

VADA Guidance: §16VAC25-220, Emergency Temporary Standard Checklist

Last updated: August 10, 2020

VADA staff understand dealers have already completed a number of the following tasks to protect their employees. However, we include each item below so that VADA members understand all that is required under the ETS.

Effective and expiration dates (16VAC25-220-20).

- ETS became effective July 27, 2020.
- **Complete training requirements** in 16VAC25-220-80 (except that involving your Infectious Disease Preparedness and Response Plan) by August 26, 2020. See details on page 6.
- Implement Infectious Disease Preparedness and Response Plan and train employees on that Plan by September 25, 2020. See details on page 5.
- The ETS will expire:
 - » Within six months of its effective date, upon expiration of the Governor's State of Emergency, or when superseded by a permanent standard, whichever occurs first; or
 - » When repealed by the Virginia Safety and Health Codes Board.

VADA Analysis

VADA is providing a training webinar for VADA members and their employees to help satisfy this requirement.

Mandatory requirements for all employers (16VAC25-220-40).

- Employers at all risk levels shall ensure compliance with requirements in this section.
- Exposure assessment and determination, notification requirements, and employee access to exposure and medical records:
 - Complete the hazard assessment using **this tool**.
 - Inform employees** of methods of self-monitoring and encourage them to self-monitor for signs and symptoms of COVID-19.
 - Do not rely on serological (meaning antibody) testing when making decisions for your employees.
 - Develop and implement **policies and procedures** for employees to report when they're experiencing symptoms consistent with COVID-19 and no alternative diagnosis has been made (like they tested positive for the flu).
 - To the extent feasible and legal, ensure sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

VADA Analysis

Within the tool, there is opportunity to conduct a hazard assessment for each job task, each employee, or each job category.

VADA Analysis

Consider informing employees in this way through the ETS-required training.

VADA Analysis

Employers probably already have such a policy in place.

- Discuss with subcontractors and companies that provide contract/temporary employees about the importance of employees known or **suspected** to be infected with SARS-CoV-2 staying at home.
- To the extent legal, HIPAA considering, **establish a system to receive reports** of positive SARS-CoV-2 tests by employees present at the place of employment within the last 14 days, and notify:
 - Other employees who may have been exposed, within 24 hours of discovery of the employees' possible exposure;
 - Other employers whose employees were present at the worksite during the same time period;
 - The building or facility owner, so they can notify other tenants and take steps to sanitize and otherwise mitigate the virus' spread;
 - The Virginia Department of Health within 24 hours of the discovery of a positive case; and
 - The Virginia Department of Labor and Industry within 24 hours of the discovery of three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 during that 14-day period.
- Ensure employee access to the employee's own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records **if the employer has such information.**

- Return to Work

- Develop and implement policies and procedures for when both symptomatic and asymptomatic employees known or **suspected to be infected** with SARS-CoV-2 may return to work. Do not require employees to pay for the cost of COVID-19 testing for return to work determinations.

Symptomatic employees with known or suspected cases of COVID-19 may return to work when:

1. **Symptom-Based Strategy:** Three days (72 hours) have passed since recovery, meaning fever resolution without the use of fever-reducing medications, AND improvement in respiratory symptoms (e.g. cough, shortness of breath), AND at least 10 days have passed since symptoms first appeared; OR
2. **Test-Based Strategy:** There's been resolution of fever without the use of fever-reducing medications, AND improvement in respiratory symptoms, AND two consecutive negative tests taken at least 24 hours apart.

Asymptomatic employees with known cases of COVID-19 may return to work when:

1. **Time-Based Strategy:** At least 10 days have passed since the date of their first positive COVID-19 diagnostic test, assuming they have not subsequently developed symptoms, which would necessitate the symptom-based strategy or test-based strategy (above); OR
2. **Test-Based Strategy:** Upon two consecutive negative tests taken at least 24 hours apart.

VADA Analysis

According to the ETS, "Suspected to be infected with SARS-CoV-2 virus" means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza).

Outside this definition, if someone has been in close contact (meaning within six feet for 15 minutes or more within the last 48 hours) with someone known to have tested positive for SARS-CoV-2, ask that they leave work and consult with a health care provider about the SARS-CoV-2 virus. Should a healthcare provider administer a test for the SARS-CoV-2 virus, they will instruct test recipients to self-quarantine while awaiting results. Employees awaiting results will qualify for up to 80 hours emergency paid sick leave under the Families First Coronavirus Response Act.

VADA Analysis

Such reports from employees can be verbal.

VADA Analysis

VADA staff does not foresee a situation in which dealers would have this information or data, but check your own procedures.

VADA Analysis

According to the ETS, "Suspected to be infected with SARS-CoV-2 virus" means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza).

- Physical Distancing

- ❑ Ensure that employees observe physical distancing while on the job and during paid breaks on the employer's property.
 - ❑ Use verbal announcements, signage, or visual cues to promote physical distancing.
 - ❑ Decrease worksite density by limiting non-employee access to the place of employment or restrict access to only certain workplace areas.
 - » Compliance with a Virginia executive order or order of public health emergency will constitute compliance with the above three requirements.
- ❑ Where physical distancing cannot be observed in an employee's work area, ensure compliance with face covering requirements or any respiratory protection or PPE standards that may apply.

- Common Areas

- ❑ Control or close access to common areas, breakrooms, or lunchrooms.
 - » If consuming a meal AND physical distancing in such areas is not possible, you may designate, reconfigure, and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc. with controlled access, provided you:
 - ❑ Post the policy limiting the occupancy of the space, and requirements for physical distancing, hand washing and hand sanitizing, and cleaning and disinfecting of shared surfaces.
 - ❑ Limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other and enforce that occupancy limit.
 - ❑ Have employees clean/disinfect the immediate area they were located prior to leaving, or clean and disinfect the area or room at regular intervals throughout the day and between shifts.
 - ❑ Make handwashing and hand sanitizer, where feasible, available to employees.

- Vehicle Occupancy

- ❑ Whenever multiple employees are occupying a vehicle for work purposes, ensure compliance with face coverings or other respiratory protection and/or PPE you find necessary (e.g., gloves).

- Virginia Executive Orders

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

VADA Analysis

This section could apply to employers with employees driving to deliver vehicles to customers, or going to pick up vehicles at auctions, etc. Advise your employees to wear face coverings in such instances.

VADA staff is of the opinion existing rules prevent auto dealership employees from physically accompanying consumers on test drives.

VADA Analysis

Click [here](#) for the latest VADA analysis of Virginia's COVID-19 related executive orders and phased reopening

• Face Coverings, Exceptions

- Know that nothing in the standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition. However, nothing in this standard changes any PPE and respiratory standards **already used in your business**. Religious exceptions also exist.

• Sanitation and Disinfecting

- Comply with the ETS and the VOSH sanitation standard applicable to your industry.
- Ensure employees interacting with customers, the general public, and others are provided with and immediately use supplies to clean and disinfect surfaces contacted during interactions with those outside the organization where there's the **potential for SARS-CoV-2 virus exposure** by themselves or other employees.
- Comply with the ETS and the VOSH hazard communication standard applicable to your industry for cleaning and disinfecting materials and hand sanitizers.
- Clean and disinfect areas in the place of employment where known or suspected to be infected with SARS-CoV-2 virus employees or other persons accessed or worked before allowing other employees to access the area. Where feasible, wait 24 hours prior to cleaning. This entire requirement does not apply if the areas in question have been unoccupied for seven or more days.
- Clean all common spaces, including bathrooms, frequently touched surfaces, and doors at least at the end of each shift.
- Clean and disinfect all shared tools, equipment workspaces, and vehicles prior to transfer from one employee to another.
- Ensure the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).
- Ensure employees have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, for the duration of work. When an employee has a job where there's frequent interaction inside six feet with other persons, provide them with hand sanitizer where feasible at their work station.
- Except during emergencies, implement protective measures to prevent cross-contamination if you have employees with varying hazard designations—very high, high, medium, or lower.

Requirements for hazards or job tasks classified at medium exposure risk (16VAC25-220-60).

• Engineering Controls

- Ensure the air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace and:
 - Are maintained in accordance with the manufacturer's instructions; and
 - Comply with minimum standards as specified in 16VAC25-220-60.B1.b.

VADA Analysis

Keep in mind, nothing in the ETS shall conflict with a Virginia executive order, and, in both the Governor's orders and the ETS, exceptions apply to rules on face coverings.

That said, should you have customer-facing employees for whom an exception applies, be aware of the potential for negative attention from the public or other employees who may be unaware of the perfectly legitimate and allowable reason for not wearing a mask.

Also, employers and employees need to understand that an employee claiming a medical exception applies does not create a simple, free pass for said employee to not wear a mask. In such instances, an ADA investigation would ensue to determine the feasibility of a reasonable accommodation. These instances, where an exception applies, are likely rare, and dealerships will need to decide whether to allow such an employee to engage with the public without a face covering.

For customers unwilling to adhere to Virginia's face covering requirements, consider alternative ways of serving such individuals—e.g., outside the physical dealership, online, or over the phone.

Lastly, there are differences between face coverings and PPE, which have separate definitions in the ETS. Face coverings are not considered PPE, and vice versa.

VADA Analysis

For example, those in your service department may use eye protection in certain instances.

VADA Analysis

VADA members have already done most or all of this.

VADA Analysis

This may mean any contact with customers, the general public, or others. Therefore, ensure sanitizing supplies are widely available throughout the store.

- Administrative and Work Practice Controls

- To the extent feasible, implement the following:
 - Prior to the commencement of each work shift, **prescreen and survey employees** to verify there are no signs nor symptoms of COVID-19.
 - Provide face coverings to suspected to be infected with SARS-CoV-2 non-employees to contain respiratory secretions until the non-employees are able to leave the site.
 - Implement flexible worksites (e.g., telework) and work hours (e.g., staggered shifts).
 - Increase physical distancing between employees at the worksite to six feet.
 - Increase physical distancing between employees and other persons, including customers, to six feet.
 - To the extent feasible, install physical barriers (e.g., clear, plastic sneeze guards).
 - Implement flexible meeting and travel options (e.g., conference calls or virtual meetings and postponing non-essential travel events).
 - Deliver services remotely, and deliver products through curbside pickup or delivery.
 - Provide face coverings to employees who cannot feasibly practice physical distancing from another and require those employees to wear them (absent an exception).
 - Provide employees in customer-facing jobs with face coverings, and require such employees to wear face coverings (absent an exception).

- **PPE**

- Employers covered by this section shall:
 - » Complete the [Hazard Assessment form](#) to assess the workplace's hazards and risks and determine what, if any, PPE is necessary. Provide for employee involvement in this process. If such hazards or job tasks are present or likely to be present, the ETS provides additional requirements. Contact VADA staff should you have further questions.

Infectious disease preparedness and response plan (16VAC25-220-70).

- Employers at the medium risk level with 11 employee or more OR at the very high or high risk level with any number of employees shall develop and implement a written Infectious Disease Preparedness and Response Plan (or "Plan") by September 25, 2020.

The Plan and its training requirements only apply to those employees classified as very high, high, or medium.

- Designate a person to be responsible for implementing your Plan.
- The Plan shall include several required elements pursuant to this section. **The best way to comply with the Infectious Disease Preparedness and Response Plan requirements of this section is to rely on the plan template the Virginia Department of Labor and Industry provided. Click here for plan template.**

VADA Analysis

Survey questions to employees alone might satisfy this requirement. Temperature checks are not required but could be an additional form of prescreening not to replace survey questioning. The [Infectious Disease Plan Template](#) offers sample questions to ask during daily screenings.

VADA Analysis

Dealers might offer PPE through the provision of gloves to customer-facing employees or in other circumstances designed to mitigate the spread of SARS-CoV-2 virus and COVID-19 disease.

If you find, after a hazard assessment, you need further assistance, please notify VADA staff.

Again, there are differences between face coverings and PPE, which have separate definitions in the ETS. Face coverings are not considered PPE, and vice versa.

VADA Analysis

Be cautious not to simply put your organization's name on the plan template and consider your business compliant with this portion of the ETS. The template is helpful for businesses in establishing their own plan; however, a business must also actually practice what is stipulated in whatever plan the business adopts.

Also, you will note there are instances in which the DOLI plan template features requirements that go above and beyond what the ETS requires. The ETS is the governing document. In other words, you need not adhere to requirements in the plan template that are beyond what is stipulated in the ETS.

Training (16VAC25-220-80).

- ❑ Employers with hazards or job tasks classified as very high, high, or medium exposure risk at a place of employment shall provide training to all employee(s) working at the place of employment, regardless of employee risk classification, on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease no later than August 26, 2020.

Training programs shall enable each employee to recognize the hazards of the virus and symptoms of COVID-19 and shall train employees in the procedures employees must follow to minimize such hazards. DOLI has provided a PowerPoint [Training Presentation](#) that covers the necessary training elements.

VADA plans to administer a training webinar, allowing employers and their employees to satisfy this section's training requirement.

- ❑ Verify compliance with this section's training requirements by preparing a written certification record for those employees exposed to hazards or job tasks classified as very high, high, or medium exposure risk levels. DOLI made available a [Training Certification Form](#) to assist employers with this requirement.

The certification shall contain the name or other unique identifier of the employee trained, the trained employee's physical or electronic signature, the date of the training, and the name of the person who conducted the training.

For computer-based training, the certification shall contain the name of the person or entity that prepared the training materials.

If the employer relies on training conducted by another employer or completed prior to the effective date of this standard, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of the actual training.

- ❑ Maintain the latest training certification.
- ❑ Retrain employees when there have been:
 - » Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;
 - » Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or
 - » Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.
- ❑ If you are a lower hazard employer, provide this [DOLI Lower Risk Training document](#) to satisfy the training requirement.

Discrimination against an employee for exercising rights under this standard is prohibited (16VAC25-220-90).

Employers cannot:

- » Discharge or in any way discriminate against an employee because an employee exercised their rights under the ETS;
- » Discharge or in any way discriminate against an employee who opts to provide and wear their own PPE or face covering if the employer doesn't provide it, provided it doesn't cause greater hazard to the employee or create a serious hazard for other employees; or
- » Discharge or in any way discriminate against an employee "who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, **social**, or any other media."

Employees are also protected in their refusal to do work or enter a location they feel is unsafe. Separate from the ETS, [§16VAC25-60-110](#) provides requirements on discharging or disciplining employees who refused to complete their work because of a reasonable fear of injury or death.

VADA Analysis

Example: Employee goes on Facebook, decrying the dealership's COVID-19 infection control. The ETS protects the employee from discharge or discrimination.

VADA thanks Todd Leeson, Esq. of Gentry Locke and Kevin Oddo, Esq. of Berglund Auto Group for their input in the creation of this document. Todd is available at (540) 983-9437 or leeson@gentrylocke.com.

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