

## What is Proposition 65?

Proposition 65, officially titled the Safe Drinking and Toxic Enforcement Act, is a California voter initiative that was approved with 63 percent of the popular vote in 1986. (See Health and Safety Code sections 25180, 25180.7, 25192 and 25249.5 through 25249.14.)

## How does Proposition 65 apply to government employees?

Health and Safety Code Section 25180.7(b) states that:

“Any designated government employee who obtains information in the course of his or her official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his or her jurisdiction and who knows that the discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within 72 hours, disclose that information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that this disclosure would adversely affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge.”

Proposition 65 applies to certain government employees through the “Government Employee Disclosure” requirement. This law requires “designated government employees” to disclose to their county Board of Supervisors and the local health officer actual or threatened **illegal discharges of hazardous waste** when they know that the discharge is likely to cause substantial injury to the public health or safety.

## Who is subject to the disclosure requirement?

The disclosure requirement applies to “designated government employees.” In general, a “designated government employee” is any local or state agency employee that is in a position that requires the employee to report economic interests (i.e. must file a [Form 700](http://www.fppc.ca.gov/Form700.html) - see <http://www.fppc.ca.gov/Form700.html>).

## What are the limitation on the disclosure requirement?

Disclosure is not required when:

- (1) The disclosure is otherwise prohibited by law.
- (2) Law enforcement personnel have determined that disclosure would adversely affect an ongoing criminal investigation. Or
- (3) The information is already general public knowledge within the locality affected by the discharge or threatened discharge.

## **What must a “designated government employee” disclose?**

“Designated government employees” must disclose an illegal discharge or threatened illegal discharge of hazardous waste that is likely to cause substantial injury to the public health or safety to the county Board of Supervisors and the local health officer within 72 hours, allowing them to take timely and appropriate action.

## **What types of discharges must be disclosed?**

The disclosure requirement applies only to the illegal discharge or threatened illegal discharge of a “hazardous waste.” Proposition 65 does not include a definition of the term “hazardous waste.” Therefore, its meaning comes from Health and Safety Code section 25117 and related regulations. Generally, “hazardous waste” refers to wastes regulated by the Department of Toxic Substances Control as toxic, ignitable, corrosive, or reactive materials.

## **Who enforces violations of the disclosure requirement? What are the potential penalties?**

Violations are enforceable as criminal offenses by district attorneys. Designated government employees who are convicted of violating the disclosure requirement may be personally liable for penalties in the amount of not less than \$5,000 and not more than \$25,000 and/or punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for not more than three years.

## **What are the other primary elements of Proposition 65?**

“Clear and Reasonable Warning” Requirement – Chemicals known to the state to cause cancer or reproductive harm are placed on a list published by the Governor. If a chemical is on the list, businesses with 10 or more employees must provide a clear and reasonable warning before exposing individuals to the listed chemicals above specific risk levels.

Prohibited Discharges – Businesses subject to Proposition 65 may not knowingly and intentionally discharge chemicals listed as known to the state to cause cancer or reproductive harm into sources of drinking water.

[Guidance on the warning and discharge provision](#) is available on OEHHA’s website at [www.oehha.ca.gov/proposition-65](http://www.oehha.ca.gov/proposition-65) and in the implementing regulations published in Title 27, California Code of Regulations, section 25102 *et seq.*

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