Benesch

2022 Data Protection & Privacy CHECK LIST

Beginning in January 2023, three new state privacy laws (and their applicable regulations) come into effect. Additionally, several other countries have taken steps to implement or shore up their own privacy and data protection laws and regulations. The new laws require business to (1) create different specific standards; (2) employ different definitions; and (3) allow for different enforcement mechanisms.

The specific nuances that each law presents will be crucial to understanding how your business can become compliant with the coming privacy laws. Below are short summaries of the applicable laws as well as a checklist that can be used to guide compliance efforts. However, we encourage all businesses to go to Data Meets World for further details on each law.

UNITED STATES

California

The California Consumer Rights Act (the CPRA) amends the already existing California Consumer Privacy Act. The main changes under the new law include: (1) the categorization and regulation of sensitive personal information; (2) the right for an individual to limit a business's use of sensitive personal information; (3) data minimization standards; (4) restrictions on the use of cookies for cross-contextual behavioral advertising; (5) annual cybersecurity review and audit requirements; (6) the creation of the California Privacy Protection Agency; and (7) the expansion of a limited private right of action.

Colorado

The Colorado Privacy Act largely sets up a similar dynamic to Europe's GDPR where there are Controllers and Processors of personal information. The main provisions include: (1) individual rights, including the right to access, correction, and deletion; (2) the implementation of a "controller" and "processor" regime; (3) contractual standards and floors that must be meet in controller and processor relationships; (4) opt-in consent requirements for the collection and processing of Sensitive Data; (5) risk assessment and audit requirements; and (6) individual opt-out rights for the selling of personal information, targeted advertising, and profiling in furtherance of legal (or similar) decisions.

Virginia

The Consumer Data Protection Act also follows in the footsteps of Europe's GDPR. While it may be a "light" version compared to Colorado's new law in terms of pages, it does not mean it is any less onerous on business. The main provisions of the new law include: (1) individual rights, including the right to access, correction, and deletion; (2) the implementation of a "controller" and "processor" regime; (3) contractual standards and floors that must be meet in controller and processor relationships; (4) opt-in consent requirements for the collection and processing of Sensitive Data; (5) risk assessment and audit requirements; and (6) individual opt-out rights from the selling of personal information, targeted advertising, and profiling in furtherance of legal (or similar) decisions.

United States Compliance Checklist

- ☐ Updating Consumer-Facing Privacy Notices **(Applicable to CA, CO, VA)**
- ☐ Updating Internal Privacy and Security Policies in line with Privacy Notices **(Applicable to CA, CO, VA)**
- ☐ Create or Update Procedures and Mechanisms to Respond to Consumer Requests **(Applicable to CA, CO, VA)**
- ☐ Create or Update Procedures and Mechanisms to Comply with Individual Rights **(Applicable to CA, CO, VA)**
- ☐ Develop and Maintain Consumer Opt-Out for Selling/Sharing Personal Information **(Applicable to CA, CO, VA)**
- ☐ Develop and Maintain Consumer Opt-Out to Limit the Use and Disclosure of Sensitive Personal Information **(Applicable to CA)**
- ☐ Develop and Maintain Procedures to Obtain Consumer Consent (Opt-In) Prior to Collecting or Processing Sensitive Personal Information **(Applicable to CO, VA)**
- ☐ Data Mapping to Identify the Full Scope Information Across Systems and Processing Activities **(Applicable to CA, CO, VA)**
- ☐ Create and Maintain Data Retention and Minimization Policies and Procedures **(Applicable to CA, CO, VA)**
- ☐ Conduct Annual Cybersecurity Audit **(Applicable to CA)**
- ☐ Determine Whether Risk Assessments are Required **(Applicable to CO, VA)**
- ☐ Review Existing Agreements with Third Parties, and Negotiate New Agreements with Third Parties, to Ensure the Required Contractual Obligations are Addressed **(Applicable to CA, CO, VA)**
- ☐ Develop and Maintain Reasonable and Proportional Technical, Organizational, and Physical Security Measures **(Applicable to CA, CO, VA)**
- ☐ Determine Whether Your Business's Marketing and Advertising Activities Fall within Restricted Forms of Targeted Advertising and Take Appropriate Action as Required by the Laws **(Applicable to CA, CO, VA)**

INTERNATIONAL

China

China's new Personal Information Protection Law ("PIPL") took effect on November 1, 2021. The law largely tracks with other international privacy and data protection laws, both in its broad scope and the strict privacy principles that it lays out. PIPL applies to processing of PI that occurs both inside and outside of China. A processor that operates outside of China falls under the PIPL if they process PI (1) for the purpose of providing products or services to persons in China; or (2) to analyze and evaluate the behavior of persons in China. This new law is similar to Europe's GDPR in scope and applicability.

South Africa

South Africa began enforcement of their Protection of Personal Information Act ("POPIA") on July 1, 2021. The law is modeled closely after Europe's GDPR and requires similar data protection principles and standards. Among other things, POPIA implements new individual rights, a broad definition of personal information, and forms enforcement mechanisms through a new South Africa Information Regulator.

Europe

As of September 2021, businesses who fall within the scope of Europe's GDPR must be using the updated and amended Standard Contractual Clauses. Business must amend contracts entered into prior to September 2021 to incorporate the new Standard Contractual Clauses by Dec. 27, 2022.

International Compliance Checklist

- ☐ Updating Consumer-Facing Privacy Notices **(Applicable to China, South Africa)**
- ☐ Updating Internal Privacy and Security Policies in line with Privacy Notices **(Applicable to China, South Africa)**
- ☐ Create or Update Procedures and Mechanisms to Respond to Consumer Requests **(Applicable to China, South Africa)**
- ☐ Create or Update Procedures and Mechanisms to Comply with Individual Rights **(Applicable to China, South Africa)**
- ☐ Appoint a Data Protection Officer **(Applicable to China and South Africa)**
- ☐ Develop and Maintain Reasonable and Proportional Technical, Organizational, and Physical Security Measures **(Applicable to China and South Africa)**
- ☐ Develop and Maintain Procedures to Obtain Consumer Consent (Opt-In) Prior to (1) Collecting or Processing Sensitive Personal Information; (2) Cross-Border Transfer; (3) Direct Marketing; and (4) Sharing or Disclosing Information to Third Parties **(Applicable to China and South Africa)**
- ☐ Create and Maintain Data Retention and Minimization Policies and Procedures **(Applicable to China and South Africa)**
- ☐ Conduct Personal Information Impact Assessments **(Applicable to China and South Africa)**
- ☐ Data Mapping to Identify the Full Scope Information Across Systems and Processing Activities **(Applicable to China and South Africa)**
- ☐ Data Mapping to Identify the Full Scope Information Across Systems and Processing Activities **(Applicable to China and South Africa)**
- ☐ Review Existing Agreements to Ensure Controller and Processor Obligations are Properly Addressed **(Applicable to China, South Africa)**
- ☐ Negotiate the Required Contractual Provisions Prior to Sharing or Disclosing Personal Information **(Applicable to China, South Africa)**
- ☐ Negotiate the Required Contractual Provisions Prior to Entering into Agreements that Involve the Transfer, Collection, Use, or Processing of Personal Information **(Applicable to CO, VA)**
- ☐ Enter into Updated Standard Contractual Clauses for New Agreements Involving the Cross-Border Transfer of Personal Information **(Applicable to Europe)**
- ☐ Amend Existing Cross-Border Transfer Agreements to Include Updated Standard Contractual Clauses **(Applicable to Europe)**
- ☐ Determine Whether a Copy of Personal Information Trasferred Outside of the Country Must be Kept in The Country **(Applicable to China)**

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