

California Proposition 65 Warning Regulation Guidance Document

Prepared for: California Business Properties Association (CBPA), January 2018

Prepared by: Anthony Samson, Senior Attorney/Policy Advisor, Arnold & Porter*

What is Proposition 65? Proposition 65 requires businesses with 10 or more employees to provide a *clear and reasonable warning* before knowingly and intentionally exposing individuals to chemicals that the State of California, through the Office of Environmental Health Hazard Assessment (OEHHA), has determined cause cancer and/or reproductive toxicity. The list of Proposition 65 chemicals can be found [here](#).

Do Existing Regulations Provide Guidance Regarding How to Warn? Yes. OEHHA’s current regulations provide what constitutes a “clear and reasonable” warning under Proposition 65 in the context of consumer product exposures, environmental exposures, and occupational exposures, as well as other specific exposure scenarios.

What Type of Warnings Do Commercial Buildings Owners/Operators Provide? Environmental exposure warnings; some may also provide consumer product warnings and/or specific exposure warnings depending on the exposure scenario. Below is an example of an environmental exposure warning that complies with the current warning regulations as it pertains to exposure to carcinogens:



Are the Existing Regulations Being Replaced by New Regulations? Yes. On August 30, 2016, OEHHA finalized substantial changes to the existing warning regulations. Although businesses are permitted to come into compliance with the new regulations at any time, they need not do so until the effective date of August 30, 2018. The new warning regulations can be found [here](#).

What Must Warnings Say Under the New Regulations? Like the previous regulations, the new regulations provide for what constitutes a “clear and reasonable” warning for consumer product exposures, environmental exposures, and occupational exposures, as well as other specific exposure scenarios. However, the content of the new warnings, particularly in the context of environmental exposure warnings, have changed significantly.

Specifically, the new warnings must (1) specify at least one chemical for which the warning is being provided--if the warning is being provided for both carcinogenicity and reproductive toxicity, then the warning must specify one of each; (2) specify the source of the exposure or exposures; (3) contain a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline; and (4) provide the following phrase at the end of the warning: “For more information, go to www.P65Warnings.ca.gov.” Here are some examples:



California
Business
Properties
Association

*This document is a guidance document only and does not constitute legal advice. To the extent CBPA members seek legal advice regarding individual compliance obligations with the Proposition 65 warning regulations or any other aspect of Proposition 65, they should consult directly with legal counsel and/or consultants that specialize in Proposition 65 compliance. If you do not currently have counsel in this area you may consider contacting Anthony Samson or one of the experts at [Arnold & Porter](#) who helped put this guidance document together. Contact CBPA at www.cbpa.org.

Arnold & Porter

For Exposures to Carcinogens



WARNING: Entering this area can expose you to chemicals known to the State of California to cause cancer, including [chemical], from [source of exposure]. For more information, go to www.P65Warnings.ca.gov.

For Exposures to Reproductive Toxicants



WARNING: Entering this area can expose you to chemicals known to the State of California to birth defects or reproductive harm, including [chemical], from [source of exposure]. For more information, go to www.P65Warnings.ca.gov.

For Exposures to both Carcinogens and Reproductive Toxicants



WARNING: Entering this area can expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm, including [chemical that causes cancer] and [chemical that causes reproductive toxicity], from [source of exposure]. For more information, go to www.P65Warnings.ca.gov.

For Exposures to a Single Chemical that is Both a Carcinogen and a Reproductive Toxicant



WARNING: Entering this area can expose you to [name of chemical] from [source of exposure]. [Chemical] is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov.

Are Any of the Above Options More Preferable than Others to Reduce Litigation Risk? Yes. It is advisable to provide a warning either for both a carcinogen and reproductive toxicant, or for a chemical that is both a carcinogen and reproductive toxicant. This way the warning covers both endpoints and provides less opportunity for private enforcers to challenge the warning as inadequate.

Must Warnings be Provided in Languages other than English? It depends. If other signage in the affected area, i.e., the office building, is provided in a foreign language, then the Prop. 65 warning must also be provided in that language in addition to English.

Where Must Warnings be Placed Under the New Regulations? For indoor environments or outdoor spaces with clearly defined entrances, a warning sign must be posted at all public entrances to the affected area in no smaller than 72-point font.



California
Business
Properties
Association

*This document is a guidance document only and does not constitute legal advice. To the extent CBPA members seek legal advice regarding individual compliance obligations with the Proposition 65 warning regulations or any other aspect of Proposition 65, they should consult directly with legal counsel and/or consultants that specialize in Proposition 65 compliance. If you do not currently have counsel in this area you may consider contacting Anthony Samson or one of the experts at Arnold & Porter who helped put this guidance document together. Contact CBPA at www.cbpa.org.

Arnold & Porter

Are There Other Warnings That May be Applicable to Commercial Buildings?: Yes:

Enclosed Parking Facility Exposure Warnings



WARNING: Breathing the air in this parking garage can expose you to chemicals, including carbon monoxide and gasoline or diesel engine exhaust, which are known to the State of California to cause cancer and birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information, go to www.P65Warnings.ca.gov/parking.

Note: Parking warnings must be provided on a 20 by 20 inch sign posted at each public entrance to the enclosed parking facility in no smaller than 72-point type. The warning must be provided in English and in any other languages in which other entrance signage is provided at the facility.

Designated Smoking Area Exposure Warnings



WARNING: Breathing the air in this smoking area can expose you to chemicals including tobacco smoke and nicotine, which are known to the State of California to cause cancer and birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information, go to www.P65Warnings.ca.gov/smoking-areas.

Note: Smoking area warnings must be provided on an 8 1/2 by 11 inch sign posted both at the entrance to and within the area in which the exposure occurs. The warning must be printed in no smaller than 22-point type and be enclosed in a box.



California
Business
Properties
Association

*This document is a guidance document only and does not constitute legal advice. To the extent CBPA members seek legal advice regarding individual compliance obligations with the Proposition 65 warning regulations or any other aspect of Proposition 65, they should consult directly with legal counsel and/or consultants that specialize in Proposition 65 compliance. If you do not currently have counsel in this area you may consider contacting Anthony Samson or one of the experts at Arnold & Porter who helped put this guidance document together. Contact CBPA at www.cbpa.org.

Arnold & Porter