

Northern Virginia Chamber Comments on Safety and Health Codes Board Emergency Temporary Standard/Emergency Regulation, §16 VAC 25-220

Thank you for the opportunity to comment on the proposed Safety and Health Codes Board Emergency Temporary Standard/Emergency Regulation, §16 VAC 25-220. Our membership is very concerned that the regulation as written is at best unnecessary and at worst harmful to the Virginia economy.

The regulation relies heavily upon guidance produced by the Center for Disease Control and Prevention (CDC) and Occupational Safety and Health Agency (OSHA). The underlying federal guidance has been available for weeks; some guidance was produced as early as March. Since it became apparent that COVID-19 was spreading rapidly across the country in early March, businesses have been making changes to their workplace to remain open or developing plans to return their workforce safely soon. Businesses have been doing so based on the most current federal guidance.

This regulation, however, comes long after businesses have already made substantial investments in, and changes to, their workplace. This new layer of complexity, which does not appear to improve safety beyond what CDC/OSHA have already recommended, will hamper the ability of businesses to reopen in a timely manner. Large businesses with access to legal counsel and other resources will need to review anew the plans they already adopted and in many cases implemented to ensure compliance, when those plans were already in compliance by the underlying CDC/OSHA guidance. For smaller businesses without those resources, many will choose to open later or in response to the delay may need to reduce their workforce. Creating a duplicative guidance after private industry has adapted to the new reality is unnecessary; and giving that guidance the force of regulation will further damage the economy.

Should this regulation be adopted irrespective of the business community's opposition, the Northern Virginia Chamber respectfully asks for the following. First, please clarify the definition of a community with "moderate" community transmission. It would appear that Northern Virginia would be considered such a location and therefore all employees residing in or travelling through Northern Virginia would be considered a "medium risk." This clarification is necessary because medium risk employees create a substantial burden on employers who otherwise, through telework, staggered shifts, and other mitigation, would classify its employees as "lower risk."

Second, we respectfully request that the Board avoid amending this regulation at its June 24 meeting to add any additional requirements on employers. As you know this emergency regulation was only available for 10 days prior to being considered by the Board. To place additional burdens on Virginia businesses without even the courtesy of a 10-day review period would add insult to injury for businesses trying to reopen safely, bring back employees, and serve customers. We believe any further regulation, if the Administration believes it is needed, be instead considered by the General Assembly.

Third, please remove any reference to sick leave. While the regulation attempts to provide clarity and specificity in regards to health and safety of employees, the references to sick leave policies are vague and not in concert with the rest of the regulation. Employers are already bound by the federal law referenced in the regulation – the Families First Coronavirus Response Act – and this is not an appropriate method to enforce a federal law.

The Northern Virginia Chamber has a long history of working with Virginia leaders to create good public policy. However, the process for this regulation does not present an opportunity for true collaboration. We implore you to reconsider adoption at this time and please allow the business community to work with the Northam Administration and the General Assembly on ways to protect employees and customers as Virginia continues to reopen its economy safely. Thank you.

Sincerely,  
Julie Coons  
President & CEO  
Northern Virginia Chamber of Commerce