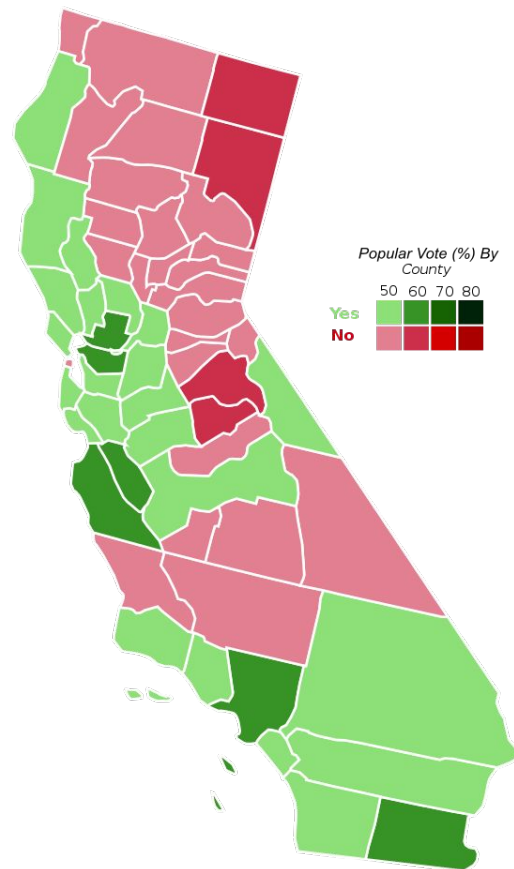




California's New Privacy Obligations for Employee Data

CPRA Background

- CA voters approved Proposition 24, the **California Privacy Rights Act**, in 2020
- The CPRA significantly amends the CCPA
- Created the California Privacy Protection Agency (CPPA)
- Requires significant regulations
- Because the CPRA was a ballot initiative, it can only be amended by the legislature to “further the purpose and intent” of the law



CPRA results by county
([Wikipedia](#))

CPRA Applicability

- 3 thresholds
 - \$25M annual revenue
 - 100,000 CA residents' personal information
 - 50% of revenue from sale of PI or sharing PI for targeted advertising
- Personal information = information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual



CPRA Requirements

- Notice
- Rights to access, delete, correct PI, and to limit the use of sensitive PI
- Opt out of sales and "sharing" (aka targeted advertising)
 - Opt out from profiling/use of automated decision-making coming soon
- Risk assessments



Not Just Consumers Anymore!

- CCPA exempted anyone who wasn't acting in a business context
- Employee (and owners, directors, officers, contractors)
- B2B contacts
- Job Applicants
- Similar to GDPR

Privacy Notice Contents

- Information about the data
 - Categories
 - The purposes
 - Retention period
 - Is it sensitive
 - Is it sold/shared with third parties
 - If so what category/type of third party
 - Is it processed for targeted advertising or profiling
- Consumer Rights
 - How to Exercise Rights
- Are there financial incentives to processes data

Employee-Specific Notice Considerations

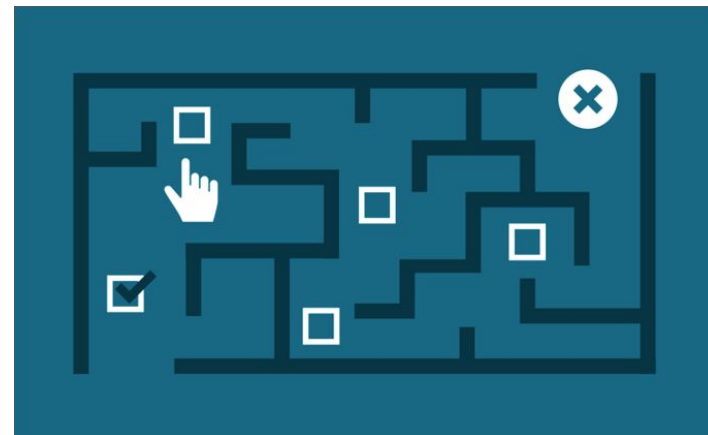
- Identifying Categories
 - Not just one category “Employee Data”
 - Identifiers
 - Geolocation
 - Sensitive Employment Data
- Retention Period
 - Governed by many other laws
 - Options:
 - Point to a retention schedule
 - X years unless otherwise required by law

Posting the Notice

- Intranet
- Link in job application
 - Could be a separate notice from the Employee Notice
- Link in offer letters
- A public website, just make sure it is clearly labeled
- Physical office location

Other Notice Considerations

- B2B Contacts
 - Consumer-facing notice may work
- Job Applicants
 - Opt out of profiling (eventually)
- Easily digestible
 - Layered
- Retention
 - Need a data retention policy
- Data Minimization
- Privacy by Design



Cliqz

What Does it Mean

- Employee data is covered
 - Right to notice
 - Right to requests
 - Likely very different responses
 - Legal counsel
 - Pre-litigation
 - Whose data is it
- Verify identity
 - Authorized agent

Considerations

	Authentication	Legal Considerations	Operational
Gen'l Consumers	You collect limited data	Except for regulated industries, you have quite a bit of control over what you collect	Many competing priorities and uses across departments, often without clarity on who "owns" what
Employees	You collect massive amounts of data	Much of what you collect, how long you retain, etc., is subject to legal requirements	HR is the owner of employee data/the employee relationship

Deletion Requests

- Honor the deletion request
- Direct third parties to delete
- Assist the controller in deletion if you are the processor
 - As the employer/former employer, highly unlikely you're the processor in these situations

Exemptions

1 Transaction
Complete the transaction for which the PI was collected

2 Contract
Perform a contract between the business and the consumer

3 Legal
Comply with laws or legal obligations or protect another's rights

4 Security
Detect security incidents

5 Malicious Activity
Protect against deceptive, fraudulent, illegal activity

6 Repair
Identify and repair errors

7 Research
Engage in scientific, historical, or statistical research

8 Internal Uses
Solely internal, reasonably aligned with expectations



Recordkeeping Requirement Examples

- EEOC - min 1 year for all personnel records
- EEOC - min 1 year from date of termination if involuntary
- ADEA - all payroll records for 3 years
- FLSA standards applicable to Equal Pay Act - all payroll records min of 3 years
 - 2 years, all records related to wage differences
- IRS - employment tax records min 4 years
- IRS - qualified sick & family leave related to COVID for min of 6 years

Responding

- **Is there an exemption available?**

There will be at least some exemptions you have to claim for any employees data.

- **How do you flag exempted data?**

You have to remember that, just because you had an exemption, it doesn't mean you can do anything you want with the data. It can only be used for exempted purposes

- **Send response.**

Inform the individual as to how you have handled the request. Deleted some things and kept others? Tell them your reasons. You have to inform the individual as to whatever deletion exemptions you are claiming.



Correction Requests

- Consider
 - Nature of the personal information
 - Purpose of processing
- Verify
- Commercially reasonable steps

Correction Request Example

- Correct My Information. My employee records say “Jaime Smith.” The correct spelling is “Jayme.”
- Possible Responses:
 - Thank you for submitting your name correction. That change has been made in our systems and should be reflected in your online account.
- We have received and reviewed your request. At this time, we are making a note in our records that you have indicated the incorrect name is attached to your file. Because your work identification documents for your I-9 use the spelling “Jaime,” we are unable to change the spelling of your official in your personnel file in order to comply with legal obligations. We have, however, marked “Jayme” as your preferred name.



DEI Considerations

Case Study: Gender Marker Day

- Planning:
 - Review legal requirements/best practices
 - What is the minimum data needed?
 - Who needs the data?
- Communicate with:
 - Anyone you share it with
 - DPAs
 - Applicants
 - Notice

Case Study Continued

- Implement:
 - Secure data collection
 - Secure and minimal sharing
- Delete:
 - Make sure to delete when you said you do
 - Realize that deleting an email does not delete it

Q&A

If we do not get to your questions today, please contact us at sales@sixfifty.com.