
Proposed Proposition 65 Updates for Rental Vehicles

By Michael B. Sachs / Apr 23, 2019

The Office of Environmental Health Hazard Assessment (OEHHA) has proposed adding a new specific warning related to exposures from rental vehicles. While this proposed amendment is still in the public comment stage, its approval is likely with an effective date in 2020. This update briefly discusses the proposed changes.

California's Proposition 65 applies to any product sold in California, or any location in the state. It requires that if the product or location contains one of over 900 potentially cancer causing or reproductive toxicant chemicals, a specific warning must be given to the purchaser of the product or persons on the premises. Liability for failure to provide the warnings includes both penalties and attorney fees.

In August 2018, California amended the regulations to include a number of product specific warnings – warnings that were required for specific products instead of the “general” consumer product warning. OEHHA has now proposed adding a product-specific warning for rental vehicle exposures.

Proposed Specific Warning Requirements For Rental Vehicle Warning

The proposed amendments would require companies to provide specific warnings (both in language and location) whenever a motor vehicle is rented.

It is important to understand that the definition of “motor vehicle” is extremely broad. It encompasses any “vehicle that is self-propelled” excluding wheelchairs, or the like, which are used by a person who, by reason of a disability, is otherwise unable to move about as a pedestrian. Thus, this amendment would include many things other than just rental cars.

Under the proposed amendment, the company has the option to use either: 1) the specific warning for general vehicle exposures or 2) a new, but similar warning:



WARNING: Operating a motor vehicle can exposure you to chemicals including engine exhaust, carbon monoxide, phthalates, and lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, do not idle the engine except as necessary, and assure adequate ventilation inside the car. For more information go to www.P65Warnings.ca.gov/passenger-vehicle.

The amendment would also institute a specific manner in which this warning must be provided. The warning must be provided to the renter prior to use of the vehicle in one or more of the following methods: 1) on the agreement or rental jacket; 2) on a hang tag on the rear view mirror of the vehicle; 3) on a sign in at least 22-point font at the rental counter; 4) in an electronic rental contract; in a confirmation email to the renter; or 5) on the on-line reservation page. As with other warnings, there are additional requirements regarding font size and prominence of the warning.

Conclusion

When this amendment goes into effect, it will require all renters of motor vehicles to change their current Proposition 65 warnings, modify how those warnings are provided and examine what additional Proposition 65 warnings must be provided.

Because these regulations, and the changes, are specific and technical, it is advisable that anyone impacted by this potential change consult with an attorney to ensure compliance with Proposition 65. Clark Hill's attorneys are experienced in Proposition 65 litigation and have worked with numerous companies to ensure compliance with Proposition 65 and to defend against any claims that are brought.