

HOW A BUSINESS OWNER CAN AVOID AND DEFEND THE PROP 65 LAWSUIT

Avoid Prop 65 Lawsuits By Posting the Proper Notice

The best way to avoid a Prop 65 lawsuit is by posting the warning signs called for in that statutory scheme. If warning signs are placed before the Prop 65 60-day violation notice is sent by the plaintiff or its attorney, an action can be defended on that basis.

Attack the Plaintiff's Prop 65 Violation Notice

In order to obtain standing to pursue a Prop 65 lawsuit, the plaintiff is required to give a 60-day notice that includes the very precise language set forth in this statute, and the interpreting regulations. Because many courts tend to disfavor Prop 65 lawsuits brought by bounty hunter attorneys, they carefully scrutinize the notices, and look for any possible defect. The notice required by Prop. 65 must identify the individuals exposed to the alleged toxins, and how the individuals were allegedly exposed. In a case handled by this office, the court dismissed the action against our hotel client because the Prop 65 notice did not satisfy these precise requirements.

Fight Back By Seeking Sanctions Against the Plaintiff and Its Counsel

When a defendant prevails in a lawsuit, the court typically awards costs of suit that can include court fees, reporter's fees, deposition transcripts, photocopies, and costs for serving process. In California, if a plaintiff brings an action it knows to be without merit, the plaintiff and its attorney can be required to pay monetary sanctions in addition to these costs. If an attorney were to bring a Prop 65 lawsuit in which the required Prop 65 notice had been posted by the business, or based on a deficient Prop 65 violation notice, the court could find the lawsuit to be frivolous, and sanction the plaintiff and his attorney.

Conclusion

Litigation is never fun, is usually expensive, and should be avoided if at all possible. A conscientious lawyer can help a business avoid litigation by eliminating conditions that can invite lawsuits. If a business is sued, an attorney can guide his client through the litigation process, and help it decide whether to settle or go to trial. If the decision is made to go to trial, the business should retain an attorney who has the experience, guile, intelligence, and tenacity to make sure that justice is ultimately served.

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