

## CALIFORNIA CONSUMER PROTECTION ACT (CCPA) Section 1789.100 et al. of the California Civil Code

[https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB25](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB25)

### KEY PROVISIONS OF THE ORDINANCE

- Applicable to businesses that collect consumer personal information who jointly, or with others, determine the purposes and means of the processing of consumers' personal information *that does business in the State of California and*:
  - Has annual gross revenue in excess of twenty-five million dollars (\$25,000,000)
  - Buys, sells or shares for commercial purposes the personal information of 50,000 or more consumers, households, or devices
  - Derives 50 percent or more of its annual revenues from selling consumers' personal information (definition of "selling" very broad)
- Definition of Consumer Information/ Personal Information very broad:
  - Consumer means a natural person who is a California resident
  - Personal Information means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly with a particular consumer or household (including):
    - Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier, internet protocol address, email address, account name, social security number, driver's license number, passport number, or other similar identifiers.
    - Professional or employment related information
    - Education information not publicly available under FERPA
- If the CCPA is applicable, depending on how you use or sell consumer information, you must:
  - protect consumer information,
  - provide notices of how consumer information will be used, whom it will be or was shared,
  - delete or not share any personal information if requested by a consumer and,
  - provide consumers a way to opt-out of the sale of their information
- Data breach – no exceptions or exemptions(only private right of action):
  - Any consumer whose nonencrypted and nonredacted personal information, is subject to an unauthorized access and exfiltration, theft or disclosure as a result of the business' violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information may be subject to
    - a civil action to recover damages of between \$100-\$750 per consumer or actual damages, injunctive or declaratory relief, any other relief the court deems appropriate
- Penalties for Noncompliance: A business who fails to cure any alleged violation within 30 days after being notified of the alleged noncompliance is in violation of the title. Any business or other person that violates this title shall be subject to an injunction and liable for a civil penalty of not more than two thousand five hundred dollars (\$2500) for EACH violation or seven thousand five hundred dollars (\$7500) for each intentional violation which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General.

- **Website requirements:** A business required to comply with section 1798.120 shall in a form that is reasonably accessible to consumers:
  - Provide a clear and conspicuous link on the business's Internet homepage titled "Do Not Sell My Personal Information" to a web page that enables a consumer or a person authorized by the consumer to opt-out of the sale of the consumer's personal information.
  - Include a description of a consumer's rights along with the "Do Not Sell My Personal Information Link" in its online privacy policy or if it has one, any California-specific description of consumers' privacy rights

### **Employee Information Exemption** Valid until January 1, 2021–The title does NOT apply to:

Personal information that is collected by a business about a natural person in the course of the natural person acting as:

- a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or contractor of that business to the extent that the natural person's personal information is collected and used by the business solely within the context of the natural person's role or former role as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or a contractor of that business.
- Employers will still be required to provide employees with information on the categories of personal information that it collects about them that do not fit into any of the above categories and prepare to comply fully after the expiration of the exemption starting January 1, 2021.
- There also exemptions for personal information for emergency contact purposes and administration of employment benefits.

### **FCRA Exemption** – The title does NOT apply to:

An activity involving the collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency as defined by the Fair Credit Reporting Act (FCRA) 15 § 1681(a) and the information is not used, communicated, disclosed or sold except as authorized under the FCRA.

**Business to Business Exemption**- Exemption limited to sharing of business to business sharing of consumer information reflecting communications or transactions between a business and a consumer where the consumer is acting as an employee, owner, director, officer or contract of the business. If applicable, exempts businesses from consumer notification and deletion requirements as well as requests for disclosure but, not from requests to opt out of sale of consumer information. Also expires January 1, 2021

## RECOMMENDED ACTIONS IN PREPARATION FOR JANUARY 1, 2020

- If you have not already done so, review how you collect and process personal data.
- Review if you fall under the purview of the CCPA- Doing business in California, revenue, etc. or if you meet one of the above exceptions.
- Review the CCPA with your outside legal counsel.
- Revise your policies and procedures, if necessary, for compliance with required notices, responses to requests for opt-out or deletion.
- Revise your online Privacy Policy, if necessary.
- Ensure you are protecting all electronic consumer data from any unauthorized access.

*NOTE: This information is offered as general direction and in no way should be construed or accepted as legal advice. Each individual employer may have particular regulatory and other requirements which may alter this general direction. Furthermore, each individual position may have unique duties, responsibilities, and characteristics which may influence this general direction.*