



CCPA: The Other Problem With A Capital “C”

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With the all-encompassing distraction of keeping up with the evolving COVID-related guidances, ordinances, and regulations, many employers have forgotten the other looming problem with a capital “C” – California Consumer Privacy Act (CCPA). With its misleading title, many businesses believe it is only outward-facing, toward their consumers. However, aspects of the CCPA apply inwardly to employees.

What Does CCPA Require?

Generally speaking, CCPA requires businesses to disclose the type of personal information collected about its consumers and how that information will be used as well as provide the choice for the consumer to opt out of the use of that personal information. Failure to comply with CCPA could result in civil penalties from \$2,500 to \$7,500, depending on whether the violation is intentional.

The full statement of the law is set out in CA Civil Code Sections 1798.100 - 1798.199. [<http://leginfo.legislature.ca.gov>]

Unfortunately, even though CCPA went into effect on January 1, 2020, with required compliance as of July 1, 2020, there are many aspects to the law that are not yet final and still subject to further expansion. For example, the CA Attorney General submitted a “final proposed regulations package” [<https://oag.ca.gov/privacy/ccpa>] on June 1, 2020, that won’t be reviewed and actually finalized for months after compliance is already required.

And if that’s not confusing enough, a proposed further amendment to CCPA has just qualified for the CA ballot on November 3, 2020. That means new CCPA regulations, which will be stricter than the current set, may be coming down the road.

Does CCPA Apply to All California Businesses?

No. CCPA applies to any for-profit business in California that collects consumer personal information and either: (a) has annual gross revenue in excess of \$25 million; (b) buys, receives for commercial purposes, sells, or shares for commercial purposes personal information of 50,000 or more consumers, households, or devices in a year; or (c) earns 50% or more of its annual revenue from the sale of consumer personal information.

Does CCPA Protect California Employees?

Yes. “Consumer” is broadly defined in the statute as “a natural person who is a California resident” and “personal information” is “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” and expressly includes employment-related data.

However, enforcement of CCPA as it applies to employers’ routine collection of applicant and employee information is currently exempted from CCPA compliance through the end of the year. It is expected to apply as of January 1, 2021, unless further amended.

What Should Employers Do Now?

Train and prepare.

Employers should focus on training their employees to comply with CCPA. For example, while employers may have automated CCPA-compliant controls for their online data collection of consumer personal information, COVID-related safety protocols have crossed over into CCPA territory. Specifically, many businesses are taking the temperature of their customers and visitors on premises before letting them in. Such information falls squarely in the definition of “personal information” and must be handled appropriately so as not to violate CCPA.

Employers should also prepare for the pending updated regulations from the CA Attorney General and the additional compliance requirements that kick in on January 1, 2021. Because there’s nothing else to worry about now, right?



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