

The Prop 65 Warning Requirements Have Changed

Over 30 years ago Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, was enacted to help Californians make informed decisions about protecting themselves from chemicals known to cause cancer, birth defects or other reproductive harm. This is the law that requires the various warning labels and posters that have now become ubiquitous throughout the state.

The law applies to California-based employers as well as any business that sells consumer goods to Californians.

In order to bring renewed attention to the purpose of Proposition 65 (Prop 65), new warning requirements have been established. The new warning provisions went into effect on August 30, 2018. Here's what you need to know about how Prop 65 affects graphic arts businesses ...

There are two categories of warnings

There are warnings that relate to exposure within your facility, and warnings that relate to exposure from your products:

- **Your facility** – If your business has 10 or more employees and exposes Californians to chemicals that are on the most recent Proposition 65 list at levels that require a warning, your business must provide a clear and reasonable warning prior to that exposure. You should have warning signs throughout your facility, including your reception area, and as you enter each new area of production where Prop 65 chemical products are used.


You must also comply with the warning requirements if a member of the public can enter your facility and potentially be exposed to a Prop 65-regulated chemical. For printers, this typically can be the case if customers come onto the production floor to perform press checks.

In addition, companies that do business within California are prohibited from knowingly discharging listed chemicals into sources of drinking water.

- **Your products** – If your finished product contains any of these regulated chemicals and there is a potential of exposure to any of the regulated chemicals, you must also inform your customers, who in turn are required to inform their customers.

The required consumer warning statements have changed

If warning statements are required, the language of the warning for consumers must now be more specific:

- At least one of the chemicals that is in the product that is either a carcinogen or reproductive toxin must be identified.
- A statement that more information is available at www.P65Warnings.ca.gov, the new Prop 65 warning website, must be included.
- The warning must say the product “can expose you to” a Proposition 65 chemical (versus the previous statements that the product “contains” the chemical).
- A triangular yellow warning symbol  must also be included in most consumer warnings.

Here is a comparison of a sample new product warning label versus a sample old product warning label. Be aware that warnings must also be provided online for products purchased over the Internet.


Here is an example of an area warning statement:


New Area Warning Statement

Old Warning Label

WARNING: This product contains a chemical known to the state of California to cause birth defects or other reproductive harm.

New Warning Label

 WARNING: This product can expose you to chemicals including [name of chemical], which [is/are] known to the State of California to cause [cancer]/[birth defects or other reproductive harm]. For more information go to www.P65Warnings.ca.gov.

 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 [name of one or more chemicals known to cause cancer and name of one or more chemicals known to cause birth defects or other reproductive harm], from [name of one or more sources of exposure]. For more information go to www.P65Warnings.ca.gov.

Even small businesses may be affected

There is an exemption from the employee training, consumer warning requirements and prohibition on discharges into drinking water sources for companies with fewer than 10 employees. However, companies with fewer than 10 employees still must comply with the Proposition 65 warning statements if they sell products to a customer that is not exempt.

You must do your due diligence

The first step towards compliance is to take a hard look at all of the materials you are using.

You can find the most current list of Prop 65 chemicals at <http://bit.ly/prop65list>. Go through your Safety Data Sheets (SDSs) to determine if you have any Prop 65 chemicals in your facility. The information is usually found in Section 11, Toxicological Information, Section 15, Regulatory Information, or Section 3, Composition. However, sometimes this information is provided in a different manner, such as a technical bulletin. Contact your supplier if you have questions.

If no Prop 65 chemicals are found, no further action is required.

If you do find Prop 65 chemicals in the materials you are using, note the concentration of the chemical. Then determine if it is something that your workers will be exposed to (such as a cleaning solvent used during the manufacturing process) and/or something that will become part of the final product (such as an ink, coating, adhesive or substrate).

If there are Prop 65 chemicals that end up in your final product, we recommend that you go back to the vendor to see if those can be substituted. If not, the next step is to determine what the consumer's actual level of exposure might be, if any at all. This is because California has established "safe harbor" levels for many (but not all) of the chemicals on the Prop 65 list. Unfortunately, for those chemicals that do not have a safe harbor level established, the threshold is assumed to be zero.

If you can determine that the ultimate consumer will not be exposed to the chemical above the safe harbor level, then the consumer warning is not required. Your vendor/chemical product manufacturer may be willing to provide a statement about exposure relative to this safe harbor level. Otherwise another option is to send a sample of the finished product to a lab for testing to see if any of the Prop 65 chemicals identified can be detected. If the testing shows that no Prop 65 chemicals can be found, then no warning would be required.

You must provide proper warnings and training for your employees

There are several approaches that can be used for any necessary employee warnings, none of which are new. In addition to posting warning signs, PIASC generally recommends that you simply incorporate these warnings into the training that is required under the Hazard Communication Standard. This includes identifying the products that contain the Prop 65 chemicals, informing employees about the hazards associated with these chemicals, and explaining what employees need to do to protect themselves from the hazards.

Action items

Given the renewed attention to the warning requirements, you should not ignore this law. Review the composition of all of your input materials (e.g., inks, coatings, solvents, plate chemistry, adhesive, etc.) to see if any Prop 65 chemicals are present. If found, take appropriate action.

For more information

The state has created a dedicated web site that contains information about the law and its requirements. You can find it at <https://oehha.ca.gov/proposition-65>.

Complying with the Rules for Background Checks

In the past, employers who conduct investigative background checks, such as for job applicants, faced a conundrum: Which of two potentially overlapping laws were they supposed to follow?

The Investigative Consumer Reporting Agencies Act (ICRAA) covers background checks in which a consumer's "character, general reputation, personal characteristics, or mode of living" is obtained through any means. The Consumer Credit Reporting Agencies Act (CCRAA) covers information "bearing on a consumer's credit worthiness, credit standing, or credit capacity." Among other differences, the ICRAA requires the employer to get prior written authorization from the person being investigated; the CCRAA does not. When obtaining information about both character and credit worthiness, which law prevails?

The California Supreme Court addressed this issue in a unanimous August decision. Employers must follow the requirements of both statutes, including complying with the more restrictive law.

Be sure to comply with the FCRA, too

Any time you use a consumer reporting agency to obtain a background check or "consumer report" on an employee or applicant, you must also comply with the Fair Credit Reporting Act (FCRA). In addition to requiring written permission from the employee or applicant, the FCRA also requires that you provide this person with a "Summary of Consumer Rights" form.

This required disclosure form was updated on September 21, 2018. You can download the new form at <http://bit.ly/ConsumerRights18>.

Action item: If you want to run a background check that includes both credit checks and character checks, be sure to first obtain written authorization and provide a copy of the updated "Summary of Consumer Rights" form.

Representing Our Industry's Interests in Sacramento

“Politics is like Newton’s first law of physics,” says RJ Cervantes, Partner at Fernandez Cervantes Government Affairs. “Nothing is moved unless it is pushed. If you’re not at the table pushing your agenda, either someone else will be there pushing it in the direction they want it to go, or you’ll stall out. Being at the table is critical.”

In fact, it is precisely because being at the table is so critical that PIASC has teamed up with other California PIA affiliates to hire RJ’s firm. We now have professional lobbyists representing the graphic communications industry’s interests in Sacramento! Each year the legislature introduces over 3,000 different bills, many of which can have significant impacts on your business. Our new presence in the capitol will help give us a say in what happens to these bills.

“The single biggest entity impacting our members is the California state legislature,” RJ observes, “and the best way for us to impact the legislature is by working together to implement a coordinated, on-going lobbying program.”

Creating a brand, building a program

“Our first goal,” RJ shares, “will be to build a brand and establish the printing industry in the minds of our elected officials. We know that between now and January they will all be reviewing what they want their legislative packages to look like for the 2019 legislative session. Educating legislators about our industry, and building a ‘graphics communications’ brand, will help get us to the table at the outset. We want to influence what gets introduced and implemented. When legislators are contemplating bills, we want them to stop and think, ‘I wonder what the printing industry would think about this policy idea, or what the impacts would be on them.’”

While creating a brand is the first goal, the ultimate goal is to build a comprehensive government affairs program. “We’ll be using all the tools at our disposal to get the job done,” RJ states. This includes:

- Direct lobbying by Fernandez Cervantes Government Affairs, which will be working day-to-day in the capitol to represent our interests
- Having members meet with elected officials to share their perspectives, which can be extremely powerful
- Providing plant tours and educational events for elected officials and their staff members
- Coordinating various grassroots activities
- Getting a political action committee up and running
- Educating our members about how to effectively participate in the legislative process

“There are big challenges and big obstacles in California,” RJ acknowledges. “To be effective we must be nimble, and smart with our time, energy and resources.”

Preparing for 2019

Because the 2018 legislative session recently wrapped up, the current focus is on preparing for 2019. RJ and his team are in the process of creating a comprehensive advocacy plan for our industry. As part of this they’ll be identifying key legislative districts—such as the districts of highly influential or powerful legislators—that have a large number of association members. This data will be useful in showing legislators that we’re here in their district employing people and doing good things in the community, and coordinating meetings, tours and grassroots efforts.

Once the new legislative session gets underway, RJ and his team will comb through all 3000+ bills that get introduced. Because the devil is in the details when it comes to legislative language, they’ll dig deep and funnel things down for us. Naturally, the focus will then be on the bills which can have the greatest impact on the printing and graphics communications industry. Many of these will affect one or more of our members’ hot button issues, such as taxation, labor laws, workforce development and environmental concerns.

“We’re excited to be working with the graphics communications industry,” RJ shares, “and looking forward to establishing a brand and getting our advocacy program established!”