Step One: Does The CCPA Apply to My Business?
California Consumer Privacy Act

The following is provided solely as information that a company should consider when attempting to determine whether it is a covered business, a service provider or a third party under the California Consumer Privacy Act (“CCPA”). This is not intended as an exhaustive compliance checklist, it should not be considered legal advice and should not be used to determine if a business is “compliant.” It is intended to assist a company with determining whether the CCPA applies to its business.

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

The CCPA regulates businesses that collect 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:

* 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.

* 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 until January 1, 2023).

* Employee Notice Requirement: Regardless of the 2023 employee data exemption, employers must still provide notice to employees, job applicants and independent contractors when collecting their personal information for employment, recruitment and contracting purposes. Employees also have a
Collecting and Selling Personal Information

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.

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 until January 1, 2023).

Personal Information Exemptions
The CCPA excludes “publicly available,” “deidentified,” and “aggregate consumer information” as personal information. See the definitions below:

- **Publicly available** means information that is lawfully made available from federal, state, or local government records.

- **Deidentified** means information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that a business that uses deidentified information has:
  - technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;
  - business processes that specifically prohibit reidentification of the information;
  - business processes to prevent the inadvertent release of deidentified information; and
  - makes no attempt to reidentify the information.

- **Aggregate consumer information** means information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer or household, including via a device.

“Collecting” and “Selling” Personal Information

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.
### 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.

### Exceptions: You do not “sell” personal information when:

- 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).
- You share or use an identifier of a consumer who opted out of selling his/her personal information for the purpose of notifying a third party of the choice to opt out.
- You share personal information with a service provider that is for business purposes if both of the following are met:
  - The service provider does not then collect, sell, or use the personal information unless for a necessary business purpose; AND
  - You provide notice in your terms and conditions that state the consumer’s information is being used or shared.
- 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.
- 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.
  - Note: 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.

### B. Are you a covered “business” under the CCPA?

If you collect or sell consumer personal information (or employee personal information or business to business information beyond January 1, 2023) the CCPA applies 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.
Exemptions

The obligations of the CCPA generally do not apply to the following, including, but not limited to:

i. any activity wholly outside of California;

ii. non-profit entities;

iii. government agencies;

iv. data that is subject to other United States laws, including:
   a. Medical information governed by the Confidentiality of Medical Information Act (CMIA);
   b. protected health information, governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act);
   c. information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human Subjects (the Common Rule), pursuant to good clinical practice guidelines by the International Council for Harmonization or human subject protection requirements of the FDA.
   d. personal information collected, processed or sold under the federal Gramm-Leach-Bliley-Act (GLBA);
   e. personal information subject to the Fair Credit Reporting Act;
   f. personal information subject to the Driver’s Privacy Protection Act of 1994.
g. vehicle information or ownership information between individual and vehicle dealer.

v. de-identified patient information;

vi. compliance with inquiries, investigations, subpoenas, or summons by federal, state, or local authorities;

vii. cooperation with law enforcement or government agencies under certain circumstances; or

viii. when exercising or defending a legal claim. Contact your Taft team if you believe an exemption applies to your business or the personal information your business handles.

C. Are you a “service provider” or “third-party” under the CCPA?

Even if your business is not a covered “Business” for CCPA purposes, it is also important to consider whether your business is operating as a “service provider” or a for-profit entity (including a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity) that both:

- Processes personal information on behalf of a CCPA covered business;  **AND**
- Receives that information from a covered business:
  - for a business purpose only; and
  - under a written contract that contains specific clauses.

If your business does not meet the above criteria as a service provider, but you still receive personal information from a “Business,” you are a “third party” as defined under the CCPA. Third parties may have certain contractual requirements under the CCPA when handling such personal information.