

Data Privacy & Security

The New Litigation and Regulation Battleground



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Speakers:



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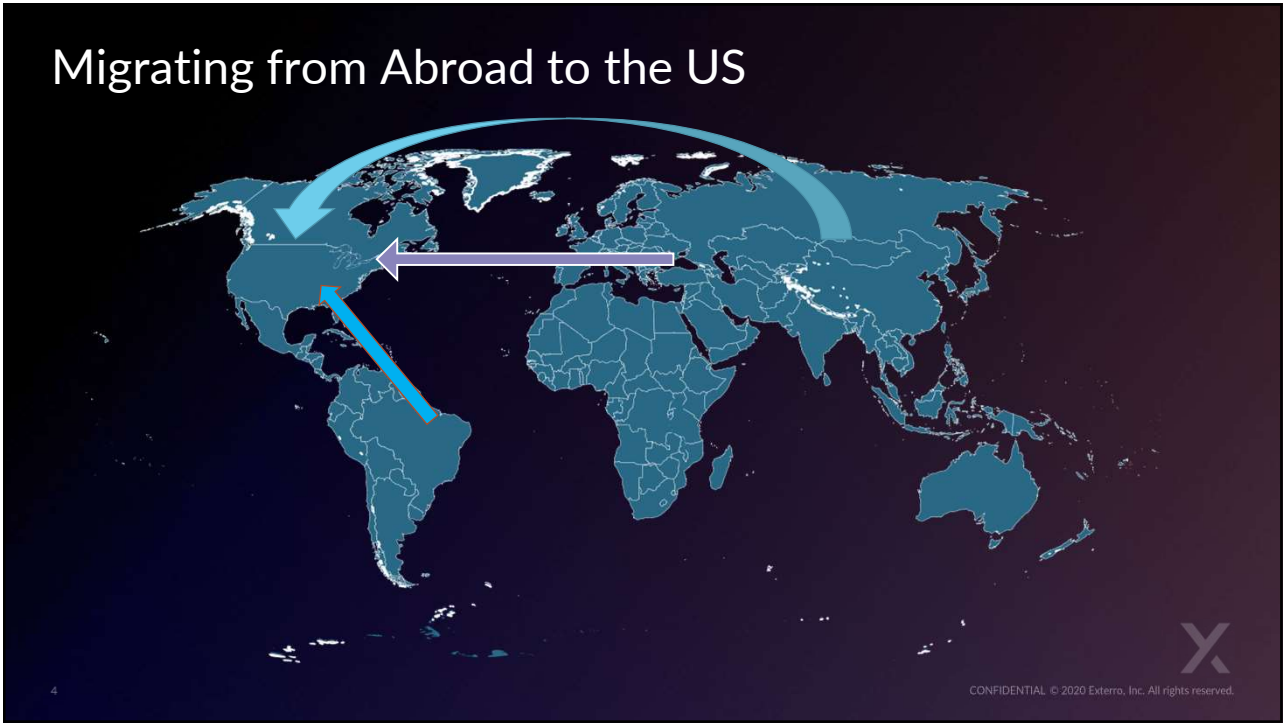
Ann Staggs,
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Airbnb

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Pioneering US Privacy Laws



A New Era of Data Privacy Rights

1. Right to Know Data Collected & Purpose
2. Right to Access Data
3. Right to Delete Data
4. Right to Know Third Parties
5. Right to Opt-Out of Sale
6. Right to Equal Treatment



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Final CCPA Regulations

- Intended to clarify issues (gaps)
- Update:
 - Consumer **Notices**
 - Consumer Rights Request
 - **Verification** of requests
 - Non-Discrimination
 - Requests by **Authorized Agents**
 - **Timing** Provisions
 - **Cookies**
- Do they help?
 - Employee data
 - B2B data

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Final CCPA Regulations Statement of Reasons

- 100s of pages of explanations
- AG responding directly to comments
- A lot of interesting points hidden inside
 - Loyalty programs are clearly in scope

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Enforcement & Litigation Actions

VIOLATIONS



DATA BREACH

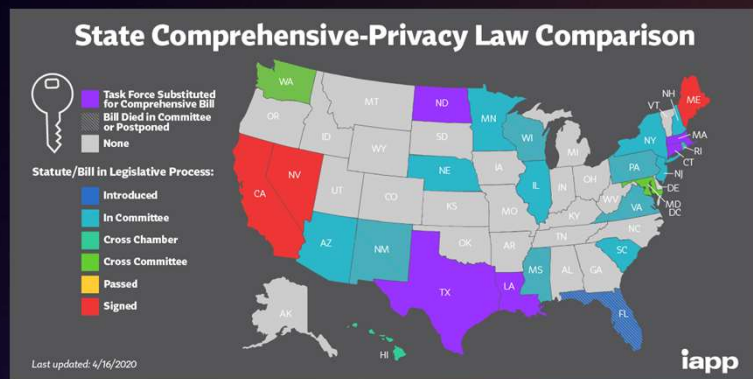


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What's to come?

STATE COMPREHENSIVE PRIVACY LAW COMPARISON



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CCPA 2.0

California Privacy Rights Act

[Ballot Initiative]



Data Privacy Law Comparison

Components	GDPR (EU Law)	CCPA	CPRA	Components	GDPR (EU Law)	CCPA	CPRA
Right to Know What Information a Business has Collected About You	🔒	🔒	🔒	Storage Limitation: Right to Prevent Companies from Storing Info Longer than Necessary	🔒	🔒	🔒
Right to Say No to Sale of Your Info	🔒	🔒	🔒	Data Minimization: Right to Prevent Companies from Collecting More Info than Necessary	🔒	🔒	🔒
Right to Delete Your Information	🔒	🔒	🔒	Right to Opt Out of Sales (Users < 1/3 mile)	🔒	🔒	🔒
Data Security: Businesses Required to Keep Your Info Safe	🔒	🔒	🔒	Ability to Override Privacy in Emergencies (Threat of Injury/Death to a Consumer)	🔒	🔒	🔒
Data Portability: Right to Access Your Information in Portable Format	🔒	🔒	🔒	Provides Transparency around "Profiling" and "Automated Decision Making"	🔒	🔒	🔒
Special Protection for Minors	🔒	🔒	🔒	Establishes Dedicated Data Protection Agency to Protect Consumers	🔒	🔒	🔒
Requires Easy "Do Not Sell My Info" Button for Consumers	🔒	🔒	🔒	Restrictions on Onward Transfer to Protect Your Personal Information	🔒	🔒	🔒
Provides Ability to Browse with No Pop-ups or Sale of Your Information	🔒	🔒	🔒	Requires High Risk Data Processors to Perform Regular Cybersecurity Audits	🔒	🔒	🔒
Penalties if Email Plus Password Stolen due to Negligence	🔒	🔒	🔒	Requires High Risk Data Processors to Perform Regular Risk Assessments	🔒	🔒	🔒
Right to Restrict Use of Your Sensitive Personal Information	🔒	🔒	🔒	Appoints Chief Auditor with Power to Audit Businesses' Data Practices	🔒	🔒	🔒
Right to Correct Your Data	🔒	🔒	🔒	Protects California Privacy Law from being Weakened in Legislature	N/A	🔒	🔒

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7 MAJOR CONSIDERATIONS TO MITIGATE LIABILITY

#1 Know Your Data

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The Foundation for Compliance



DATA SUBJECTS	Customers Current Employees Past Employees Job Candidates Minors/Children Beneficiaries Contractors
APPLICABILITY	Code of Federal Regulations GLBA PRCP EU UK Mexico Canada
DATA ELEMENTS	Social Security Number Drivers' License Number Account Number Credit Card # Biometric Religion Political Affiliations Aptitudes Preferences Attitudes
COLLECTION	Web Form Email Paper Form Phone
DEPARTMENTS	HR - Benefits Finance - Payroll HR - Recruiting Legal & Compliance Marketing
APPLICATIONS	SAP workday ORACLE KRONOS PeopleSoft
LOCATIONS	Office 365 box SharePoint FILENET Laptops File Cabinets
THIRD PARTIES	ADP PageUp LabCorp aetna IRON MOUNTAIN
RETENTION	Payroll Records Personnel Records Recruiting Records AUT 7 Years BEL 5 Years NLD 5 Years ITA 5 Years USA 7 Years

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1. Informs Compliance & Surfaces Risks



2. UPDATE POLICIES & DISCLOSURES
3. CHECK IN WITH VENDORS
4. DATA RETENTION/MINIMIZATION
5. MANAGE CONSUMER REQUESTS
6. BOLSTER SECURITY
7. DEFEND COMPLIANCE

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7 MAJOR
CONSIDERATIONS
TO MITIGATE
LIABILITY

#2
Update Policies
& Disclosures

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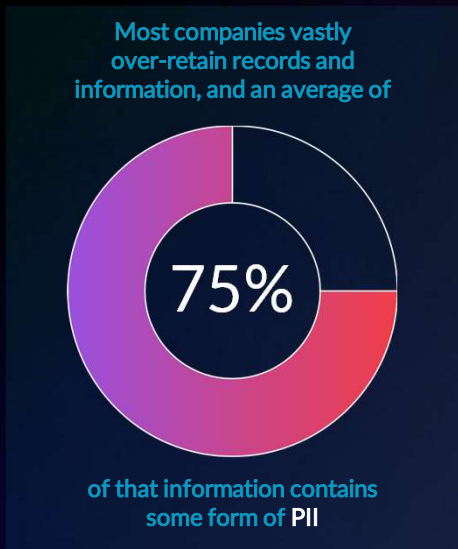
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CONSIDERATIONS
TO MITIGATE
LIABILITY

#3
Operationalize Record
Retention & Deletion
Requirements

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Over-Retention of Personal Data



- Data you don't have can't be breached
- You don't have to protect data you don't have
- You don't have to spend time and money searching for data you don't have

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Data Map | Personal Data Processing Activities

PROCESSING ACTIVITY: HR ONBOARDING
COUNTRY: UNITED STATES

Purpose of Processing

Associated Data Elements

Bio
G
Protected
Sensitive Pe
Personal Infor

Data Subjects

Types of Notice Provided

Consent Received from Subject

Data Map | Personal Data Processing Activities

PROCESSING ACTIVITY: HR ONBOARDING
COUNTRY: UNITED STATES

Movement, Access & Sharing

Third-Parties	ADP, Aviva, EEF, ELF, Insurer, Law Firms, Legal & General, MS, NADCAP (PRI), NQA (Iso Accreditor)
Transfer to Other Countries	United Kingdom, Germany, Brazil
Methods of Sharing	Email, Mail, Paper Documents, USB/Flash Drives, Website/Web Application
Corporate Applications	Adobe, ADP, Elf, Epicor, Excel, HSE, MS Office, MS Outlook, PDF

This processing activity is supported by the following record types:

Record Types/Department	Reported Retention	Retention Requirements
Benefit/Pension Plans Human Resources	Permanent	Permanent Corporate Standard
Personnel Files Human Resources	Permanent	7 Years State Payroll Requirements
Recruiting Records Distribution Center	Permanent	1 Year 29 CFR 1627.3(b)(1)
Employment Eligibility Verification Human Resources	Permanent	3 Years 8 USC 1324a

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A Clear Path to Data Minimization

DEVELOP

- ✓ Retention Schedules
- ✓ Scheduling Logic
- ✓ Policies
- ✓ Deletion Strategies
- ✓ Hold Process

IMPLEMENT

- ✓ Program Training
- ✓ Policy Attestation
- ✓ Clean Up
 - Email
 - File Share
 - Structured Data
 - Paper Records

MAINTAIN

- ✓ Audit Trail
- ✓ Documentation
- ✓ Policies
- ✓ Program Monitoring
- ✓ Program Updates
- ✓ Annual Review

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7 MAJOR
CONSIDERATIONS
TO MITIGATE
LIABILITY

#4
Bolster Your
Security


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What is reasonable security?

- Yet to be determined by the courts.
- **BEST GUIDANCE:** 2016 CA AG Data Breach Report
 - 20 data security controls published by the Center for Internet Security...
 - “inventory and control of hardware assets”
 - “continuous vulnerability management,” and
 - “data recovery capabilities.”
 - The then-current AG noted that a failure to implement “all” applicable controls “constitutes a lack of reasonable security.”
- Not clear if current AG will follow this guidance -- good starting point.

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TO MITIGATE
LIABILITY

#5
Check-in with
Vendors

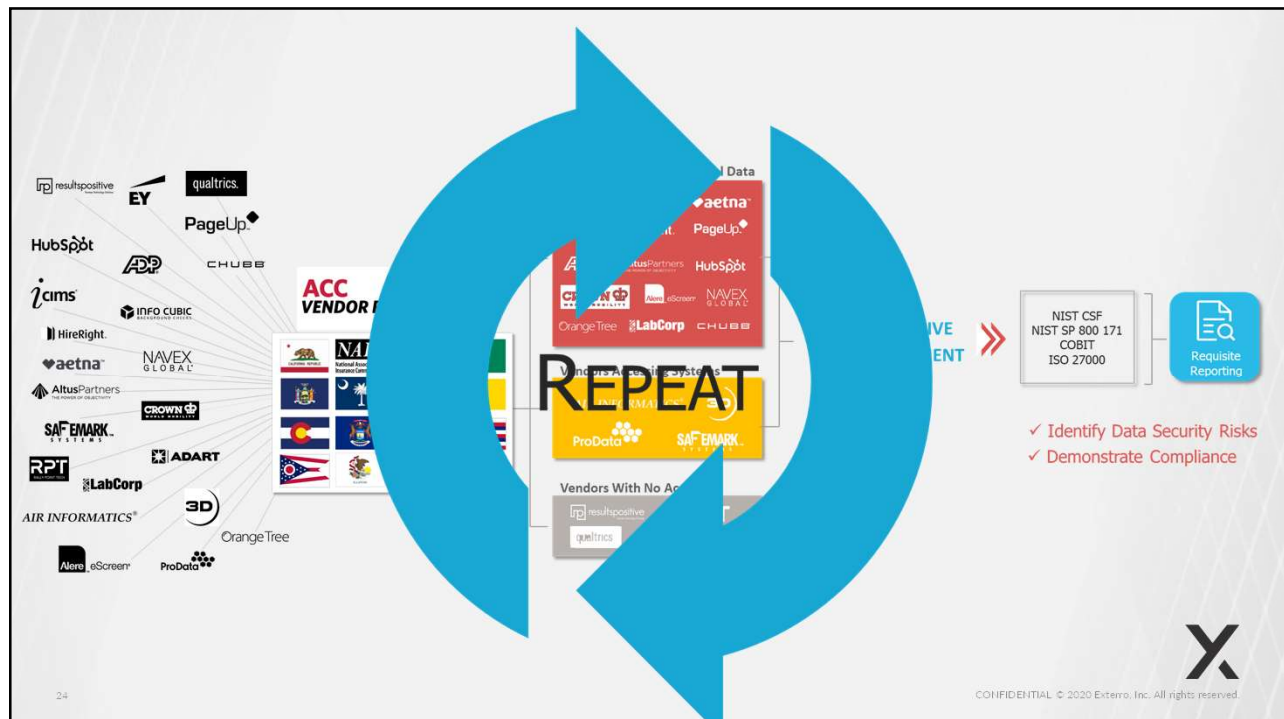
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- 1 Who are our vendors?
- 2 Which ones touch our data?
- 3 What specific data do they touch?
- 4 Which ones are relevant to regulations?
- 5 How are they protecting our data?

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7 MAJOR CONSIDERATIONS TO MITIGATE LIABILITY

#6 Manage Consumer Requests

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Are you prepared to respond quickly and compliantly?

GIVE ME MY DATA

DELETE MY DATA

DON'T SELL MY DATA

REQUEST

✓ LEGAL HOLDS

✓ RETENTION REGS.

45-day timeline period fulfilling requests

Day 1

45 Days

90 Days

2 Years

Confirm receipt of the request within 10 days

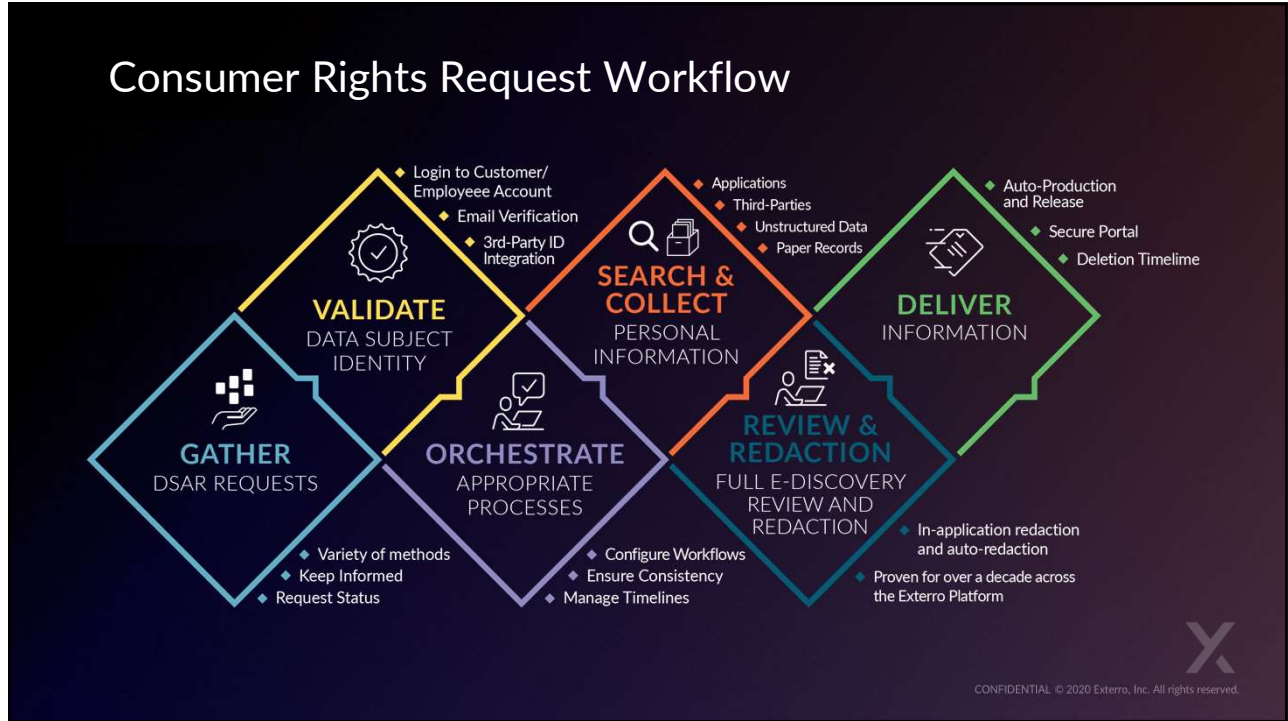
Respond to opt-out requests within 15 days

Fulfill request

Fulfill request (if taking extension)

Maintain request records logs for 2 years

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7 MAJOR CONSIDERATIONS TO MITIGATE LIABILITY

#7 Prepare For Litigation

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Plaintiffs' Attorneys Lay Groundwork for BROAD PRIVATE RIGHT OF ACTION...

21 class actions filed referencing
CCPA **since January 1**

90% of actions claim **negligence or
non-data breach claims** as
primary theory

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Questions...

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