

ALERTS

Litigation Law Alert - California Adds BPA To List Of Unsafe Chemicals

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The State of California has added [bisphenol A \(BPA\)](#) to the [California Proposition 65](#) list of chemicals “known to the State of California to cause Cancer or Birth defects.” BPA has been used to make certain plastics and resins, reaching the public spotlight about a decade ago when “BPA free” became a common advertising line with respect to plastic water bottles. The listing was made effective by California’s Office of Environmental Health Hazard Assessment (OEHHA) on May 11, 2015.

As of May 11, 2016, notices of violation will be served in earnest by private plaintiffs upon businesses that have ten or more employees, and that sell, distribute, or manufacture a product containing BPA that does not have a warning. There currently is no “safe harbor” level of exposure established by the state for BPA, and thus merely having BPA present in a product or otherwise exposing consumers to BPA at any level without providing a required warning may result in liability.

Businesses should evaluate their products and supply chains to ensure that products manufactured, sold or distributed in California after May 11, 2016, either (1) contain no BPA, or, (2) are sold with the requisite warning. If reformulation is the chosen approach, the business should verify that products containing BPA will sell through retail outlets before May 11, 2016. Alternatively, if the business chooses to provide a warning, both new and current inventories should be labeled.

Simply reformulating products before May 11, 2016, is not enough to avoid liability. To avoid liability, no end user should be able to acquire BPA containing products or purchase services which expose them to BPA without a required warning after May 11, 2016.

For more information, contact the Barnes & Thornburg attorney with whom you normally work, or one of the following attorneys: Levi Heath at levi.heath@btlaw.com or 310-284-3890; or Mike Scanlon at michael.scanlon@btlaw.com or 317-231-7387.

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