

LEGAL ALERT

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CALIFORNIA'S PROPOSITION 65: RECENT 60-DAY NOTICES TARGET CALIFORNIA RESTAURANTS

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A recent uptick in Proposition 65 notices of violation have targeted California restaurants. These notices are issued from a particular private enforcer (or bounty hunter), but such trends often prompt others to follow suit. With that in mind, we are sharing this advisory with our California restaurant and bar clients to help them avoid being the target of a Proposition 65 notice and how to address a Proposition 65 notice if received.

BACKGROUND ON PROPOSITION 65

Proposition 65 requires that warnings be provided before persons are exposed to chemicals known to cause cancer or reproductive toxicity. The Code requires the State to publish a list of chemicals known to cause cancer, birth defects or other reproductive harm. The list is updated periodically, and currently includes about 900 chemicals along with a “safe harbor level” for chemicals.

Exposure may occur in a wide variety of contexts, including product sales, food and beverage consumption, environmental exposure, and occupational exposure. This means that virtually every company that manufactures, distributes, or sells goods, food or beverages that reach California consumers, along with every company that employs or hosts individuals in its California place of business, must be cognizant of Proposition 65 and how it relates to their business.

If exposure to a listed chemical above the safe harbor level arises, businesses with 10 or more employees must either reformulate to eliminate the offending chemical or, more commonly, provide a “clear and reasonable” warning before exposing anyone to the listed chemical.

Penalties for violations can be up to \$2,500 per day, per violation.

PROPOSITION 65 AND CALIFORNIA RESTAURANTS

Proposition 65 imposes warning requirements for California restaurants. Proposition 65 requires separate warnings for both food and alcohol served at California restaurants. The required content, language, and method of transmission (e.g., placement) of the warning differs for both food and

alcohol. A California restaurant with both of these safe harbor warnings complies with Proposition 65 and should not be the target of a notice of violation.

If a California restaurant does not have a compliant Proposition 65 warning and receives a notice of violation, it may still take corrective action within 14 days of receiving the notice that will limit any penalties. For this reason, swift action is key if you receive a Proposition 65 notice.

CONCLUSION

California restaurants should seek advice from qualified legal counsel experienced in Proposition 65 compliance. If you are concerned that your restaurant is or will become subject to Proposition 65, want to ensure that your existing procedures remain compliant, or if you receive a 60-Day Notice, please contact Hahn Loeser Partner Michael Gleason or any of our other attorneys in San Diego.

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