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Virginia Becomes First State to Adopt Mandatory COVID-19 Workplace Safety Requirements

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Quick Hit

Virginia became the first state to issue mandatory COVID-19 workplace safety rules when the Virginia Safety and Health Codes Board ("VSHCB") approved an emergency temporary standard on July 15, 2020 by a 9-2 vote. The final text has not yet been published but the mandatory requirements are expected to include obligations surrounding flexible sick leave policies, the promotion of social distancing, policies to identify workers who may have been exposed to COVID-19 in the workplace, and policies to determine when workers known or suspected to have had COVID-19 are able to return to the workplace.

Key Takeaways

The majority of employers in Virginia will soon be required to follow an emergency temporary standard establishing workplace safety rules to limit the risks of COVID-19 exposure to workers. Based on our review of draft regulations, the new standard is likely to come into effect in late July and will apply to most private employers in the Commonwealth of Virginia, as well as to state and local employees. It appears that employers who violate the new rules may be subject to significant fines.

When announcing these new mandatory rules, Virginia Governor Ralph Northam said they were being enacted due to the absence of federal guidelines. The Department of Labor and federal Occupational Safety and Health Administration have repeatedly said they do not intend to propose a nationwide rule regulating COVID-19 measures and protections in the workplace. We've previously posted on OSHA's comments on that position here. Instead, OSHA has issued temporary enforcement guidance and indicated it will rely on the OSH Act's general duty clause which requires employers to provide a workplace free from recognized hazards. We've reported on this non-mandatory guidance from OSHA in several previous posts.

The Virginia emergency temporary standard will be the first to go beyond OSHA's non-mandatory guidance and establish minimum virus protection requirements. Oregon OSHA has similarly announced it is working to draft and adopt temporary COVID-19 rules with a target effective date of September 1. No other states have passed similar standards, but some, such as Michigan, have issued executive orders aimed at the same workplace safety goals.

We will publish an updated post once the final rules are published.

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