

CALIFORNIA PROP. 65 WARNING REQUIREMENT FOR THC MAKES CBD, HEMP AND CANNABIS PRODUCTS A TARGET

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The California Proposition 65 warning requirement for THC took effect on January 3, making cannabis, hemp and CBD products a likely target for private enforcement actions.

Although under federal law CBD products are allowed to contain up to 0.3 percent THC, or Δ 9-Tetrahydrocannabinol, no safe harbor level of exposure to THC has been established under Prop. 65. That means private enforcers can argue that any detectable amount can subject a product to the Prop. 65 warning requirement. Companies can work with consultants to develop a safe use determination for THC, but until it is established and accepted, enforcement actions will be a material risk. Notably, the Prop. 65 listing applies to Δ 9-THC, although the Prop. 65 requirements may still be triggered by residual Δ 9-THC present in other THC products, like Δ 8-THC distillates.

At the same time that THC was added to the Prop. 65 list, California's Office of Environmental Health Hazard Assessment added a reproductive harm endpoint for cannabis (marijuana) smoke, which was already identified as a carcinogen under Prop. 65. That means that although cannabis products intended to be smoked may already bear a Prop. 65 warning related to cancer, the reproductive harm warning should also be included.

As for THC, the listing raises Prop. 65 considerations for a much broader range of cannabis, hemp and CBD products, such as oils, edibles, beverages, and vape cartridges. Plaintiff groups are expected to aggressively target these products, expanding on a multi-year trend of pursuing marijuana-based businesses for Prop. 65 violations.

For more information, please do not hesitate to contact one of the authors or your BCLP relationship lawyer.

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