

THE VIRGINIA STANDARD FOR COVID-19 16VAC25-220 COMPLIANCE



Jennifer Rose, CSP

VOSH Cooperative Programs Director

VIRGINIA COVID-19 STANDARD- HISTORY

- Emergency Temporary Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 (ETS), 16VAC25-220, effective July 27, 2020.
- The ETS expired on January 26, 2021 and was replaced with a permanent standard on January 27, 2021.
- VOSH/OSHA ETS addressing healthcare services and healthcare support services for Virginia and suspended application of 16VAC25-220, effective August 2, 2021.

VIRGINIA COVID-19 STANDARD-HISTORY

- CDC's updated guidance for fully vaccinated people issued on July 27, 2021
 - requirement in certain situations for fully vaccinated employees to wear face coverings in areas of substantial or high transmission
- Seven day comment period prior to the scheduled Board meeting of August 26, 2021
- On August 26, 2021, final the amendments to the standard
- Standard was published on September 8, 2021
- Revisions to Employer Infectious Disease Preparedness and Response Plans must be completed by October 8, 2021, and Employee Training by November 7, 2021.
- Focus change from the risk exposure level approach to mitigation strategies



MAJOR CHANGES

Risk exposure level approach changed to focus on protecting employees who are unvaccinated or not fully vaccinated

Allows compliance with a recommendation contained in current CDC guidelines

If the CDC guidelines do not address requirements in the Virginia Standard, then employers must comply with the Virginia Standard

When two or more employees test positive within a 14-day period, this must be reported to VDH and DOLI within 24 hours

ENFORCEMENT

- Informal investigations
 - employee complaints,
 - reports of potential COVID-19 related employee hospitalizations,
 - reports of potential COVID-19 related workplace outbreaks, etc.
 - The VOSH program's complaint investigation process involves contacting the employer by phone, fax, email, or letter and providing a summary of the complaint allegation.
- Onsite Inspections
 - potential COVID-19 related employee deaths
 - potential COVID-19 related hospitalizations
 - COVID-19 related workplace outbreaks
 - Can result in violations and substantial penalties



SUMMARY VOSH COVID-19 RESPONSE											
Dates	8/27/21	9/3/21	9/10/21	9/17/21	9/24/21	10/1/21	10/8/21	10/15/21	10/22/21	10/29/21	Total
Phone Calls											
Total Phone Calls	84	100	125	133	120	116	107	95	68	51	14471
UPAs Complaints OIS Statewide	21	24	18	20	23	17	15	9	9	8	2243 *
# Inspections <i>Complaints, Referrals, Hospitalizations & Fatalities</i>	1	2	2	9	0	4	2	1	2	1	243 **
<i>Inspections w/ Violations</i>	92		95	95	97	99	101	101	102	103	103
<i>Inspections Closed</i>	155		162	166	173	174	174	175	179	181	181
<i># of Violations Issued - Final Order Cases (Willful, Serious, OTS)</i>	297		304	304	310	329	346	346	350	352	352
<i>#EEs Exposed</i>	14708		14745	14745	15767	16092	16320	16320	16438	16475	16475
<i>Initial Penalty (\$)</i>	\$ 699,860		\$ 761,110	\$ 835,125	\$ 783,955	\$ 820,725	\$ 820,725	\$ 820,725	\$ 835,125	\$ 835,125	\$ 835,125
# Hospitalizations	1	2	3	2	3	2	0	1	0	1	101 ***
Fatalities/Workplace deaths	1	0	0	1	0	1	0	0	1	1	50
# of Emails forwarded to Regional/Field Offices from MF COVID-19 positive Cases Reports (ETS) Complaints (does not include reports submitted by phone in the Regional Offices).	0	2	1	3	4	4	9	2	3	1	706
# REDCAP Notifications (Launched 09/28/20)	601	698	688	686	654	579	492	357	321	266	32771
# REDCAP Notifications (3 or more cases reported 2 or more - Since 09/10/21)	209	255	237	413	405	339	314	222	187	174	9924
<i>* Time Range: 01/01/2020 to 10/29/2021 UPA numbers may change as Regions update the system.</i>											
<i>**Inspections opened (Total: 243 - Draft + Final)</i>											
<i>% of COVID-19 Inspections closed - 74% (181)</i>											
<i>% of COVID-19 Inspections with violations - 42% (103)</i>											
<i>***There are Employers submitting multiple notifications. Some of the hospitalizations reported to VOSH later resulted in fatalities.</i>											

16VAC25-220-40.G. FACE COVERINGS

Must be provided and required for use by employees that are not fully vaccinated, fully vaccinated employees in areas of substantial or high community transmission, and otherwise at-risk employees while indoors

Mask are required regardless of whether six feet is maintained from other persons

The level of community transmission may be obtained from the VDH website
COVID-19 Level of Community Transmission – Coronavirus
(virginia.gov)



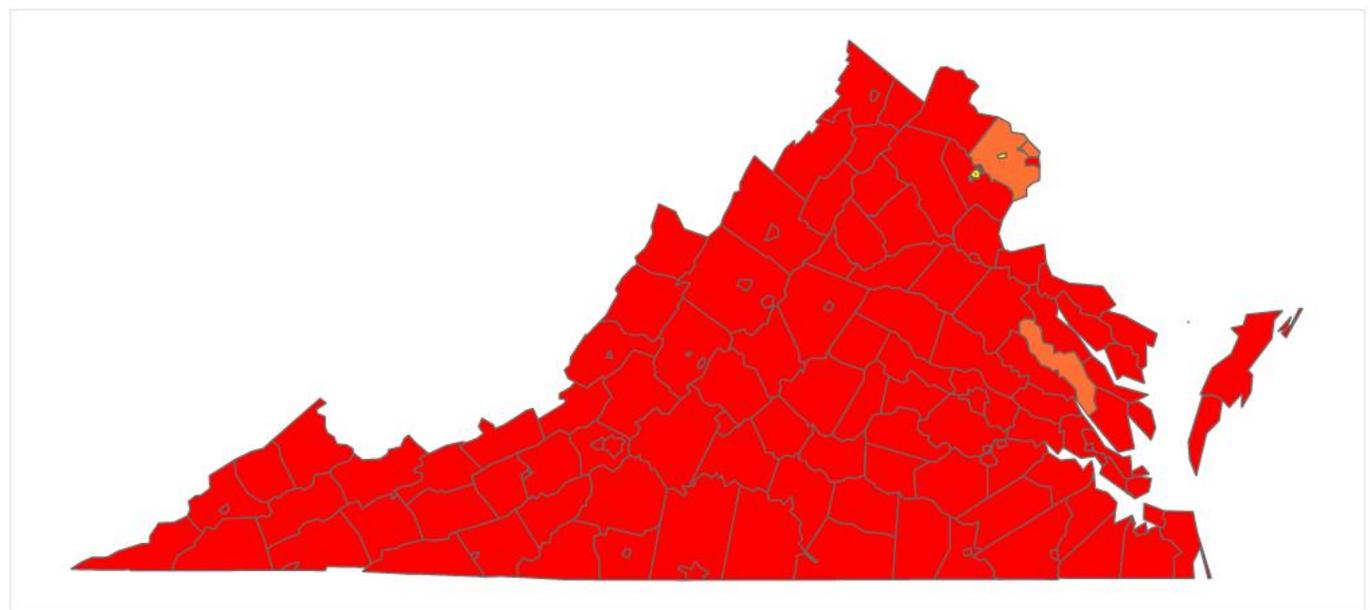
Level of Community Transmission



Updated weekly on Mondays using data through previous Saturday, Last updated 10/4/2021

State, Region or Locality selector for map

Locality

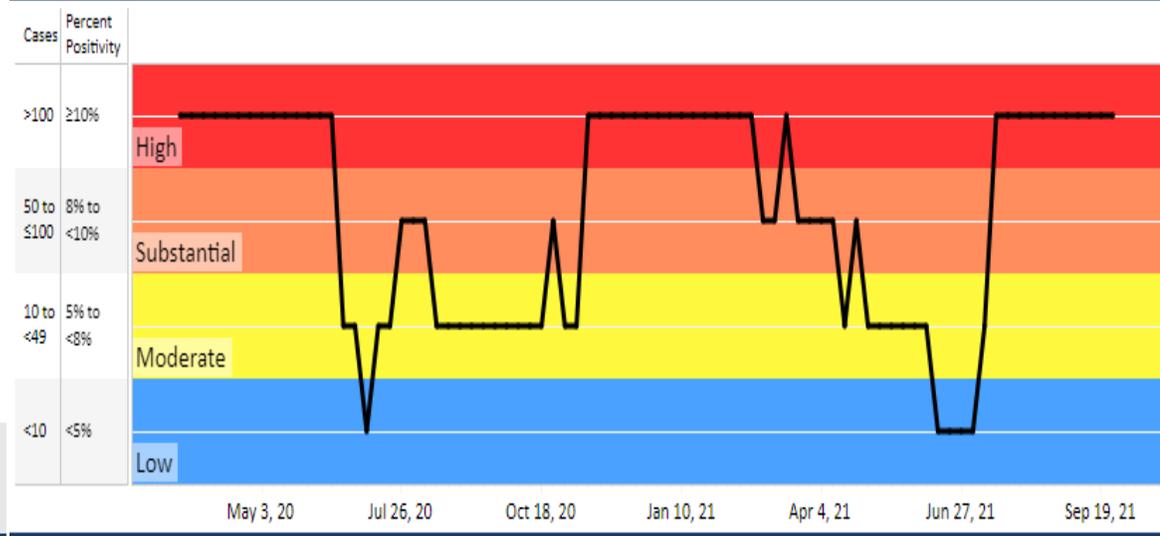


Region or Locality Selector	Transmission Level	Cases	Percent Positivity
Accomack	High	312.5	14.4%

Transmission Level

Region or Locality Selector	Transmission Level	Cases	Percent Positivity
Accomack	High	312.5	14.4%

Transmission Level



Rate of new cases per 100,000 persons within the last 7 days

RETURN TO WORK

- Employees who are COVID-19 positive, regardless of vaccination status
 - remove until they meet the return to work criteria in 16VAC25-220-40 C 3 subdivision C 3; or
 - provide a COVID-19 polymerase chain reaction (PCR) test at no cost to the employee.
 - (1) negative, the employee may return to work immediately
 - (2) positive, comply with 16VAC25-220-40 C 1 subdivision C 1
 - If the employee refuses to take the test, the employer must continue to keep the employee removed from the workplace (exceptions for those who cannot take the test for religious or disability-related medical reasons)
- Return to work in accordance with guidance from
 - licensed healthcare provider
 - VDH public health professional; or
 - CDC's "Isolation Guidance" and CDC's "Return to Work Healthcare Guidance"

INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE PLAN

Those covered by section 50 and 60 of the standard

Workplaces with 11 or more non-vaccinated employees

Healthcare

See webpage template

OSHA ETS WITH VACCINE MANDATE

- On September 9, 2021, President Biden issued a COVID-19 Action Plan for a Path Out of the Pandemic
 - OSHA is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work.
 - OSHA has issued an Emergency Temporary Standard (ETS) to implement this requirement.
- If federal OSHA adopts a vaccine mandate ETS for employers with 100 or more employees, the Board will meet to consider the ETS

FAQ: Will Federal OSHA's vaccination standard for employers with 100+ employees be enforced in Virginia?

- VOSH standards are required to be “at least as effective” as those adopted by Federal OSHA
- Federal OSHA's Vaccination and Testing was published November 5, 2021
- The current Virginia standard does not contain a vaccine mandate
- The Virginia Safety and Health Codes Board has 30 days to adopt identically
- Board meeting in December and the OSHA ETS will be on the agenda.

FAQ: Is physical distancing enough?

- No, but there are exceptions
- Current CDC guidance does not allow or take into account the ability to maintain physical distancing as an exception to wearing face masks or face coverings while indoors.
- Exceptions
 - When an employee is alone in a room
 - While an employee is eating and drinking
 - When employees are wearing respiratory protection in accordance with 1910.134W
 - When it is important to see a person's mouth
 - When employees cannot wear facemasks due to a medical necessity, medical condition, or disability or due to a religious belief
 - When the employer can demonstrate that the use of a facemask presents a hazard to an employee of serious injury or death
- Physical distancing of 6 feet is not listed as an exception

FAQ: Can my employer ask about my vaccination status?

- The Department is not aware of any Virginia law, standard or regulation that prohibits employers from asking employees if they have received the COVID-19 vaccine and are fully vaccinated, and if so, requiring employees to show proof of full vaccination.
- If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own healthcare provider, the employer cannot mandate that the employee provide any medical information as part of the proof.
- If an employer chooses not to verify, then they must apply the Virginia Standard to its employees as if the employees were not fully vaccinated
- Employers may rely on an employee's representation of being fully vaccinated, without requiring proof of vaccination

FAQ: Can my employer require me to get vaccinated?

- Whether an employer may require or mandate COVID-19 vaccination is a matter of state or other applicable law.
- The Department is not aware of any Virginia law, standard or regulation that prohibits employers from implementing a COVID-19 vaccine mandate.

FAQ: ARE ADVERSE REACTIONS TO THE VACCINE RECORDABLE?

- Don't want to discourage getting vaccinated
- Do not wish to disincentivise employers' vaccination efforts
- VOSH will not enforce 29 CFR 1904's recording requirements

QUESTIONS?

VOSH Consultation

<https://www.doli.virginia.gov/vosh-programs/consultation/>

Outreach Documents

<https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

jennifer.rose@doli.virginia.gov