

**WORKSAFE! FACT SHEET
ACCESS TO INFORMATION**

A. Labor Code § 6408

1. Employers shall provide certain information to workers:

a. **POSTER** - the employer must post the Cal/OSHA poster (see copy at page 120).

b. **CITATIONS** - the employer must post citations (copies will do) for a certain amount of time at or near the place where the violation occurred.

c. **RIGHT TO OBSERVE MONITORING** - the employer must let workers observe monitoring of hazards.

d. **ACCESS to RECORDS** - the employer must permit workers access to certain records (see B below for detail).

e. **NOTICE of EXPOSURE above certain levels** - the employer must tell each worker who has been or is being exposed to toxic materials or harmful physical agents that he or she is being exposed at a level above that which a standard or order or special order permits, and the notice must explain what corrective action is being taken.

B. Title 8 California Code of Regulations 3204 (8 CCR 3204)

1. Access to the information set forth below - which is granted under 8 CCR 3204 to employees - is also granted to employee representatives. **However, with respect to employee medical records, the authorized representative must submit a RELEASE FORM from the employee along with the request for information.**

**There are new privacy laws regarding medical records; please check with an attorney regarding these rules.

a. **Access is to be granted within 15 days** of the request, unless Cal/OSHA grants an extension of time for the Employer to meet the request. 8 CCR 3204(e)(1)(A).

b. **Access is authorized by Labor Code § 6408(d).** Access includes:

(1) Employee Exposure Records

Per 8 CCR 3204(c)(5)(A) through (D) this is:

(A) environmental (workplace) monitoring or measuring, and

(B) biological monitoring results, and

(C) material safety data sheets (MSDSs), or

(D) any other record which reveals the identity of a toxic substance or harmful physical agent.

Per 8 CCR 3204(e)(2)(A) 1 through 4 this is:

1. records of the employee's past or present exposure to toxic substances or harmful physical agents;

2. exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee;
3. records containing exposure information concerning the employee's workplace or working conditions; and
4. exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

NOTE: Workers have a right to **OBSERVE** monitoring or measuring of employee exposure to hazards. Labor Code § 6408(c).

NOTE: Workers exposed to hazardous substances in violation of laws, standards or orders shall be **INFORMED** of the exposure and corrective action taken. Labor Code § 6408(e).

(2) Employee Medical Records

Per 8 CCR 3204(c)(6)(A) 1 through 5 this is:

1. medical and employment questionnaires or histories (including job descriptions and occupational exposures);
2. the results of medical exams (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);
3. medical opinions, diagnoses, progress notes, and recommendations;
4. descriptions of treatments and prescriptions; and
5. employee medical complaints.

Per 8 CCR 3204(c)(6)(B) this does NOT include:

1. actual physical specimens;
2. records concerning health insurance claims if not maintained with the employer's medical program records, or if not easily accessible (by name, social security number, payroll number, or other personal identifier);
3. records of voluntary employee assistance programs (alcohol, drug abuse, personal counseling) if maintained separately from the employer's medical program records.

(3) Analyses Using Exposure and Medical Records.

8 CCR 3204(e)(2)(C) and 8 CCR 3204(c)(2)

c. Access by providing a copy of the records is without cost only the first time it is requested. 8 CCR 3204(e)(1)(C)

2. The sample letters should be addressed to the employer. Address them to the most senior authority in the company, and send copies to the appropriate managers.

C. Labor Code § 6409 & 6409.1- First Report of Work Injury

Employers (and others) must REPORT INJURIES and KEEP certain RECORDS. Doctors and employers are required to report to the **Division of Labor Statistics and Research** about occupational injuries or illnesses. See Labor Code §§ 6409 and 6409.1(a) & (b). Re reports to and from other agencies, see Labor Code §§ 6409.2 and 6409.5. For prisoners, see Labor Code §§ 6413 and 6413.2.

INJURIES requiring a REPORT. Per Labor Code § 6409, reports shall be made for illnesses as defined in § 6409 (b) or for injuries which result in lost time beyond the date of the injury or illness or which require medical treatment beyond first aid. Per Labor Code § 6409.3 all pesticide treatments are considered beyond first aid.

1. DOCTOR'S FIRST REPORT. Per Labor Code § 6409, doctors must file a report with the Division of Labor Statistics & Research (**DLSR**).

2. EMPLOYER'S FIRST REPORT. Per Labor Code § 6409.1 (a), the **employer must file a report with** the Division of Labor Statistics & Research (**DLSR**). IF the employer is insured, this form is filed by the employer with the insurer and the insurer then files with DLSR.

CAN YOU GET A COPY? Per Labor Code § 6412, these reports are **NOT open to the public**. The Employer's report is **NOT** admissible as evidence in any workers' compensation matter. However, the Doctor's report is (except for the portion filled out by the worker); but it is not admissible to bar proceedings for workers' compensation. **SO, you can NOT get these from Cal/OSHA but only by subpoena or legal request with a release form from the employer or doctor.**

3. EMPLOYER'S REPORT to Cal/OSHA. Per Labor Code § 6409.1 (b), in addition to the report required by subdivision (a), the **employer must file a report immediately by telephone (see 8 CCR 342 for detail) with Cal/OSHA for a serious injury or illness or death**. Serious means it involved hospitalization for more than 24 hours for something other than medical observation or it involved the loss of any piece of the body (not a finger tip) or any serious degree of permanent disfigurement.

Per 8 CCR 342, employers must report the name and location of the injured person, nature of the injury or illness, a description of the accident including its time and date, the employer's name, address and telephone number and other relevant information to the nearest Cal/OSHA office by phone or fax within 8 hours. See <http://www.dir.ca.gov/dosh/DistrictOffices.htm> for the list of offices.

CAN YOU GET A COPY? After the Cal/OSHA case is closed, you can get this report from Cal/OSHA utilizing the California Public Records Act. See page 95.

The law was recently strengthened regarding the employer's reporting requirements. AB 2837, effective January 1, 2003, substantially increased penalties for employers who failed to report. **Employers who fail to report a fatal or serious injury or illness now face a minimum penalty of \$5,000.** See Labor Code § 6314(b) and related regulation 8 CCR 342. AB 2837 also provides that an employer, officer, management official or supervisor who knowingly **fails to report a death** to Cal/OSHA or knowingly induces another to do so **is guilty of a misdemeanor** and will face a penalty of up to one year in jail, a fine of up to \$15,000 or both. If the violator is a corporation or limited liability company, the fine could be up to \$150,000. (But see Labor Code § 6413.5 for minimal penalties for violations of others or by employers for other aspects of failure to report.)

D. Labor Code § 6410 - Recordkeeping Requirements

LOG 300 and Form 301. Per Labor Code § 6410, Labor Code § 6410 et. seq. the employer must follow specific recordkeeping requirements. The employer is required to fill out an Injury and Illness Incident Report within 7 calendar days of receiving information that a recordable work-related injury or illness has occurred (Form 301). The employer is also required to keep a Log of Work-Related Injuries and Illnesses (Log 300).

See pages 103 - 113 in the Appendix for Cal/OSHA Forms for Recording Work-Related Injuries and Illnesses. These documents are available on legal size paper and in an excel spreadsheet from the Cal/OSHA Publications list under Recordkeeping. See http://www.dir.ca.gov/dosh/dosh_publications/RecKeepOverview.pdf.