

PFAS: What Are They? Where Are They? And How Can Businesses Avoid the Litigation Associated with Them?

Article

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What are PFAS and Where are They Found?

“Per- and Polyfluoroalkyl Substances” (“PFAS”) are a group of approximately 15,000 chemicals found in thousands of products ranging from consumer products like food packaging, non-stick cooking materials, and cosmetics to commercial firefighting foams. PFAS are commonly referred to as “forever chemicals” because they do not easily break down in the human body and can exist in the environment for hundreds of years.

Companies began the widespread use of PFAS in various products in the late 1940s. Since then, research on the adverse effects of PFAS exposure has continued to advance. This research has linked PFAS exposure to adverse health effects including, cancers, fertility issues, diabetes, developmental issues, and immune disorders.

PFAS Litigation

Early PFAS litigation was focused on contamination of the environment surrounding major PFAS manufacturing locations. Major manufacturers faced thousands of lawsuits over the past several decades related to their products contaminating the water supply and allegedly harming residents in the surrounding areas.

Since 2020, there has been a significant rise in PFAS litigation. There are several factors driving this increase. As more time has passed since the widespread use of PFAS, researchers have been able to complete more studies on the long-term health effects of PFAS exposure. As such, there is now more data to directly connect PFAS exposure to adverse health effects. This is a critical component to any personal injury case because without medical studies, causation is nearly impossible to prove.

The increased awareness of the risks and adverse health effects of PFAS exposure has also led to increased governmental intervention to curb the use of PFAS. In 2021, the Environmental Protection Agency (“EPA”) rolled out a “Strategic Roadmap” that set future timelines for additional regulations on PFAS in drinking water and reporting requirements on PFAS. On a state level, legislatures are passing laws to regarding PFAS use and many state attorneys general are bringing lawsuits against PFAS manufacturers to protect the public from PFAS exposure.

Further, there have recently been several multibillion dollar settlements reached in PFAS litigation. Any time plaintiffs are seeing substantial settlements like this, the likelihood of similar lawsuits increases.

Recently, Kimberly-Clark has been the target of a proposed class action PFAS lawsuit. That suit, filed in Connecticut federal court, accuses Kimberly-Clark of negligence for failing to warn near its Kleenex facility that the facility’s smokestacks were emitting PFAS. Kimberly-Clark has denied that it uses PFAS in its U.S. consumer products.

Protect Your Business

Historically, PFAS litigation has been focused on the manufacturers of PFAS products. Recently, however, companies further down the chain of commerce have been targeted. Companies who have PFAS in their finished products- including food packaging, personal hygiene products, and clothing - are now becoming the targets of regulations and litigation.

In anticipation of new regulations and potential litigation, prudent businesses will want to consult counsel regarding new laws and regulations unique to their business and state to ensure their compliance, and may consider hiring outside consultants to audit their business to determine whether PFAS are used in their manufacturing process and/or the materials received from suppliers.

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