

4.21.2021

Final Standard For COVID-19 – Frequently Asked Questions:

<https://www.doli.virginia.gov/final-covid-19-standard-frequently-asked-questions/>

§10

19. DOES THE STANDARD REQUIRE EMPLOYEES TO BE VACCINATED?

No. The standard is silent on the issue of vaccines in the workplace.

20. WHAT DOES IT MEAN TO BE FULLY VACCINATED?

What does it mean to be fully vaccinated?

The CDC defines “fully vaccinated” to mean 2 weeks or more have passed since getting the second dose of a two-dose vaccine, or 2 weeks or more have passed since getting one dose of a single-dose vaccine.

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>

NOTE: Once manufacturers establish guidelines for their vaccines remaining current (i.e., what is the estimated duration of immunity offered by a particular vaccine), the definition of “fully vaccinated” may change and could impact compliance issues with the standard.

21. CAN MY EMPLOYER LEGALLY ASK IF I RECEIVED THE COVID-19 VACCINE AND AM FULLY VACCINATED?

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.

HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) applies to “covered entities” and “business associates,” and in most cases does not apply to employers. Accordingly, the patient privacy protections contained in HIPAA do not apply to employers who ask employees if they have received the COVID-19 vaccine and are fully vaccinated or require employees to show proof of full vaccination. For further information on HIPAA see: <https://www.hhs.gov/hipaa/for-individuals/employers-health-information-workplace/index.html>

EEOC

The Equal Employment Opportunity Commission (EEOC) indicates that employers may require employees to show proof of full vaccination, but notes certain issues associated with such a mandate:

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

K.3. Is asking or requiring an employee to show proof of receipt of a COVID-19 vaccination a disability-related inquiry? (December 16, 2020)

No. There are many reasons that may explain why an employee has not been vaccinated, which may or may not be disability-related. Simply requesting proof of receipt of a COVID-19 vaccination is not likely to elicit information about a disability and, therefore, is not a disability-related inquiry. However, subsequent employer questions, such as asking why an individual did not receive a vaccination, may elicit information about a disability and would be subject to the pertinent ADA standard that they be “job-related and consistent with business necessity.” If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own health care provider, the employer may want to warn the employee not to provide any medical information as part of the proof in order to avoid implicating the ADA.

22. CAN MY EMPLOYER REQUIRE ME TO GET FULLY VACCINATED?

The CDC notes the following with regard to employer vaccine mandates:

Whether an employer may require or mandate COVID-19 vaccination is a matter of state or other applicable law. 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.

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html#:~:text=Employer%20Vaccine%20Mandates%20and%20Proof%20of%20Vaccination&text=If%20an%20employer%20requires%20employees,as%20part%20of%20the%20proof.>

The Department is not aware of any Virginia law, standard or regulation that prohibits employers from implementing a COVID-19 vaccine mandate.

EEOC

The Equal Employment Opportunity Commission (EEOC) indicates that employers may require employees to be vaccinated, but notes certain issues associated with such a mandate:

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

K.5. If an employer requires vaccinations when they are available, how should it respond to an employee who indicates that he or she is unable to receive a COVID-19 vaccination because of a disability? (December 16, 2020)

The ADA allows an employer to have a [qualification standard](#) that includes “a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace.” However, if a safety-based qualification standard, such as a vaccination requirement, screens out or tends to screen out an individual with a disability, the employer must show that an unvaccinated employee would pose a direct threat due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” [29 C.F.R. 1630.2\(r\)](#). Employers should conduct an individualized assessment of four factors in determining whether a direct threat exists: the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm. A conclusion that there is a direct threat would include a determination that an unvaccinated individual will expose others to the virus at the worksite. If an employer determines that an individual who cannot be vaccinated due to disability poses a direct threat at the worksite, the employer cannot exclude the employee from the workplace—or take any other action—unless there is no way to provide a reasonable accommodation (absent [undue hardship](#)) that would eliminate or reduce this risk so the unvaccinated employee does not pose a direct threat.

If there is a direct threat that cannot be reduced to an acceptable level, the employer can exclude the employee from physically entering the workplace, but this does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities. For example, if an employer excludes an employee based on an inability to accommodate a request to be exempt from a vaccination requirement, the employee may be entitled to accommodations such as performing the current position remotely. This is the same step that employers take when physically excluding employees from a worksite due to a current COVID-19 diagnosis or symptoms; some workers may be entitled to telework or, if not, may be eligible to take leave under the FMLA or under the employer’s policies. *See also [Section J, EEO rights relating to pregnancy](#).*

Managers and supervisors responsible for communicating with employees about compliance with the employer’s vaccination requirement should know how to recognize an accommodation request from an employee with a disability and know to whom the request should be referred for consideration. Employers and employees should engage in a flexible, interactive process to identify workplace accommodation options that do not constitute an undue hardship (significant difficulty or expense). This process should include determining whether it is necessary to obtain supporting documentation about the employee’s disability and considering the possible options for accommodation given the nature of the workforce and the employee’s position. The prevalence in the workplace of employees who already have received a COVID-19 vaccination and the amount of contact with others, whose vaccination status could be unknown, may impact the undue hardship consideration. In discussing accommodation requests, employers and employees also may find it helpful to consult the Job Accommodation Network (JAN) website as a resource for different types of accommodations, www.askjan.org. JAN’s materials specific to COVID-19 are at <https://askjan.org/topics/COVID-19.cfm>.

Employers may rely on CDC recommendations when deciding whether an effective accommodation that would not pose an undue hardship is available, but as explained further in [Question K.7.](#), there may be situations where an accommodation is not possible. When an employer makes this decision, the facts about particular job duties and workplaces may be relevant. Employers also

should consult applicable Occupational Safety and Health Administration standards and guidance. Employers can find OSHA COVID-specific resources at: www.osha.gov/SLTC/covid-19/.

Managers and supervisors are reminded that it is unlawful to disclose that an employee is receiving a reasonable accommodation or retaliate against an employee for [requesting an accommodation](#).

§40

41. THE CDC UPDATED ITS GUIDELINES FOR CLEANING AND DISINFECTING WORKPLACES ON APRIL 5, 2021. DO THE UPDATED GUIDELINES APPLY TO HEALTHCARE SETTINGS?

No, the updates do not apply to healthcare settings. The updated CDC guidelines can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>.

The CDC also released a science brief on April 5, 2021 on SARS-CoV-2 and surface (fomite) transmission for indoor community environments available here: <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>

The updated CDC guidance states that it is indicated for cleaning and disinfecting buildings in community settings to reduce the risk of COVID-19 spreading. The updated guidance is not intended for healthcare settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.

42. THE CDC UPDATED ITS GUIDELINES FOR CLEANING AND DISINFECTING WORKPLACES ON APRIL 5, 2021. IF THERE HAS BEEN A SICK PERSON OR SOMEONE WHO TESTED POSITIVE FOR COVID-19 IN OUR WORKPLACE WITHIN THE LAST 24 HOURS, DO THE NEW CDC GUIDELINES IMPACT REQUIREMENTS IN THE FINAL PERMANENT STANDARD?

With one exception, no.

NOTE 1: Governor's Executive Order (EO) 72 contains requirements for business to conduct cleaning and disinfecting in public settings that is directed at mitigating the spread of the virus to the general public. This FAQ shall not be construed to impact any such requirements contained in EO 72. [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf)

NOTE 2: The updated CDC guidelines can be found at:

<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

The updated CDC guidance states that it is indicated for cleaning and disinfecting buildings in community settings to reduce the risk of COVID-19 spreading. The updated guidance is not intended for healthcare settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.

The CDC also released a science brief on April 5, 2021 on SARS-CoV-2 and surface (fomite) transmission for indoor community environments available here: <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>

The updated CDC guidelines do not materially conflict with 16VAC25-220-40.L.4, which provides that:

“Areas in the place of employment where employees or other persons known [“tested positive for COVID-19”] or suspected to be infected with the SARS-CoV-2 virus [a “sick person” who has signs or symptoms of COVID-19 and no alternative diagnosis has been made] accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas. Where feasible, a period of 24 hours will be observed prior to cleaning and disinfecting. This requirement shall not apply if the areas in question have been unoccupied for seven or more days.”

Exception. 16VAC25-220-40.L.4 provides that its requirements do “not apply if the areas in question have been unoccupied for seven or more days.” The updated CDC guidelines provide that “If more than 3 days have passed since the person who is sick or diagnosed with COVID-19 has been in the space, no additional cleaning or disinfecting (beyond regular cleaning practices) is needed.”

16VAC25-220-10.G.1 provides in part:

“To the extent that an employer actually complies with a recommendation contained in CDC guidelines... and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer’s actions shall be considered in compliance with this standard....”

Based on the CDC’s science-based determination that a waiting period of three days rather than seven days is sufficient to assure that the spread of the virus is unlikely, an employer would be considered to be in compliance with 16VAC25-220-40.L.4 if it decided to not comply with that requirement (areas unoccupied for seven or more days) because the areas in question had been unoccupied for three or more days.

NOTE 3: 16VAC25-220-40.L.4 provides that “...Where feasible, a period of 24 hours will be observed prior to cleaning and disinfecting.” The updated CDC guidelines use similar but not identical language when it provides that “Wait as long as possible (at least several hours) before you clean and disinfect.” Under the final permanent standard, feasibility includes both technical and economic feasibility as those terms are defined. In the context of 16VAC25-220-40.L.4, there would be little substantive difference between an employer’s analysis and assessment of the feasibility of waiting up to 24 hours versus its’ determination about the period of time that it could “wait as long as possible.”

NOTE 4: In certain respects, the updated CDC guidelines could be interpreted to be more stringent than 16VAC25-220-40.L.4, and in such cases, an employer may, but is not legally required by the final permanent standard to comply with the more stringent CDC guidelines.

43. THE CDC UPDATED ITS GUIDELINES FOR CLEANING AND DISINFECTING WORKPLACES ON APRIL 5, 2021. DO THE UPDATED CDC GUIDELINES IMPACT THE REQUIREMENTS IN 16VAC25-220-40.L.5 CONCERNING THE CLEANING AND DISINFECTING OF “BATHROOMS (INCLUDING PORT-A-JOHNS, PRIVIES, ETC.), FREQUENTLY TOUCHED SURFACES, AND DOORS?”

Yes, but only in certain situations.

NOTE 1: NOTE 1: Governor’s Executive Order (EO) 72 contains requirements for business to conduct cleaning and disinfecting in public settings that is directed at mitigating the spread of the virus to the general public. This FAQ shall not be construed to impact any such requirements contained in EO 72. [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf)

NOTE 2: The updated CDC guidelines can be found at:

<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

The updated CDC guidance states that it is indicated for cleaning and disinfecting buildings in community settings to reduce the risk of COVID-19 spreading. The updated guidance is not intended for healthcare settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.

The CDC also released a science brief on April 5, 2021 on SARS-CoV-2 and surface (fomite) transmission for indoor community environments available here: <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>

16VAC25-220-40.L.5 provides:

All common spaces, including bathrooms (including port-a-johns, privies, etc.), frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at least once during or at the end of the shift. Where multiple shifts are employed, such spaces shall be cleaned and disinfected no less than once every 12 hours.

The updated CDC guidelines now provide that when no people with confirmed or suspected COVID-19 are known to have been in a space “cleaning” [but not “disinfecting”] surfaces is sufficient, unless “certain conditions” discussed below exist. 16VAC25-220-10.G.1 provides in part:

“To the extent that an employer actually complies with a recommendation contained in CDC guidelines... and provided that the CDC recommendation provides equivalent or greater protection

than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard....”

In the absence of such “certain conditions,” and based on the CDC’s science-based determination that cleaning only is sufficient to assure that the spread of the virus is unlikely, an employer would be considered to be in compliance with 16VAC25-220-40.L.5 if it decided to not disinfect such surfaces.

However, the employer would be required to fully comply with 16VAC25-220-40.L.5 where “certain conditions apply that can increase the risk of infection from touching surfaces:

- High transmission of COVID-19 in your community,
- Low number of people wearing masks,
- Infrequent hand hygiene, or
- The space is occupied by certain populations, such as people at increased risk for severe illness from COVID-19

NOTE 3: 16VAC25-220-40.L.5 provides that “Where multiple shifts are employed, such spaces shall be cleaned and disinfected no less than once every 12 hours.” Because the updated CDC guidelines do not address the issue of worksites that operate more than one shift, such employers must continue to comply with the requirement 16VAC25-220-40.L.5 to at least clean once every 12 hours. As discussed above, where “certain conditions” apply, disinfection once every 12 hours would also be required under 16VAC25-220-40.L.5.

NOTE 4: In certain respects, the updated CDC guidelines could be interpreted to be more stringent than 16VAC25-220-40.L.4, and in such cases, an employer may, but is not legally required by the final permanent standard to comply with the more stringent CDC guidelines.

44. THE CDC UPDATED ITS GUIDELINES FOR CLEANING AND DISINFECTING WORKPLACES ON APRIL 5, 2021. DO THE UPDATED CDC GUIDELINES IMPACT THE REQUIREMENTS IN 16VAC25-220-40.L.6 CONCERNING THE CLEANING AND DISINFECTING OF SHARED TOOLS, EQUIPMENT, WORKSPACES, AND VEHICLES?

No. 16VAC25-220-40.L.6 provides:

All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

Because the updated CDC guidelines do not address “shared” tools, equipment, workspaces and vehicles, employers must continue to comply with the requirements in 16VAC25-220-40.L.6.

NOTE 1: The updated CDC guidelines can be found at:

<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

The updated CDC guidance states that it is indicated for cleaning and disinfecting buildings in community settings to reduce the risk of COVID-19 spreading. The updated guidance is not intended

for healthcare settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.

The CDC also released a science brief on April 5, 2021 on SARS-CoV-2 and surface (fomite) transmission for indoor community environments available here: <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>

NOTE 2: Governor's Executive Order (EO) 72 contains requirements for business to conduct cleaning and disinfecting in public settings that is directed at mitigating the spread of the virus to the general public. This FAQ shall not be construed to impact any such requirements contained in EO 72. [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf)