



TEAMSTERS

Safety & Health FACTS

Safety and Health Department, International Brotherhood of Teamsters
25 Louisiana Avenue, NW, Washington, DC 20001 ♦ 202/624-6960 ♦ ibtsafety@teamster.org

ACCESS TO EMPLOYEE EXPOSURE AND MEDICAL RECORDS

29 CFR 1910.1020

The purpose of this standard is to provide employees and the union the right of access to relevant exposure and medical records. Any employer who maintains employee exposure or medical records pertaining to employees exposed to toxic substances or harmful physical agents is obligated to comply with this standard. All employee exposure and medical records, whether or not the records are mandated by specific OSHA standards, are covered by this standard.

Definitions

- (1) “Access” means the right and opportunity to examine and copy.
- (2) “Designated representative” means any individual or union to whom an employee gives written authorization to exercise the right of access. For the purposes of access to employee exposure records or analysis using exposure or medical records, the union shall be treated automatically as a designated representative without the need for written employee authorization.
- (3) “Employee” means a current or former employee.
- (4) “Employee exposure record” means a record containing the following kinds of information:
 - (i) Workplace monitoring or measuring of a toxic substance or harmful physical agent;
 - (ii) Biological monitoring which directly measures the absorption of toxic substances in the body (e.g., the level of a chemical in the blood) but does not include results which assess an employee's use of alcohol or drugs;
 - (iii) Material safety data sheets indicating that the material may pose a hazard to human health; or

(iv) In the absence of the above, a chemical inventory, or any other record which reveals where and when the chemical was used and the identity (e.g., chemical, common, or trade names) of a toxic substance or harmful physical agent.

(5) (i) **“Employee medical record”** means a record concerning the health status of any employee, including:

(A) Medical and employment questionnaires (including job description and occupational exposures);

(B) Results of medical examinations and laboratory tests;

(C) Medical opinions, diagnoses and recommendations;

(D) First-aid records;

(E) Descriptions of treatments and prescriptions; and

(F) Employee medical complaints.

(ii) **“Employee medical record”** does not include:

(A) Records concerning health insurance claims not accessible by employee name or

(B) Records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records.

Preservation of Records

The standard requires that employee medical and exposure records for each employee must be preserved and maintained by the employer for the duration of employment plus 30 years. There are some exceptions included in the standard regarding records that do not need to be maintained for 30 years.

Access to Records

If an employee or designated representative requests access to a record, the employer must provide access in a reasonable time, place, and manner. If the employer cannot provide access to the records within 15 working days, the employer must give the reason for the delay and the earliest date when the record can be made available.

If additional information is needed to aid in locating the records, the employer may require only the information that is absolutely necessary to locate or identify the records being requested (e.g., dates and locations where the employees worked).

When an employee or designated representative requests a copy of a record, it is the responsibility of the employer to ensure that:

- ♦ a copy of the record is provided without cost to the employee or representative;
- ♦ copying facilities are made available without cost to the employee or representative for copying the record; or
- ♦ the record is loaned to the employee or representative for a reasonable amount of time to make a copy.

The standard does not preclude employees and unions from collectively bargaining to obtain access to information in addition to that required.

Any requests by a designated representative for access to an employee's exposure records without that employee's consent shall be in writing specifying the records requested and the occupational need for access to these records. However, if an employee gives specific written consent to his/her designated representative, the employer must ensure access to those records.

If an employer has performed any analyses using exposure or medical records, the employer must give an employee or designated representative access to those analyses upon request.

Trade Secrets

The employer is allowed to delete from the records any trade secret data which discloses manufacturing processes or the percentage of a chemical in a mixture.

In the event that information considered "trade secret" is needed in a non-emergency situation, the employer must, upon request, disclose a specific chemical identity to a health professional, employee, or designated representative if:

- ♦ the request is in writing and
- ♦ the request describes, with reasonable detail, a need for the information due to one or more of the following health needs:
 1. To assess the hazards of the chemicals to which the employees will be exposed;
 2. To conduct sampling of the workplace atmosphere for exposure levels;
 3. To conduct medical surveillance of exposed employees;
 4. To provide medical treatment to exposed employees;
 5. To select appropriate personal protective equipment for exposed employees;
 6. To design engineering controls for exposed employees; or
 7. To conduct studies to determine the health effects of exposure.

If the employer denies a written request for disclosure of a specific chemical identity, the denial must be provided in writing to the health professional, employee, or designated representative within 30 days of the request. The written denial must include evidence to support the claim that

the specific chemical identity is a trade secret. The denial must also state the specific reasons why the request is being denied and explain in detail how alternative information may easily satisfy the specific medical or occupational health needs without revealing the specific chemical identity.

Employee Information

The employer must inform employees covered by this standard, when first hired and at least once per year thereafter, of the following:

- ♦ Existence, location, and availability of any records covered by this section;
- ♦ Identity of the person responsible for maintaining and providing access to records; and
- ♦ Each employee's rights of access to these records.

The employer must keep a copy of this standard and its appendices on file. Copies must be readily available to employees upon request.

Transfer of Records

If the employer ceases to do business, all records must be transferred to the successor, who shall receive and maintain them. In the event that there is no successor employer to receive and maintain the records, the employer is required to notify the affected current employees of their rights of access three months prior to the cessation of the employer's business.