



Warner Norcross + Judd LLP

California Consumer Protection Act

KEY COMPONENTS:

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.

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.

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.

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.