



**Data Privacy
Institute**

California Privacy Rights Act (CPRA) : Updates for 2023



Data Privacy Institute (DPI): CPRA Updates for JAN 2023

What are the new changes to CCPA under CPRA?

California Consumer Privacy Act – CCPA - (Passed NOV 2020 – Effective Date: CURRENT)

California Privacy Rights Act – CPRA – (Passed JAN 2021 – Effective Date: JAN 2023)

This document should not be considered legal advice and should not be used in the determination of compliance or adherence to CCPA or CPRA, it is information and intended to be an overview and guide for businesses to use in assisting with compliance efforts.

California Consumer Rights Notice – CURRENTLY UNDER CCPA

California Consumers enjoy the following rights with respect to Personally Identifiable Information (PII) a business may possess, collect or process as it relates to the California Consumer Privacy Act (CCPA) and the California Privacy Rights Act (CPRA). Once a CA Consumer has submitted a request that has been authenticated for identity and the request is free from any exemptions and/or exceptions, the following rights are granted:

Right to Know – CA consumers have the right to know if an organization has collected, is collecting or will be collecting personal information on the qualified consumer making the request.

Right to Request Categories and Use of PII - CA consumers have the right to request and organizations have an obligation to disclose the specific categories and specific pieces of PII that are collected and the ways that this PII will be used.

Right to Delete – CA consumers enjoy the right to request that PII be erased/deleted upon a verifiable consumer request. The organization must comply with erasure/deletion requests to apply to all internal files (exceptions for PII that is required to perform normal business transactions) as well as third party providers and processors.

Right to Opt-Out- CA consumers have the right to opt out of all data sales of any PII to third parties or processors.

ENHANCEMENTS TO CCPA starting in JAN 2023:

CPRA has added or enhanced the following:

Right to Opt-Out – Starting JAN 2023, CPRA now adds the further enhancement of “selling” or “sharing” PII. CPRA now mandates that CA consumers can opt-out with a verifiable request if the company “Sells” OR “Shares” the PII of qualified CA consumers. “Sharing” is defined as using PII to; share, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate PII to a third party for the purposes of cross-contextual behavioral advertising, regardless if it is for monetary or other valuable consideration. Cross-contextual behavioral advertising is when PII of consumers is used to determine profiles and behavioral analysis gleaned from the data subject’s activity across business lines or other services that is outside of the original interaction in which the consumer engaged with the organization.

Right to Correct or Modify PII – CA consumers will now have a new right to correct or modify incorrect or erroneous data upon verifiable consumer request. Starting in JAN 2023 organizations must be able to correct PII that has been deemed incorrect and give CA consumers the ability to modify/correct the PII that is stored and collected.

ENHANCEMENTS TO CCPA starting in JAN 2023:

CPRA has added or enhanced the following:

Right to Limit the Use and Disclosure of Sensitive PII – CPRA adds the definition of “Sensitive PII” (SS #, driver’s license, state identification card or passport number, account passwords, log-in credentials, financial information on accounts, debit card or credit card numbers with security or access codes/passwords, geolocation data, racial makeup, ethnicity data, religious/philosophical beliefs, union membership, mail, email, text messages, genetic data, biometrics, health data and sexual orientation). Starting in JAN 2023, CA consumers can make a verifiable request to Limit the Use or Disclosure of Sensitive PII, the organization must limit the use and disclosure of that customer’s Sensitive PII to that use which is primarily required in order to perform services or provide goods in the normal transaction of business.

NOTICE REQUIREMENTS UNDER CCPA:

CCPA requires covered businesses to provide notice and inform consumers with specific information within their privacy policies and provide consumers with a notice, which is easy to understand, in a font and layout that is easy to read and is readily accessible by consumers online:

- a. Rights. A full list of consumer rights granted under the current CCPA.
- b. Categories of Personal Information.
 - i. Collected. A full list of the categories of personal information collected (Specific categories of PII to be used – 11 total) in the prior 12 months as well as the purposes behind collection; changing or modifying the use will require another notification.
 - ii. Sold. Categories of PII sold in the prior 12 months (or if the covered entity has not sold PII in the prior 12 months, the covered entity must provide notice as to that fact).
 - iii. Disclosed. Categories of PII disclosed for a business purpose in the prior 12 months (or if the covered entity has not disclosed PII in the prior 12 months, the covered entity must provide notice as to that fact).
- c. Financial Incentive. If a covered entity provides a financial incentive, favorable price or service differentiation based on a consumer's data choices, the covered entity must provide a "Notice of Financial Incentive". The notice must include the following information:
 - i. Summary. A clear overview of the financial incentive, price or service difference offered.
 - ii. Material Summary. Must disclose the material terms of the financial incentive, price or service difference, along with the categories PII that are related to the financial incentive, price or service difference as well as the value of the data that is being used.
- d. Opt-in. Provide the option for consumers to opt-in to the financial incentive, price or service differentiator.
- e. Right of Withdrawal. Consumers right to opt out of the financial incentive at any time and the mechanism that they can access to exercise this right.
- f. Explanation of Value. Clearly outline the financial incentive, price or service difference and its relation to the value of collected/utilized consumer data:
 - i. Must provide an estimate of the value of the consumer's data that was utilized as the basis for offering the financial incentive, price or service difference.
 - ii. The methodology and process by which the estimate of the value of consumer data was determined.

Privacy Policy Updates UNDER CPRA:

CPRA will require the following Privacy Policy Updates.

- *CPRA now adds “Sharing” of PII to the required lists of categories described and disclosed.*
- *CPRA now requires that covered entities provide and disclose the various categories of sources from which PII is collected and utilized.*
- *CPRA now requires that covered entities disclose the business purpose for collecting, selling or sharing consumers’ PII.*
- *CPRA requires that covered entities disclose the various categories of third parties where PII will be disclosed and shared.*
- *CPRA requires that covered entities disclose the retention period of the collected PII as it relates to all of the various categories of PII and assure that the PII is held for only the amount of time that is necessary to perform the business function related to the collected data.*

Consumer Requests UNDER CCPA/CPRA:

Responding To Consumer Requests. Under the CCPA/CPRA, businesses have to acknowledge and respond to authenticated requests from any consumer.

- 10 days. A business shall confirm receipt of the request within 10 business days and provide information about how the business will process the request. The information provided shall describe in general the business's verification process and when the consumer should expect a response.
- 45 days. Businesses shall respond to requests to know and requests to delete within 45 calendar days. The 45-day period will begin on the day that the business receives the request. If the business cannot verify the consumer within the 45-day time period, the business may deny the request.
- 90 days. If necessary, businesses may take up to an additional 45 calendar days to respond to the consumer's request, for a maximum total of 90 calendar days from the day the request is received, provided that the business provides the consumer with notice and an explanation of the reason that the business will take more than 45 days to respond to the request.

Right to Non-Discrimination UNDER CCPA/CPRA:

CCPA/CPRA explicitly states that covered entities can not discriminate against those individuals that choose to exercise their rights under CCPA/CPRA. Consumers must have the right to equal service and price. The following is considered discriminatory:

- Denying goods or services
- Differential pricing for goods or services, which includes the use of incentives and discounts, or penalties and fees
- Varying levels of service or quality that is a result of consumers exercising their CCPA/CPRA rights OR any suggestions that variable pricing or differential service levels would be available.

CPRA now adds “Retaliating against an employee, applicant for employment, or independent contractor” as an additional form of discrimination.

Additional IMPORTANT updates to CCPA/CPRA:

There are several important changes to CCPA/CPRA that will take effect in 2023:

- JAN 2023 CPRA becomes fully operative. No longer a right to cure (CPRA Ballot Initiative Section 31 (a)).
- JAN 2023 Operative CPRA employee and B to B exemptions expire (CPRA Section 1798 – 145 M/N).
- CA Privacy Protection Agency takes over from CA Attorney General as main enforcement agency.
- JULY 2023 CPRA enforcement begins with newly formed CA Privacy Protection agency (CPPA) - (CPPA Section 1798 – 185D).

Starting JAN 2023, CPRA ends “grace period” to remediate and goes into full enforcement mode without a period to cure. Also, employees enjoy the same data privacy rights as consumers starting in 2023. Full enforcement by the new CPPA begins in earnest in JULY 2023.