of exposure.

Our members would appreciate clarification regarding what qualifies to fulfill the “an employer can demonstrate” standard? Does an employer need to require a copy of an employee’s vaccination card? Is a written record of an employee’s status needed? Would requiring and maintaining this information place employers in violation of HIPPA rules, require small employers to institute specific security measures to protect an employee’s privacy and ensure other employees do not have access to a fellow employee’s medical history?

Therefore, will DOLI require employers to prove vaccination status of their employees?

Finally, it is our Coalition’s recommendation that you direct the Virginia Safety and Health Codes Board to convene a meeting before June 30, 2021 to repeal the entire Permanent Standard (16VAC25-220).

As the three critical pieces of the Permanent Standard – 1) social distancing, 2) wearing face protection and 3) increasing sanitation measures are expected to be removed on May 28th, there will no longer be a need for the Permanent Standard. The numerous conflicts between the changing CDC guidance, Executive Orders, and Permanent Standard are causing confusion and stress on Virginia’s employers and employees as they rebuild their businesses, as well as causing time allocation and costs on the agencies that are responsible for enforcement of the regulations.

Our Coalition would request a meeting with the relevant secretariat and agency officials to discuss these questions as to what businesses should expect on May 28th and what additional guidance employers need as well as next steps for the Safety and Health Codes Board. Part of our discussions could also determine if ongoing guidance is needed to replace the Permanent Standard if it is repealed.

Sincerely,

VIRGINIA BUSINESS COALITION

Associated Builders and Contractors -Virginia Associated General Contractors of Virginia Delmarva Chicken Association Hampton Roads Chamber of Commerce Harrisonburg – Rockingham Chamber of Commerce Heavy Construction Contractors Association National Federation of Independent Business Northern Virginia Chamber of Commerce Northern Virginia Transportation Alliance Precast Concrete Association of Virginia Richmond Area Municipal Contractors Association Shellfish Growers of Virginia Thomas Jefferson Institute for Public Policy Virginia Agribusiness Council Virginia Assisted Living Association Virginia Association of Roofing Professionals Virginia Association of Surveyors Virginia Association for Home Care & Hospice Virginia Automatic Merchandising Association	Virginia Contractor Procurement Alliance Virginia Food Industry Association Virginia Forestry Association Virginia Forest Products Association Virginia Loggers Association Virginia Manufactured & Modular Housing Association Virginia Manufacturers Association Virginia Peninsula Chamber of Commerce Virginia Poultry Federation Virginia Retail Federation Virginia Seafood Council Virginia Society of Certified Public Accountants Virginia Trucking Association Virginia Veterinary Medical Association Virginia Wholesalers & Distributors Association Virginia Wineries Association <i>Coalition Contacts: Nicole Riley, NFIB; Brett Vassey, VMA; and Jodi Roth, VRF.</i>
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cc: Virginia General Assembly; Secretary of Commerce and Trade Brian Ball; Chief Workforce Advisor to the Governor Megan Healey; Chief of Staff Clark Mercer; Chief Counsel Rita Davis; Deputy Secretary of Commerce and Trade Cass Rasnick; and Commissioner of the Department of Labor and Industry Ray Davenport