



Privacy and Data Security

Step Two: What About The CPRA's Applicability to My Business? California Privacy Rights Act

NOTE: In November, 2020, California voters approved the California Privacy Rights Act (the "CPRA"), which amends the California Consumer Privacy Act (the "CCPA"). The CPRA is set to become effective on January 1, 2023. Until then, the CCPA will remain in full force and effect. To review the CCPA's applicability to your business, please review **Step One** of Taft's guide to the CCPA and CPRA.

The red text indicates CPRA requirements or designates additions/changes from the CCPA.

A. Do you collect or sell Consumer or Employee Personal Information?

The CPRA regulates businesses that *collect*, *share* and *sell* personal information of California consumers. "Personal information" is any information that can be used to individually identify a person from a larger group, such as data including, but not limited to: first and last name, Social Security number, driver's license number, financial account information, credit card numbers, email addresses, phone numbers, age, mailing address, and more.

The personal information of individuals regulated by the CCPA can generally fall under three categories, two of which are exempt from the CCPA until January 1, 2023:

<input type="checkbox"/>	Consumer Data You collect, use or sell personal information of a natural person who is a California resident. This can be the personal information of your customers, users of your product or any individual that is a resident of California.
<input type="checkbox"/>	Employee Data You collect personal information from a natural person in the course of acting as a job applicant, employee, owner, director, officer, medical staff member, or contractor of your business. (Generally exempt from CCPA and CPRA until January 1, 2023). <u>Employee Notice Requirement:</u> Regardless of the 2023 employee data exemption, employers <u>must</u> still provide notice to employees, job applicants and independent contractors when collecting their personal information for

	<p>employment, recruitment and contracting purposes. Employees also have a limited private right of action for any non-redacted and unencrypted personal information that was accessed by or disclosed to an unauthorized individual.</p>
	<p>Business Contact Information Communications between businesses that contain personal information for the purpose of conducting due diligence or providing services to the other business. (Exempt from CCPA and CPRA until January 1, 2023).</p>
<p>□</p>	<p>Personal Information Exemptions Both the CCPA and CPRA exclude “publicly available,” “deidentified,” and “aggregate consumer information” as personal information. These statutes define the terms in a similar manner with a few distinctions. See the definitions below:</p> <ul style="list-style-type: none"> ○ “Publicly available” means information that is lawfully made available from federal, state, or local government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public by the consumer or from widely distributed media, or by the consumer; or information made available by a person to whom the consumer has disclosed the information if the consumer has not restricted the information to a specific audience. ○ “De-identified” means information that cannot reasonably be used to infer information about, or otherwise be linked to, a particular consumer provided that the business that possesses the information: <ul style="list-style-type: none"> ▪ Takes reasonable measures to ensure that the information cannot be associated with a consumer or household. ▪ Publicly commits to maintain and use the information in de-identified form and does not attempt to re-identify the information. Businesses may attempt to re-identify the information solely for the purpose of determining whether its de-identification processes satisfy CPRA requirements. ▪ Contractually obligates any recipients of the information to comply with all provisions of de-identified data under the CPRA. ○ “Aggregate consumer information” has the same definition under the CCPA.

“Collecting,” “Sharing” and “Selling” Personal Information

<input type="checkbox"/>	<p>Collecting You are deemed to collect personal information when you buy, rent, gather, obtain, receive, or access personal information by any means. Collection can be done actively or passively by observing the consumer’s behavior, including online monitoring and tracking.</p>
<input type="checkbox"/>	<p>Sharing – only applies to CPRA (January 1, 2023) You are considered to be sharing personal information when you share, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate personal information to a third party for “cross-context behavioral advertising,” whether or not for monetary or other valuable consideration.</p> <p>For purposes of this determination, “cross-context behavioral advertising” means the targeting of advertising to a consumer based on the consumer’s personal information obtained from the consumer’s activity across businesses or other services, other than the business or services in which the consumer intentionally interacts with.</p>
<input type="checkbox"/>	<p>Selling You are considered to be selling personal information when you sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally or in writing a consumer’s personal information to another business or third party for monetary or valuable consideration.</p>

Exceptions: You do not “sell/share” personal information when:

<input type="checkbox"/>	<p>A consumer directs you to intentionally disclose their personal information or the consumer uses you to interact with a third party (as long as the third party does not sell the personal information).</p>
<input type="checkbox"/>	<p>You share or use an identifier of a consumer who opted out of selling his/her personal information <i>or limiting the use of his or her sensitive personal information</i> for the purpose of notifying other persons of the choice to opt out.</p>
<input type="checkbox"/>	<p>The personal information is transferred to a third party as part of a merger, acquisition, bankruptcy, or other transaction where the third party assumes control of all or part of the business.</p> <p>However, if the third party materially alters how the personal information is used and is materially inconsistent with the promises made at the time of collection, the third party must provide notice of the new practices.</p>

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| | <ul style="list-style-type: none"> ▪ <u>Note</u>: A business may not make material, retroactive privacy policy changes or make other changes in their privacy policy that would violate the Unfair and Deceptive Practices Act. |
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B. Are you a covered “business” under the CPRA?

If you collect, **share** or sell consumer personal information (or employee personal information or business to business information beyond January 1, 2023) the CPRA will apply to you if you meet the following criteria to be considered a “business.” To be considered a business, you must meet all of the first four criteria below, along with ONE of the three criteria listed under the first four criteria.

1.	You are a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is for the profit or financial benefit of your shareholders or other owners;
2.	You, or someone on your behalf, collects consumers’ personal information;
3.	You, alone or jointly, determine the purposes and means of the processing of the personal information; <i>AND</i>
4.	You do business in California.
<u>AND</u>	
You meet one of the following criteria:	
<input type="checkbox"/>	<i>As of January 1 of the calendar year</i> , had annual gross revenue in excess of twenty-five million dollars (\$25,000,000) <i>in the preceding calendar year</i> . *Note, this figure includes total global revenue (regardless of where the revenue is derived from); <i>OR</i>
<input type="checkbox"/>	Alone or in combination, you annually buy, sell, or share the personal information of <i>100,000</i> or more consumers or households (limited to California); <i>OR</i>
<input type="checkbox"/>	You derive fifty percent (50%) or more of your annual revenue from selling <i>or sharing</i> (“sharing” is defined below) consumer personal information (limited to California).

C. Are you a “service provider,” a “third party,” OR a “contractor” under the CPRA?

What constitutes a service provider and a third party under the CPRA is not substantially different than what constitutes a service provider or a third party under the CCPA. See **Step One**.

However, the CPRA creates a new type of third party that contracts with the covered business, the “**contractor**.” A contractor is a person to whom the covered business *makes available* a consumer’s personal information for a business purpose, pursuant to a written contract with the covered business. This is broader than a service provider in that the contractor does not have to process personal information, just have personal information made available to it by the covered business.