

# CALIFORNIA CONSUMER PRIVACY ACT: BUSINESS COMPLIANCE

## California Consumer Privacy Act: Are You Ready?

The California Consumer Privacy Act (CCPA or the Act) takes effect January 1, 2020. The Act recognizes and enforces California consumers' right to privacy and control over their personal information. This includes the right to know what personal information about them is being collected, shared or sold by a business. Moreover, California consumers have the right to opt out of the sale of their personal information, and the right to request a business to delete their personal information.

Unfortunately, many businesses are not prepared. Failure to comply with CCPA may subject a business to enforcement by the California Attorney General, including the imposition of civil penalties of as much as \$7,500 per violation of the Act. In addition, individuals can bring a private right of action to sue a business in the event of an unauthorized disclosure, theft or exfiltration of their personal information as a result of the company's failure to implement and maintain reasonable safeguards to secure such data.

To help your business prepare for the new regulations, we've created the following CCPA Compliance Checklist. It will enable you to confirm that your business is subject to the CCPA and identify the measures with which your business must comply, determined by how you process personal information.

We provide a second checklist to ensure you properly comply with a consumer's request for information or the deletion of information. Finally, we define "personal information" and "eligible businesses" under the Act, and outline regulations regarding online privacy policies and general exemptions to the Act.

For more information about CCPA compliance, see our **Global Privacy Law Update** and our **CCPA Update: Amendments and Proposed Regulations**, or contact Cybersecurity & Data Privacy Co-Chair Anjali Das.



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# CCPA COMPLIANCE CHECKLIST

## Is your business subject to CCPA?



If you do business in the State of California on a for-profit basis and answer "yes" to one or more of the following questions, you are subject to CCPA:

- Your annual gross revenue exceeds \$25 million
- You annually **buy, collect, sell** or **share** personal information (PI) of 50,000 or more California consumers or households
- You receive 50% or more of your annual revenue from selling California consumers' PI

## Do you collect PI of California residents?



If you collect PI of California residents, you must disclose the following at or prior to the point of collection:

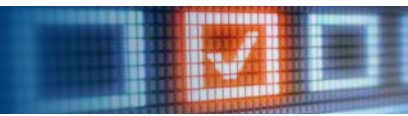
- Categories of PI you have collected
- Categories of source(s) from which the PI was collected
- Business or commercial purposes for collecting or selling the PI
- Categories of third parties with whom PI is shared
- Specific PI collected about an individual consumer
- Business purpose for collecting or processing PI

## Do you sell PI of California residents?



If you sell PI of California residents to a third party for monetary or other valuable consideration, you must comply with these additional measures:

- Afford California consumers the right to opt out of the sale of their PI to third parties
- The right to "opt out" must be disclosed in a "clear and conspicuous" link on the business's internet homepage to a web page titled "DO NOT SELL MY PERSONAL INFORMATION"
- A business cannot require a consumer to create an account to exercise their right to "opt out" of the sale of their PI
- The consumer's right to "opt out" of the sale of their PI should be described in the business's online Privacy Policy
- You cannot sell the PI of California residents under 16 years of age without the express "opt in" consent



## Do you share PI with third parties?



You may share PI with third-party services providers to perform a business purpose so long as:

- The third party is processing personal information on behalf of your business for a stated business purpose pursuant to a written contract
- You have notified the consumer that their PI is being shared with a third party
- The third party is prohibited from retaining, using, selling or disclosing PI other than for the stated business purpose

## What is “personal information” (PI) under the CCPA?

### *PI may include (but is not limited to) the following consumer information:*

- Unique individual identifier (such as name, postal address, online identifier, IP address, email address, account name, social security number, driver’s license number, passport number, tax identification number, military identification number, California State ID card or other government-issued ID numbers)
- Commercial information such as the consumer’s purchasing history of products or services
- Biometric information
- Consumer’s online activity such as browsing history, search history and interactions with Websites or ads
- Geolocation data
- Audio, electronic, visual, thermal, olfactory or similar information
- Professional or employment-related information (see note below)
- Education information that is not publicly available
- Inferences that can be drawn to create a unique consumer profile reflecting the individual’s preferences, characteristics, behavior, attitudes

*NOTE: The Act, as amended by AB 25, exempts until January 1, 2021, personal information collected by a business from a job applicant, employee, owner, director, officer, medical staff member or contractor of the business.*

## What are eligible “business purposes” for collecting or processing PI?

### *A “business purpose” may include the following activities:*

- Auditing related to consumer transactions
- Detecting security incidents and protecting against fraudulent or illegal activity
- Debugging or repairing functionality of systems
- Short-term, transient use of PI, such as customizing ads during the same interaction with the consumer
- Performing services on behalf of the business or service provider, including maintaining and servicing accounts, providing customer service, processing or fulfilling customer orders and transactions
- Verifying customer information
- Processing payments
- Providing financing
- Providing advertising or marketing services
- Providing analytic services
- Internal research for technological development
- Maintaining the quality of a service or device

## Consumer's right to request the business to delete PI

***A California consumer has the right to request a business to delete their PI. A business that receives a verifiable consumer request shall delete the PI, unless it is necessary for the business to maintain the PI in order to:***

- Complete a transaction or contract with the consumer
- Respond to security incidents or protect against fraudulent or illegal activity
- Debug or repair system functionality
- Exercise or protect rights of free speech
- Comply with the California Electronic Communications Privacy Act
- Engage in scientific, historical or statistical research in the public interest
- For internal uses that are aligned with consumer expectations
- Comply with any other legal obligation
- Use the PI in lawful manner that is compatible with the purpose for which the PI was collected

## Methods for consumers to submit requests for information

***A business must make available to consumers two (2) or more designated methods for submitting requests for information including:***

- A toll-free telephone number (at a minimum)
- Website address
- Email address (see note below)

*NOTE: The CCPA as amended by AB 1564 states that a business that operates exclusively online and has a direct relationship with the consumer from whom it collects PI only shall be required to provide an email address for submitting requests.*

***A business that receives a verifiable request from a consumer for information:***

- Must disclose and deliver the required information to the consumer free of charge within 45 days of receipt of a verifiable consumer request
- May request a 45-day extension to comply with the request when reasonably necessary
- Is only required to provide information that covers the preceding 12-month period from the date of request
- Is not required to respond to a consumer's request for information more than twice in a 12-month period

## Antidiscrimination provision

***A business cannot discriminate against consumers who exercise their rights under the CCPA by:***

- Denying goods or services
- Providing a different level of quality or services
- Charging a different price, unless the difference is reasonably related to the value of the consumer's data

*NOTE: A business may offer consumers a "financial incentive" to consent to the collection and sale of their PI.*

## Online privacy policy

***A business should maintain an online privacy policy that contains the following information updated at least once every 12 months:***

- A description of consumers' rights regarding their PI
- Method for consumers to submit requests to the business regarding their PI
- A list of the categories of PI collected by the business in the past 12 months
- A list of the categories of PI sold about consumers in the past 12 months
- A list of the categories of PI shared or disclosed in the past 12 months for a stated business purpose

## General exemptions to the CCPA

*The CCPA has several important exemptions and does not restrict a business's ability to do the following:*

- Comply with other federal, state or local laws
- Comply with a civil, criminal or regulatory investigation, subpoena or summons
- Cooperate with law enforcement
- Collect, use or sell de-identified consumer information that cannot reasonably identify a particular individual
- Prosecute or defend legal claims
- Collect, use, retain, sell or disclose PI that is de-identified and cannot be linked to a particular individual
- Collect or sell PI if all aspects of the commercial transaction take place wholly outside California

*In addition, the CCPA does not apply to any of the following:*

- Medical information governed by the Confidentiality of Medical Information Act or protected health information governed by HIPAA or HITECH
- Health care providers governed by the Confidentiality of Medical Information Act, HIPAA or HITECH
- Information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human Subjects
- Sale of personal information to or from a consumer reporting agency if that information is to be reported in or used to generate a consumer report
- Personal information collected, processed, sold or disclosed pursuant to the Gramm–Leach–Bliley Act, also known as the Financial Services Modernization Act of 1999
- Personal information collected, processed, sold or disclosed pursuant to the Driver's Privacy Protection Act