

DLA-SM ACCESSING MEDICAL RECORDS PROGRAM

May 2022

PURPOSE

The purpose of this program is to provide employees a right of access to relevant exposure and medical records; and to provide the Safety Manager a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees and the Safety Manager is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. The program applies when employees have exposure records or medical records that they themselves request or for others with a need to know who require access.

DEFINITIONS

Access means the right and opportunity to examine and copy.

Analysis using exposure or medical records means any compilation of data or any statistical study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

Designated representative means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

Employee means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights.

Employee exposure record means a record containing any of the following kinds of information:

- Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc) but not including results which assess the biological effect of a substance or agent, or which assess an employee's use of alcohol or drugs;
- Safety data sheets indicating that the material may pose a hazard to human health; or

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

Employee medical record means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel or technician, including:

- Medical and employment questionnaires or histories (including job description and occupational exposures),
- The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a baseline or detecting occupational illness, and all biological monitoring not defined as an “employee exposure record”),
- Medical opinions, diagnoses, progress notes, and recommendations,
- First aid records,
- Descriptions of treatments and prescriptions, and
- Employee medical complaints.

"Employee medical record" does not include medical information in the form of:

- Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice; or
- Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or
- Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or
- Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

Employer means a current employer, a former employer, or a successor employer.

Exposure or exposed means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

Health Professional means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

Record means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

Specific chemical identity means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

Specific written consent means a written authorization containing the following:

- The name and signature of the employee authorizing the release of medical information,
- The date of the written authorization,
- The name of the individual or organization that is authorized to release the medical information,
- The name of the designated representative (individual or organization) that is authorized to receive the released information,
- A general description of the medical information that is authorized to be released,
- A general description of the purpose for the release of the medical information, and
- A date or condition upon which the written authorization will expire (if less than one year).
- A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization.
- A written authorization may be revoked in writing prospectively at any time.

Toxic substance or harmful physical agent means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo-or hyperbaric pressure, etc.) which:

- Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), which is incorporated by reference as specified in 29 CFR 1910.6;
- Or has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer;
- Is the subject of a safety data sheet (SDS) kept by or known to the employer indicating that the material may pose a hazard to human health.

Trade secret means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

PRESERVATION OF RECORDS

Medical records for DLA-SM employees shall be preserved and maintained for at least the duration of employment plus thirty (30) years.

The following types of records will not be retained for any specified period by DLA-SM management:

- Health insurance claims records maintained separately from DLA-SM's medical program and its records,

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- First aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records, and
- The medical records of DLA-SM employees who have worked for less than (1) year need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

Any DLA-SM employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

- Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year if the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and
- Safety data sheets (SDSs) and records of any chemical inventory or other record revealing the use and identity of a toxic substance or harmful physical agent need not be retained for any specified period if some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and
- Biological monitoring results designated as exposure records by specific occupational safety and health standards shall be preserved and maintained as required by the specific standard.

Analyses using exposure or medical records Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

Information contained in a record must be preserved and retrievable, except chest X-ray films shall be preserved in their original state.

PROCEDURE FOR REQUESTING ACCESS OF RECORDS

All DLA-SM employee medical records are maintained by DLA. Each employee can request their employee medical record from the servicing agency.

ACCESS OF EXPOSURE/MEDICAL RECORDS

Emergency access of medical records:

Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic substance is necessary for emergency or first-aid treatment, DLA-SM shall immediately disclose the specific chemical identity to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. DLA-SM may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs 29 CFR 1910.1020(f)(4) and (f)(5) as soon as circumstances permit.

Non-Emergency access of medical records:

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In non-emergency situations, DLA-SM shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph 29 CFR 1910.1020(f)(2), to a health professional, employee, or designated representative if:

- The request is in writing;
- The request describes with reasonable detail one or more of the following occupational health needs for the information:
 - To assess the hazards of the chemicals to which employees will be exposed;
 - To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;
 - To conduct pre-assignment or periodic medical surveillance of exposed employees;
 - To provide medical treatment to exposed employees;
 - To select or assess appropriate personal protective equipment for exposed employees;
 - To design or assess engineering controls or other protective measures for exposed employees; and
 - To conduct studies to determine the health effects of exposure.

In accordance with this program and in compliance with the referenced regulation, any entity granted authority to access a DLA-SM employee medical/exposure record will be provided free copies upon request at no charge to the employee or any other authorizing entity.

Upon initial entry as a DLA-SM employee and at least annually thereafter, DLA-SM shall inform all employees:

- The existence, location, and availability of any exposure/medical records;
- The person responsible for maintaining and providing access to records (DLA-SM Safety Manager); and
- Each employee's rights of access to these records.

Department of Labor (OSHA) representatives shall be admitted to DLA-SM sites without delay and at reasonable times by escorting the OSHA representatives to senior management for the operation to be inspected. DLA-SM employees must provide access to all pertinent safety and occupational health information regarding the workplace consistent with national security requirements. DLA-SM employees may request identification and proof of security clearance as appropriate for all DLA-SM areas visited.

REFERENCES

Occupational Safety and Health Act: General Duty Clause

OSHA 29 CFR 1910.95: Occupational Noise Exposure.

OSHA 29 CFR 1910.120: Hazardous Waste Operations and Emergency Response.

OSHA 29 CFR 1910.134: Respiratory Protection.

OSHA 29 CFR 1910.1001: Asbestos

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OSHA 29 CFR 1910.1020: Access to Employee Exposure and Medical Records

OSHA 29 CFR 1926.33: Access to Employee Exposure and Medical Records

DLAI 6055.01 Safety and Occupational Health (SOH) Program, 2018

DLAM 6055.01-V1 Mishap and Near Miss Notification, Investigation, Reporting, and Record Keeping, 2020

DLAM 6055.01-V2 Safety and Occupational Health (SOH) Inspection and Hazard Management, 2020

DLAM 6055.01-V3 Safety and Occupational Health (SOH) Training and Awareness, 2020