

Access to Employee Exposure and Medical Records

Purpose

The purpose of this section is to provide employees and their designated representatives a right of access to relevant exposure and medical records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees and their representatives, is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Reference-

Code of Federal Regulation, Title 29, Part 1910.1020 (g)

Scope

This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including an in-house or contractual basis. This Company shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which records are made or maintained.

Notification

Upon initial employment employees will be briefed and at least annually thereafter, informed via a bulletin board posting of the following:

The existence, location and availability of employee records for exposure to toxic substances or harmful physical agents. The records are maintained in the Human Resources Manager office.

The person responsible for maintaining and providing access to the records. Contact your Resources Manager or Safety Representative to initiate this request.

The employee right of access to those records.

The entire section pertaining to the Access to Employee Exposure and Medical Records is available for employee review by contacting the Safety Representative. Since it is readily available posting is not required.

Record Keeping

The Safety Director is responsible for maintaining and providing access to employees' medical records. These records are kept separately from other employee records.

The medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

Employee exposure records shall be maintained for the duration of employment and for 30 years thereafter and should include the following:

Environmental (workplace) monitoring including personal, area, grab, swipe (wipe over a designated area), etc. type samples.

Biological monitoring—level of chemical in the blood, urine, hair, fingernails, etc.

Material safety data sheets or a chemical inventory or any other record which reveals where and when used and the identify (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

Access

Each employee has the right and opportunity to examine and copy his/her records.

The employee may access his/her records by making a request to the Human Resources Manager or Safety Representative. The company will release an employee's medical records only if the employee has given specific, written consent.

Access to an employee must be provided no later than 15 days after the request for access has been made.

Records or copies must be provided at no cost to the employee.

Transfer of records

Whenever we cease to do business, we shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

Whenever this company ceases to do business and there is no successor employer to receive and maintain the records subject to this standard, we shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of business.

Employer Responsibilities for Worker Medical Records

The following is an extract of the Occupational Safety and Health Administration's (OSHA) publication 3169 covering workers' access to their exposure and medical records. This highlights what employers should know concerning these records, as outlined in the OSHA Standard Title 29 of the Code of Federal Regulations (CFR) Part 1910.1020, Access to Employee Exposure and Medical Records.

What should an employer do?

- Preserve and maintain accurate medical exposure records for each worker.
- Inform workers of the existence, location and availability of those medical and exposure records.
- Give workers any informational material regarding the standard that OSHA makes available.
- Making records available to workers, their designated representatives and OSHA, as required.

What types of records must an employer maintain?

You must maintain your workers' medical and exposure records. Exposure records include:

- 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 containing information about a substance's hazards to human health.

Medical records are those records concerning a workers' health status that were created or maintained by a physician, nurse, health care professional or technician. Medical records include:

- 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.
- Worker medical complaints.

In addition, you must maintain any analyses (i.e., complications of data or statistical studies) of medical and exposure records that concern working conditions or the workplace.

Do employers have to make all records available?

No, these are not considered medical records under the standard:

- 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 worker 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 worker assistance programs, such as records for alcohol and drug abuse or personal counseling, if they are maintained separately from you 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 workers, and their designated representatives, that the information has been deleted from medical and exposure records. If the exclusion of the trade secret information substantially impairs the evaluation of when and where the exposure occurred, however, the employer must provide alternative information to the worker.

What if an employer does not have exposure records for a particular worker?

- If an employer does not have exposure records that document the amount of a toxic substance or harmful physical agent that the resulting worker has been exposed to, the employer should give the requesting worker the records of other workers (with personal identifiers removed) with similar duties or working conditions that reasonably indicate the amount and nature of exposures the worker requesting the records may have had.
- The employer 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 worker is being assigned or transferred.

How long does an employer have to keep worker exposure and medical records and other exposure information?

Unless another OSHA rule specifically provides a different period of time, you must keep medical records for at least the duration of the worker's employment plus 30 years, except for:

- Health insurance claim records that the employer maintains separately from the employer's medical program and its records.
- First-aid records made onsite by a non-physician of one-time treatment and later observations of minor scratches, scrapers or other injuries that did not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.
- Medical records of workers who have worked for less than 1 year, as long as the employer offers all such records to the worker upon termination of employment.

Unless another OSHA rule specifically provides a different period of time, you must keep exposure records for at least 30 years, except for:

- Background data related to environmental or workplace monitoring or measuring, such as laboratory reports and worksheets, must only be retained for 1 year, so long as the employer preserves certain interpretive documents relevant to the interpretation of the data for 30 years.
- Material Safety Data Sheets and other specified records concerning the identity of a substance or agent, so long as the employer keeps some record of the identity, preferably the chemical name and information on when and where it was used, for 30 years.
- Biological monitoring results designating as exposure records by specific OSHA standards and shall be preserved and maintained as required by the specific standard governing their use.
- Analyses using medical or exposure records for at least 30 years.

What if an employer goes out of business?

You must transfer all records subject to the standard to the successor employer; or, if there is no successor notify current workers at least 3 months before the business closes of their right to access their records. You should either transfer the records required to be preserved under the standard to the National Institute (NIOSH), or notify the Director of NIOSH in writing of your intent to dispose of the records 3 months before that disposal.

Does the standard cover an employer who runs a business in a state that operates its own job safety plan?

Yes. 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 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.

What types of exposures should concern the worker?

The standard covers record documenting the amount of worker exposure to “toxic substances and harmful physical agents,” which may include:

- 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.

What does “access” mean to a worker?

Access means the right to examine and copy medical and exposure records. An employer must permit a worker and, in certain circumstances his designated representative, to access exposure and medical records relevant to the worker free of charge, within a reasonable period of time. The worker and the designated representative may access the medical and exposure records in one of three ways:

1. The employer may give the worker a copy of the document.
2. The employer may provide facilities for the worker to copy the document, or
3. The employer may loan the worker the document to copy it offsite.

What types of records may a worker access?

The worker may access any exposure records that show the measuring or monitoring of his exposure to a toxic substance or harmful physical agent. If the employer does not have any records that specifically chart the worker's exposure levels, the worker may access the exposure records of other workers who engaged in similar work or working conditions and may have experienced similar exposures. A worker's exposure records include:

- 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 containing information about a substance's hazards to human health.

The worker also may access any medical records concerning his health status that were created or maintained by a physician, nurse, health care professional or technician. A worker's medical records include:

- 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
- Worker medical complaints

In addition, the worker may access any analyses (i.e. compilations of data or statistical studies) of medical and exposure records that concern his working conditions or workplace. If an analysis includes information that could be used to directly or indirectly identify individual workers, however, the employer is required to remove these identifiers to the extent possible before permitting worker access to the analysis. Examples of identifiers include a worker's name, address, Social Security number and job title.

What types of records can be designated worker representative access?

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

- Worker exposure records- Recognized or certified collective bargaining agents may access worker exposure records without an individual worker's written consent. The designated representative must request access in writing from the employer and must specify the records to be disclosed and the occupational health need for accessing the records.
- Worker medical records-Designated representatives may access the medical records of any worker who has given the representative specific written consent. As with worker access to medical records, access is limited to those records pertaining to the authorizing worker.
- Analyses- For the purpose of analyses using exposure or medical records, recognized or certified collective bargaining agents may access the records without an individual worker's written consent. As with worker access, however, the employer must remove or prevent access to any information in these analyses that could reasonably be used to identify the individual worker whose records are the subject of the analyses.