



YOU'D BETTER HOLD ONTO THOSE SAMPLING RESULTS— OSHA'S 30-YEAR RECORDKEEPING REQUIREMENT

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Among the myriad of regulations promulgated by the [Occupational Safety and Health Administration](#) ("OSHA") is a wide-sweeping requirement in [29 C.F.R. 1910.1020](#) to preserve and maintain each "employee exposure record" for at least thirty (30) years. "Employee exposure record" is broadly defined to include air monitoring results and other sampling to detect toxic substances or harmful physical agents in the workplace, including personal, area, grab, and wipe samples. The OSHA standards do not require employers to conduct such sampling or monitoring, but employers often do conduct such activities for any number of reasons. And the OSHA recordkeeping and reporting requirements kick in once a record is created from that sampling or monitoring. In light of these requirements, in-house counsel needs to work closely with the management team and carefully consider the onerous obligations that can arise from sampling and monitoring and need to ensure that compliance with the OSHA requirements is achieved for any records generated from those activities.

As defined by the OSHA standard, a "toxic substance or harmful physical agent" generally means any chemical substance, biological agent, or other physical stress (including noise, temperature, vibration, and radiation) listed by the [National Institute for Occupational Safety and Health](#) ("NIOSH") or otherwise shown to cause human health hazards. Accordingly, the results of any indoor air sampling for certain [volatile organic compounds](#) ("VOCs"), or wipe samples taken for mold or lead, would likely constitute employee exposure records. Also falling within the ambit of employee exposure records are any summaries, reports, or other such documents that analyze or otherwise compile the data collected through sampling or monitoring and even includes background data collected for comparison purposes. Further, material safety data sheets ("MSDS") constitute employee exposure records where they indicate that the subject material may be hazardous to human health.

Pursuant to the OSHA standard, with limited exceptions, employee exposure records must be kept for a minimum of thirty years. Exceptions to the thirty year retention requirement do exist for background data and MSDS, which generally only need to be retained for one year if certain other records are kept for the full thirty year period. To the extent that it provides any consolation, the thirty year retention requirement for employee exposure records is actually surpassed by the requirement established for employee medical records in the same OSHA regulation. Such medical records generally must be kept for the duration of the employee's term of employment and then for thirty more years.

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OSHA's 30-YEAR RECORDKEEPING REQUIREMENT (cont'd)

Finally, in addition to preserving and maintaining the employee exposure records, in-house counsel should be aware that employers are required to make certain disclosures and to take certain steps to make the records available. Specifically, at the time of hire and annually thereafter, employees must be advised of the existence of any such records. Upon request, employees must also be afforded access to those records, and access generally needs to be provided within fifteen (15) days of that request. By understanding the OSHA requirements applicable to certain sampling and monitoring records, in-house counsel and management can make an informed decision about what activities to undertake, whether and which records to generate, and the steps thereafter required to maintain compliance with the applicable requirements.

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