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California's Ban on PFAS in Food Packaging Takes Effect January 1, 2023

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A ban on the sale of nondurable food packaging in California containing PFAS chemicals goes into effect on January 1, 2023, which is now less than four months away. The ban was contained in Assembly Bill 1200, which was enacted in October 2021, along with unrelated new requirements for disclosure of chemicals in cookware.

AB 1200 prohibits selling or distributing food packaging made of plant fibers, such as take-out boxes and food wrappers, if they contain PFAS that were intentionally added or are present at or above 100 ppm. The new law draws no distinction between those PFAS for which data exists to evaluate their potential for public harm and PFAS for which no data demonstrates a public health risk. Not only does the new law ban *all* PFAS in food packaging, in addition, a manufacturer must use the "least toxic alternative" (an undefined term) when "replacing" PFAS in food packaging to comply with the new law.

PFAS refers to a large group of chemicals that have been used in many products to enhance certain properties, such as water- or stain-resistance or, in the case of food packaging, preventing leakage of sauces and other liquids. Many businesses substituted cardboard and paper packaging for single-use plastic packaging because they are perceived as better alternatives for the environment, given the known problems with recycling plastics that have resulted in a glut of plastic being sent to landfills as recycling options dwindle. Now, in line with the "law of unintended consequences," these alternatives to plastic containers are themselves coming under fire.

PFAS compounds have made headlines lately because some have been identified as having potential health effects, although the science of which of the PFAS chemicals are hazardous and at what levels is still being developed. PFAS are also known as "forever chemicals" because their inert nature makes them resistant to breaking down, meaning they can be found throughout the environment, including in human bodies.

The durable properties of these substances has resulted in a push to regulate PFAS, generally, and to ban some of them altogether. EPA recently announced "public health goals" for some PFAS in drinking water at levels below the current ability to detect them in a lab. EPA has also announced that it is starting the process to list several PFAS chemicals as "hazardous substances," with far-reaching regulatory consequences.

Given the global supply chain and the built-in delays between manufacturing and availability at your local sandwich shop, businesses may find it challenging to comply with the ban on PFAS in food packaging by January 1, 2023. The law's PFAS ban was also not well publicized, so manufacturers may have been slow to adjust. Moreover, like a number of other California environmental laws, this PFAS ban creates a different set of requirements and restrictions for the California market than for other states. However, increasing public knowledge and concern over PFAS and their use in food packaging may be driving businesses to find alternatives without PFAS regardless of their regulatory status. Several major lawsuits over the use of food packaging containing PFAS has certainly increased the visibility of the issue, as well.

The other element of AB 1200 regarding disclosure of chemicals in cookware is also worth noting, although its provisions will apply to fewer businesses. The bill requires "manufacturers" (broadly defined) of "cookware" (also broadly defined), to disclose on the product label or packaging if the product contains one or more of the chemicals on California's list of "Candidate Chemicals" associated with the State's Safer Consumer Products program. In addition, the law prohibits a cookware manufacturer from advertising their product does not contain a particular compound when it contains other compounds of the same "class." (e.g., touting their cookware is "PFOA free" if it contains other PFAS chemicals like PTFE).

The cookware labeling requirements take effect January 1, 2024, giving a bit more time for manufacturers to come into compliance. However, there are over 1,000 Candidate Chemicals, so the task for manufacturers will be daunting. Moreover, unlike Proposition 65 warnings, which are only required to identify one of the more than 1000 chemicals on the Proposition 65, AB 1200 appears to require that *every* Candidate Chemical in a cookware product must be identified on the product's label. In some cases, both AB 1200 and Proposition 65 warnings may be required, meaning the amount of label space available for the name and features of any product may be diminishing drastically.

Manufacturers of paper and cardboard food packaging, and those who use these products in their businesses, may already be behind the eight ball if they have not already been planning for this new law to take effect. Manufacturers of cookware, too, have precious little time to implement the big changes this law places on them. Even if your business is not directly affected by this particular law, keep an eye open for more PFAS regulation that is certain to impact you eventually.

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