Court Strikes Down FTC's Click-to-Cancel Rule – But Businesses Still Face Major Risk from State Auto-Renewal Laws

Insights
7.14.25

A federal appeals court just vacated the FTC's controversial Click-to-Cancel rule on procedural grounds – but businesses shouldn't drop their guard just yet. Many states already have their own automatic renewal laws on the books, and they're not going anywhere. Here's what happened with the July 8 decision from the 8th Circuit Court of Appeals, why it matters, and what your business should do next.

What Just Happened?

In a July 8 ruling, the U.S. Court of Appeals for the Eighth Circuit struck down the FTC's *Negative Option Rule* – commonly known as the *Click-to-Cancel* rule – just days before it was scheduled to take effect on July 14.

Sidebar: The Click-to-Cancel Rule, Explained

The FTC's Click-to-Cancel rule aimed to target deceptive subscription practices that make it easy to sign up but difficult to cancel. It attempted to impose several new requirements on companies using recurring billing models:

- **Clear and Conspicuous Disclosures:** Businesses would have to present key terms (such as pricing, cancellation terms, and renewal conditions) before collecting billing information.
- **Express Informed Consent:** Customers would need to affirmatively agree to the terms in a standalone format – separate from other transaction elements.
- **Easy Cancellation Mechanism:** Companies would have to provide a cancellation method that is at least as simple as the method used to subscribe, including through the same communication channel.

For a thorough summary of the rule, click here to read our prior coverage.

The reason for the court's decision? The three-judge panel said that the Federal Trade Commission skipped a critical step in the rulemaking process. Under the FTC Act, the agency was required to conduct a preliminary regulatory analysis if the rule would have an annual economic impact of $100 million or more. The FTC initially claimed the rule didn't meet that threshold. But after an

Administrative Law Judge found otherwise, the agency never went back and conducted the analysis. That failure proved fatal.

While the court didn't weigh in on whether the FTC *could* regulate negative option practices in this way, it made clear that agencies must follow the proper procedures, especially when issuing rules with far-reaching economic implications.

What's Next?

While the appeals court struck down the Click-to-Cancel rule on a procedural technicality, it left the door open for the FTC to try again – this time with the proper economic analysis. The question is whether the Trump-era agency will take another stab at it or abandon the effort as part of the Administration's sweeping deregulation efforts.

And while Congress could step in to legislate this issue directly, the likelihood of a bipartisan consensus emerging on this topic seems very unlikely in the current climate.

But Wait: That Doesn't Mean You're Off the Hook

Although the federal rule is vacated (for now), businesses that offer auto-renewing subscriptions are still firmly in the regulatory crosshairs. That's because many states – including California, Minnesota, Oregon, Colorado, and others – have already adopted their own strict automatic renewal laws (ARLs) that mirror or even exceed the FTC's requirements.

These state laws vary, but often require:

- Clear and conspicuous disclosures of renewal terms
- Affirmative consent before charging
- Notice of upcoming renewals – sometimes for both first and subsequent periods
- Easy, user-friendly cancellation mechanisms, often matching the original sign-up method
- Special rules for free trials or gift offers that convert to paid memberships
- Prohibition on retention offers

What's the Danger?

Even with the FTC rule gone, regulators and plaintiffs' attorneys are still watching. If your auto-renewal practices are confusing, misleading, or difficult to cancel, you may face:

- State AG enforcement actions
- Private lawsuits under state consumer protection laws
- Ongoing or potential future FTC enforcement using existing unfair/deceptive practice authority

What Businesses Should Do Now

Even though the FTC rule is dead (for now), you should consider taking proactive steps to stay ahead of state laws and potential future federal regulation. Here's your checklist:

1. Review Your Subscription Flows

Identify where you offer negative option features (e.g., free trials, recurring billing, auto-renewals).

2. Check State Laws Where You Operate

Determine whether your customer base is subject to state ARLs. California, Minnesota, Oregon, Colorado, and several other states have strict laws already in force, and others will be coming online in the coming years.

3. Make Cancellation Easy

If sign-up was online, you may want to ensure cancellation can be, too. Using simple, intuitive cancellation paths that match or exceed the original sign-up method is a good practice.

4. Disclose Clearly

Prominently display key terms – price, renewal timing, cancellation deadlines – before purchase. Avoid hiding terms in footnotes or hyperlinks.

5. Confirm Consent

Use unambiguous, standalone consent, especially for recurring charges. Pre-checked boxes could spell trouble depending on the state(s) in which you operate.

6. Train and Monitor

Equip customer support teams with clear cancellation protocols. Monitor whether cancellations are being honored without delay or friction.

7. Keep Records

Retain logs of disclosures, consent, and cancellation communications. These will be key if you're ever challenged.

Conclusion

For further information, contact your Fisher Phillips attorney, the authors of this Insight, or an attorney on the firm's Consumer Privacy Team or Privacy and Cyber Team. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox.

Related People

Kate Dedenbach, CIPP/US
Of Counsel
248.901.0301
Email

Service Focus

Privacy and Cyber

Consumer Privacy Team

Trending

U.S. Privacy Hub