454 CMR 21.00: "RIGHT TO KNOW" LAW M.G.L. C. 111F

Section

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21.01: Purpose and Scope

(1) Purpose. The purpose of 454 CMR 21.00 is to establish minimum standards and reasonable requirements to protect the health and safety of employees through the communication of information regarding toxic or hazardous substances.

(2) Scope. 454 CMR 21.00 is applicable to all activities of employees who are, have been or may be exposed to toxic or hazardous substances at the workplace.

(3) Exceptions.

(a) Exception 1. The Director of DLS may grant exceptions to 454 CMR 21.00. Such exceptions shall be granted in any particular case only where it is clearly evident that it is necessary to prevent undue hardship or where existing conditions prevent compliance. In no case shall any exceptions be granted unless, in the opinion of the Director, reasonable protection of the health and safety of the employees and others will be maintained. A request for exception shall be submitted to the Director in writing specifically setting forth the desired exception, the reason that the enforcement of the applicable provision is unreasonable and the nature of the undue hardship. Exemptions shall remain in force until rescinded in writing by the Director.

(b) Exception 2. Items containing fluids and particles which by use and form are commonly classified as consumer products and, being either inert or totally encapsulated are not defined as articles under the provisions of M.G.L. c. 11F, § 1, are exempt from the provisions of M.G.L. c. 111F, §§ 11 and 15, if:

1. consumer goods (goods primarily used or bought for use by individuals for personnel, family or household purposes) when used in the workplace, where:
   a. the toxic or hazardous substances contained therein are not listed as carcinogens, mutagens, tertogens, neurotoxins or extraordinarily hazardous substances as defined by the DPH, and
   b. they are not required to be labelled under M.G.L. c. 111F, § 7b, and
   c. the substances are used in the workplace in such a manner that employee exposure is equivalent to exposures resulting from consumer usage.
2. office supplies, including those materials to be found at the employee's desk or similar work area in an office environment and toner used in photographic or other types of office copying machines, where
   a. the substance is present only in amounts and forms substantially equivalent to the amount and forms generally available to consumers, and
   b. the substance is used in the workplace in such a manner that employee exposure is equivalent to consumer usage,
3. food stuffs,
4. gasoline, oils and other additives in fuel tanks, engines, and other operating systems of passenger vehicles or light duty trucks, where
   a. the substances are present only in amounts and forms substantially equivalent to the amounts and forms generally available to consumers, and
   b. the substances are used in such a manner that employee exposure and environmental exposure are substantially equivalent to exposures resulting from consumer usage,

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5. fuel oils number 1, 2, 3, 4, 5, 6, natural gas, kerosene, petroleum, or propane where used for space heating, or power generation purposes, such that employees are not exposed to fumes or combustion by-products, and all required emission control equipment is used.

454 CMR 21.00 is intended to complement and not to contravene 105 CMR 670.000: "*Right to Know*" and 310 CMR 33.00: *Implementation of M.G.L. c. 111F, Employee and Community "Right to Know"*.

(4) Additional Procedures and Policies. Nothing contained in 454 CMR 21.00 shall be interpreted as prohibiting any employer from implementing additional procedures and policies for employees and others, provided such additional procedures and policies do not conflict with 454 CMR 21.00.

21.02: Definitions

The following definitions shall apply in the application of 454 CMR 21.00. The singular includes the plural and the plural includes the singular.

Director. The Director of the Department of Labor Standards.

Director's Representative. An employee of the Department of Labor Standards so designated in writing by the Director.

Competent Individual. The authorized person who, through experience or education, has a level of knowledge and capabilities necessary to conduct the training program as outlined in 454 CMR 21.07.

DLS. Department of Labor Standards.

DPH. Department of Public Health.

Foreseeable Emergency A situation or condition that could reasonably be anticipated as a result of acts or omissions involving the use of toxic or hazardous substances in the work place.

Immediate Use. Those circumstances under which the toxic or hazardous substance or mixture containing such substance remains under the control of and is used only by the person who transfers the substance or mixture from a labeled container and such use occurs within the work shift in which the substance or mixture is transferred.

Legally Incapacitated. The condition in which a person is unable to act on his or her own behalf as defined by law and resulting from a determination of an appropriate court of the Commonwealth or of another state.

Mixtures. Mixtures may be prepared and produced by a manufacturer and furnished or sold, directly or indirectly to employers for use by their employees at the workplace. Mixtures may also be prepared by employers for use by their employees at the workplace.

MSDS. Material Safety Data Sheet.

Normal Operating Conditions. Those conditions arising during the employer's regular course of business, including those conditions which might reasonably be expected to occur as a result of foreseeable emergencies.

Normal Working Conditions. Those conditions encountered by an employee as a result of the employees work assignments, except those arising as a result of an unforeseeable emergency.

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Reasonable Procedures. A clear written procedure, provided to employees, that is consistent for all employees similarly situated and sets forth the method or manner, during the work shift, in which the employer will respond to an employee's request for an MSDS.

Verified Complaint. A written complaint attested to by the employee.

21.03: General Duties and Responsibilities

(1) Workplace Notices. Workplace notices required under M.G.L. c. 111F, § 11(e) shall be posted in the English language as provided by DLS.

Employers having Employees who speak other languages shall also post the notice in those languages.

Notices in languages other than English may be provided by DLS upon request.

(2) Employer Liability. Employers subject to criminal liability for willful and intentional violations under M.G.L. c. 111F, § 3(b) are the chief executive officers or other officers of a corporation, partners of a partnership, the owner in the case of a sole proprietorship, or any other person in the service of an employer, as defined by M.G.L. c. 111F, § 1, who has the principal responsibility for the direction and control of employees.

For the Commonwealth, the liability shall rest with the chief officer of any agency, department, authority or other statutorily recognized subdivision.

For any city, town or county, the liability shall rest with the senior administrator of each subdivision.

(3) Disclosure of Information. Information derived from an MSDS by an employee or his/her designated representative under the provisions of M.G.L. c. 111F, § 11(c), may be used and/or disclosed for purposes directly related to issues associated with, or arising from, collective bargaining agreements, workers' compensation claims or matters concerned with occupational safety and health, provided that equivalent information is subject to disclosure or discovery by the employee or the employee's designated representative as a result of collective bargaining agreements or any other provisions of law.

21.04: General Performance Requirements

(1) Cause to Believe. Accident and inspection reports prepared by DLS under 454 CMR 21.04, complaints, and referrals from other state or federal agencies, and other reliable sources of information shall be considered by the Director as the basis for cause to believe that a violation of the provisions of 454 CMR 21.00 has occurred and the Director may undertake an investigation.

(2) Essential Services. The chief officer of statutorily recognized subdivisions of the Commonwealth and the senior administrator of each city, town or county shall determine those services considered to be essential under M.G.L. c. 111F, § 11D. The determination shall be in writing and, as a minimum, contain those job classifications considered to be essential and a brief statement, by job classification, as to the reason for the determination. All employees occupying essential service job classifications shall be so notified in writing by the employer. The employer shall also maintain a copy of the written determination with the MSDS's at a central location in the workplace. Any employee or his/her designated representative, upon making a written request, shall have the right to examine the written determination at the central location of the MSDS file.

Chief officers and senior administrators under conditions of an emergency as declared by an appropriate Public Official, may designate other job classifications or individual employees as performing essential services. This shall be communicated to the effected employees verbally or in writing as soon as practicable.

Employees determined to be performing essential services may appeal the determination to the Director under the provisions of M.G.L. c. 111F, § 13 provided that the employee is, has been or maybe exposed to toxic or hazardous substances, has requested an MSDS and has refused to work with the substance until the MSDS is provided.

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(3) Proof of Diligent Efforts. An employer having received a request from an employee pursuant to M.G.L. c. 111F, § 11, shall furnish the employee with copies of all written communication pertaining to the MSDS, between the employer, the manufacturer, the intermediate seller and the Director of DLS.

(4) Employee Refusal to Work. An employee who has requested an MSDS pursuant to M.G.L. c. 111F, § 11 and has not received said MSDS within four working days may refuse to work with the substance for which the employee has requested the MSDS, until such MSDS is provided by the employer, only if the employer has not exercised diligent efforts in accordance with M.G.L. c. 111F, § 9(b) and cannot furnish the employee with proof of such diligent efforts.

The employee may also refuse to work with the substance if the MSDS provided by the employer is incomplete or outdated.

The employee may continue to refuse to work with the substance until the employee is provided an MSDS that conforms to the requirements of M.G.L. c. 111F and 454 CMR 21.00.

Employees who refuse to work shall be paid wages and receive all other benefits to the same extent as if the employee were continuing to work in the job held at the time the employee requested the MSDS. Failure of an employer to continue to pay wages and to grant other benefits to the employee shall be considered a violation of M.G.L. c. 111F, § 13.

21.05: Labels

The following shall apply to all containers except those exempted or requiring special consideration under M.G.L. c. 111F, § 7.

(1) Location. Labels shall be prominently located on the container in its upright position when the container is in its usual position for use, so as to be legible.

(2) Type. Names on labels shall be in bold face letters.

(3) Legibility. The chemical name and the NFPA Code, if applicable, of the toxic or hazardous substances, in English and on a distinctly contrasting background, shall be affixed to the container.

(4) Weather Exposure. Labels on containers exposed to the elements of the weather shall be such that the reading matter is clear and conspicuous at all times and will not be defaced or obliterated by rain, snow or other adverse elements of the weather.

(5) Secondary Containers. If a labeled container is covered by a secondary container or a covering that remains in place while the contents of the container are withdrawn or used therefrom, the required labels shall also appear on the secondary container or covering.

(6) Mixtures. Containers of mixtures shall be labeled with the chemical name listed on the MSDS for each toxic or hazardous substance in the mixture, subject to the limitations and exceptions appearing in M.G.L. c. 111F, § 7. It is recommended that containers of mixtures be also labeled with the common name of the mixture.

(7) Typography Size. The size of type on labels shall substantially comply with the following minimum requirements:

Over 1 Gallon or 5 lbs.	3/16 in.
Over 5 Gallons or 30 lbs.	¼"
Over 10 Gallons or 100 lbs.	½"

21.06: Material Safety Data Sheet

(1) Types of MSDS. MSDS's shall consist of one of the following types:
(a) Massachusetts Substance List MSDS;
(b) Trade Secret MSDS;
(c) Mixture MSDS.

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(2) Mixture MSDS. An MSDS for Mixtures shall comply with the conditions and requirements of M.G.L. c. 111F, § 10 and 454 CMR 21.06(3) through (9).

(3) Additional MSDS. If a manufacturer or employer prepares an MSDS for a mixture, the existing MSDS for the toxic or hazardous mixture and each constituent toxic or hazardous substance shall be available to the employee upon request. An employer who receives a mixture MSDS from a manufacturer or intermediate seller and furnishes that mixture MSDS to an employee shall not be required to request constituent substance MSDS's from the manufacturer or intermediate seller until or unless the employee requests them. Failure of an employer to furnish MSDS for a constituent substance shall not be considered grounds for refusal to work under the provisions of M.G.L. c. 111F, § 11(d).

(4) Name. The common name of the mixture in addition to the chemical name of each toxic or hazardous substance shall be listed on the MSDS.

(5) Ingredients. All toxic or hazardous substances present in mixtures shall be listed in the MSDS and subject to the provisions of M.G.L. c. 111F, § 10c.

(6) Percentages. The percentage of each toxic or hazardous substance listed on the MSDS shall be based on the relative amounts present in the mixture unless the percentage is a valid trade secret.

(7) CAS Number. The applicable CAS Numbers shall be shown for each toxic substance present in the mixture.

(8) Special Information on Mixtures. Special precautions and additional emergency procedures arising from the nature of the mixture and the source of this information shall be listed.

(9) Manufacturer's or Employer's Name. The manufacturer's or employer's name, address, emergency telephone number and the date the MSDS was prepared shall be listed.

(10) Subsequent Employee Request. An employer is not required to furnish an MSDS to an employee under M.G.L. c. 111F, § 11 if that employee was provided with the most recent MSDS for that substance within one year prior to the date of the employee's request.

(11) Independent - Contractors. For workplaces and workareas not wholly owned or controlled by the independent contractors, the MSDS's and all other required information pertaining to substance introduced into the workplace by the independent contractor shall be maintained at the employer's principal place of business within the Commonwealth.

All MSDS's shall be maintained so as to be accessible and furnished upon request to the employee.

21.07: Instruction or Training

(1) General Requirements. Instruction or training shall be given and/or conducted by a competent individual.

Instructions or training shall include but not be limited to the following:

(a) A detailed explanation of employee rights including:
   1. Workplace Notice;
   2. Container labeling;
   3. Request of an MSDS;
   4. Work refusal;
   5. Discrimination discipline, discharge;
   6. Hearings and appeals;
   7. Instruction or training.

(b) Introduction to a sample MSDS:
   1. Name, address, emergency telephone number;
   2. Preparer's name, address and date;
   3. List of ingredients and percentages;

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4. Health information;
5. Occupational exposure limits;
6. First aid procedures;
7. Physical data;
8. Fire and explosion hazards;
9. Reactivity;
10. Employee protection;
11. Other regulatory controls.

(c) Explanation of workplace MSDS's with reference to specific substances used handled or stored.

(d) Explanation of designated substances as they apply to labeling:

1. Carcinogenic;
2. Mutagenic;
3. Teratogenic;
4. Neurotoxic.

(e) Orientation and explanation of protective clothing and equipment as it relates to the proper handling and use of toxic or hazardous substances in the workplace.

(f) Employers shall maintain a record of training or instruction given to employees. This record, at a minimum, shall describe the instruction or training, the date or dates on which it was given, the names of the employees and the person giving the training or instruction. These records shall be maintained by the employer for the duration of each employee's employment and shall be made available to the Director or the Director's representative.

(2) Presentation. Instruction or training shall be given and/or conducted during the employee's normal work hours or shift hours.

(3) Cost. Instruction or training shall be given and/or conducted at no cost to the employee.

(4) Other Competent Individuals. Written instructions or training programs may be furnished by the employer through an independent third party of competently trained individuals. This provision does not diminish or alter employer responsibility under M.G.L. c. 111F or under 454 CMR 21.00.

(5) Third Party Instructors. Third party instructors shall be registered with the Department of Labor Standards.

Registration may be obtained by written application that shall contain:

(a) Name and address of all instructors;

(b) Qualifications;

(c) A training plan that includes, at minimum, all of the requirements of 454 CMR 21.07(1) through (4).

A letter of acknowledgment from the Director of Labor Standards shall constitute evidence of registration. Application for registration shall be filed and renewed annually. No fee is required.

21.08: Penalty

(1) Penalty. A violation of 454 CMR 21.00 shall be considered a violation of M.G.L. c. 111F.

21.09: Severability

(1) Severability. If any provision of 454 CMR 21.00 shall be held inconsistent with M.G.L. c. 111F, or held unconstitutional, either on its face or as applied, the inconsistency or unconstitutionality shall not affect the remaining provisions of 454 CMR 21.00.

REGULATORY AUTHORITY

454 CMR 21.00: M.G.L. c. 111F; St. 1983, c. 470.