

Chapter 296-816 WAC

PROTECTING TRADE SECRETS

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WAC 296-816-100 Scope. This chapter applies to both:

- Withholding trade secret information from material safety data sheets (MSDSs) and employee exposure records;

AND

- Providing trade secret information in medical emergencies and nonemergency situations.

Definition:

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. 04-14-026, § 296-816-100, filed 6/29/04, effective 9/1/04.]

WAC 296-816-200 Protecting trade secrets.

Your responsibility:

To meet requirements that apply to your workplace when withholding or providing trade secret information.

You must:

WAC 296-816-20005

Indicate when trade secret information has been withheld.

WAC 296-816-20010

Provide trade secret information in a medical emergency.

WAC 296-816-20015

Provide trade secret information in nonemergency situations.

WAC 296-816-20020

Provide trade secret information when requested by WISHA.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-14-026, § 296-816-200, filed 6/29/04, effective 9/1/04.]

WAC 296-816-20005 Indicate when trade secret information has been withheld.

You must:

- Indicate clearly in the MSDS or employee exposure records that trade secret information has been withheld.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-14-026, § 296-816-20005, filed 6/29/04, effective 9/1/04.]

WAC 296-816-20010 Provide trade secret information in a medical emergency.

You must:

- Immediately provide the specific chemical identity to the treating physician or nurse when **they determine:**

- That a medical emergency exists;

AND

- The specific chemical identity is necessary to treat the employee involved in the medical emergency.

Note:

- You may require a written statement of need and confidentiality agreement from the treating physician or nurse receiving the trade secret information as soon as circumstances of the medical emergency permit.
- If the health care professional receiving the trade secret information decides that there is a need to disclose it to WISHA, they need to inform you prior to, or at the same time as, disclosure being made to WISHA.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-14-026, § 296-816-20010, filed 6/29/04, effective 9/1/04.]

WAC 296-816-20015 Respond to requests for trade secret information in nonemergency situations.

You must:

- Provide specific chemical identity information in non-emergency situations when a written request by a health professional, employee, or designated representative, includes the following:

- Details showing that the specific chemical identity is needed for one or more of the following occupational health reasons:

- Assessing the hazards of the chemicals employees will be exposed to.

- Conducting or assessing sampling of the workplace atmosphere to determine employee exposure levels.

- Conducting medical surveillance of exposed employees.

- Providing medical treatment to exposed employees.

- Selecting or assessing personal protective equipment for exposed employees.

- Designing or assessing engineering controls or other protective measures.

- Conducting studies to determine the health effects of exposure.

- Details showing why the following alternative information **does not** meet the needs of the requestor:

- The properties and effects of the chemical.

- Measures for controlling employees' exposure to the chemical.

- Methods of monitoring and analyzing employee exposure to the chemical.

■ Methods of diagnosing and treating harmful exposures to the chemical.

– The procedures that will be used to keep the information confidential.

– A written confidentiality agreement that says:

■ The information will not be used for anything other than the stated health needs.

■ The information will not be released to anyone else, except according to the terms of the agreement or to WISHA.

Note: • If the health care professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to WISHA, they need to inform you prior to, or at the same time as, disclosure being made to WISHA.

You must:

• Meet all the following requirements if you decide not to provide the requested trade secret information:

– Provide a written denial within thirty days that includes the following information:

■ The reasons for denying the request.

■ Evidence that the requested information is a trade secret.

■ A detailed explanation of how alternative information may satisfy the requesting party's needs without revealing any specific chemical identity.

– Provide alternative information that allows the requesting party to identify where and when an exposure occurred, if trade secret information was deleted.

– Make available all other information about the properties and effects of the specific chemical.

Note: • If you deny a request for trade secret information, the requestor may refer the written denial, along with the original request, to WISHA for consideration. WISHA will review the denial and determine if it meets the requirements of this chapter, such as whether:

- It is a bona fide trade secret.
- There is a medical or occupational health need for the information.
- Adequate means are in place to protect the confidentiality of the information.
- WISHA may issue orders or impose additional limitations or conditions on the release of the information to make sure that the occupational health needs are met without risk to you when you show WISHA that a confidentiality agreement will not provide enough protection against harm that could be caused to your business by disclosing a specific chemical identity.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-14-026, § 296-816-20015, filed 6/29/04, effective 9/1/04.]

WAC 296-816-20020 Provide trade secret information when requested by WISHA.

You must:

• Provide trade secret information to WISHA when requested.

– Make any trade secret claim, including supporting documentation, by the time you provide WISHA with the information.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. 04-14-026, § 296-816-20020, filed 6/29/04, effective 9/1/04.]

WAC 296-816-300 Definitions.

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:

A record containing any of the following 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 (MSDSs) 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.

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.

Health professional:

A physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing 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 information that reveals the precise chemical designation of the substance, such as:

- Chemical name;

OR

- Chemical abstracts service (CAS) registry number.

Trade secret: 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:

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