MNOSHA St. Paul office – (651) 284-5050
MNOSHA Duluth office – (218) 733-7830
MNOSHA Mankato office – (507) 304-6262

Employee Right-to-Know on construction sites

The Employee Right-to-Know Act was passed by the Minnesota Legislature in 1983 and requires employers to provide training and information to employees who are routinely exposed to hazardous substances, harmful physical agents and infectious agents on the job. Employee Right-to-Know (ERTK) applies to both general industry and construction employers and is intended to ensure employees are aware of the dangers associated with the substances and agents they may be exposed to at their worksites. Employers are required to evaluate, or survey, their worksites for the presence of hazardous substances, harmful physical agents and infectious agents, and provide training to employees concerning those substances or agents. A *written* ERTK program is required.

I. Site responsibility

A. The general contractor or controlling employer has overall site-safety responsibility. Responsibilities include:

1. conducting a survey of the entire site for hazardous substances and harmful physical agents and determining whose employees may be affected by the hazardous substances, harmful physical agents or infectious agents present on the site;

2. informing the subcontractors whose employees may be affected by these substances or agents; and

3. conducting on-going assessments of the health and safety hazards present.

B. Subcontractors are responsible for the safety of their area. Responsibilities include:

1. surveying their sites for hazards and informing the general contractor and other subcontractors with employees in the area of the hazards present; and

2. assuring their employees are trained in all hazards to which they may be exposed even if the exposure is caused by the work of another subcontractor.

C. Employers that introduce hazardous substances into the worksite and expose another employer's employees are required to provide the other employers or contractors with a copy of pertinent material safety data sheets (MSDSs) or to make them available at a central location at the site. One employer does not actually have to physically give another employer the MSDSs, but must inform the other employer of the location at the site where the MSDSs will be maintained.

II. Written ERTK program

A. Employers must develop and implement a *written* ERTK program that must be available at *a central location* and must include:

1. an outline of training that will be provided to employees;

2. a list of the hazardous substances known to be present using an identity (e.g., chemical name, common name, etc.) that is referenced on the appropriate MSDS – the list may be compiled for the worksite as a whole or for individual work areas;

3. a description of the labeling systems or other forms of warning used at the worksite and the methods that will be used to inform other employers of the labeling system;

4. the methods the employer will use to inform employees of the hazards of infrequent or nonroutine tasks that involve exposure to hazardous substances, harmful physical agents or infectious agents;

5. the methods the employer will use to inform employees of the hazards associated with hazardous substances contained in unlabeled pipes in their work areas;

6. the methods the employer will use to inform other employers with employees working at the site of the hazardous substances, harmful physical agents or infectious agents employees may be exposed to while performing their work and the precautionary measures that must be taken under normal operating conditions and in foreseeable emergencies; and

7. the methods the employer will use to provide other employers with a copy of the MSDS or other written information, or how it will be made available at the jobsite (e.g., a central location) for each substance or agent the other employer's employees may be exposed to while working at the jobsite.

B. The *written program or a summary of the written program* must be maintained *at the jobsite* at all times and *must be made available*, upon request, to employees, their designated representatives and OSHA.

III. Required employee training

A. General

1. All employees who are routinely exposed (e.g., have a reasonable potential for exposure to hazardous substances, harmful physical agents or infectious agents during the normal course of assigned work) *must be trained.* An employee is considered to be "routinely exposed" when required to work with or in an environment of a hazard covered by ERTK.

2. Employees must be fully trained *before initial* assignment to a jobsite where the employee may be routinely exposed to a hazardous substance, harmful physical agent or infectious agent. Additional training must be done before the employee is routinely exposed to any additional hazards covered by ERTK.

3. Temporary, seasonal and part-time workers who are assigned to tasks that could potentially expose them to hazardous substances, harmful physical agents or infectious agents must be included in the training program.

4. ERTK training must be updated *annually*.

5. The *current employer* is responsible for ERTK employee training. ERTK training must be jobsite specific. If a substance covered by ERTK is available for use and employees are expected to use it or work in an environment where it is used or exists, then training must be provided.

6. Giving an employee a data sheet, package insert, reference manual or other printed material to read, or having them sit and watch a video *does not* meet the ERTK training requirements. Training must be a forum for explaining to employees not only the hazards in their work area, but also how to use the ERTK information.

    a. Audiovisuals, interactive video, printed materials, etc., may be used as part of the program but must be supplemented by specific information related to the employees' job duties and related exposures.

    b. Training must include an opportunity for employees to ask questions to ensure they understand the information presented to them.

7. Employers that use a small number of substances may decide to conduct training by going through the MSDS for each substance. Employers with a large number of substances may decide to train about specific exposure hazards, common hazards of a broad class of substances or agents, hazards of a complete production operation or any other grouping of similar information.

B. Training records and documentation

1. Records of ERTK training must be maintained by the employer, *on-site or at a central location*, and retained for *three* years. Training records must be made available, upon request, for review by employees, their designated representatives and OSHA representatives. At a minimum, training records must include:

    a. the date training was conducted;

    b. the name, title and qualifications of those conducting the training;

    c. the names and job titles of employees who completed the training; and

d. a brief summary or outline of the information covered during the training.

C. Training and information requirements for hazardous substances

1. Availability of written information – material safety data sheets (MSDSs)

a. A material safety data sheet or equivalent written information *must be "readily accessible" at the jobsite* for all hazardous substances in use at the construction site.

b. "Readily accessible" means the information is convenient to or nearby the employee's work area and can be easily obtained by the employee without delay.

c. The employer using the substance is responsible for providing the MSDS. It is suggested, but not required, that the general contractor or controlling party have all subcontractors locate the necessary MSDSs in one central trailer or similar location on site.

2. Training for employees routinely exposed to hazardous substances must include:

a. a summary of the standard and the employer's written ERTK program;

b. the name or names of substances, including any generic or chemical name, trade name and commonly used name;

c. the level, if known, at which exposure to the substance has been restricted and the methods that can be used to detect the presence or release of substances (including substances in unlabeled pipes);

d. known acute (extremely severe, reaching crisis rapidly) and chronic (prolonged, lingering) effects of exposure at hazardous levels, including routes of entry;

e. known symptoms;

f. any potential for flammability, explosion or reactivity of the substance;

g. appropriate emergency treatment;

h. known proper conditions of use and exposure to the substance (e.g., required personal protective equipment, appropriate work practices or methods to use in handling or using the substance, etc.);

i. procedures for cleanup of leaks and spills;

j. the name, phone number and address of a manufacturer of the hazardous substance; and

k. a written copy of all of the above information (e.g., MSDSs) and where that information can be found at the worksite.

D. Training and information requirements for harmful physical agents

ERTK restricts coverage of harmful physical agents to *four physical agents* (heat, noise, ionizing radiation and nonionizing radiation) because the ERTK statute defines harmful physical agents as those physical agents "determined by the commissioner **as part of the standard for that agent** to present a significant risk to worker health or safety or imminent danger of death or serious physical harm to an employee." Therefore, before a physical agent can be covered under ERTK, a separate standard for the agent must exist.

1. Availability of written information

   a. Manufacturers of equipment that generates a harmful physical agent must provide the purchasing employer with the information necessary for that employer to comply with the training requirements of ERTK. The information must be provided at the time of purchase and must be current, accurate and complete.

   b. Employers must provide written information to employees who may be exposed to one or more of these physical agents at a level that may be expected to approximate or exceed the permissible exposure limit or the applicable action level.

2. Training for employees who are routinely exposed to harmful physical agents at levels that approximate or exceed the permissible exposure limit or applicable action level must include the following:

   a. the name or names of the physical agent including any commonly used synonym;

   b. the level, if known, at which exposure to the physical agent has been restricted or, if no standard has been adopted, according to guidelines established by competent professional groups;

   c. the known acute (extremely severe, reaching crisis rapidly) and chronic (prolonged, lingering) effects of exposure at hazardous levels;

   d. known symptoms;

   e. appropriate emergency treatment;

   f. known proper conditions for exposure to the physical agent (e.g., required personal protective equipment, appropriate work practices, etc.);

g. the name, phone number and address, if appropriate, of a manufacturer of the equipment that generates the harmful physical agent; and

h. a written copy of all of the above information that shall be readily accessible in the area or areas in which the harmful physical agent is present and where the employees may be exposed to the agent through use, handling or otherwise.

E. Training and information requirements for infectious agents

The infectious agents provisions of ERTK apply to all employers that have employees potentially exposed to infectious agents, which includes employees assigned to first aid or first response teams. Although construction employers are exempt from 1910.1030, Occupational Exposure to Bloodborne Pathogens, they are *not exempt* from ERTK infectious agents training if they have employees who are routinely exposed to infectious agents.

1. Availability of information – The written information requirement for infectious agents can be met if the employer makes reference documents available at the worksite for employees' information. Documents such as "The Control of Communicable Disease in Man" that provide all the information required for infectious agents training under ERTK are acceptable as meeting this requirement.

2. The training program for all employees routinely exposed to infectious agents must cover the most commonly found agents and must include:

   a. a general explanation of the epidemiology and symptoms of infectious diseases, including hazards to special at-risk employee groups;

   b. an explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to infectious agents, including blood and other infectious materials;

   c. an explanation of the chain of infection, or infectious disease process, including agents, reservoirs, modes of escape from reservoir, modes of transmission, modes of entry into host and host susceptibility;

   d. an explanation of the employer's exposure control program;

   e. an explanation of the use and limitations of methods of control that will prevent or reduce exposure, including universal precautions, appropriate engineering controls and work practices, personal protective equipment and housekeeping;

   f. an explanation of the basis for selection of personal protective equipment, including information about the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;

g. an explanation of the proper procedures for cleanup of blood or body fluids;

h. an explanation of the recommended immunization practices, including the HBV vaccine and the employer's methodology for determining which employees will be offered the HBV vaccine, and the efficacy, safety and benefits of being vaccinated;

i. procedures to follow if an exposure incident occurs, method of reporting the incident and information about the post-exposure evaluation and medical follow-up that will be available;

j. information about the appropriate actions to take and people to contact during an emergency involving blood or other potentially infectious materials;

k. an explanation of the signs, labels, tags or color coding used to denote biohazards;

l. an opportunity for interactive questions and answers with the person conducting the training session;

m. an accessible copy of the regulatory text of the ERTK standard and an explanation of its contents; and

n. how to gain access to further information and reference materials that must be made available in the workplace, including the location, contents and availability of pertinent materials that explain symptoms and effects of each infectious agent.

IV. Labeling

A. Hazardous substances

1. Consumer products generally come pre-labeled and these labels are adequate in most cases. Bulk items and transfer containers used by more than one individual, which may not be pre-labeled, will have to be labeled. However, specific trade items, such as a roofer's melt pot, cauldron or buggy, when used by the appropriate tradespeople, would not require labeling.

2. Immediate-use containers (e.g., test tubes, beakers, graduates, vials, pitchers, pails or similar containers that are routinely used and reused) do not have to be labeled if:

   a. they are used only to transfer a hazardous substance from a labeled container;

b. they remain under the control of the person who transferred the substance; and

c. they are only used during the work shift in which the transfer takes place.

3. Labels or other markings on each container of hazardous substances must include the identity of the hazardous substance, appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. The label may also include a coded reference to the appropriate MSDS.

4. Labels must be legible and in English, but may also be printed in other languages.

5. The substance identity on the label must correspond to the MSDS for the product.

B. Harmful physical agents

Employers must label equipment or work areas that generate harmful physical agents at a level that approximates or exceeds the permissible exposure limit with at least the name of the physical agent and the appropriate hazard warning. For example: warning signs may be appropriate in areas where radiation exposure due to nondestructive testing is possible or in areas that are particularly noisy.

C. Infectious agents

Labeling for infectious agents is not feasible or practical on construction sites. However, written information must be available to employees who are potentially exposed to infectious agents because of their job assignments (e.g., assigned to a first aid team, etc.).

V. Sources for more information

For more detailed written information, employers should review the Employee Right-to-Know standard (Minnesota Rules Chapter 5206) and the general industry guidelines booklet "An Employer's Guide to Developing an Employee Right-to-Know Program."

Questions may be directed to the following Minnesota OSHA offices.

Minnesota OSHA
443 Lafayette Road N.
St. Paul, MN 55155-4307
Phone: (651) 284-5050
Fax: (651) 284-5741

Minnesota OSHA
525 Lake Ave. S., Suite 330
Duluth, MN 55802-2368
Phone: (218) 733-7830
Fax: (218) 725-7722

Minnesota OSHA
Mankato Place
12 Civic Center Plaza, Suite 1650
Mankato, MN 56001-7781
Phone: (507) 304-6262
Fax: (507) 389-2746

This material can be provided to you in different formats (Braille, large print or audio) if you call the MNOSHA Training Office at (651) 284-5050 or (651) 297-4198 TTY.

Hazards commonly found in construction

Chemical compounds

- ✓ Paints, thinners and strippers (see Minnesota Rules 5207.0040 for isolation and ventilation requirements for painting)
- ✓ Adhesives, glues
- ✓ Pipe joint compound, PVC cements
- ✓ Sealants
- ✓ Cleaning solvents
- ✓ Muriatic, sulfuric, hydrochloric acids
- ✓ Motor oils, hydraulic fluids, gasoline
- ✓ LP gas

Dusts and fumes

- ✓ Nuisance dust
- ✓ Welding and soldering fumes (contents of rods, base metals and coatings)
- ✓ Silica and other abrasive materials
- ✓ Portland cement, mortars
  - asbestos (see Minnesota Rules 5207.0035 for survey requirements before renovation or demolition work is begun)

Gases

- ✓ Oxygen
- ✓ Acetylene
- ✓ Nitrogen
- ✓ Hydrogen sulfide
- ✓ Methane
- ✓ Carbon monoxide (see Minnesota Rules 5207.0310 for survey requirements)
- ✓ Nitrogen dioxide
- ✓ LP gas

Physical agents

- ✓ Noise
- ✓ Heat
- ✓ Ionizing radiation (X-rays, gamma rays, etc.)
- ✓ Nonionizing radiation (microwaves, etc.)