

## California Consumer Protection Act and Nationwide Implications

### **I. General overview of the CCPA**

The CCPA extends certain protections and rights to any natural person “enjoying the benefit and protection of laws and government” of California (“**Consumers**”). Namely, the CCPA gives Consumers the following rights in relation to their Personal Information (defined below):

1. the right to know (a) what category or categories of Personal Information a company has collected about them, (b) where such information was sourced from, (c) what the information collected is being used for, (d) whether the information is being disclosed or sold, and (e) to whom the information is being disclosed or sold;
2. the right to “opt out” of allowing a company to sell their Personal Information to third parties (or, for Consumers who are under 16 years old, the right not to have their Personal Information sold without effective consent);
3. the right to have a company delete their Personal Information (subject to some exceptions); and
4. the right to receive equal service and pricing from a company, even if they exercise their privacy rights under the CCPA.

Additionally, the CCPA requires that companies make certain disclosures to consumers via their privacy policies, or otherwise at the time the Personal Information is collected.

### **II. Companies that must comply with the CCPA**

The CCPA applies to for-profit entities that do business in California (a physical presence in California is not required) and that collect and process Consumer’s Personal Information. Additionally, the CCPA applies to companies that meet **one** of the following criteria:

1. The company generates annual gross revenue of at least \$25 million;
2. The company annually buys, collects, receives, sells, or shares, alone or in combination, the Personal Information of 50,000 or more Consumers, households, or devices; or
3. The company derives at least 50 percent of its annual revenue by selling the Personal Information.

Nonprofit companies, as well as companies that don’t meet any of the three above thresholds, are not required to comply with the CCPA.

### **III. Definition of “Personal Information”**

The CCPA defines personal information very broadly. “**Personal information**” is defined as “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.” The term “household” adds a unique wrinkle – the term is not defined, and, therefore, it is unclear how broad the definition of Personal Information may be.

In addition to the common types of Personal information (*i.e.*, Social Security numbers, drivers’ license numbers, etc.), the CCPA includes purchase histories and “unique personal identifiers,” such as device identifiers and other online tracking technologies, as examples of Personal Information.

The CCPA excludes information that is publicly available from the definition of Personal Information. “**Publicly Available Information**” is defined as information that is “lawfully made available from federal, state, or local government records.” However, Personal Information is not considered “publicly

available” if the information is used for a purpose different from the one for which the information was maintained and made available in the public records.

The CCPA also excludes aggregated, de-identified data from the definition of Personal Information. “**Aggregate Consumer Information**” means information that “relates to a group or category of Consumers, from which individual Consumer identities have been removed, that is not linked or reasonably linkable to any Consumer or household, including via a device.” It is important to note that under this definition, Aggregate Consumer Information does not mean an individual Consumer’s information that has been de-identified.

#### **IV. Consumer rights under the CCPA**

The following are the most notable rights granted to Consumers under the CCPA.

##### **a) Required disclosures / Consumer’s right to know and request information**

Companies must disclose to Consumers of the following information:

- what categories of Personal Information and the specific pieces of Personal Information that are collected;
- how that Personal Information is collected and how it will be used;
- the categories of Personal Information that are sold or shared with third parties;
- the categories or types of third parties with whom Personal Information is or will be sold or shared.

These disclosures can be done through a publicly available privacy policy.

In addition to these general disclosures, Consumers can request individualized information. For example, a Consumer can request that a company disclose the sources from which the company collected the Consumer’s Personal Information, the specific pieces or categories of Personal Information it collected about the Consumer, and the third parties with which it shared that information. If a company receives a request from a Consumer for such information, the company must disclose and deliver, free of charge to the Consumer, the information requested within 45 days of such request. The CCPA requires that companies provide at least two means for consumers to submit requests for disclosure, including a toll-free telephone number.

Additionally, the Consumer making such request does not have to an account with the company. Selling or retaining any piece of Personal Information, even on a single one-time transaction, triggers compliance with the CCPA.

##### **b) Consumer’s right to have Personal Information deleted**

Consumers may request that a company delete any Personal Information about the Consumer which the company has collected from the Consumer. Companies must comply with these requests and ensure the Consumer’s Personal Information is also deleted by any third parties with whom the company may have previously shared that Consumer’s Personal Information.

There are some exceptions to the requirement to delete a Consumer’s Personal Information, such as if the Personal Information is needed to complete a transaction that the Consumer has requested, to comply with certain security measures, or to comply with a legal obligation.

c) **Consumer's right to limit sharing or selling Personal Information**

Consumers must be presented with an easy, simple, and straightforward process to opt-out of having their Personal Information sold or disclosed to third parties. Companies that sell or disclose Personal Information to third parties will need to disclose that practice and give Consumers the ability to opt out of the sale or disclosure. Additionally, companies need to provide a link titled “**Do Not Sell My Personal Information**” on the company’s home webpage, whereby a Consumer can notify the company of the Consumer’s request to opt-out of having their information sold or disclosed to third parties.

The CCPA further provides that a company must not sell the Personal Information of Consumers younger than 16 years of age without that Consumer’s affirmative consent. For Consumers younger than 13 years of age, a company cannot sell that Consumer’s Personal Information without the affirmative consent of that Consumer’s parent or guardian.

d) **Companies cannot discriminate against Consumers who exercise their rights**

The CCPA prohibits companies from discriminating against Consumers who exercise their privacy rights. Essentially, companies cannot deny goods or services, charge different prices for goods or services, or provide a different quality of goods or services to Consumers who exercise their privacy rights. The CCPA does offer certain exceptions to this rule, however it is unclear how those exceptions will be interpreted.

V. **Penalties for violations**

The CCPA can be enforced by the California Attorney General and Consumers. The civil penalty for intentional violations of the CCPA is up to \$7,500 per violation.

If, as a result of a company’s failure to implement and maintain required reasonable security procedures under the CCPA, Personal Information is subject to unauthorized access, theft, or disclosure, affected Consumers can seek statutory or actual damages and other relief. Such suit can be brought individually or as part of a class action. Statutory damages can be between \$100 and \$750 per California resident per incident, or actual damages, whichever is greater. However, it is not obvious what “per incident” means, so the ceiling for statutory damages currently is unclear.

VI. **Compliance with the CCPA**

Before January 1, 2020, companies should audit how they collect, share, and store Personal Information. If a company’s practices are inconsistent with the CCPA, it may be necessary to implement new procedures before the CCPA becomes effective.

Increased disclosures will be a large part of compliance with the CCPA. Under the CCPA, these disclosures must be updated every 12 months. Companies need to make sure they are proactively disclosing the following information to Consumers:

- the existence and nature of Consumers’ rights under the CCPA;
- the categories of Personal Information being collected;
- the purposes for which Personal Information is collected; and
- the categories of Personal Information that it sold or disclosed to the third parties and the categories of third parties to whom that information is being disclosed.

Additionally, service level agreements with third parties may need to be revised.

## **VII. Conclusion**

Companies will need to monitor new legislation nation-wide and, increasingly, world-wide to determine what laws apply to its business activities. Simultaneously, companies will need to monitor their data collection and privacy practices to ensure they comply with applicable laws and best practices.

If you have questions about your privacy policy or service level agreements, we at Fairfield and Woods, P.C. can be of service.

Please contact Marcela A. Dye at [mdye@fwlaw.com](mailto:mdye@fwlaw.com) or (303) 894-4406 if you have questions.