

Chapter 296-802 WAC

EMPLOYEE MEDICAL AND EXPOSURE RECORDS

WAC

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WAC 296-802-100 Scope. The purpose of this chapter is to provide employees and their designated representatives the right to access relevant medical and exposure records. It also describes the procedures WISHA will follow when accessing confidential medical information.

This chapter applies to:

- All employers who make, maintain, contract for, or have access to records relating to employee exposure to toxic substances or harmful physical agents, whether or not they are required by specific occupational safety and health rules. These records include:

- Employee medical records.
- Employee exposure records.
- Analyses of employee medical or exposure records.

IMPORTANT:

- The requirements of this chapter do not affect any other legal and ethical obligations the employer has to keep employee medical information confidential.

Exemption: Agricultural operations covered by chapter 296-307 WAC, Safety standards for agriculture, are exempt from the requirements of this chapter.

Reference:

- Requirements for material safety data sheets are found in WAC 296-800-180, Material safety data sheets (MSDSs) as exposure records.
- Additional information about accessing medical information can be found in chapter 70.02 RCW, Medical record—Health care information access and disclosure.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-10-026, § 296-802-100, filed 4/27/04, effective 8/1/04.]

WAC 296-802-200 Keep employee medical and exposure records.

Summary:

Your responsibility:

To keep employee medical records, exposure records, and analyses.

(4/27/04)

IMPORTANT:

- Physicians or other health care personnel may keep medical records for you.
- You may keep information in any form as long as the information is retrievable.

- Unless a specific occupational safety and health rule provides a different time period, you must keep records for the period required by this chapter.

You must:

- Keep employee medical records
WAC 296-802-20005.
- Keep employee exposure records
WAC 296-802-20010.
- Keep analyses of medical or exposure records
WAC 296-802-20015.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-10-026, § 296-802-200, filed 4/27/04, effective 8/1/04.]

WAC 296-802-20005 Keep employee medical records.

You must:

- Keep medical records for at least as long as the employee works for you plus thirty years.

Exemption:

- If an employee works for you for less than **one** year and you provide the records to them when they leave employment, you do not have to keep their medical records.
- You do not need to keep the following records for any specific period:
 - Health insurance claims records maintained separately from your medical program and records.
 - Records of first-aid treatment, if made on-site by a non-physician and if kept separately from the employee medical record.

You must:

- Keep chest X-ray films in their original state, such as film or electronic image.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-10-026, § 296-802-20005, filed 4/27/04, effective 8/1/04.]

WAC 296-802-20010 Keep employee exposure records.

IMPORTANT:

You do not need to keep employee exposure records for exposure to toxic substances when they are:

- Purchased as a consumer product;

AND

- Used in the same manner and frequency that a consumer would use them.

You must:

- Keep employee exposure records for at least thirty years from the date the exposure record was made. These records include the following:

- The sampling results.
- The collection methodology (sampling plan).

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– A description of the analytical and mathematical methods used.

– Background data to environmental monitoring or measuring, such as laboratory reports and work sheets.

Note: You do not have to keep the actual background data for more than one year if you keep a summary of the data for thirty years.

You must:

Keep a record, for at least thirty years, of the identity of any toxic substance used in your workplace. Include:

- Where the substance was used.
- When the substance was used.

Note: The identity may be retained either as part of the exposure record or as a separate record.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-20010, filed 4/27/04, effective 8/1/04.]

WAC 296-802-20015 Keep analyses of medical or exposure records.

You must:

• Keep each analysis using medical or exposure records for at least thirty years.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-20015, filed 4/27/04, effective 8/1/04.]

WAC 296-802-300 Inform employees about records.

Summary:

Your responsibility:

To inform current employees about their medical and exposure records.

You must:

Inform current employees about their medical and exposure records

WAC 296-802-30005.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-300, filed 4/27/04, effective 8/1/04.]

WAC 296-802-30005 Inform current employees about their medical and exposure records.

You must:

• Inform employees covered by this rule about medical and exposure records when they first start employment, and then at least annually. Include the following information:

- Where the records are located.
- Who is responsible for the records.
- Who to contact for access to the records.
- Their rights to copy the records.

• Make copies of this rule available upon request to employees.

• Distribute to your employees any information about this chapter that you are given by the department.

Note: Some of the ways to inform employees that you have medical and exposure records include e-mail, letters, posters, or classroom training.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-30005, filed 4/27/04, effective 8/1/04.]

WAC 296-802-400 Provide employees access to records and analyses.

Summary:

Your Responsibility:

To provide employees access to records and analyses.

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IMPORTANT:

• Employees or their designated representatives can use the collective bargaining process to gain access to records beyond what is required by this chapter.

• The requirements of this section apply to both current and former employees.

You must:

Provide access to employee medical records, exposure records, and analyses

WAC 296-802-40005.

Provide employee medical records

WAC 296-802-40010.

Provide employee exposure records

WAC 296-802-40015.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-400, filed 4/27/04, effective 8/1/04.]

WAC 296-802-40005 Provide access to employee medical records, exposure records, and analyses.

You must:

• Provide employees and their designated representatives access to requested records and analyses as follows:

– In a reasonable time, place, and manner.

– Within fifteen working days.

■ If there is a delay, inform the requesting party of the reason and the earliest date the record will be made available.

Exemption: You do not have to provide analyses that are currently being worked on or have not been reported to you.

You must:

• Provide a copy of the record, when requested, to the employee or designated representative without cost. This may be done by one of the following methods:

– Make a copy for the requestor.

– Make the record and a copier available.

– Loan the record to the employee or designated representative for a reasonable time, so a copy can be made.

Note: • Access to employee medical records will be provided to designated representatives only when the employee provides specific written authorization. See WAC 296-802-40010.

• To locate or identify the records being requested, you may request, from employees or their designated representatives, only known and necessary information. For example, you may request dates and location of where the employee worked during the time period in question.

• You are not required to perform an analysis of medical or exposure records at the request of an employee or designated representative.

• When there is an original X ray you may restrict access to an on-site examination or make other arrangements for a temporary loan.

• When a record has been provided without cost to an employee or designated representative, and they request additional copies, you may charge a reasonable, nondiscriminatory administrative cost. For example, you may charge search and copying expenses but not overhead expenses.

– A reasonable fee for copying, as defined in chapter 70.02 RCW, should not exceed sixty-five cents per page for the first thirty pages and fifteen cents per page for all additional pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-40005, filed 4/27/04, effective 8/1/04.]

WAC 296-802-40010 Provide employee medical records.

You must:

(4/27/04)

- Make sure employees have access, upon request, to their own medical records.

- Note:**
- A physician, nurse, or other responsible health care professional who maintains employee medical records may delete from requested medical records the identity of individuals who provided confidential information regarding an employee's health status.
 - If a physician represents you and believes that providing an employee access to their specific diagnosis of a terminal illness or psychiatric condition could harm the employee, they may request that the record be released only to a designated representative having specific written authorization.
 - The physician representing you may recommend that the employee or designated representative do one of the following:
 - Consult with the physician to review and discuss requested records.
 - Accept a summary of facts and opinions instead of requested records.
 - Accept the release of requested records only to another physician or designated representative.

You must:

- Make sure that individual employees are not identified in any portion of analyses that report the contents of employee medical records.
 - Identifying information includes both direct identifiers such as name, address, Social Security number, and payroll number, and other information that could reasonably be used in the circumstances to identify individual employees such as exact age, height, or weight.

Note: If it is not feasible to remove personal identifying information from a document, you do not have to provide the portions where personal identifiers cannot be moved.

You must:

- Provide designated representatives access to employee medical records when the employee provides specific written authorization.
 - If the written authorization does not contain an expiration date, it expires ninety days after it is signed.
 - Release only medical information that exists on the date of the written employee consent, unless the consent specifically states that future information may be released.

Note: An employee may revoke the specific written authorization in writing at any time.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-40010, filed 4/27/04, effective 8/1/04.]

WAC 296-802-40015 Provide employee exposure records.

You must:

- Provide requested exposure records that show the type and amount of toxic substances or harmful physical agents to which the employee is or has been exposed, for an employee's current or transfer work assignment.
 - In the absence of records specific to the employee, exposure records of other employees with the same job duties or related working conditions will be used to the extent necessary to respond to the request.
 - Provide a designated representative, who does not have specific employee consent, access to employee exposure records only when a reasonable written request is made that includes the following:
 - The records requested.
 - The occupational health need for accessing these records.

(4/27/04)

Note: Trade secret information may be withheld from exposure records. See chapter 296-816 WAC, Protecting trade secrets, for more information.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-40015, filed 4/27/04, effective 8/1/04.]

WAC 296-802-500 Respond to medical record access orders.

Summary:

IMPORTANT:

This section describes how WISHA accesses employee medical records and your related rights and obligations.

Your responsibility:

To post written WISHA access orders.

You must:

Respond to WISHA access orders for employee medical records

WAC 296-802-50005.

Content of WISHA written access orders

WAC 296-802-50010.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-500, filed 4/27/04, effective 8/1/04.]

WAC 296-802-50005 Respond to WISHA access orders for employee medical records.

You must:

- Promptly respond to a written access order you receive from WISHA for personally identifiable employee medical information.
- Post a copy of the cover letter you receive from WISHA for fifteen working days where employees can easily review it.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-50005, filed 4/27/04, effective 8/1/04.]

WAC 296-802-50010 Content of WISHA written access orders. A written access order from WISHA will contain at least the following information:

- The identity of employees whose medical information is being requested.
 - This may be either by name, job classification, time clock number, department, or similar identifier.
- A description of the medical information that will be examined.
- The purpose for seeking access to this medical information.
 - Any additional evidence supporting access to the medical information.
 - A step-by-step description of how the records will be obtained, copied, reviewed, and stored, specifying the following:
 - Who will be in charge of on-site review of the records, or who will take possession of the records for offsite review.
 - Where the records will be reviewed.
 - When review or receipt of the records is to take place.
 - If the records are to be reviewed on-site, what type of information will be copied and removed offsite.
 - How personal identifiers will be separated from the medical information and how long this information will be kept.

- The principal WISHA investigator's full name, business address and telephone number.
- The full names and titles of all individuals that will review the records.
- The WISHA industrial hygiene program manager's full name, business address and telephone number.

Note: WISHA does not need a written access order for the following types of employee medical records:

- Medical records and analyses that do not contain personal identification information.
- Examination of records to verify compliance with the medical surveillance requirements of another occupational health and safety rule.
- The following records when required by another occupational health and safety rule:
 - Medical opinions.
 - Biological monitoring results.
 - Results of medical examinations and laboratory tests.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-10-026, § 296-802-50010, filed 4/27/04, effective 8/1/04.]

WAC 296-802-600 Transfer and disposal of employee records.

Summary:

Your responsibility:

To transfer or dispose of employee medical and exposure records when you go out of business.

You must:

Transfer or dispose of employee medical and exposure records when you go out of business

WAC 296-802-60005.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-10-026, § 296-802-600, filed 4/27/04, effective 8/1/04.]

WAC 296-802-60005 Transfer or dispose of employee medical and exposure records when you go out of business.

You must:

- Follow the requirements in Table 1 when transferring or disposing of records.

**Table 1
Transfer or Disposal of Records**

If	Then
Another employer continues the business when you go out of business	Transfer all employee records to that employer
No other employer continues the business when you go out of business	Do the following: – Notify affected current employees of their rights of access to records at least three months prior to the termination of your business AND EITHER: – Notify WISHA in writing of your impending decision to dispose of records at least three months prior to your planned disposal; OR

If	Then
	– Transfer the records to WISHA, if required by a specific WISHA safety and health rule
You intend to dispose of records after the retention period has expired Note: If you dispose of records on a regular basis, you may notify WISHA once annually, at least three months before your first disposal, with the schedule of your planned disposals for the year	• Do the following: – Notify WISHA in writing of your impending decision to dispose of records at least three months prior to your planned disposal; OR – Transfer the records to WISHA, if required by a specific WISHA safety and health rule

Note: The address to notify WISHA in writing is:
Department of Labor & Industries/WISHA Services
Attention: Medical Records
P.O. Box 44610
Olympia, WA 98504-4610

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-10-026, § 296-802-60005, filed 4/27/04, effective 8/1/04.]

WAC 296-802-900 Definitions.

Access

The right and opportunity to examine and copy an employee record.

Analysis using exposure or medical records

• Any collection of data or a statistical study based on either:

– Information from individual employee exposure or medical records;

OR

– Information collected from health insurance claim records.

Designated representative

• Any individual or organization to which an employee gives written authorization.

• A recognized or certified collective bargaining agent without regard to written employee authorization.

• The legal representative of a deceased or legally incapacitated employee.

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 (such as the level of a chemical in the blood, urine, breath, hair, or fingernails) 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.

- Material safety data sheets indicating that the material may pose a hazard to human health;

OR

- In the absence of the above:
 - A chemical inventory or any other record that reveals where and when used and the identity (e.g., chemical, common or trade name) of a toxic substance or harmful physical agent.
 - Exposure records of other employees with past or present job duties or related working conditions.

Employee medical record

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 (preemployment, preassignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for 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.
- Employee medical complaints.

An employee medical record does **not** include any of these types of medical information:

- Physical specimens (for example, blood or urine samples), which are routinely discarded as a part of normal medical practice.
- 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, such as Social Security number or payroll number.
- Records created solely in preparation for litigation that are privileged from discovery under applicable rules of procedure or evidence.
- Records concerning voluntary employee assistance programs, such as alcohol, drug abuse, or personal counseling programs, if maintained separately from the employer's medical program and records.

Exposure or exposed

The contact an employee has with a toxic substance, harmful physical agent or oxygen deficient condition. Exposure can occur through various routes, such as inhalation, ingestion, skin contact, or skin absorption.

First aid

Any of the following are considered first aid:

- Using a nonprescription medication at nonprescription strength.
- Administering tetanus immunizations. Other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment.
- Cleaning, flushing or soaking wounds on the surface of the skin.
- Using wound coverings such as bandages, Band-Aids™, or gauze pads.
- Using butterfly bandages or Steri-Strips™.

- Using hot or cold therapy.
- Using any nonrigid means of support, such as elastic bandages, wraps, or nonrigid back belts.
- Using temporary immobilization devices, such as splints, slings, neck collars, or back boards, while transporting an accident victim.
- Drilling a fingernail or toenail to relieve pressure.
- Draining fluid from a blister.
- Using eye patches.
- Removing foreign bodies from the eye using only irrigation or a cotton swab.
- Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means.
- Using finger guards.
- Using massages.
- Drinking fluids for relief of heat stress.

Harmful physical agent

Any physical stress such as noise, vibration, repetitive motion, heat, cold, ionizing and nonionizing radiation, and hypo- or hyperbaric pressure which:

- Is listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS);

OR

- Has shown positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer;

OR

- Is the subject of a material safety data sheet kept by or known to the employer showing that the material may pose a hazard to human health.

Health professional

A physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, who provides medical or other occupational health services to exposed employees.

Record

Any item, collection, or grouping of information. Examples include:

- Paper document.
- Microfiche.
- Microfilm.
- X-ray film.
- Computer record.

Specific chemical identity

Any other information that reveals the precise chemical designation of the substance, such as:

- Chemical name;

OR

- Chemical abstracts service (CAS) registry number.

Specific written authorization

A written authorization containing at least 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 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.
- A date or condition upon which the written authorization will expire.

Toxic substance

Any chemical substance or biological agent, such as bacteria, virus, and fungus, which is any of the following:

- Listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS).
- Shows positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer.
- The subject of a material safety data sheet kept by or known to the employer showing the material may pose a hazard to human health.

Trade secrets

Any confidential information that is used in an employer's business and gives an opportunity to gain an advantage over competitors who do not know or use it. It can be a:

- Formula.
- Pattern.
- Process.
- Device.
- Information.
- Collection of information.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.-060. 04-10-026, § 296-802-900, filed 4/27/04, effective 8/1/04.]