



## To Mask, or Not to Mask, That is the Question: Status of Virginia DOLI Workplace Rules

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As we reported in September 2021, **Virginia DOLI Issues New COVID-19 Rules for Employers**, Virginia is one of the only states in the country that has workplace COVID-19 health and safety rules, including, most notably, rules requiring employers to have policies mandating that their employees wear masks in the workplace unless certain very specific exceptions apply. As COVID-19 transmission rates continue to drop, many employers have asked whether and when these rules will be lifted. On January 15, 2022 ? Inauguration Day ? Governor Youngkin issued **Executive Order 6** which strongly encouraged the Virginia Department of Labor and Industry (DOLI) to rethink the DOLI?s Permanent COVID-19 Standard (the Standard), finding that the current rules have been ?ma[king] running a business in Virginia more difficult? and that ?our government contributed to these difficulties.? The governor directed the DOLI?s Safety and Health Codes Board to convene an emergency meeting ?to discuss whether there is a continued need for? the Standard and report back to him on its position within thirty (30) days. In response, DOLI and the Virginia Safety and Health Codes Board met on February 16, 2022 to discuss whether the Standard should remain in place.

In that meeting, DOLI reported its finding that COVID-19 no longer poses a grave risk to Virginia?s employees due to transmission in the workplace. DOLI recommended that the Standard be withdrawn, which such motion was adopted. But wait! Before you pull off your mask and throw it in the shredder, this decision does not immediately lift the workplace masking rules. Instead, consideration of whether the Standard should be withdrawn will go through a 30-day public Notice and Comment period whereby DOLI can receive and consider comments in favor of, and in opposition to, removal of the Standard. Once the Notice and Comment Period is completed, a final meeting will occur, and DOLI will decide whether to keep or withdraw the Standard. DOLI also plans to issue guidance documents on how employers can protect employees in the workplace from COVID-19 risks. That guidance also will be subject to a 30-day public Notice and Comment period.

What does this mean for Virginia employers? Currently, the Standard is still in place, at least for the next

thirty days. So, for now, employers should ensure that their employees stay masked. Yet, at the end of that thirty days, it is likely that the Standard will be withdrawn. At that point, employers will be permitted to remove their mask mandate. We will continue to provide updates on DOLI's actions.

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