

COVID-19 Legal Update

Virginia Governor Ralph Northam's Executive Order No. 72

Effective: December 14, 2020

Expires: January 31, 2021

On December 10, 2020, Governor Ralph Northam issued [Executive Order No. 72](#) imposing new requirements to combat the spread of COVID-19. This new Order replaces Governor Northam's previous Covid-19 Order, [Executive Order No. 67](#) and establishes the Covid-19 rules individuals and businesses in Virginia must follow from December 14, 2020, through January 31, 2021.

Although every business should read the Order in its entirety, following are the key changes to Governor Northam's previous Covid-19 rules (each rule is subject to several exceptions as explained in this Update):

- Individuals are required to stay home between the hours of 12:00 a.m. and 5:00 a.m.;
- Almost every Virginia business is permitted to operate, subject to certain restrictions;
- Gatherings of more than 10 people are prohibited;
- Masks are required indoors whenever more than one person shares space;
- Masks are required outdoors whenever social distancing is not feasible;
- An individual may be charged with a Class 1 Misdemeanor for failure to wear a mask, attending an improper gathering, or for violating the business restrictions; and
- Businesses may be subject to state agency fines/penalties for failing to comply with the Order or other Covid-19 guidelines.

Modified Stay at Home Order

All individuals in Virginia must remain inside their residence between the hours of 12:00 a.m. and 5:00 a.m.

Exceptions:

- Obtaining food/beverages or other goods or services permitted under the Order.
- Seeking medical attention, governmental services, or law enforcement/emergency services.
- Taking care of other individuals or animals.
- Traveling required by court order or to facility child custody, visitation, or child care.
- Engaging in exercise.

- Traveling to and from one's residence, place of worship, or work.
- Traveling to and from an educational institution.
- Volunteering at charitable or social services organizations.
- Leaving a residence for reasonable fear for health/safety, or required by law enforcement/government agency.

*Eckert Seamans previously published a legal update on Executive Orders Nos. 53 and 55 (issued in March), which discusses the Stay at Home Order. The legal update is accessible [here](#), and FAQs published by the Commonwealth regarding the Stay at Home Order are accessible [here](#).

Indoor and Outdoor Mask Rules:

This Order expands the current statewide mask mandate, which has been in place since May 29, 2020:

Indoors:

- Face coverings required for individuals age 5 and older in indoor settings shared by others, except inside their residence.

Outdoors:

- Face coverings required for individuals age 5 and older if unable to maintain at least six feet minimum distance.

Enforcement:

- Failure to wear face coverings pursuant to the Order is punishable as a Class 1 misdemeanor, and will be enforced by the Virginia Alcoholic Beverage Control Authority.

Exceptions:

- Eating or drinking;
- Exercising;
- Playing a musical instrument when a face covering inhibits the ability to play, provided that at least 10 feet of physical distancing can be maintained from other persons;
- Any person who has trouble breathing, is unconscious, or incapacitated;
- When communicating with the hearing impaired;
- Temporary removal of the face covering is necessary to secure government or medical services; and
- Persons with health conditions or disabilities that prohibit wearing a face covering, and such person shall **not** be required to produce or carry medical documentation, or otherwise identify the medical condition.

Public and Private In-Person Gathering Restrictions

This Order reduces the number of people allowed in a social gathering. All public and private in-person gatherings of **more than 10 individuals** are **prohibited**.

Exceptions:

- At a person's place of employment or educational institution;
- Gatherings of family members living in the same household;
- Religious gatherings (subject to delineated requirements detailed below);
- In instances where more than 10 individuals are in a particular location (i.e. park, retail business), provided the individuals do not congregate.

Enforcement:

- Violation of the 10-person gathering limit is a Class 1 misdemeanor, and may be enforced by any law enforcement officer.

Business Restrictions

All Virginia businesses must continue to review and abide by the following standards:

- [Virginia Phase Three Guidelines for All Business Sectors](#)
- [Virginia Emergency Temporary Standard Infectious Disease Prevention: \[Covid-19\]](#)
- [Occupational Safety and Health Administration Covid-19 Guidelines](#)
- [CDC Guidelines \(current as of December 4, 2020\)](#)

Employees of businesses listed in Section II.A and C of EO-72 must wear face coverings while working unless they are indoors and in private. The employees of the following businesses are subject to this requirement:

- Food and Beverage Establishments
- Farmers Markets
- Fitness and Exercise Facilities
- Personal Care and Personal Grooming
- Privately-Owned Campgrounds
- Indoor Shooting Ranges
- Racetracks

- Large Outdoor Amusement Parks and Zoos
- Entertainment and Amusement
- Recreational Sports Establishments
- Grocery stores and pharmacies
- Medical supply retailers
- Electronic retailers
- Automotive establishments
- Home improvement and lawn/garden stores
- Gas stations and convenience stores
- Banks and other financial institutions with retail functions
- Pet and feed stores
- Office supply stores
- Laundromats/dry cleaners
- Retail establishments located in healthcare facilities

A summary of unique restrictions for certain of these businesses under the new Order are as follows:

Food and Beverage Establishments:

- Onsite sale, consumption, and possession of alcohol prohibited after 10:00 p.m., except may be sold via delivery or take-out at any time;
- Dining and congregation areas must close between 12:00 a.m. and 5:00 a.m., but food and beverage establishments may continue to offer delivery and take-out;
- Tables must be separated by at least six feet;
- Employees must wear face coverings and thoroughly clean and disinfect surfaces every 60 minutes, and clean tabletops, chairs, and credit card readers between every patron;
- Patrons age five and older must wear face coverings, except while eating.

Farmers Markets:

- Must configure operations to avoid congestion or congregation points so that patrons may maintain minimum physical distance and vendors must thoroughly clean and disinfect frequently contacted surfaces;
- All Employees and vendors must wear face coverings;

- Vendors must supply hand sanitizing or hand washing stations for patrons and employees;
- Patrons age 5 and older must wear face coverings.

Fitness and Exercise Facilities:

- Occupancy cannot exceed 75% of lowest load on certificate of occupancy;
- All patrons and employees must remain at least ten feet apart;
- Group exercises cannot exceed the lesser of 75% occupancy on certificate of occupancy or 10 participants;
- Employees must wear face coverings, except lifeguards responding to distressed swimmers;
- Patrons age 5 and older must wear face coverings, except when exercising;
- Outdoor and indoor pool occupancy cannot exceed 75% of lowest load on certificate of occupancy, and swimmers must maintain ten feet of physical distance (hot tubs, spas, splash pads, spray pools, and interactive play features remain closed);
- Shared equipment must be cleaned after each use.

Places of Worship:

- Attendees must remain six feet apart, except for family members residing in the same household;
- Individuals age 5 and older must wear a face covering;
- Items used to distribute food or beverages must be disposable, used only once, and discarded after use, and items cannot be passed to or between attendees, except amongst family members;
- Frequently contacted surfaces must be thoroughly cleaned and disinfected prior to and following religious service;
- Must post signage at the entrance that (1) prohibits attendance by those experiencing COVID-19 symptoms, and (2) provides health reminders best practices to minimize community spread.

Personal Care and Personal Grooming Establishments:

- No more than two appointments per personal service provider at a time;
- Must maintain six feet minimum distance between workstations;
- Both clients and employees must wear face coverings at all times, except when treating the areas of the nose and mouth;
- Must provide face coverings for clients or ask that clients bring face coverings with them;
- Must thoroughly clean and disinfect frequently-contacted surfaces every 60 minutes;

- Must clean and disinfect personal care and personal grooming tools after each use, or otherwise discard if cleaning and disinfection is not possible.

Privately-Owned Campgrounds:

- Employees must wear face coverings;
- Patrons age 5 and older must wear face coverings;
- Must provide hand washing in bath houses and sanitization stations for guests and employees.

Indoor Shooting Ranges:

- Employees and guests must maintain six feet of physical distancing;
- Employees must wear face coverings;
- Patrons age 5 and older must wear face coverings;
- Must thoroughly clean and disinfect frequently-contacted surfaces every 60 minutes and must disinfect all equipment between each customer use. Equipment that cannot be disinfected is prohibited.

Public Beaches:

- Beachgoers must maintain six foot minimum distancing;
- No gatherings of more than 10 people;
- No entertainment that promotes gatherings;
- Implement a cleaning schedule for all high-touch surfaces made of plastic or metal such as benches and railings that includes cleaning at least every two hours between the hours of 9 a.m. and 6 p.m.;
- Establish, train, and deploy a team to educate and promote compliance with beach rules and refer cases of noncompliance to public safety personnel, if appropriate;
- Clean and disinfect public restrooms every two hours;
- Chair and umbrella rental companies must set up chairs and umbrellas for customers at least six feet of distance between groups and must clean equipment between rentals;
- All employees and contract workers must wear a face covering when not able to practice physical distancing.

Racetracks:

- Total number of patrons cannot exceed the lesser of 30% of occupancy load or 250 persons;
- All individuals must maintain six feet of physical distancing;

- Food services must follow restaurant and beverage establishment guidance and camping areas must follow campground guidance;
- Employees and patrons must wear face coverings.

Large Outdoor Amusement Parks and Zoos:

- Applies only to those establishments with at least 25 acres of land, with one or more amusement exhibits or rides, and that hosts at least 500,000 visitors annually;
- Total occupancy cannot exceed the lesser of 50% capacity for all areas of the venue;
- Must install visible markers for lines that separate people by six feet;
- Employees must wear face coverings;
- Patrons age 5 and older must wear face coverings indoors, as well as outdoors when six feet of distance cannot be maintained;
- All indoor rides, attractions, and theatres, or any rides, attractions, or theatre with indoor queue lines must remain closed.

Entertainment and Amusement Businesses:

- The following may open to attendees:
 - Outdoor performing arts venues, outdoor concert venues, outdoor sports venues, outdoor movie theaters, museums, aquariums, zoos, and botanical gardens
- The number of attendees may not exceed the lesser of 30% capacity of the venue or 250 persons, and private bookings may not violate the 10-person gathering limitation;
- Establishments must install visible markers for lines that separate people by six feet and create a flow plan to adjust the flow of patrons to avoid bottlenecks and pinch points;
- Employees must wear face coverings;
- Perform a thorough cleaning every 60 minutes, install sneeze guards, and provide hand washing/sanitization stations.

Recreational Sports:

- Indoor and outdoor recreational sports activities are permitted;
- Participants, instructors, and spectators must maintain ten feet of physical distance at all times, with the exception of incidental contact:
 - Competition that involves close contact with other athletes must be avoided
- Indoor Sports: The total number of spectators cannot exceed the lesser of 30% capacity or 25 persons per field;

- Outdoor Sports: The number of spectators is limited to two guests per player, or 30% of the capacity of the venue, whichever is less;
- Employees and spectators must wear face coverings at all times.

Enforcement:

- The Virginia Department of Health and any other agency with regulatory authority over a business or establishment affected by the Phase Two restrictions shall have authority to enforce the above requirements.
- Any willful violation or refusal, failure, or neglect to comply with the above requirements is punishable by a Class 1 misdemeanor.
- The State Health Commissioner may seek injunctive relief in circuit court for violation of any of the above requirements.

Essential Retail Businesses:

- The Order also provides a list of Essential Retail Businesses that may remain open during their normal business hours (grocery stores, mechanics, banks, gas stations, etc.)

This COVID-19 Legal Update is intended to keep readers current on developments regarding Executive Orders from Gov. Ralph Northam. It is not intended to be legal advice. If you have any questions, please contact authors Karen A. Elliott at 804.788.7762 or kelliott@eckertseamans.com, Brendan C. Horgan at 804.788.7769 or bhorgan@eckertseamans.com, Shannon A. Kapadia at 804.788.7770 or skapadia@eckertseamans.com, Cody T. Murphey at 804.788.7765 or cmurphey@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.