



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

March 2019

Content

- Introduction..... 1
- I. What Is The CCPA? 2
 - A. Which businesses are impacted by the CCPA..... 2
 - B. Summary of Compliance Requirements 3
 - C. What Are The Differences Between the CCPA and the GDPR 4
- II. How We Help HR Departments Come Into Compliance 6
- BCLP’s Data privacy and security team..... 8



David Zetoony

Partner
Chair, Data Privacy and Security Team
T: +1 303 417 8530
david.zetoony@bcplaw.com

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.



Sarah Bhagwandin

Counsel, Employee Benefits and Executive Compensation
T: +1 303 866 0214
sarah.bhagwandin@bcplaw.com

Sincerely,

David Zetoony

Chair Data Privacy and Security Team
Bryan Cave Leighton Paisner

Sarah Bhagwandin

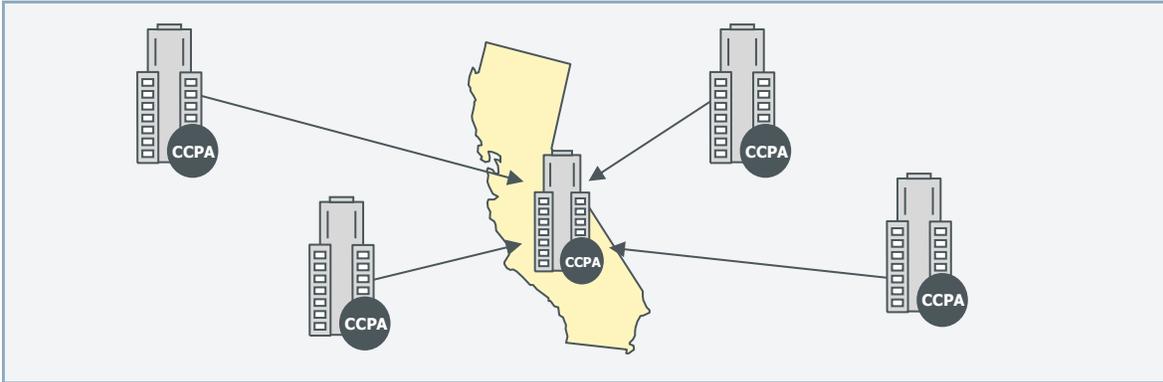
Counsel, Employee Benefits and Executive Compensation
Bryan Cave Leighton Paisner



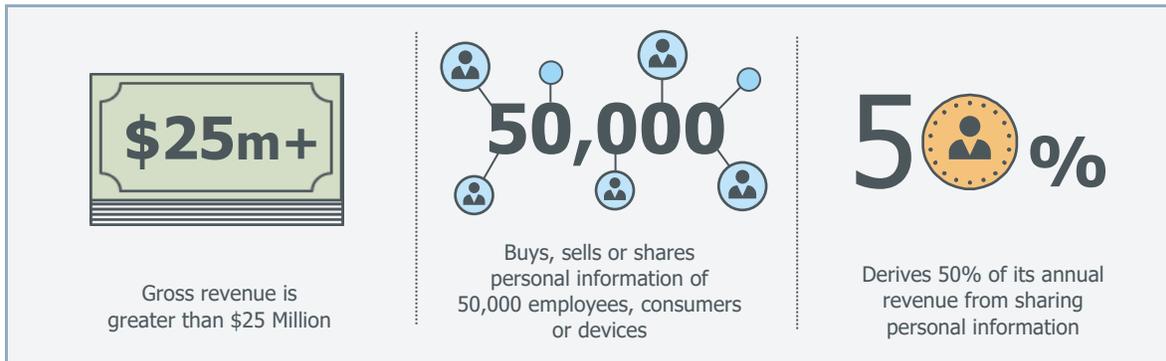
I. What Is The CCPA?

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:



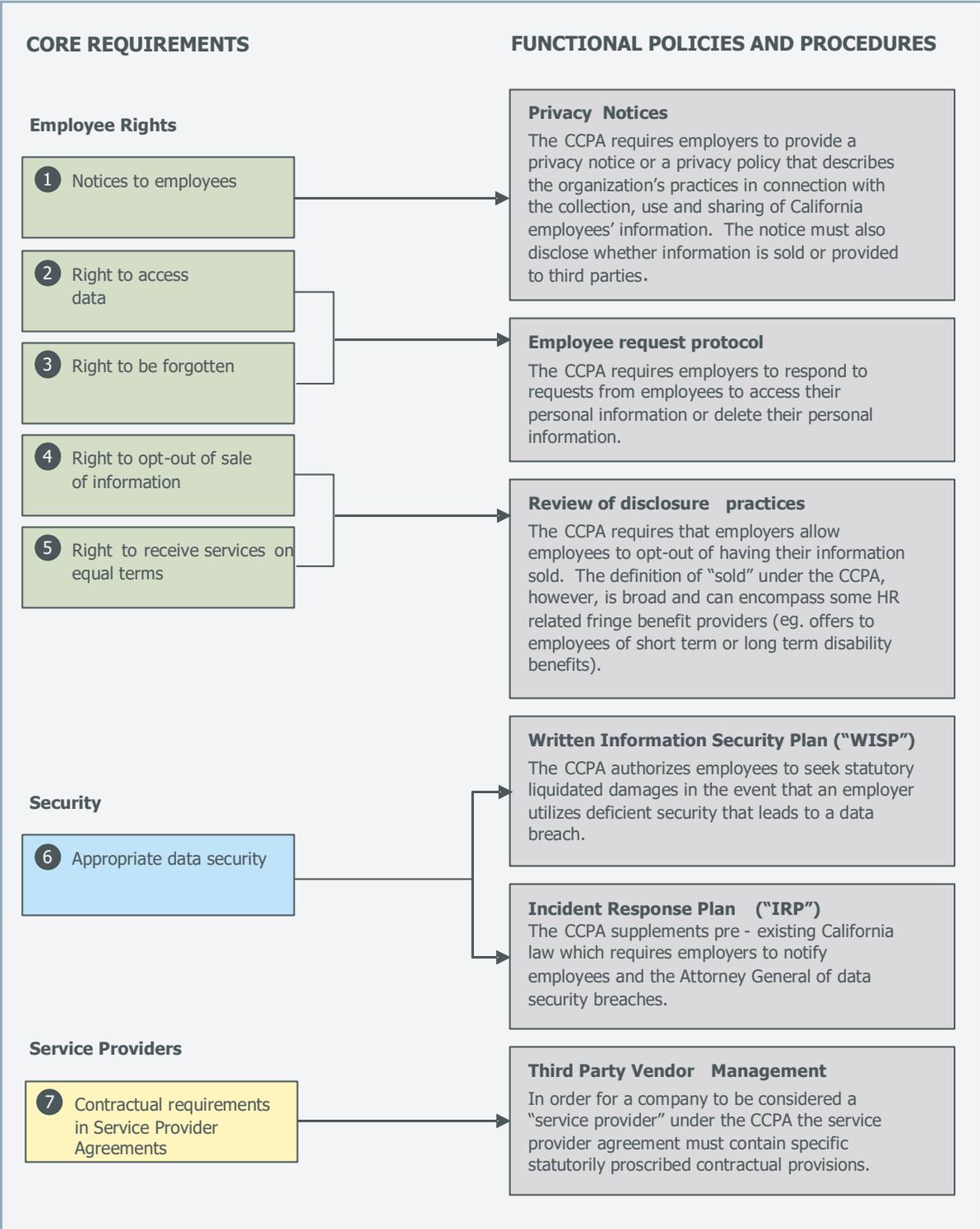
While HR departments do not typically consider themselves to be selling employee information, the CCPA considers providing employee information to certain benefits providers (e.g., life insurance providers, short term disability providers) as a “sale.” In addition, if a company sells information about 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

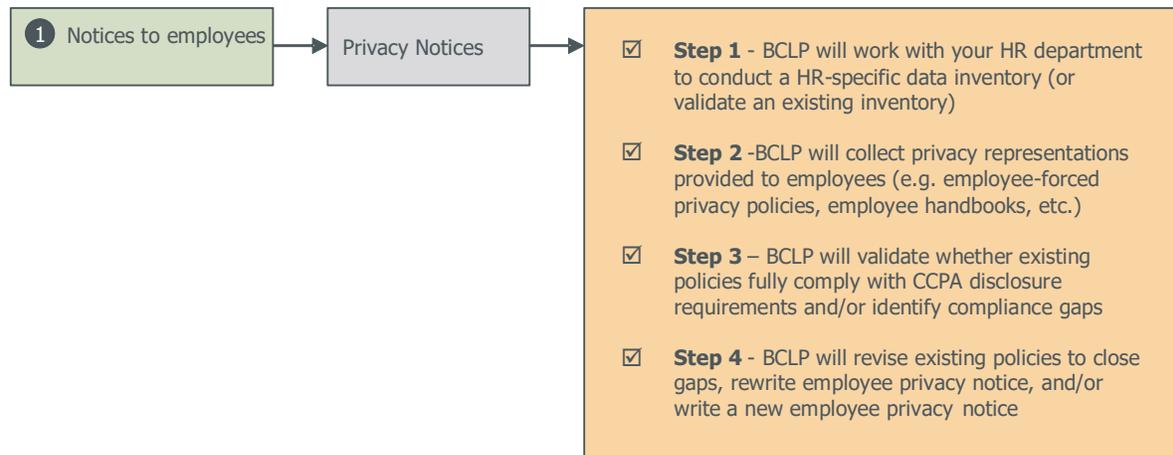
Some HR departments with responsibility over European based employees invested significant time and energy in 2017 and 2018 to comply with the European General Data Protection Regulation ("GDPR"). Where GDPR based protections were voluntarily applied across the organization (i.e., to US based employees), 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
Employee rights	<ul style="list-style-type: none"> ✓ Notices to employees ✓ Right to access data ✓ Right to be forgotten ✓ Right to fix errors ✓ Right to object to processing/ revoke consent 	<ul style="list-style-type: none"> ✓ Notices to employees ✓ Right to access data ✓ Right to be forgotten ✓ Right to opt-out of sale of information ✓ Right to receive services on equal terms
Data Security	<ul style="list-style-type: none"> ✓ Appropriate data security required ✓ Breach notification 	<ul style="list-style-type: none"> ✓ Appropriate data security required
Service provider	<ul style="list-style-type: none"> ✓ Contractual requirements in service provider agreements 	<ul style="list-style-type: none"> ✓ Contractual requirements in service provider agreements
Ability to process data	<ul style="list-style-type: none"> ✓ Permissible Purpose ✓ Data Minimization 	None
Data transfers outside EEA (or California)	<ul style="list-style-type: none"> ✓ Adequacy measures required for any country determined to have laws that do not parallel EEA 	None
Accountability/ governance	<ul style="list-style-type: none"> ✓ Internal documentation and record keeping ✓ Designated DPO (if necessary) or other responsible individual 	None

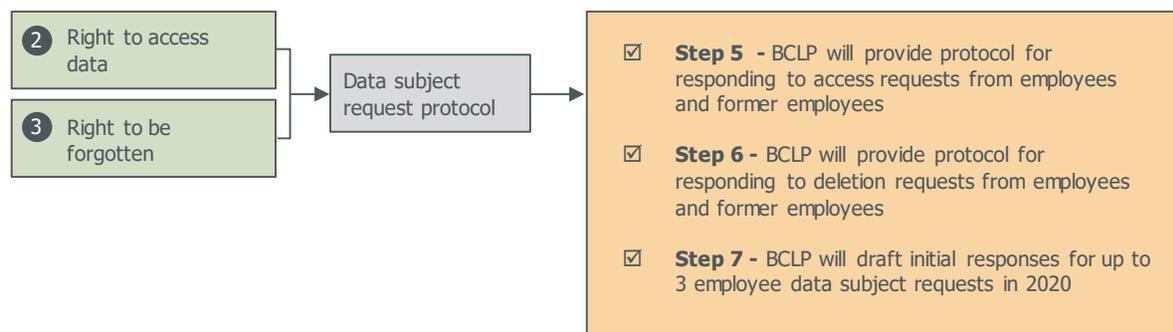
II. How We Help HR Departments Come Into Compliance

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.

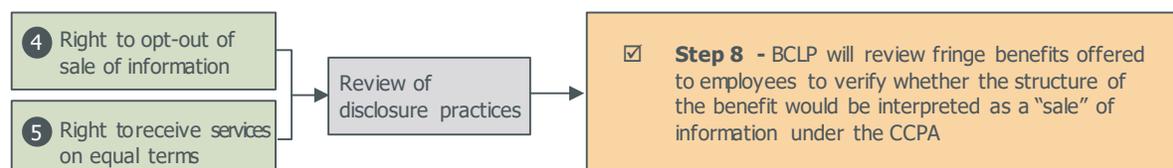
Steps 1-4: Documenting Employee Data and Providing Appropriate Notice



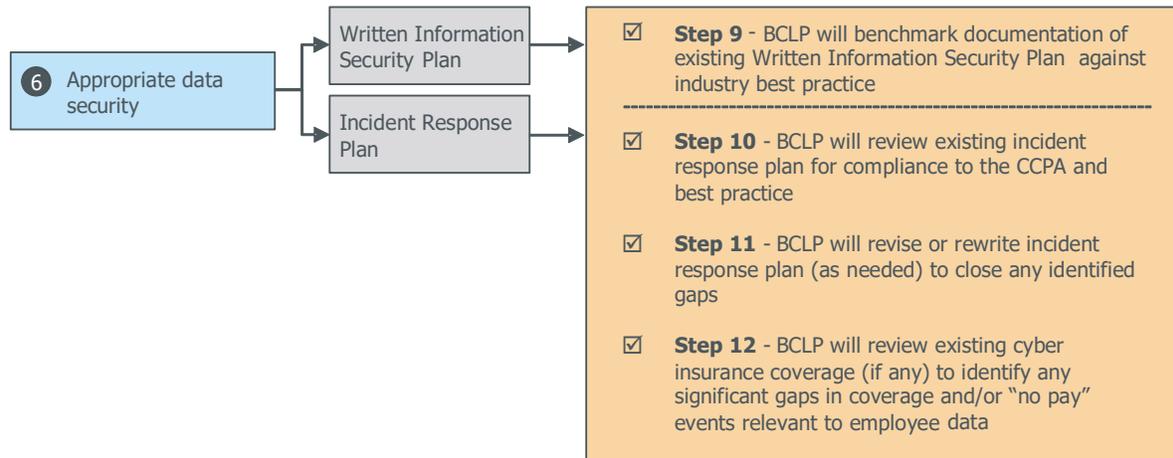
Steps 5-7: Addressing Access and Deletion Rights



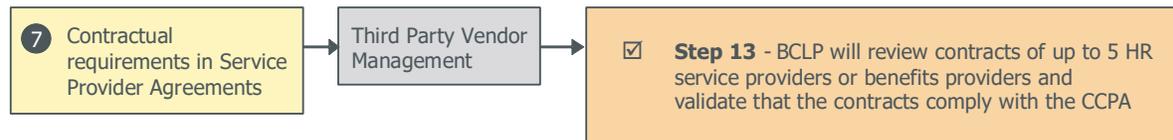
Step 8: Addressing Opt-Out Rights



Step 9-12: Addressing Data Security of Employee Information



Step 13: Addressing Service Provider Concerns



BCLP'S DATA PRIVACY AND SECURITY TEAM



David Zetony
Partner / Chair Privacy Team
Corporate
T: +1 303 417 8530
david.zetony@bcplaw.com



Kate Brimsted
Partner
Security, Corporate
T: +44 (0)20 3400 3207
kate.brimsted@bcplaw.com



Sarah Delon-Bouquet
Counsel
Litigation and Corporate Risk
T: +33 (0) 1 44 17 77 25
sarah.delonbouquet@bcplaw.com



Jena Valdetero
Partner
Litigation and Corporate Risk
T: +1 312 602 5056
jena.valdetero@bcplaw.com



Dominik Weiss
Counsel
Litigation and Corporate Risk
T: +49 (0) 40 30 33 16 148
dominik.weiss@bcplaw.com



Nicola Conway
Associate
Corporate
T: +44 (0)20 3400 3424
nicola.conway@bcplaw.com



Tom Evans
Associate
Corporate
T: +44 (0)20 3400 2661
tom.evans@bcplaw.com



Jason Haismaier
Partner
Corporate
T: +1 303 417 8503
jason.haismaier@bcplaw.com



Josh James
Associate
Litigation and Corporate Risk
T: +1 202 508 6265
josh.james@bcplaw.com



Andrew Klungness
Partner
Corporate
T: +1 310 576 2176
andrew.k@bcplaw.com



Carolyn Krampitz
Associate
Corporate
T: +49 (0) 40 30 33 16 149
carolyn.krampitz@bcplaw.com



Emmanuelle Mercier
Associate
Litigation and Corporate Risk
T: +33 (0) 1 44 17 77 74
emmanuelle.mercier@bcplaw.com



François Alambret
 Counsel
 Litigation and Corporate Risk
 T: +33 (0) 1 44 17 77 48
francois.alambret@bcplaw.com



Jessica Pedersen
 Associate
 Litigation and Corporate Risk
 T: +1 312 602 5027
jessica.pedersen@bcplaw.com



Karin Ross
 Associate
 Corporate
 T: +1 303 417 8511
karin.ross@bcplaw.com



Tyler Thompson
 Associate
 Corporate
 T: +1 303 866 0231
tyler.thompson@bcplaw.com



Maria Vathis
 Of Counsel
 Litigation and Corporate Risk
 T: +1 312 602 5127
maria.vathis@bcplaw.com



Steve Evans
 Associate
 Employee Benefits
 T: +1 314 259 2387
steve.evans@bcplaw.com



Sarah Bhagwandin
 Counsel
 Employee Benefits
 T: +1 303 866 0214
sarah.bhagwandin@bcplaw.com

Getting in touch

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

David Zetoony

Tel: +1 303 417 8530

david.zetoony@bclplaw.com