

California Privacy Rights Act: What Employers Need to Know

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Originally passed in 2018 and effective in 2020, the California Consumer Privacy Act (CCPA) is a comprehensive privacy law aimed at enhancing California residents' privacy rights and consumer protection. And to ensure such privacy rights and protections, the act requires covered businesses to follow strict privacy requirements regarding personal information they collect about consumers, such as requiring these businesses to notify consumers about the kinds of personal information it collects about them and what it's used for.

But the privacy rights and consumer protections didn't stop there: At the end of 2020, California voters approved Proposition 24, known as the California Privacy Rights Act (CPRA). The CPRA amended the CCPA, building on its framework and expanding some of its protections. While some amendments took effect immediately on approval, **many of its provisions will take effect on January 1, 2023.**

In 2023, employers covered by the CPRA must be prepared to comply with the law as it pertains to their employees', job applicants' and independent contractors' personal information.

The law's broad language, specifically the way it defines "consumers" and their "personal information," encompasses California-based employees, job applicants, independent contractors and most of the information collected about them within the scope of those roles — but that wasn't the law's intention when it was enacted. Therefore, employment-related information previously was exempted from most of the law's requirements; this exemption, however, expires on January 1, 2023.

So, come January 1, 2023, employers covered by the CPRA must be prepared to comply with the law as it pertains to the personal information of additional individuals including, but not limited to, their employees, job applicants and independent contractors (referred to here and throughout as "employment-related information").

This white paper addresses frequently asked questions about the law and its upcoming changes, and offers some steps employers can take in preparation for the new year.

Are the CCPA and the CPRA Different Laws?

In various articles and resources, the law is referred to as either the CCPA or the CPRA — but they are essentially the same law. The California Privacy Protection Agency, which is the agency creating regulations for the law, notes in its [FAQ page](#) that, technically, the CPRA amended the CCPA and added some new provisions — but the CPRA didn't replace the CCPA with an entirely new law. Thus, the agency refers to the law as the CCPA.

Because many of the CPRA amendments take effect January 1, 2023, however, numerous resources are referring to the law as the CPRA. It's unclear which name will win out in 2023, but regardless, they are the same statute, and when the amendments take effect in 2023, there will be no difference between the CCPA and CPRA.

For the purposes of this white paper and its focus on the changes coming in January 2023, it will refer to the law as the CPRA.

CPRA-covered businesses have certain obligations regarding personal information collected about consumers, which includes employment-related information beginning January 1, 2023.

Does the CPRA Apply to My Business?

The law doesn't apply to every business in California. Beginning January 1, 2023, the CPRA will apply specifically to **for-profit businesses** doing business in the state of California that meet one of the following criteria:

1. Have a gross annual revenue in excess of \$25 million;
2. That buy, sell and/or share (alone or in combination) personal information of 100,000 or more California residents or households; or
3. That derive 50 percent or more of annual revenue from selling or sharing consumers' personal information.

Please note that the January 1 coverage criteria above are slightly different from the law's current criteria. Specifically, regarding the second point above, the law currently states that it applies to businesses that buy, sell, share or "receive for the business's commercial purposes" the personal information of 50,000 or more consumers, households or devices. It's quite easy to "receive" information, but the 2023 changes remove the "receives" phrase, focusing on buying, selling and sharing. That, along with the increase in consumers/households from 50,00 to 100,000 or more, means some currently covered businesses may fall out of coverage. Currently covered businesses should be sure to re-evaluate coverage according to the new criteria.

Also subject to the law is any entity:

- That controls or is controlled by a business subject to the CPRA;
- That shares common branding with the business; and
- With whom the business shares consumers' personal information.

All businesses subjected to the CPRA have certain obligations with respect to the personal information collected about consumers, which, beginning January 1, 2023, will include employees, job applicants and independent contractors.

Please note that a business not covered directly by the law may take on CPRA obligations via contract if it does business with a company subject to the CPRA and receives consumers' personal information from that company.

My Business Is Covered, So What's Changing on January 1, 2023?

In the past, businesses covered by the law have been required to provide a notice to California-based employees and job applicants of the categories of personal information collected about them and the purposes for which they are used at or before the point of collecting that information — commonly referred to as the “notice at collection.” Employers haven't had to apply the remaining requirements to their employment-related information given the exemption.

On January 1, 2023, however, this exemption expires, and covered businesses will need to comply with all provisions of the CPRA pertaining to their personnel and employment-related information. This includes:

- Providing an updated notice at collection;
- Providing new privacy policy disclosures about employees' CPRA rights and how to exercise those rights;
- Establishing the procedures necessary to comply with employee CPRA requests; and
- Training appropriate personnel to handle employee CPRA requests and responses.

Employers should prepare to update their “notice at collection” for the new year.

Why Do We Have to Update the Notice at Collection?

Because the CPRA amended the CCPA notice at collection requirements, effective January 1, 2023.

Currently, at or before the time of collection, employers must comply with the requirement to disclose:

- The categories of personal information to be collected about an applicant or employee; and
- The purposes for which the information will be used.

Beginning January 1, 2023, however, in addition to these existing requirements, employers also must inform their employees and job applicants of:

- The categories of “sensitive personal information” collected and the purposes for which they are used.
 - » Sensitive personal information includes things like Social Security number, driver's license number, financial account information, login credentials, health information, biometric data, racial or ethnic origin, religious or philosophical beliefs, union membership, and genetic data.
- The length of time the business intends to retain each category of the personal information, including sensitive personal information. Or, if that is not possible, the criteria used to determine the retention period, provided that the business cannot retain the information longer than is reasonably necessary for the disclosed purpose.
- Whether the personal information, including sensitive personal information, is sold or shared.

Employers should prepare to update their notices for the new year and consult their legal counsel with any questions.

What CPRA Information Do We Need to Include in Our Employee Privacy Policy?

In addition to the notice at time of collection, beginning January 1, 2023, employers must, in their privacy policy, disclose to employees, job applicants and independent contractors information about their rights under the CPRA and procedures for exercising those rights. Subject to some general exceptions, the CPRA gives consumers the right:

- To delete personal information, subject to certain exceptions.
- To correct inaccurate personal information.
- To access personal information.
- To know what personal information is sold or shared and to whom.
- To opt out of sale or sharing of personal information.
- To limit use and disclosure of sensitive personal information.
- Of no retaliation exercising their rights under the law.

An employer's privacy policy must be updated at least once every 12 months.

Covered businesses also must disclose the following in its privacy policy:

- Categories of personal information collected during the preceding 12 months.
- Categories of sources from which personal information is collected.
- Business or commercial purposes for collecting personal information.
- Categories of third parties to which personal information is disclosed.
- Categories of personal information the business has sold or shared in the prior 12 months, or, if the business hasn't sold or shared personal information in the preceding 12 months, a statement to that effect in the privacy policy.
- Categories of personal information disclosed for business purposes in the preceding 12 months, or, if the business hasn't disclosed personal information for business purposes, a statement to that effect in its privacy policy.

The requirement to provide consumer information going back 12 months is commonly called the "12-month look back period." It's important to note that when this requirement takes effect January 1, 2023, businesses must be prepared to provide information going back 12 months to January 1, 2022.

Employers must update their privacy policy at least once every 12 months.

Covered employers should consult with legal counsel to determine the best way to address the CPRA notice and disclosure requirements for employees and applicants depending on their particular business practices.

How Do We Administer Employee CPRA Rights?

In addition to the new disclosure requirements, covered businesses must develop procedures for receiving and responding to employee CPRA requests under the law to, for example, produce, delete or correct the individual's personal information.

Covered employers already have procedures in place for CCPA requests from outside consumers (e.g., customers, clients, visitors, etc.), but they will need to adapt those procedures, or create new ones, to accommodate the inclusion of employees, job applicants and independent contractors, and their personal information.

Employers should consult with legal counsel to determine the optimal way to receive and respond to requests from these individuals, which may warrant the creation or use of different procedures and personnel depending on how employment-related information is collected and stored, and who has access to the information.

Keep in mind that employment-related information may be subject to different retention and/or confidentiality requirements than other consumer data. Employers should work with legal counsel to identify what information is subject to CPRA requests and whether exceptions may apply to certain requests, such as a request to delete personal information.

CPRA enforcement won't begin until July 1, 2023, but employers should begin preparing now so they're in compliance by January 1, 2023, when the changes take effect.

Additionally, the law requires that all individuals responsible for handling consumer inquiries about the business' privacy practices or compliance with the CPRA must be informed of all of CPRA requirements and their implementing regulations, as well as how to direct consumers to exercise their rights under law.

Employers should identify the individuals who are responsible for handling their California employees' employment-related information and train them on:

- Consumer rights under the CPRA;
- How consumers can exercise those rights; and
- The business's responsibility in responding to those inquiries/rights.

What Should We Do to Prepare for 2023?

Employers should begin preparing now for the changes taking effect in 2023. Some helpful steps may be for employers to:

- Determine whether the law applies. As previously noted, the law's original coverage criteria are changing on January 1, 2023. Businesses that were previously subject to the law should re-evaluate coverage according to the new criteria to determine if they're still subject to the law or may have fallen out of coverage.

- Audit employment-related information practices. Create a data map that tracks what employment-related information is collected, what it's used for, where it's stored and who has custody over it. Keep in mind that “collecting” and “personal information” are defined by the law very broadly. “Collecting” includes both active and passive collection or receipt of information, and most, if not all, information collected from employees, applicants and contractors will qualify as “personal information” under the law.
- Review the CPRA rights, including any exceptions, and work with legal counsel to establish procedures and tools for receiving, processing and responding to CPRA requests from their personnel.
- Update or create the required notices and privacy policies, and determine how to distribute them.
- Train the relevant personnel on CPRA consumer rights and how to receive and process requests.
- Identify service providers and contractors with whom employers disclose employees’ personal information and work with legal counsel to ensure compliance with respect to those contracts.
- Review and ensure the implementation of reasonable security measures to protect personal information from unauthorized access.

Additionally, employers should expect updated privacy regulations from the California Privacy Protection Agency. The agency commenced formal rulemaking on July 8, 2022, so once the regulations take effect, employers will likely have some additional clarity regarding their obligations under this law. Employers can review the [California Privacy Protection Agency website](#) for CPRA resources and regulatory developments.

The CPRA is a complicated law and compliance will be challenging. Employers are strongly encouraged to work with legal counsel as they prepare for 2023. Fortunately, there is a grace period for enforcement, which won't begin until July 1, 2023; however, employers should nonetheless prepare to be in compliance by January 1, 2023, when the changes take effect.

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