

# Fact Sheet

## Minnesota Employee Right to Know Act

The Minnesota Employee Right to Know Act (MERTKA) is one of the most important and most commonly cited OSHA regulations. It is intended to ensure that all employees are aware of the work-related health hazards to which they are or may be exposed.

### Introduction

The purpose of the Minnesota Employee Right to Know Act is to ensure that all employees are aware of the hazards associated with exposure to hazardous substances, harmful physical agents (including heat, noise, ionizing radiation, or non-ionizing radiation), or infectious agents to which they may be exposed in the workplace.

The regulation applies to all Minnesota employers with the exception of Federal agencies.

### OSHA enforcement

It is noteworthy that the top ten most common MNOSHA citations include several MERTKA-related violations. For instance, failing to conduct adequate MERTKA training is by far the most common MNOSHA violation most years. This fact underscores the importance of this topic.

### Listing of hazards

The first step in complying with the regulation is to determine whether employees are exposed or potentially exposed to any hazardous substances, harmful physical agents, or infectious agents that are or may be present in the workplace. It is nearly

impossible to imagine a workplace where there is absolutely no chance of exposure; nearly every employer, therefore, will be required to develop a MERTKA program, as described later in this fact sheet.

A formal listing of hazards to which employees are "routinely exposed" is required. "Routinely exposed" means that a reasonable potential exists for exposure to hazardous substances, harmful physical agents, or infectious agents during the normal course of employees' work assignments. Routine exposure includes working in areas where hazardous substances have been spilled and cleaning up leaks and spills. It does not include a simple walk-through of an area where a substance or agent is present and no significant exposure occurs.

Exposure above the OSHA Permissible Exposure Limits (PELs) is not necessary for inclusion on the list of hazards.

Compiling this list will require careful consideration and evaluation of the work area. Many hazards will not be immediately obvious. For example:

- Carbon monoxide from forklifts and other such equipment.

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- Diesel exhaust from diesel equipment.
- Welding fumes from welding operations.
- Wood dust from wood working operations.
- Heat, insect bites, and poisonous plants if employees work outdoors.
- Methane, hydrogen sulfide, and other gases potentially encountered by employees who work in confined spaces.

## Written program

If employees are exposed to hazardous substances, harmful physical agents, or infectious agents, then a formal, written program is required.

*A program template is available from the Office of Occupational Health and Safety (uohs@umn.edu)*

The program must include:

- An inventory of hazardous substances, harmful physical agents, or infectious agents present in the workplace.
- Identification of employees who are routinely exposed to those substances or agents.
- A system for obtaining and maintaining Material Safety Data Sheets (MSDS).
- Methods for making information readily accessible to employees in their work areas.
- A plan for providing initial, pre-assignment, and annual training of employees.
- Implementation and maintenance of a labeling system or other warning methods.
- The methods used to communicate and control hazards that may be encountered during infrequent or non-routine tasks.

- In addition, multi-employer workplace employers must describe the methods the employer will use to:
  - Inform other employers with employees working at the workplace of the hazardous substances, harmful physical agents, or infectious agents employees may be exposed to while performing their work.
  - Provide other employers with MSDSs or other written information, or notify them of where MSDSs or other information will be located in the workplace.
  - Inform other employers of required precautionary measures that must be taken during normal operating conditions and in foreseeable emergencies.
  - Inform the other employers of the labeling system used in the workplace.

The MERTKA program must be maintained at the worksite and must be available to employees or their designated representatives and Minnesota OSHA.

Like most safety programs, the MERTKA program will be an ever-changing program. New substances will be introduced; currently used substances will be replaced or totally eliminated from use, etc.

The written MERTKA program must be reviewed at least annually to remove outdated information, insert new information, update training records, etc.

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## Training

Each employee covered by the program must receive MERTKA training. The training must be made available by and at the cost of the employer. Training must be provided in English or a language understood by employees.

Training must be specific to the hazards that are listed in the MERTKA program. Highly generalized training (e.g., a generic training video) that does not include information about specific hazards (e.g., carbon monoxide, heat, pesticides, corrosives, etc.) is not acceptable by itself.

Training must be provided:

- Before an employee's initial assignment to a workplace where exposure may occur.
- Before any new or additional hazardous substance or agent is introduced into the workplace.
- Annually. Annual update training may be brief summaries of information included in initial and/or previous training sessions.

All training must be adequately documented and records must be retained for three years.

For several reasons, locations are advised to contact DEHS and/or OHS for assistance with planning and conducting MERTKA training. This type of training is quite technical and lengthy, and will require some degree of trainer credibility.

## Material Safety Data Sheets (MSDSs)

A Material Safety Data Sheet (MSDS) is a detailed information bulletin prepared by the manufacturer or importer of a chemical that describes the physical and chemical properties, health hazards, routes of entry, precautions for safe handling and use, emergency and first-aid procedures, and control measures for a given chemical.

Employers must maintain a complete and accurate MSDS for each hazardous substance present in the workplace, with the following exceptions:

- Products employees bring into the workplace for their personal use.
- Consumer products or products sold or used in retail establishments if they are used in a manner that is comparable to typical consumer use (i.e., same frequency, concentration, etc.).
- Articles that contain a hazardous substance in solid form that is not released.
- Substances bound and not released under normal conditions of use (e.g., adhesive tape, vinyl upholstery, tires, etc.).
- Waste material regulated under the Resource Conservation and Recovery Act (RCRA).
- Substances in sealed packages that are not opened.
- Substances in a physical state, volume, or concentration that does not present a hazard (e.g., very small quantity, solids, diluted substances that present no adverse health effects, etc.).

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Material Safety Data Sheets must include (at a minimum) the information contained in 29 CFR 1910.1200 (g)(2). In most cases, materials such as product labels, instructions, fact sheets, inserts, marketing materials, and other such documents are not adequate to meet this requirement.

## Hazard labeling

All hazardous substances must be kept in properly labeled containers.

Labels on containers received from manufacturers or importers must include:

- The identity (name) of the hazardous substance.
- The appropriate hazard warnings (e.g., “flammable,” “causes lung damage,” “irritates skin,” etc.).
- The name and address of the chemical manufacturer, importer, or other responsible party.

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

- They are used only to transfer a hazardous substance from a labeled container.
- They remain under the control of the person who transferred the substance.
- They are only used during the work shift in which the transfer takes place.

Pipes or piping systems need not be labeled but their contents must be included in employee training.

Where labeling is not practical or feasible, such as for carbon monoxide from lift trucks or welding operations, warning signs or equivalent warning methods must be used.

## Exceptions to the MERTKA regulation

*Technically Qualified Individuals* (TQIs) are individuals who, because of their training, education, and experience, are deemed to be knowledgeable in the hazards associated with hazardous substances, harmful physical agents, or infectious agents. The only individuals who may claim TQI status are physicians, dentists, pharmacists, and lead research individuals.

There is no need to provide training to TQIs. However, TQIs must be notified when the training is going to be given to other employees and allowed to attend if they wish.

The TQI exemption applies only to MERTKA training and has no effect on other portions of the regulation or any other OSHA standard that requires training of employees. For example, employees who are exposed to bloodborne pathogens, which are infectious agents, must be trained in accordance with the Occupational Exposure to Bloodborne Pathogens standard. If bloodborne pathogens are included in the MERTKA training session on infectious agents, TQIs must attend.

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*Farms.* Farming operations that employ ten or fewer employees are exempt from all provisions of Employee Right to Know, with the exception that label information must be provided to employees or their representatives. Farming operations employing more than ten employees or operating a temporary labor camp and employing any of its residents must comply with the Farming Operations Training Plan Standard, Minnesota Rules 5206.1300 to 5206.1900.

*Waste Service Employers.* Employers who collect, process, or dispose of waste regulated under the federal Resource Conservation and Recovery Act are exempt from the hazardous substances and harmful physical agents training and information requirements of MERTKA. Waste service employers include garbage and rubbish collectors, landfill operators, hazardous waste transporters, and independent testing laboratories or government agencies who visit hazardous waste sites. To qualify for exemption under ERTK, waste service employers must develop and implement a training program for employees and submit that program to MNOSHA for approval. Again, the exemption from MERTKA requirements for waste service employers does not extend to any other OSHA standard. For example, waste service employers must comply with the Occupational Exposure to Bloodborne Pathogens Standard, 29 CFR 1910.1030, if employees have the potential for exposure to blood as a result of their job responsibilities.

## Questions

If you have questions on this topic, please contact the Office of Occupational Health and Safety at (612) 626-5008 or [uohs@umn.edu](mailto:uohs@umn.edu), or see the website at <http://www.ohs.umn.edu>.