

TITLE XXIII

LABOR

CHAPTER 277-A

TOXIC SUBSTANCES IN THE WORKPLACE

Section 277-A:1

277-A:1 Name. – This chapter shall be known and may be cited as the "Worker's Right to Know Act."

Source. 1983, 466:1, eff. Oct. 26, 1983.

Section 277-A:2

277-A:2 Purpose. – The general court hereby finds and declares that the proliferation of toxic substances in the workplace poses a growing threat to the health of employees exposed to these substances; that the number and variety of these substances makes effective monitoring of these potential health hazards by governmental agencies difficult and expensive; that employees themselves are often in the best position to detect symptoms of toxicity, provided they are aware of the nature of the substances to which they are exposed; that employees have an inherent right to know the dangers to which they are potentially exposed in their workplace so that they may make knowledgeable and reasoned decisions with respect to their continued employment under the circumstances and the need for corrective action; and that the workplace often serves as an early warning mechanism for the outside environment. The general court therefore determines that it is appropriate for employers to provide their employees with all available information concerning the nature of the toxic substances to which such employees may be exposed during the course of their employment and the suspected hazards these substances pose and to take all other practicable and feasible measures to protect their employees from the risks of toxic substances.

Source. 1983, 466:1, eff. Oct. 26, 1983.

Section 277-A:3

277-A:3 Definitions. –

As used in this chapter:

- I. "Employee" means any person who currently works or formerly worked, with or without compensation, in a workplace. The term "employee" does not include domestic workers or casual laborers employed at the place of residence of the employer.
- II. "Employee representative" means an individual or organization to which an employee gives written authorization to exercise his rights under this chapter. A recognized or certified collective bargaining agent shall be considered to be an employee representative without regard to written employee authorization.
- III. "Employer" means any person, firm, corporation, partnership, association, the state, any political subdivision of the state, or any other entity which is engaged in a business or in providing services and which employs employees in connection with such business or services.
- IV. "Safety data sheet" means a written document prepared on a toxic substance containing all of the following information except as provided by RSA 277-A:4, III(c):
 - (a) Identification including product identifier; manufacturer or distributor name, address, phone number; emergency phone number; recommended use; restrictions on use.
 - (b) The hazards of the substance.
 - (c) Composition and information on ingredients, including information on chemical ingredients and trade secret

claims.

(d) First aid measures including important symptoms or effects, if acute or delayed, and required treatment.

(e) Firefighting measures including suitable extinguishing techniques and equipment and any chemical hazards from fire.

(f) Accidental release measures including emergency procedures, protective equipment, and proper methods of containment and cleanup.

(g) Handling and storage precautions, including incompatibilities.

(h) Exposure controls and personal protection, including Occupational Safety and Health Administration Permissible Exposure Limits, Threshold Limit Values, appropriate engineering controls, and personal protective equipment.

(i) Physical and chemical properties and characteristics.

(j) Stability, reactivity, and the possibility of hazardous reactions.

(k) Toxicological information including routes of exposure, related symptoms, acute and chronic effects, and numerical measures of toxicity.

(l) The date such information was compiled and the name and address of the manufacturer, producer, or formulator responsible for compiling it.

V. "Toxic substance" means any radioactive or other substance which is defined as a toxic substance by a rule adopted pursuant to RSA 541-A by the department of health and human services. The department shall define as a toxic substance:

(a) Any substance which appears on any list of toxic or hazardous substances which is included in any of the following:

(1) The United States Department of Transportation's 1980 Emergency Response Guidebook of Hazardous Waste Materials.

(2) TLV's: Threshold Limit Values for Chemical Substances and Physical Agents in the Workroom Environment, published by the American Conference of Government Industrial Hygienists.

(3) Title 29, Code of Federal Regulations, Section 1910.1000.

(4) Standards issued under Section 6(b)(5) of the Occupational Safety and Health Act of 1970.

(5) The Director of the Department of Industrial Relations' List of Hazardous Substances, published by the State of California.

(b) Any substance which has yielded positive evidence of acute or chronic health hazards in human, animal or other biological testing which could be applicable to human beings;

(c) Any other substance which the department determines should be so defined consistent with the purposes of this chapter and consistent to the extent possible with the methods and criteria used in compiling the lists of toxic or hazardous substances referred to in subparagraph (a). For the purposes of this chapter, the term "toxic substance" shall not include any liquor or beverage, as those terms are defined in RSA 175:1, VIII and XLII, or any other substance which has been packaged for retail sale or which is contained in a product which has been packaged for retail sale; and

(d) Any substance which is combustible, a compressed gas, explosive, flammable, a health hazard, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water reactive as established by the latest edition of the Fire Protection Guide on Hazardous Materials published by the National Fire Protective Association.

VI. "Trade secret" means any confidential formula, pattern, device or compilation of information which does all of the following:

(a) Is used in the employer's business.

(b) Gives the employer the opportunity to obtain an advantage over competitors who do not know or use it.

(c) Is known only to the employer and to those employees to whom it is necessary to confide.

VII. "Workplace" means any location, permanent or temporary, where an employee performs any work-related duty in the course of his employment.

VIII. "Commissioner" means the commissioner of labor.

Source. 1983, 466:1. 1990, 255:10. 1995, 310:175, 181, eff. Nov. 1, 1995. 2015, 141:1, eff. Jan. 1, 2016.

Section 277-A:4

277-A:4 Safety Data Sheets. –

I. Except as provided in paragraph III, no person shall obtain, purchase, manufacture, formulate, transport or distribute any toxic substance within this state unless the substance is accompanied by a complete safety data sheet prepared by the manufacturer, producer, or formulator of such substance no more than one year prior to the obtainment, purchase, manufacture, formulation, transportation or distribution.

II. A manufacturer, producer or formulator may provide a single safety data sheet for a product mixture containing 2 or more toxic substances instead of providing a safety data sheet for each toxic substance component of such mixture if all of the following are applicable:

(a) The product mixture itself has been submitted to sufficient analysis and testing to justify a valid judgment on its hazardous properties.

(b) Each component toxic substance is identified on the product label individually, within the limits of practicability and feasibility.

(c) A safety data sheet on each component toxic substance identified pursuant to subparagraph (b) is available upon request.

III. (a) When a manufacturer, producer, formulator or employer considers the identity of or other information concerning a toxic substance to be a protectable trade secret whose disclosure would compromise his or her competitive advantage, he or she shall register this information as secret with the commissioner of labor provided that such information is already registered as a trade secret pursuant to any provision of federal law or such information is not registered as a trade secret but is related to a proprietary process the disclosure of which would compromise his or her competitive position.

(b) The commissioner of labor shall not release any data which discloses any trade secret or proprietary process unless he or she shall notify, in writing and by certified mail, the submitter of such information of the intent to release the data. The commissioner may not release the information, without the submitter's consent, until the thirtieth day after the submitter has been furnished such notice. Any subsequent release shall be pursuant to applicable provisions relating to trade secrets or the Freedom of Information Act.

(c) In the event that a toxic substance or product mixture containing 2 or more toxic substances is registered by a manufacturer, producer or formulator as a component of a trade secret or otherwise protected as a proprietary process, such manufacturer, producer or formulator shall not be required to divulge the specific identity of the substance, but shall be required to provide a safety data sheet containing the information specified in RSA 277-A:3, IV(b)-(l).

(d) In the event that a toxic substance or product mixture containing 2 or more toxic substances is registered as a component of a trade secret or otherwise protected as a proprietary process, the employer shall not be required to divulge the specific identity of the substance but shall otherwise be subject to all of the duties imposed by RSA 277-A:5.

IV. Notwithstanding the provisions of paragraph III, full and complete information regarding any toxic substance or substances to which an employee has been exposed shall be made available to a licensed physician if the information is needed for the purpose of medical diagnosis or treatment of such person.

Source. 1983, 466:1, eff. Oct. 26, 1983. 2015, 141:2, eff. Jan. 1, 2016.

Section 277-A:5

277-A:5 Employer's Duty to Provide Information. –

Subject to the limitations of RSA 277-A:4, III, every employer whose employees handle, use, or are otherwise exposed to any toxic substance during the course and scope of their employment shall:

I. Keep on file in a convenient office location and make available for examination and reproduction upon request a safety data sheet for each toxic substance or product mixture containing 2 or more toxic substances to which an employee may be exposed in carrying out his or her duties.

II. Post a notice, written in clearly understandable nontechnical language, in a conspicuous location accessible to the employees and as close to the work area as possible containing the word "Warning" in large letters and all the following information on each toxic substance to which employees may be exposed:

(a) The name or names of the substance.

(b) The acute and chronic hazards of exposure to the substance.

(c) Symptoms of exposure and overexposure, including known behavioral effects.

- (d) Appropriate emergency treatment for exposure and overexposure.
 - (e) Proper conditions for safe use of and exposure to the substance.
 - (f) Procedures for cleanup of leaks and spills of the substance.
 - (g) Procedures in case of fire or other environmental changes which would result in increasing the substance's hazardous or toxic properties.
- III. Post a notice of the availability of a safety data sheet for each of the toxic substances to which the employee may be exposed and, upon request by an employee for a safety data sheet, supply such data sheet within 72 hours.
- IV. Conduct an education and training program within 180 days of October 26, 1983, for all employees routinely exposed to toxic substances, and thereafter during the first month of employment of any such new employee, informing such employees of the nature of the toxic substances to which they will be exposed, prescribing proper and safe procedures for handling under all circumstances, and advising them of the potential risks involved.
- V. Make every reasonable effort to obtain from manufacturers, producers, formulators, the Federal Environmental Protection Agency, or any other authoritative source, any new or updated information concerning the toxic substances in his or her workplace and to make such information available to all affected employees immediately.
- VI. Notify all employees of their rights under this chapter.
- VII. Send a copy of each safety data sheet with details of the specific locations of each toxic substance and available extinguishing agents to the local fire department. Such safety data sheets shall be available for public inspection at such fire departments.
- VIII. Maintain on file at the workplace safety data sheets for a period of at least 30 years after discontinuation of the use of each toxic substance. In the event that the employer ceases operations or relocates, all safety data sheets shall be submitted to the department of labor to be maintained on file for the statutorily required 30 year period. All rights of access to safety data sheets provided in this chapter shall apply to the full 30 year period.

Source. 1983, 466:1, eff. Oct. 26, 1983. 2015, 141:2, eff. Jan. 1, 2016.

Section 277-A:6

277-A:6 Employees' Rights if Information Not Provided. – Any employee who requests information about a toxic substance required pursuant to RSA 277-A:5, III may, if he does not receive such information within 5 working days, refuse to work with such substance until such time as the employer provides him with such information.

Source. 1983, 466:1, eff. Oct. 26, 1983.

Section 277-A:7

277-A:7 Discharge or Discrimination for Exercise of Rights Forbidden. –

- I. No employer shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against any employee, prospective employee or employee representative because that person has filed any complaint or has instituted or caused to be instituted any proceeding related to the provisions of this chapter, or has exercised any right provided in this chapter.
- II. Any employee, prospective employee or employee representative who believes that he has been discharged, disciplined, or otherwise discriminated against by an employer pursuant to paragraph I shall, within 30 days of such violation, or 30 days after he first obtains knowledge of such violation, file a complaint with the commissioner of labor alleging such discrimination. Upon receipt of such a complaint, the commissioner shall conduct an investigation as he deems appropriate. If, upon investigation, the commissioner determines the allegation to have substance, he may refer the matter to the attorney general for appropriate action.

Source. 1983, 466:1, eff. Oct. 26, 1983.

Section 277-A:8

277-A:8 Inspection by Department of Labor Permitted. –

I. If the commissioner or his designee finds, or has cause to believe, that any provision of this chapter is being violated, he may enter and inspect the premises of any employer's place of business and take samples of any unknown substance in order to ascertain compliance with this chapter. The laboratory services of the department of health and human services shall be made available to the department of labor for purposes related to enforcement of this chapter, subject to the availability of adequate laboratory support.

II. The following persons may, if they so desire, accompany such agent or employee of the department of labor:

(a) The affected employer.

(b) An employee of the affected employer or an employee representative.

III. It shall be a violation of this chapter for any person to interfere with the agent or employee of the department of labor in the discharge of his duties as prescribed by this chapter.

Source. 1983, 466:1. 1995, 310:181, eff. Nov. 1, 1995.

Section 277-A:9

277-A:9 Penalty. – Any person who violates any provisions of this chapter shall be liable for a penalty of not more than \$2,500 for each such violation, to be collected in a civil action by the commissioner of labor. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

Source. 1983, 466:1, eff. Oct. 26, 1983.

Section 277-A:10

277-A:10 Construction of Chapter. – The provisions of this chapter shall be construed as being complementary to and not in lieu of any other law or of any rule adopted under authority of law relative to toxic substances or toxic waste including but not limited to RSA 147-A and RSA 147-B. However, any conflict between this chapter and an existing statute or rule shall be resolved at all times by following the stricter requirement.

Source. 1983, 466:1, eff. Oct. 26, 1983.