

§12-202-2 Definitions. As used in this chapter:

"Access" means the right and opportunity to examine and copy.

"Air contaminant" means the equivalent of the terms "material" and "substance" for this chapter.

"Analysis using exposure or medical records" means any compilation of data, or any research, or statistical or other studies 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.

"ANSI" means the American National Standards Institute.

"ANSI Z9.2" means ANSI Z9.2-1979, Fundamentals Governing the Design and Operation of Local Exhaust Systems.

"ANSI Z88.2" means ANSI Z88.2-1984, Practices for Respiratory Protection.

"Coal tar pitch volatiles" mean, as used in table 202-1, the fused polycyclic hydrocarbons which volatilize from the distillation residues of coal, petroleum (excluding asphalt, CAS 8052-42-4 and CAS 64742-93-4), wood, and other organic matter.

"Designated representative," means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose 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 materials or harmful physical agents.

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

- (1) Environmental (workplace) monitoring or measuring of a toxic substance or a harmful physical agent, including personal, area, grab, or wipe sampling, or any other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- (2) Biological monitoring results which directly assess the absorption of a substance or 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;
- (3) Material safety-data sheets; and
- (4) 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 or nurse, or any other health care personnel or technician, including:

- (1) Medical and employment questionnaires or histories (including job description and occupational exposures);
- (2) 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 base-line or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record");
- (3) Medical opinions, diagnoses, progress notes, and recommendations;

- (4) Descriptions of treatments and prescriptions;
- (5) First-aid records; and
- (6) Employee medical complaints; but does not include medical information in the form of:
 - (A) Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice; or
 - (B) 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
 - (C) Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or
 - (D) 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.

"Excursion factor" means the magnitude of the permissible excursion above the PEL-TWA for those substances not preceded by a "C" in table 202-1 and not found in table 202-2.

"Exposure" or "exposed" means that an employee is subjected to a toxic material or harmful physical agent in the course of employment through any route of entry, such as inhalation, ingestion, skin contact, or absorption, and includes past exposure and potential exposure.

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

"Material" see "Air contaminant".

"Permissible Exposure Limit (PEL)" means the airborne concentrations of substances to which it is believed that nearly all workers may be exposed with no adverse effect.

"Permissible Exposure Limit-Ceiling (PEL-C)" means the concentration that shall not be exceeded even instantaneously. The PEL-C is the employee's exposure, which shall not be exceeded during any part of the workday. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure, which shall not be exceeded at any time over a working day.

"Permissible Exposure Limit-Short Term Exposure Level (PEL-STEL)" means the employee's 15-minute time weighted average exposure, which shall not be exceeded at any time during a workday unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time limit shall not be exceeded at any time during the workday.

"Permissible Exposure Limit-Time Weighted Average (PEL-TWA)" means the employee's average airborne exposure, which shall not be exceeded in any 7- to 8-hour work shift of a 40-hour workweek.

"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).

"SIC" means the Standard Industrial Classification.

"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:

- (1) The name and signature of the employee authorizing the release of medical information;
- (2) The date of the written authorization;
- (3) The name of the individual or organization that is authorized to release the medical information;
- (4) The name of the designated representative (individual or organization) that is authorized to receive the released information;
- (5) A general description of the medical information that is authorized to be released;
- (6) A general description of the purpose for the release of the medical information; and
- (7) A date or condition upon which the written authorization will expire (if less than one year); but

A written authorization does not 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.

"Substance" see "Air contaminant".

"Toxic material 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:

- (1) 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); or
- (2) Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or
- (3) Is the subject of a material safety-data sheet 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. [Eff. 7/12/82; am 5/28/83; am 6/16/84; am 8/5/88; am 3/22/91] (Auth: HRS §396-3) (Imp: HRS §396-3)