



CALIFORNIA CONSUMER PRIVACY ACT (CCPA)  
GAP ASSESSMENTS AND COMPLIANCE PROGRAM FOR  
HUMAN RESOURCE DEPARTMENTS

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## INTRODUCTION

As one of the oldest and most recognized data privacy and security practices, we have had the honor of helping hundreds of human resource departments address data privacy issues over the past decade. That experience has given us unique insight into how human resource professionals address new and evolving privacy frameworks.

The California Consumer Privacy Act is in many respects a “game changer.” While there are many aspects of the CCPA that are contradictory, unsettled, and ambiguous, we apply a pragmatic, rationale, and systematic approach to helping human resource departments understand the requirements of the Act and evolving their practices and documentations to demonstrate material compliance with its provisions. This document describes our straight-forward approach to identifying HR-related gaps to the CCPA, and to developing a HR-specific privacy program that materially complies with the law.

Sincerely,

**David Zetoony**

Chair Data Privacy and Security Team  
Bryan Cave Leighton Paisner

**Sarah Bhagwandin**

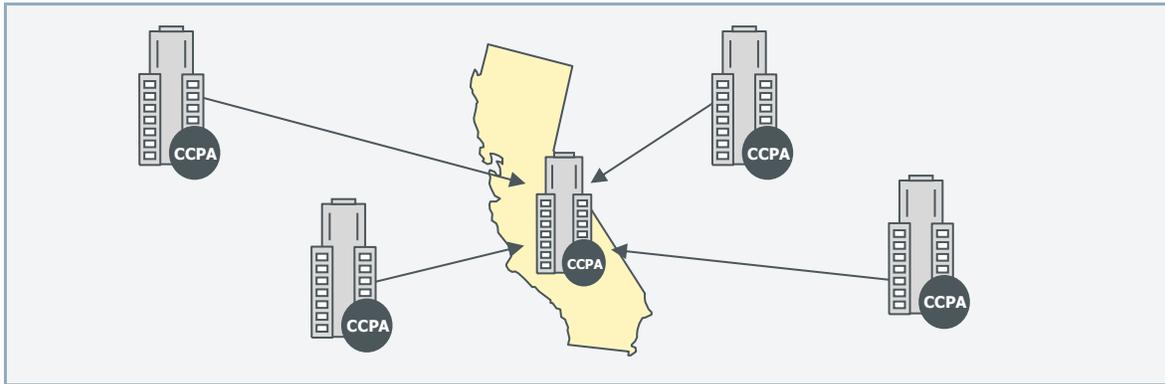
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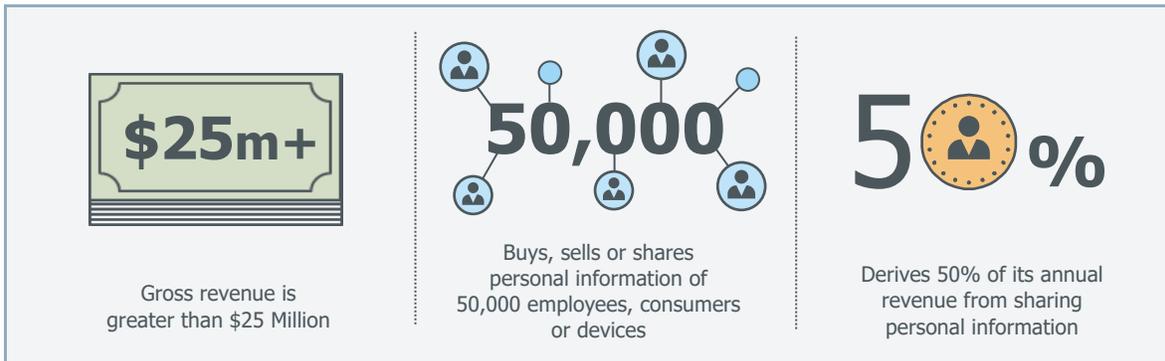
## I. What Is The CCPA?

### A. Which businesses are impacted by the CCPA

Like several other European and United States data privacy and security statutes, the CCPA purports to apply extra-territorially – i.e., to companies that have California-based employees and that do “business” in California, but do not have formal offices in California.



Unlike most other data privacy and security statutes, however, the CCPA attempts to carve out small businesses such that it only applies to an HR department if a business falls into one of the following buckets:



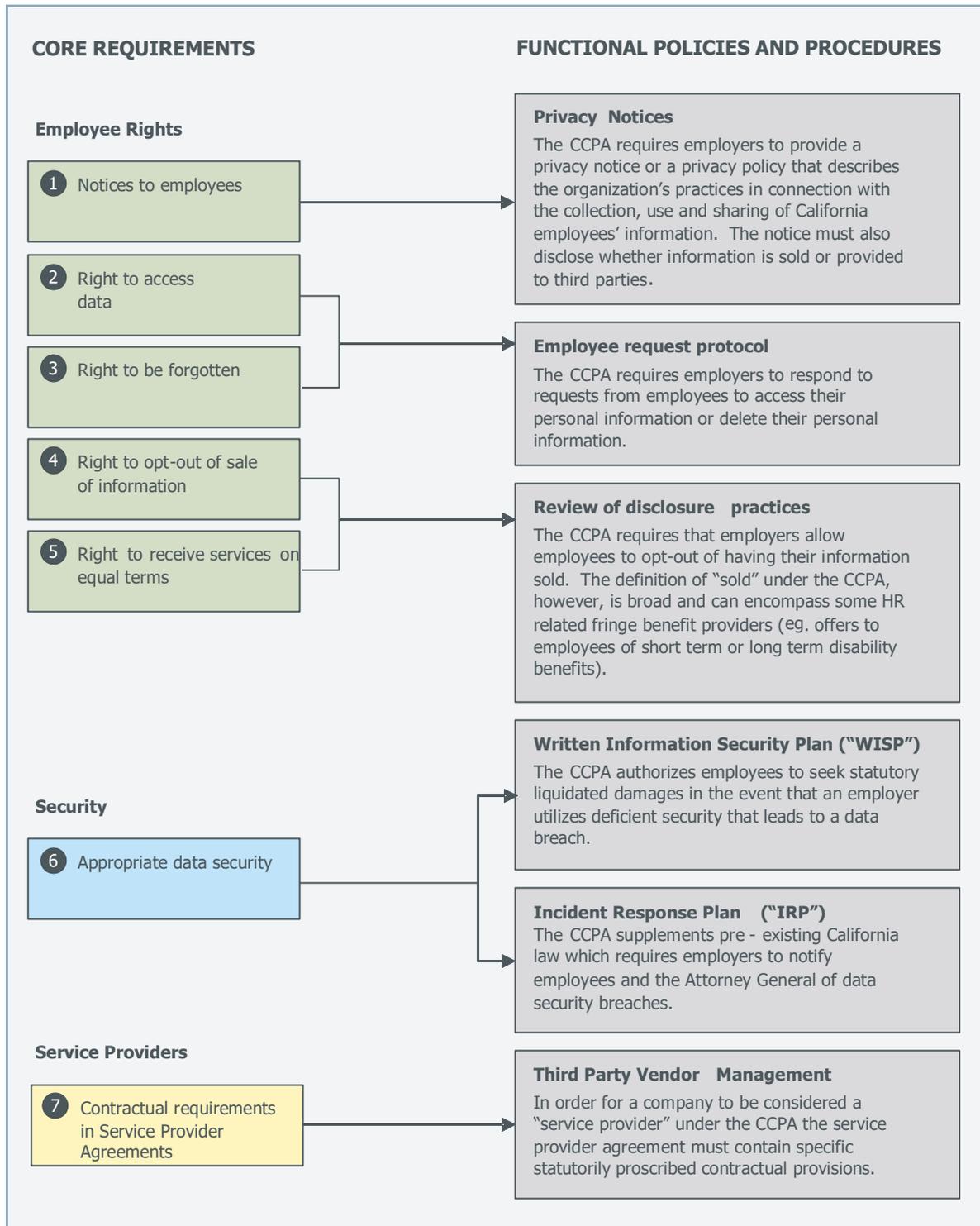
While HR departments do not typically consider themselves to be selling employee information, the CCPA considers providing employee information to certain benefits providers (e.g., life insurance providers, short term disability providers) as a “sale.” In addition, if a company sells information about non-employee consumers as part of its business, such sale may “trigger” the CCPA for all data collection by the company – including the collection of data from employees.

Unlike many other data privacy and security statutes, the CCPA also carves out from most of its provisions

- Non-profits that do not operate for “profit or financial benefit.”
- Health information of employees collected by a self-funded plan and providers that are regulated by the Health Insurance Portability and Accountability Act.

## B. Summary of Compliance Requirements

The CCPA's requirements relating to the collection and disclosure of employee data can be broken down into seven "core requirements" grouped into three buckets – employee rights, data security, and service providers. In order to turn those core requirements into practice, BCLP recommends that employers put into place, or review, six functional policies and procedures:



## C. What Are The Differences Between the CCPA and the GDPR

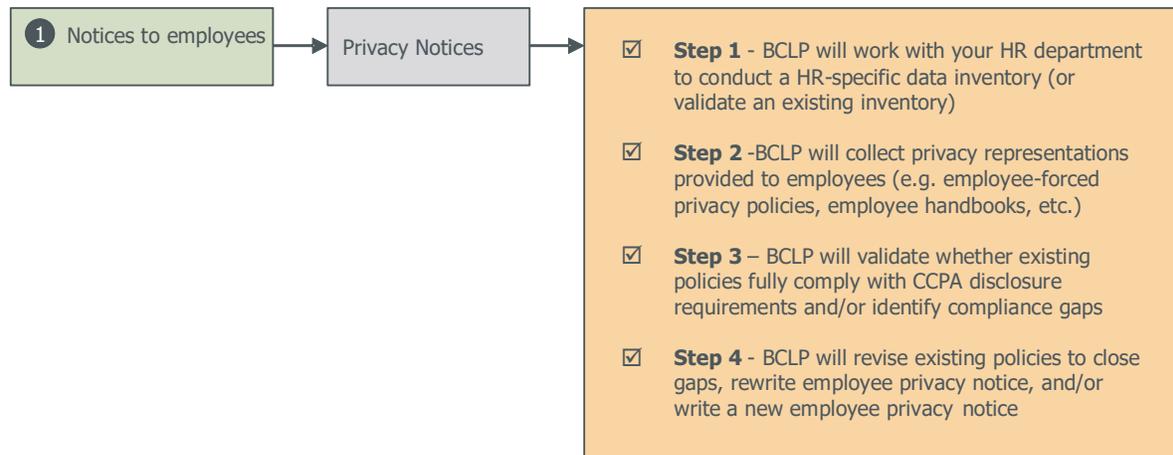
Some HR departments with responsibility over European based employees invested significant time and energy in 2017 and 2018 to comply with the European General Data Protection Regulation ("GDPR"). Where GDPR based protections were voluntarily applied across the organization (i.e., to US based employees), much of that work can be leveraged in order to move towards compliance with the CCPA. The following provides a snapshot comparison of the requirements of the GDPR to the CCPA:

	GDPR	CCPA - Final Legislative Version
<b>Employee rights</b>	<ul style="list-style-type: none"> <li>✓ Notices to employees</li> <li>✓ Right to access data</li> <li>✓ Right to be forgotten</li> <li>✓ Right to fix errors</li> <li>✓ Right to object to processing/ revoke consent</li> </ul>	<ul style="list-style-type: none"> <li>✓ Notices to employees</li> <li>✓ Right to access data</li> <li>✓ Right to be forgotten</li> <li>✓ Right to opt-out of sale of information</li> <li>✓ Right to receive services on equal terms</li> </ul>
<b>Data Security</b>	<ul style="list-style-type: none"> <li>✓ Appropriate data security required</li> <li>✓ Breach notification</li> </ul>	<ul style="list-style-type: none"> <li>✓ Appropriate data security required</li> </ul>
<b>Service provider</b>	<ul style="list-style-type: none"> <li>✓ Contractual requirements in service provider agreements</li> </ul>	<ul style="list-style-type: none"> <li>✓ Contractual requirements in service provider agreements</li> </ul>
<b>Ability to process data</b>	<ul style="list-style-type: none"> <li>✓ Permissible Purpose</li> <li>✓ Data Minimization</li> </ul>	None
<b>Data transfers outside EEA (or California)</b>	<ul style="list-style-type: none"> <li>✓ Adequacy measures required for any country determined to have laws that do not parallel EEA</li> </ul>	None
<b>Accountability/ governance</b>	<ul style="list-style-type: none"> <li>✓ Internal documentation and record keeping</li> <li>✓ Designated DPO (if necessary) or other responsible individual</li> </ul>	None

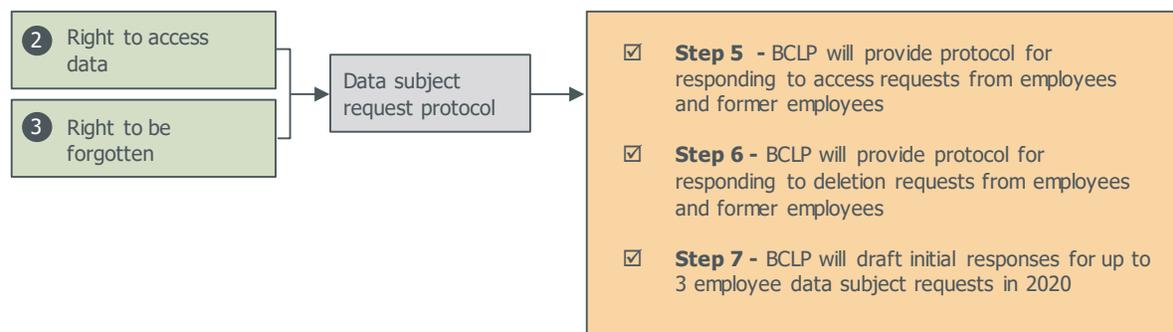
## II. How We Help HR Departments Come Into Compliance

We leverage our extensive experience and history with data privacy issues that impact human resource records and departments to conduct a systematic 12 step process through which we conduct a gap assessment to flag areas of non-compliance, and then work with our client to revise, or rewrite, current policies or procedures to address each gap.

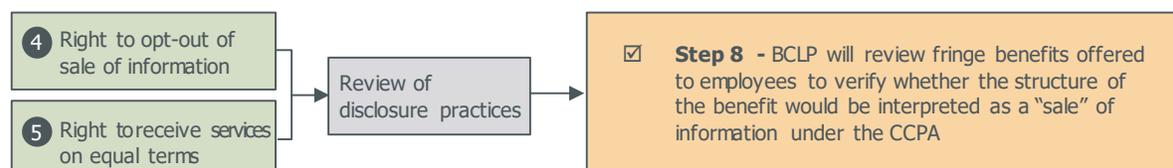
### Steps 1-4: Documenting Employee Data and Providing Appropriate Notice



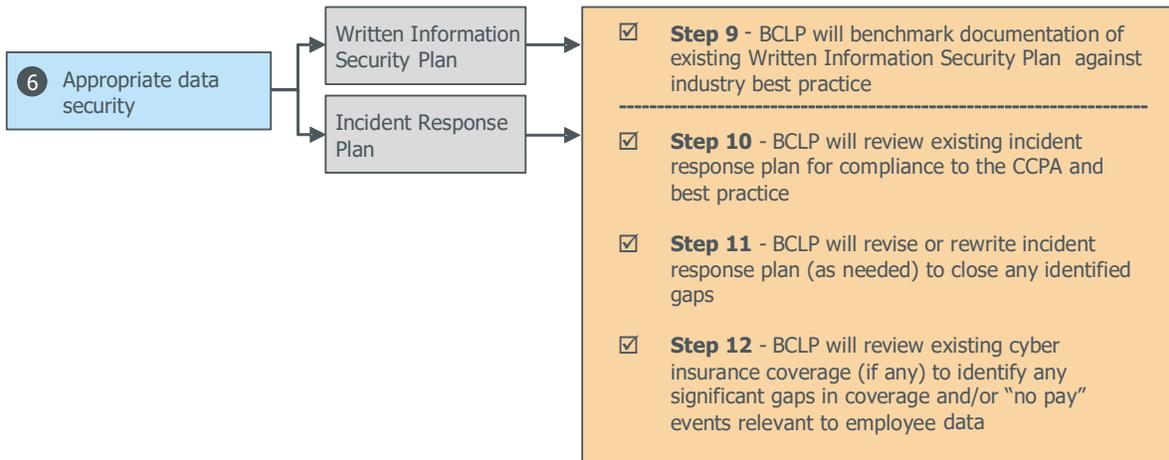
### Steps 5-7: Addressing Access and Deletion Rights



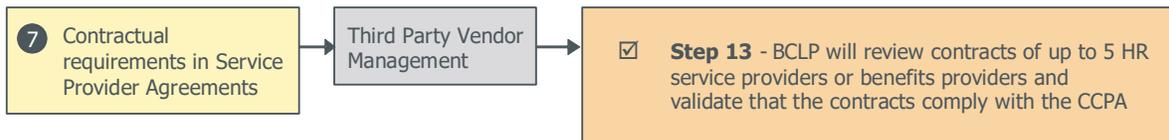
### Step 8: Addressing Opt-Out Rights



### Step 9-12: Addressing Data Security of Employee Information



### Step 13: Addressing Service Provider Concerns



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**Getting in touch**

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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