

**Toxic Substances
Information, Training, and Education**

Part 820 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the
state of New York (Cited as NYCRR 820)

and

Article 28 of the New York State Labor Law



As Amended
Effective August 26, 2004

Article 28
Toxic Substances

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§ 875. Definitions

When used in this article:

1. "Employer" means any individual, partnership, corporation or association engaged in a business who has employees including the state and its political subdivisions. The term "employer" does not include the employment of domestic workers or casual laborers employed at the place of residence of his or her employer.
2. "Toxic substance" means any substance which is listed in the latest printed edition of the national institute for occupational safety and health registry of toxic effects of chemical substances or has yielded positive evidence of acute or chronic health hazards in human, animal or other biological testing.
3. "Workplace" means any location away from the home, permanent or temporary, where any employee performs any work-related duty in the course of his employment.

(Added L.1980, c.551, §3.)

§ 876. Notice requirements

Notice to employees and their representatives regarding toxic substances.

1. Every employer shall post a sign in every workplace at the location or locations where notices to employees are normally posted, to inform employees that they have a right to information from their employer regarding the toxic substances found in the workplace and a description of the toxic effects of these substances and the circumstances under which these effects are produced.
2. Until such time as the commissioner in consultation with the commissioner of health determines that there is a federal program in effect which will guarantee substantially similar protection to employees, each employer shall make available in writing to each employee, and if so requested their representatives, information relating to all toxic effects and the circumstances under which these effects are produced from the toxic substances to which the employee may be exposed in the course and scope of employment.
3. It shall be the responsibility of the employer to obtain information relating to toxic substances from: the manufacturer; the New York state department of health; the Federal Environmental Protection Agency's Chemical Substances Information Network; and the Health Hazard Evaluation Program of the National Institute of Occupational Safety and Health.
4. Subject to the limitations set forth in section eight hundred seventy-seven of this article, any manufacturer, importer, producer or formulator of any toxic substance shipped or transported or sold for any use within the state must provide, upon request, the following information:
 - (a) the name or names of the toxic substance, including the generic or chemical name;
 - (b) the trade name of the chemical and any other commonly used name;
 - (c) the level at which exposure to the substance is determined to be hazardous, if known;

- (d) the acute and chronic effects of exposure at hazardous levels;
- (e) the symptoms of such effects;
- (l) the potential for flammability, explosion and reactivity of such substance;
- (g) appropriate emergency treatment;
- (h) proper conditions for safe use and exposure to such toxic substance;
- (i) procedures for cleanup of leaks and spills of such toxic substance.

5. Whenever an employer receives new information concerning those subjects listed in subdivision four of this section, whether from the manufacturer, importer; producer or formulator or from state or federal agencies, such employer must make such new information available to employees and if so requested, their representatives upon receipt of same.

6. Each employer shall make available to every employee the informational leaflets that he receives about the toxic substances information program pursuant to section forty-eight hundred four of the public health law.

7. Upon receipt of a request for information the employer must provide the requested information in writing within seventy-two hours, excluding weekends and public holidays. If the information is not provided, the employee may not be required to work with the toxic substance until the information is made available,

8. Provision of information to an employee shall not in any way affect the liability of an employer with regard to the health and safety of an employee or other persons exposed to toxic substances, nor shall it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law. Further, it shall not affect any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a toxic substance pursuant to any other provisions of law.

(Added L.1980, c. 551, § 3.)

§ 877. Trade secrets

1. When a manufacturer, producer, formulator or employer considers the identity of or other information concerning a toxic chemical substance to be a protectable trade secret or a proprietary process whose disclosure would compromise his competitive advantage and when other applicable provisions of the health law are satisfied, he may register this information as secret with the commissioner of health.

2. Manufacturers, producers, formulators and employers who so register a substance, process or product with the commissioner of health must inform in writing, employers who request information relating to such substance, and employees and their representatives, that such substance or process constitutes a registered trade secret or proprietary process and that information regarding the toxic effects of such substance is only available without identifying information and must provide such information without identifying data.

3. No officer, employee or agent of any state or municipal department, agency, commission or authority shall disclose to anyone in any manner any record or portions thereof protected pursuant to this article and which are within his custody or knowledge for so long as such record or portions thereof shall be so exempted or until a final judicial denial of such exemption is rendered. Any person who violates any provision of this subdivision may be fined, suspended or removed from office or employment in the manner provided by law.

(Added L.1980, c. 551, § 3.)

§ 878. Employee education and training

Every employer shall institute an education and training program for employees routinely exposed to toxic substances.

2. The education and training program shall commence prior to initial assignment and shall be repeated at least annually thereafter. Additional instruction must be provided whenever the potential for exposure to toxic substances is altered.

3. The education and training program shall include, but may not be limited to, the following:

- (a) the location of toxic substances to which the employee may be exposed:
- (b) the properties of toxic substances to which employees may be exposed:
- (c) the name or names of the toxic substance, including the generic or chemical name;
- (d) the trade name of the chemical and any other commonly used name:
- (e) the acute and chronic effects of exposure at hazardous levels;
- (f) the symptoms of effects of exposure at hazardous levels;
- (g) the potential for flammability, explosion and reactivity of such substance:
- (h) appropriate emergency treatment:
- (i) proper conditions for safe use and exposure to such toxic substance;
- (j) procedures for cleanup of leaks and spills of such toxic substance.

(Added L.1980, c. 551, § 3.)

§ 879. Records

Employers shall keep a record of the name, address and social security number of every employee who handles or uses a substance or substances included in section nineteen hundred ten of the federal occupational safety and health regulations, subparagraph z and which such substance or substances was or were handled or used by which employee. Such record shall be made available to each affected employee, former employee, designated physician or representative and the commissioner of health, upon request, for examination and copying. Such record shall be kept for forty years. Such records shall be sent to the department of health if the employer's establishment ceases to operate within the state of New York.

(Added L.1980, c. 551, § 3; amended L.1985, c. 577, § 1; L.2003. c., 411, § 1, eff. Aug. 26, 2004)

§ 880. Employees' rights

1. Employees or their representatives may request in writing from employers and shall receive all information relating to toxic substances set forth in subdivision three of section eight hundred seventy-eight of this article.

2. If an employee has requested information about a substance pursuant to subdivision seven of section eight hundred seventy-six of this article, and has not received information within the time allowed therein, the employee may not be required to work with such substance.

3. No employer shall discharge, or cause to be discharged, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed any complaint or has instituted, or caused to be instituted, any proceeding under or related to the provisions of this article, or has testified, or is about to testify, in any such proceeding, or because of the exercise of any right afforded pursuant to the provisions of this article on such employee's behalf or on the behalf of others, nor shall any pay, position, seniority, or other benefits be lost for exercise of any right provided by this article.

4. Any employee who believes that he or she has been discharged, disciplined, or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs or thirty days after the employee first obtains knowledge that a violation did occur, file a complaint with the industrial commissioner¹ alleging such discrimination. Upon receipt of such complaint, the industrial commissioner shall cause such investigation to be made as he deems appropriate. If upon such investigation, the industrial commissioner determines that the provisions of this section have been violated, he shall request the attorney general to bring an action in supreme court against the person or

persons alleged to have violated the provisions of this section. In any such action the supreme court shall have jurisdiction to restrain violations of this section and to order all appropriate relief, including but not limited to civil penalties as set forth in section eight hundred eighty-two of this article, hiring, rehiring or reinstatement of the employee in employment together with the payment of any compensation otherwise actually lost as a result of such violation.

5. Within ninety days of the receipt of a complaint filed under this section the industrial commissioner shall notify the complainant and his representative by registered mail of his determination.

6. Any waiver by an employee or applicant for employment of the benefits or requirements of this article shall be against public policy and be null and void.

7. Any employer's request or requirement that an employee waive any rights under this article as a condition of employment shall constitute an act of discrimination.

(Added L.1980, c. 551, § 3.)

¹ Now commissioner of labor

§ 881. Powers of the industrial commissioner¹

The industrial commissioner may promulgate such regulations as he shall consider necessary and proper to effectuate the purposes and provisions of this article.

(Added L.1980, c. 551, § 3.)

¹ Now commissioner of labor.

§ 882. Penalties

1. Civil penalty. Any employer who fails to comply with the provisions of this article shall be liable for a civil penalty not to exceed ten thousand dollars in addition to any other damages for which an employer maybe liable pursuant to any other provision of law. The attorney general may bring an action in the supreme court against any person or persons alleged to have violated the provisions of this article. In any such action the supreme court shall have jurisdiction to restrain violations of this article and to levy appropriate penalties. Any penalty assessed for the violation of any of the provisions of this article shall be payable to the commissioner of health to be utilized for the purposes of environmental health pursuant to section forty-eight hundred two of the public health law.

2. Criminal penalty. Any person who willfully and intentionally violates the provisions of this article is guilty of a misdemeanor and upon conviction shall be punished, for a first offense, by a fine of not more than five hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a subsequent offense by a fine of not more than one thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

(Added L.1980,c. 551, § 3.)

§ 883. Separability

If any section, clause or provision of this article shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

(Added L.1980, c. 551, § 3.)

Part 820
Toxic Substances-Information, Training and Education
(Statutory Authority: Labor Law. §§ 21[11] 881)

Sec.

- 820.1 Purpose
- 820.2 Definitions
- 820.3 Notice and information requirements
- 820.4 Training
- 820.5 General recordkeeping responsibilities
- 820.6 Information and assistance
- 820.7 Separability

Part (§§ 820.1 - 820.7) filed April 13, 1987 eff. June 1, 1987.

§ 820.1 Purpose.

This Part implements Labor Law, section 881 which provides for promulgation of regulations to effectuate the purposes and provisions of Labor Law, article 28, which guarantees employee' rights to information, training and education regarding toxic substances in the workplace.

Sec. filed April 13, 1987 eff. June 1, 1987.

§ 820.2 Definitions.

As used in Labor Law, article 28, and these regulations:

(a) *chemical name* means the scientific designation of a substance in accordance with the nomenclature developed by the International Union of Pure and Applied Chemistry or by the Chemical Abstracts Service.

(b) *Employee* includes all regular and temporary, full-time and part-time employees, former employees employed after the effective date of Labor Law, article 28, and employees on lay-off and leaves of absence for any reason, but does not include domestic workers or casual laborers employed at their employers' place of residence.

(c) *Exposure or exposed* means being subjected to a toxic substance through any actual or potential route of entry, including inhalation, ingestion, injection, skin contact or absorption, for any period of time, even if such exposure is accidental or if actual exposure is being prevented in whole or in part by the use of protective devices.

(d) *Hazardous* means causing, potentially causing, or contributing to an acute or chronic illness or any other risk to health or life.

(e) *Routine exposure* means exposure (as defined in subdivision [c] of this section) which can be expected to occur in the course of employment as part of an employee's job duties or incidental thereto.

(f) *Trade name* means any designation or identification of a chemical or combination of chemicals, such as a common name, code name, code number or brand name, used to identify a chemical or combination of chemicals other than by their chemical names.

(g) *Substantial number* means 10 employees or 20 percent of the total number of employees, whichever number is lower.

(h) As used in these regulations, the terms *employer*, *toxic substance* and *workplace* have the same meaning as provided in Labor Law, section 875.

Sec. filed April 13, 1987 eff. June 1, 1987.

§ 820.3 Notice and information requirements.

(a) Where any provision of Labor Law, article 28 or these regulations requires an employer to provide

employees with notice or information relating to a toxic substance, said notice or information need not be provided to a former employee employed after the effective date of Labor Law, article 28, or an employee on indefinite lay-off if the toxic substance was not introduced into the workplace until after the employee ceased working for the employer at that workplace. However, if a former employee employed after the effective date of Labor Law, article 28, or an employee on indefinite lay-off requests information pursuant to Labor Law, sections 876(7) and 880(1), about a toxic substance that was not present in the workplace at any time that the employee was employed there, then the employer shall so advise the employee in writing.

(b) The sign required by Labor Law, section 876(1), shall conform substantially to the dimensions, format and type size of those produced by or available from the New York State Department of Health, or shall otherwise be legible and conspicuous, and shall be posted conspicuously on employee bulletin boards or in other similar places, so as to ensure that the signs will be readily seen by employees. If a substantial number of the employees in the workplace speak a language other than English as their primary language and cannot understand a sign in English, then a sign must be posted in that language or languages as well as in English.

(c) The information required to be made available to employees and their representatives under Labor Law, sections 876 and 880, shall be communicated in a manner comprehensible to the employees to whom it is directed, shall be current, and must be updated in a connection with the annual training required by Labor Law, section 878. The employer shall advise the employees or their representatives of the source(s) consulted in order to obtain this information. If a substantial number of the employees speak a language other than English as their primary language, and cannot understand this information in English, and any of this information is available in such other language, then the employer shall communicate such information to the employees in that language as well as in English.

(d) The information required to be made available to employees and their representatives under Labor Law, section 876, includes information about any toxic substance known to be present in a mixture, provided that either:

(1) the substance comprises, as an intentional ingredient or as an impurity, one percent or more by weight of the mixture; or

(2) even if the substance is present only in trace amounts in the mixture, the toxic properties of the substance are such that the mixture may be hazardous upon exposure because of the presence of the substance. An example of this situation would be the presence of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin in the herbicide 2, 4, 5-T.

(e) The information required to be made available to employees and their representatives under Labor Law, section 876(2), shall be maintained in a place readily accessible to employees.

(f) Copies of the information required to be made available to employees and their representatives under Labor Law, section 876(2), shall be provided to them upon request and without charge or condition, unless:

(1) the number of pages encompassed within any one request is greater than 200, in which case the employer shall have the option of charging the actual cost of copying the information in excess of 200 pages or permitting examination of any pages in excess of 200 during regular working hours, with no loss of pay, in a location convenient to the job site of the requestor or, if the requestor is an employee representative, the employees he or she represents; or

(2) the information requested has been supplied in written form to the requestor within a one-year period prior to the request, in which case the employer may either:

(i) loan the information to the requestor; or

(ii) make the information available for inspection or copying in a location convenient to the job site of the requestor or, if the requestor is an employee representative, the employees he or she represents, but need not do so during regular working hours or without loss of pay to the requestor.

(g) Where an employee or a representative of one or more employees has not received information

required to be made available within the time required by Labor Law, section 876(7), the employee(s) may not be required to handle, use or remain in risk of exposure to the toxic substance until the information is provided by the employer.

(h) (1) If information is requested pursuant to Labor Law, section 876(7) or section 880(1), about a substance which is neither a toxic substance nor comprised of any toxic substance, or with regard to which no information is available, then the employer shall respond in writing, state that the substance is not toxic or that no information about the substance is available, and identify the source(s) upon which such statement is based.

(2) An employer may not state that a substance is not toxic or that no information about the substance is available without first:

(i) obtaining a material safety data sheet ("MSDS") or chemical data sheet for that substance;

(ii) obtaining a fact sheet about that substance from the New York State Department of Health; or

(iii) consulting the sources listed in Labor Law, section 876(3).

(i) (1) An employer may comply with the requirements of Labor Law, sections 876(7) and 880(1), and these regulations by:

(i) describing the location of each toxic substance in the workplace;

(ii) making available an MSDS or a chemical data sheet prepared by the New York State Department of Health for each such toxic substance, provided that the MSDS or chemical data sheet contains all of the information required by Labor Law, article 28, and these regulations; and

(iii) advising the employee(s) or employee representative who requested the information that future research may render the information obsolete or incomplete.

(2) If an MSDS or chemical data sheet provided by an employer does not contain all of the information required by Labor Law, article 28, and these regulations, then the employer shall provide the required supplemental information by consulting the sources listed in Labor Law, section 876(3).

(j) Whenever an employer receives new information about any toxic substance in the workplace concerning those subjects listed in Labor Law, section 876(4), it shall upon receipt thereof provide employees and, if so requested, their representatives with such information.

Sec. filed April 13, 1987 eff. June 1, 1987.

§ 820.4 Training.

(a) The education and training program required by Labor Law, Section 878, need not be provided to a former employee or an employee on leave or lay-off unless or until such employee returns to work.

(b) Employees are entitled to the education and training required by Labor Law, section 878, if they are routinely exposed to any toxic substance as "routine exposure" is defined in section 820.2(e) of this Part.

(c) Time, location and manner of training. (1) The education and training program required by Labor Law, section 878, must be provided by qualified trainers during employees' regular working hours, with no loss of pay, in a location convenient to the job site of the employee(s) receiving such training.

(2) The education and training program required by Labor Law, section 878, must be tailored to the individual workplace environment and must include an oral explanation to accompany any written material. If a substantial number of the employees in any particular education and training group speak a particular language other than English as their primary language and cannot comprehend an English-language education and training program, the education and training program must be provided to such employees in that language as well as in English.

(d) Substantive information to be provided. The information required to be provided to employees by

Labor Law, section 878(3)(a)-(j) includes:

(1) such introductory material as is necessary for employees to understand the information provided pursuant to Labor Law, section 878(3)(a)-(j), including but not limited to:

- (i) routes by which toxic substances enter the body;
- (ii) target organs of various toxins, and how toxic substances reach such organs;
- (iii) the retention and accumulation of toxic substances in the body;
- (iv) the concept of synergistic, additive and antagonistic interactions between substances whereby their toxic effects may be multiplied or otherwise increased;
- (v) the concept of a biological threshold level of exposure for the effects of some toxic substances and the absence of any threshold exposure level for other toxic substances, such as chemical carcinogenicity; and
- (vi) the inability of the body to reverse some toxic effects.

(2) information about any toxic substance known to be present in a mixture, provided that either:

- (i) the substance comprises, as an intentional ingredient or as an impurity, one percent or more by weight of the mixture; or
- (ii) even if the substance is present only in trace amounts in the mixture, the toxic properties of the substance are such that the mixture may be hazardous upon exposure because of the presence of the substance. An example of this situation would be the presence of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin in the herbicide 2, 4, 5-T;

(3) any Federal, State and local occupational safety and health laws, ordinances, regulations, or other requirements or standards for the handling and use of any toxic substance found in the employees' workplace;

(4) how to read an MSDS or chemical data sheet;

(5) the use and functioning of cleanup, firefighting and personal protective equipment, in both ordinary and special use conditions, and any workplace policy for when such equipment is to be used; and

(6) the sources from which employees may obtain further information concerning the toxic substances in their workplace, the hazardous consequences of such substances, and the available protective measures, including the addresses and telephone numbers of the nearest offices of the agencies listed in Labor Law, section 876(3).

(e) Updating the education and training program. (1) Before any new toxic substance may be introduced into the workplace, an employer must provide employees with the required education and training for that substance.

(2) Upon the receipt of information indicating that a substance already in use in the workplace is toxic, an employer shall promptly provide employees with the required education and training for that substance.

(f) Employees' rights. The education and training program for employees required by Labor Law, section 878, shall include the following information:

(1) the employees' right to notice and information, the type of information to be provided, and the procedures for obtaining such information, under Labor Law, section 876, and these regulations;

(2) the employees' right to refuse to work with a toxic substance for which a request for information was made but not responded to within 72 hours of the request; the right not to lose pay or forfeit any other privilege until a proper response to the request is received; and the right not to be discharged, disciplined, penalized, or discriminated against for exercising any right under Labor Law, article 28, or these regulations; and that complaints regarding violations of Labor Law, article 28 or these regulations may be made to either the New York State Department of Labor or the Attorney

General of the State of New York:

(3) the employees' right to education and training, the specific information required to be provided through such education and training, and the manner in which such education and training is to be provided under Labor Law, section 878, and these regulations; and

(4) the employer's recordkeeping obligations and employees' right to examine and copy such records under Labor Law, section 879, and these regulations.

(g) Recordkeeping. Employers shall maintain a written record of training given to employees. This record shall describe the training, the date or dates on which it was given, the names of the employees in attendance at each session, and the person(s) conducting the training. These records shall be maintained by the employer for the duration of each employee's employment and shall be made available upon request to the employee, his or her representative, the New York State Department of Labor and the Attorney General of the State of New York.

Sec. filed April 13, 1987 eff. June 1, 1987.

§ 820.5 General recordkeeping responsibilities.

(a) The record required to be maintained by Labor Law, section 879, shall specify the name, address and social security number of the employee, and the chemical and trade name(s), chemical abstracts service number, and manufacturer, if known, of each substance to which the employee has been exposed.

(b) The employer shall keep a file of any written materials maintained to comply with Labor Law, article 28, including, at least, training materials and the MSDS's or chemical data sheets for each toxic substance found in the workplace since the effective date of Labor Law, article 28, whether or not the substance is still present in the workplace.

(c) An employer ceasing operations or relocating out of the State shall supply the New York State Department of Health with a copy of the records required under subdivisions (a) and (b) of this section.

Sec. filed April 13, 1987 eff. June 1, 1987.

§ 820.6 Information and assistance.

Any employer may request further information or assistance regarding these regulations or compliance therewith by contacting the Bureau of Toxic Substance Assessment of the New York State Department of Health.

Sec. filed April 13, 1987 eff. June 1, 1987.

§ 820.7 Separability.

If any section, clause or provision of this Part shall be unconstitutional, or be invalid or ineffective in whole or in part, to the extent that it is not unconstitutional, invalid or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

Sec. filed April 13, 1987 eff. June 1, 1987.