Access to Medical and Exposure Records

WHAT'S AT STAKE?

Employees and employers need to know their respective rights and responsibilities under Federal OSHA Regulation Standard on Access to Employee Exposure and Medical Records on the following two scenarios:

- Employees possibly exposed, to, or use of toxic substances or harmful physical agents at worksites.
- Employer who has employees that may be exposed.

WHAT'S THE DANGER?

The question is what are those exposures that pose a danger to employees?

The OSHA Standard covers records disclosing and documenting the amount of employees' exposure to "toxic substances and harmful physical agents." They may include the following:

- Metals and dusts, such as, lead, cadmium, and silica.
- Biological agents, such as bacteria, viruses, and fungi.
- Physical stress, such as noise, heat, cold, vibration, repetitive motion, and ionizing and non-ionizing radiation.

According to OSHA's regulation, "toxic substance or harmful physical agent" posing a hazard to human health must either (1) be listed in the latest edition of the NIOSH Registry of Toxic Effects of Chemical Substances, (2) have yielded positive evidence of an acute or chronic health hazard in testing conducted by or known to the employer, or (3) be the subject of a material safety data sheet (MSDS) kept by or known to the employer indicating that the material may pose a hazard to human health.

HOW TO PROTECT YOURSELF

A. Employees under the OSHA Standard have designated rights.

Right to Access

What is “access”?

- Access means the right to examine and copy medical and exposure records. As an employee, you have the right to access exposure and medical records and analyses based on these records that concern your employment.

Method of Access

As an employee, you and your designated representatives may access your medical and exposure records in one of three ways:

- The employer may give you a copy of the document, or
- The employer may provide facilities for you to copy the document, or
- The employer may loan you the document to copy it offsite.

No Records

If your employer does not have any records that specifically chart your own exposure levels, you may access the exposure records of employees who engage in similar work or working conditions and may have experienced exposures similar to yours. Employee exposure records include the following:

- Designated Employee Representative Access

The OSHA standard recognizes two types of designated representatives: (1) an individual or organization to whom the employee has given written authorization to access his or her medical or exposure records, and (2) a recognized or certified collective bargaining agent. To access employee information, employee representatives must follow very specific requirements, such as the following:

- Employee Exposure Records.

- Employee Medical Records

Types of Records

- Monitoring results of workplace air or measurements of toxic substances or harmful physical agents in the workplace, including personal, area, grab, wipe, or other forms of sampling results.
- Biological monitoring results, such as blood and urine test results.
- Material safety data sheets (MSDSs) containing information about a substance's hazards to human health.

Other Employee Records

You also may access any employee medical records concerning your health status that were created or maintained by a physician, nurse, health care professional, or technician. Employee medical records include the following:

- Medical and employment questionnaires or histories.
- Results of medical examinations and laboratory tests.
- Medical opinions, diagnoses, progress notes, and recommendations.
- First-aid records.
- Descriptions of treatments and prescriptions.
- Employee medical complaints.

Analyses Compilation

- In addition, you may access any **analyses**— compilations of data or statistical studies — of employee medical and exposure records that concern your working conditions or workplace. If an analysis includes information that could be used to directly or indirectly identify individual employees, however, the employer is required to remove these "identifiers" to the extent possible before permitting employee access to the analysis. Examples of identifiers include an employee's name, address, social security number, and job title

B. Employers have responsibilities under the OSHA STANDARD.

- Preserve and maintain accurate medical and exposure records for each employee.
- Inform workers of the existence, location, and availability of those medical and exposure records.
- Give employees any informational material regarding this standard that OSHA makes available to you.
- Make records available to employees, their designated representatives, and to OSHA, as required.
- Access exposure and medical records relevant to the employee free of charge, with / in a reasonable period of time.

Not Records

- Physical specimens, such as blood and urine samples.
- Records concerning health insurance claims if they are (1) maintained separately from your medical program and its records, and (2) not accessible by employee name or other personal identifier (e.g., social security number or home address).
- Records created only for use in litigation that are privileged from discovery.
- Records created as part of voluntary employee assistance programs, such as records for alcohol and drug abuse or personal counseling, if they are maintained separately from your medical program and its records.
- Trade secret information involving manufacturing processes or a percentage of a chemical substance in a mixture, as long as you inform health professionals and employees and their designated representatives that you have deleted that information from medical and exposure records.

No Exposure Records

- If employer does not have exposure records that document the amount of a toxic substance or harmful physical agent that the requesting employee has been exposed to, the employer must give the requesting employee the records of other employees (with personal identifiers removed) with similar

duties or working conditions that reasonably indicate the amount and nature of exposures the employee requesting the records may have had.
- Employer also may be required to supply exposure records that reasonably indicate the amount and nature of toxic substances or harmful physical agents at a particular workplace, or used in a specific working condition, to which the requesting employee is being assigned or transferred.

Length of Time to Keep Exposure Information and Medical Records

- Employee medical records for at least the duration of the employee's employment plus 30 years.
- Employee exposure records for at least 30 years.
- Analyses using Medical or exposure records for at least 30 years.

Cessation of Business

- Transfer all records subject to this standard to the successor employer OR, if there is no successor, notify current employees at least 3 months before the business closes of their right to access their records. You also must either transfer the records required to be preserved under this standard to the National Institute for Occupational Safety and Health (NIOSH), or notify the Director of NIOSH in writing of your intent to dispose of the records 3 months before that disposal.

Applicable Jurisdiction

- OSHA requires states with their own safety and health programs to have rules and enforcement programs that are at least as effective as those of the federal program.
- If you are an employee in an OSHA-approved state plan, you have the same rights as employees in states under federal OSHA jurisdiction, but your state plan may have additional requirements.
- If you are an employer in a state plan, you have at least the same responsibilities and rights as employers in states under federal OSHA jurisdiction, but your state plan may

have additional requirements.

FINAL WORD

Both employee and employer have rights and responsibilities in relation to possible exposure to and use of toxic substances or harmful physical agents in the workplace.