



Warner Norcross + Judd LLP

# California Consumer Protection Act

## KEY COMPONENTS:

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**Effective January 1, 2020. However, no enforcement until either 6 months after publication of Attorney General's regulations or July 1, 2020, whichever is sooner.**

The CCPA includes a 12-month "look-back" provision, which gives consumers the right to access their individualized information from the past twelve months. Therefore, consumers could access their personal information dating back to January 1, 2019.

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## Who Must Comply:

Any business that does business with any (one) California resident, AND, either:

- Earns \$25,000,000/year in revenue;
- Annually buys, receives (for businesses' commercial purposes), sells, or shares for commercial purposes the personal information of 50,000 or more consumers, households, or devices; or
- Derives 50% or more of its annual revenue by selling personal information.

The CCPA also applies to any entity that controls or is controlled by a business that falls under the requirements above.

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## What is Covered Under The CCPA?

*Personal Information of Consumers:*

- Consumer means any California resident.
- Personal information means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.
- Personal information includes\*:
  - Professional or employment information
  - Commercial information, such as purchasing habits or and actual products or services purchased
  - Geolocation data
  - Biometric information
  - Metadata
  - Internet or network information, such as search and browsing history
  - Identifiers, such as name, social security number, IP address, and driver's license and passport numbers
  - Non-public education information

\*Employee data and business-to-business contact information excluded until 2021.

## Rights of a Consumer Under the CCPA

- Right to Know (Right of Disclosure)
- Right to Access
- Right to Deletion (Right to be Forgotten)
- Right to Opt-Out
- Right to Equal Service (Antidiscrimination)

In addition to the individual rights described above, the CCPA has specific provisions applicable to the “*Sale of Personal Information*” – selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to another business or a third party for monetary or other valuable consideration.

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## Differences Between the CCPA and the Global Data Protection Regulation (GDPR)

- The CCPA regulates only for-profit businesses, while the GDPR regulates more expansively.
  - The definition of “personal data” under the CCPA is more expansive than it is under the GDPR, as it protects personal data associated not only with a consumer, but with a consumer’s household.
  - The GDPR generally regulates the processing of personal data, while the CCPA focuses on individual rights and the sale of personal information.
  - The CCPA includes a limited private right of action.
  - The GDPR has greater accountability-related obligations than the CCPA, including the need to conduct Data Protection Impact Assessments in certain circumstances and the maintenance of a register of processing activities.
  - The GDPR requires consent or “legal basis” for processing. The CCPA does not impose restrictions on processing.
  - The CCPA maintains a greater focus on transparency obligations and provisions that limit the selling of personal information, including the requirement that a business place a “Do Not Sell My Personal Information” link on its website home page.
  - The CCPA mandates that contracts with service providers or third parties contain a provision stating that they will not sell the personal information. The GDPR does not mandate this.
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## Mandatory Steps for Businesses to Comply Under the CCPA

A business must:

- Provide consumer with at least two different methods for submitting requests to exercise individual rights (i.e., a toll-free phone number and a website address, if the business maintains a website).
  - Place information regarding consumer’s rights under the CCPA on its homepage, or have the information on a separate, readily accessible, California-specific webpage.
  - Respond to verifiable consumer requests within 45 days, free of charge.
  - Honor opt-out requests.
  - Update its privacy policies and notifications.
  - Ensure its agreements with third-parties comply with the CCPA and create agreements if they are not already in place.
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## Consequences for Noncompliance

California consumers have a private right of action against businesses who fail to adequately safeguard certain personal information (as defined in Ca Civ. Code section 1798.81.5(d)(1)(A)).

- Allows for a fine of up to \$750 and not less than \$100 per incident.

The Attorney General of California may bring an action against businesses.

- Allows for a fine of up to \$2,500 per violation, or \$7,500 for each intentional violation.