



“Hedging Their Bets” – California Passes One-Year Extension On CCPA Employee Data Exemption

Insights

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Governor Newsom just signed legislation that will extend the California Consumer Privacy Act (CCPA) exemption for employee, job applicant, and independent contractor data for an additional year – until January 1, 2022. However, this legislation will become effective only if a ballot measure on the November ballot (Proposition 24), which contains a longer extension, does not pass.

As we discussed last year, AB 25 postponed by one year, until January 1, 2021, all of the CCPA’s requirements pertaining to the personal information of employees, job applicants, and natural persons working as independent contractors except for two: (1) reasonable security measures to safeguard the data, and (2) disclosure of the categories of personal information collected about the individuals and the business purposes for which the information is used. This exemption covers personal information collected from or about individuals in the context of them being employed, applying for employment, or providing services as independent contractors or information collected for purposes of providing or administering health benefits. A companion measure similarly exempted from coverage for one year personal information collected from individuals in the context of “business-to-business” communications, due diligence or transactions.

This one-year exemption enacted last year was a temporary “compromise” to allow for what was expected to be a larger conversation this year in the California legislature about what privacy rules, if any, should apply in the workplace.

However, that conversation never really happened this year, for two reasons. First, the COVID-19 pandemic interrupted legislative work and forced the legislature to focus on other immediate issues. Second, a ballot proposition (Proposition 24) qualified for the November ballot that would make a number of significant changes to the CCPA. Among these changes, Proposition 24 would extend the exemption for employee, job applicant, and independent contractor data, and business-to-business communications, until January 1, 2023.

While Proposition 24 looks likely to pass in November, nothing is for certain. Therefore, as a backstop against the unlikely failure of the ballot measure, legislators passed (and Governor Newsom signed) AB 1281 to extend the employee data and other exemptions for one year, until 2022. AB 1281 will only go into effect if Proposition 24 does not pass.

The bottom line for California employers? There will be at least an additional one-year reprieve from the CCPA applying to employee, job applicant, and independent contractor data. AB 1281 guarantees that by extending the exemption until 2022. If Proposition 24 passes, this exemption will be extended an additional year until 2023.

Fisher Phillips serves as outside employment and privacy counsel for thousands of employers across the country. Our CCPA Task Force is presently advising many California employers and national clients that do business in California on complying with the CCPA. For advice on California privacy law, feel free to contact any attorney in any of our six California offices.

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