

Business Considerations: California Consumer Privacy Act

The following is provided solely as information that a company should consider when attempting to determine whether it can generally comply with California Consumer Privacy Act (“CCPA”). This is not intended as an exhaustive compliance checklist, it should not be considered legal advice and should not be used to determine if a business is “compliant.” It is intended to assist a company with determining whether the CCPA applies to its business, to what extent, and what the company must consider in meeting applicable requirements.

Covered Business or Service Provider

Are you a covered “business” under the CCPA?

<input type="checkbox"/>	You are a sole proprietorship, partnership, LLC, corporation, association, or other legal entity that is for the profit or financial benefit of your shareholders or other owners;
<input type="checkbox"/>	You, or someone on your behalf, collects consumers’ personal information;
<input type="checkbox"/>	You, alone or jointly, determine the purposes and means of the processing of the personal information;
<input type="checkbox"/>	You do business in California;
	<u>AND</u>
	You meet one of the following criteria:
<input type="checkbox"/>	Your annual gross revenue is in excess of twenty-five million dollars (\$25,000,000).
<input type="checkbox"/>	Alone or in combination, you annually buy, receive for commercial purposes, sell, or share for commercial purposes the personal information of 50,000 or more consumers, households, or devices.
<input type="checkbox"/>	You derive fifty percent (50%) or more of your annual revenue from selling consumer personal information.

Do you collect personal information?

<input type="checkbox"/>	Consumer Data You collect personal information of a natural person who is a California resident.
<input type="checkbox"/>	Employee Data You collect personal information from a natural person in course of acting as a job applicant, employee, owner, director, officer, medical staff member, or contract of your business. (Exempt from CCPA until January 1, 2021).
<input type="checkbox"/>	Business to Business Communications between businesses that contain personal information for the purpose of conducting due diligence or providing services to the other business. (Exempt from CCPA until January 1, 2021).

What should you be able to do if the CCPA applies to your business and its collecting or selling of personal information?

<input type="checkbox"/>	Right to Know You must be able to determine if you are or have collected information on the consumer making the request.
<input type="checkbox"/>	Right to Request to Disclose You must be able to determine what categories and specific pieces of personal information is collected and for what purpose the information is used.
<input type="checkbox"/>	Right to Delete You must be able to delete a consumer's personal information from your own records and also direct service providers to delete a consumer's personal information.
<input type="checkbox"/>	Right to Opt-Out If you sell consumers' personal data and receive an opt-out request from a consumer, you must be able to cease selling that customer's personal information.

Are you a “service provider” under the CCPA?

Even if your business is not a covered “business” for CCPA purposes, it is also important to consider whether your business is operating as a “service provider” or a for-profit entity (including a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity) that both:

- Processes personal information on behalf of a covered business.
- Receives that information from a covered business:
 - for a business purpose only; and
 - under a written contract that contains specific clauses.

Essential to this role as a service provider is a written contract between the covered business and your business in which the covered business prohibits your business from using, disclosing or retaining personal information for:

- Any purpose other than performing the services specified in the contract or that the CCPA otherwise permits a service provider to take; and
- A commercial purpose other than providing the services specified in the contract.

Data Subject Requests

Generally speaking, a covered business should be in a position to properly and timely respond to and address a data subject's request to exercise any of his or her enumerated rights.

- **Data Access.** Can you access or provide access a data subject's personal information in your company's possession?
- **Rectification.** Can you correct a data subject's personal information if requested?
- **Prohibit Data Sharing.** Can you prohibit the sharing of a data subject's personal information?
- **Portability.** Can you provide copies of a data subject's personal information?
- **Erasure.** Can you erase or delete a data subject's personal information?
- **Process Requests.** Do you have a means to receive inquiries from data subjects? For example, companies must provide two or more designated methods for submitting information requests, including at minimum a toll-free number and a website address if the company has a website.
- **Security.** Can you implement the necessary technical and organizational measures to keep personal information confidential and secure?

Notice to Consumers

In its online privacy policy, covered businesses must inform consumers of the following:

- Consumers' rights under CCPA.
- A list of categories of personal information (11 specific categories of PI are to be used) collected in the preceding 12 months and the purposes (business and commercial) for collection; use for any other purposes requires further notice prior to different use.
- A list of categories of personal information sold in the preceding 12 months (of if the business has not sold consumers' personal information in the preceding 12 months, the business must inform the consumer of that fact).
- A list of categories of personal information disclosed for a business purpose in the preceding 12 months (or if the business has not disclosed consumers' personal information for a business purpose in the preceding 12 months, the business must state that).

No Discrimination

Under the CCPA, consumers have the right to equal service and price, meaning that a business cannot discriminate against a consumer because the consumer exercised any of his or her rights under the CCPA. Businesses must have processes in place to ensure they do not inadvertently discriminate under CCPA. Discrimination, for purposes of CCPA, includes:

- Denying goods or services to the consumer;
- Charging different prices or rates for goods or services, including through the use of discounts or other benefits of imposing penalties;
- Providing a different level or quality of goods or services to the consumer, if the consumer exercises his or her rights under CCPA;

- a. Suggesting that the consumer will receive a different price or rate for goods or services, or a different level or quality of goods or services

“Collecting” vs “Selling” Personal Information

The CCPA regulates businesses that collect and sell personal information of California consumers.

Collecting and Selling Personal Information

<input type="checkbox"/>	<p>Collecting You are deemed to collect personal information when you buy, rent, gather, obtain, receive, or access personal information by any means. Collection can be done actively or passively by observing the consumer’s behavior, including online monitoring and tracking.</p>
<input type="checkbox"/>	<p>Selling You are considered to be selling personal information when you sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally or in writing a consumer’s personal information to another business or third party for monetary or valuable consideration.</p> <p>Exceptions: You do not “sell” personal information when:</p>
<input type="checkbox"/>	A consumer directs you to intentionally disclose their personal information or the consumer uses you to interact with a third party (as long as the third party does not sell the personal information).
<input type="checkbox"/>	You share or use an identifier of a consumer who opted out of selling his/her personal information for the purpose of notifying a third party of the choice to opt out.
<input type="checkbox"/>	<p>You share personal information with a service provider that is for business purposes if both of the following are met:</p> <ul style="list-style-type: none"> • The service provider does not then collect, sell, or use the personal information unless for a necessary business purpose. • You provide notice in your terms and conditions that state the consumers’ information is being used or shared.
<input type="checkbox"/>	<p>The personal information is transferred to a third party as part of a merger, acquisition, bankruptcy, or other transaction where the third party assumes control of all or part of the business.</p> <p>However, if the third party materially alters how the personal information is used and is materially inconsistent with the promises made at the time of collection, the third party must provide notice of the new practices.</p>

Covered businesses should determine whether or not they plan to sell personal information of California consumers to third parties. If a covered business decides to sell, then it should implement processes to account for the following:

- **“Do Not Sell My Personal Information Link.”** If a company sells personal information of California consumers, it must clearly and conspicuously post a link entitled “Do Not Sell My Personal Information,” which directs visitors to a webpage where the visitor can opt-out of their personal information being sold. The link must be placed on both the internet home page and in the online privacy policy.
- **Opt-In and Parental Consent.** Companies must seek opt-in consent from California children between the ages of thirteen (13) and sixteen (16). If selling personal information from children under the age of thirteen, the company must receive parental consent.
- **Refrain from Seeking Opt-In Consent** for 12 months from California residents who have opted out.