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Inaugural Annual Privacy Summit

Session 7, Track 1

Employee Privacy Fireside Chat

MCLE: 1.0 Hours

Friday, February 10, 2023
2:00 p.m. – 3:00 p.m.

Speakers:

Tanya Forsheit, Head of Privacy Compliance, The New York Times
Justine Phillips, Partner, DLA Piper

Conference Reference Materials

Points of view or opinions expressed in these pages are those of the speaker(s) and/or author(s). They have not been adopted or endorsed by the California Lawyers Association and do not constitute the official position or policy of the California Lawyers Association. Nothing contained herein is intended to address any specific legal inquiry, nor is it a substitute for independent legal research to original sources or obtaining separate legal advice regarding specific legal situations.

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EMPLOYEE PRIVACY FIRESIDE CHAT

February 10, 2023

Jennifer L. Mitchell, BakerHostetler

Tanya Forsheit, The New York Times Company

Justine Phillips, DLA Piper

AGENDA

1. California Consumer Privacy Act for Employee Data
2. Employee Monitoring
3. AI-Based Employment Decisions

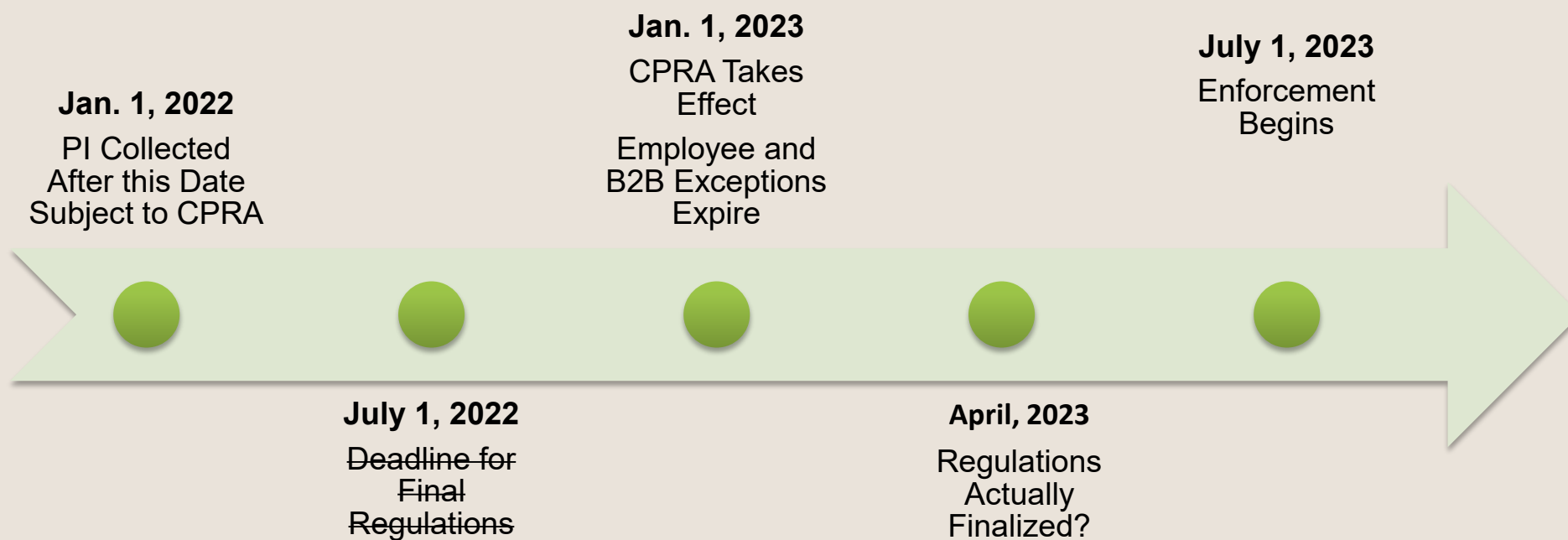
CCPA & CPRA: A Brief History

- California Consumer Privacy Act (“CCPA”) was first omnibus U.S. state privacy law passed in 2018.
- In 2019, AB 25 amended CCPA to include “a natural person acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or contractor of that business.” BUT rights were limited to notice and right to sue if data was breached.
- California Privacy Rights Act (“CPRA”) became law through the passage of Proposition 24 in November 2020 and takes effect January 1, 2023.
- Current/former employees, applicants, dependents and independent contractors have full rights effective January 1, 2023.

What's New Under the California Privacy Rights Act?

Key Changes Under CPRA	
Use and Retention Limitation (Data Minimization)	<ul style="list-style-type: none"> Business must limit collection, use, and retention of personal information to what is <i>necessary</i> to provide a good/service. Business must disclose the length of time the business intends to retain each category of personal information.
Additional Privacy Rights	<ul style="list-style-type: none"> Right to correct inaccurate information. Right to limit use and disclosure of “sensitive personal information” to only what is necessary. Right to opt-out of “sharing” personal information.
New Category of Personal Information	<ul style="list-style-type: none"> Sensitive personal information (includes SSN, precise geolocation, race or ethnic origin, genetic data, health data, and email/message contents).
Vendor Classification and Contract Requirements	<ul style="list-style-type: none"> New requirements for vendor agreements. New bucket of vendors for “Contractors” to whom personal information is “made available.”
Required Assessments	<ul style="list-style-type: none"> Businesses whose processing of personal information presents a <i>significant</i> risk to consumer privacy or security must perform an independent cybersecurity audit on an annual basis. Such businesses must also submit a regular risk assessment to the CPPA.
New Enforcement Agency	<ul style="list-style-type: none"> California Privacy Protection Agency (CPPA).

CPRA Timeline



Workforce Rights Under the CCPA & CPRA

	CCPA Rights	CPRA Rights
Right to Know	✓	✓
Right to Access	✗	✓
Right to Deletion	✗	✓
Right to Correct	✗	✓
Right to Opt-Out of Sale	✗	✓
Right to Opt-Out of Sharing	✗	✓
Right to Limit Use and Disclosure of Sensitive Personal Information	✗	✓
Right to Sue if Certain PI is Breached	✓	✓

General Obligations for Employers

Notice at Collection. Provide a notice to the workforce at or before the point of collection of their personal information.

Vendor Agreements. Enter into a specific agreement with any third party, service provider, or contractor that receives personal information.

Be Reasonable with Your Data. Use personal information only as reasonably necessary and proportionate to achieve the purpose(s) for which it was collected.

Retention & Destruction Obligations. Retain personal information only as reasonably necessary and proportionate to achieve the purpose(s) for which it was collected, and inform consumers of the same.

Privacy Request Compliance. Maintain records of all privacy requests and how company responded for 24 months.

Reasonably Secure Data. Implement and maintain reasonable security for all data.

Training. Ensure that all individuals responsible for handling privacy requests are informed.

CCPA Roundtable Discussion

- Are there any exceptions to a Right to Know specific pieces request?
- What is SPI and when does the Right to Limit Use/Disclosure of SPI apply?
- How do we disclose accurate retention periods and why does it matter?

Employee Monitoring and Surveillance

- New state laws are requiring employers to provide written notice of employee monitoring/surveillance, including Connecticut, Delaware and most recently, New York
- Notices must communicate that telephone conversations, email or internet usage may be subject to employer monitoring
- What are best practices in light of these developments?

AI-Based Employment Decisions

- NYC law prohibiting employers from using AI-based technologies for hiring or promotion decisions without auditing the tools for potential for bias (Local Law 144)
 - Enforcement begins April 2023
 - The law also requires notice to employees and applicants
- “Automated decision making” requirements under the CCPA
- EEOC intent to increase enforcement aimed at AI discrimination

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Questions?



Tanya Forsheit is Head of Privacy Compliance at The New York Times Company. Tanya has more than 20 years of experience advising on high-profile matters involving confidential data and other sensitive information. She previously led the privacy practice at several law firms. Her practice as outside counsel focused on the protection, processing and monetization of data, including matters related to interest-based advertising, privacy policies, mobile apps, cloud computing, smart devices, and data analytics. Tanya is a past President of the Women Lawyers Association of Los Angeles, a past Trustee of the Los Angeles County Bar Association (LACBA), and was the Founding Chair of LACBA's Privacy and Cybersecurity Section. Tanya graduated from the University of Pennsylvania Law School in 1997.



Justine Phillips

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Justine focuses her practice on both proactive and reactive cybersecurity and data privacy services, representing clients in matters related to information governance, diligence in acquisitions and investments, incident preparedness and response, the California Consumer Privacy Act and cyber litigation.

She provides actionable and practical guidance to help businesses manage data, technology, cyber threats, privacy, security and digital assets. As businesses navigate complex and far-reaching laws and regulations, Justine proactively creates compliance programs customized to client needs and budgets, including data mapping, vendor management, privacy and security by design, cyber risk management and mitigation, eWorkforce policies, data retention and destruction policies and implementation, consumer request workflows, cyber-awareness policies and trainings, and CCPA/CPRA readiness audits. She also provides reactive cyber services, including incident response, crisis management, privileged forensic investigations into business email compromises, data breaches and ransomware attacks, compliance with notice obligations to individuals and regulators, regulatory inquiries and investigations, and cyber litigation. Justine also handles employment litigation and counseling, as well as commercial litigation. As a co-author of the recently published "*Data Privacy Program Guide: How to Build a Privacy Program that Inspires Trust*," CISO DRG Publishing, 2022, Justine frequently speaks and writes on privacy and cyber issues.

CREDENTIALS

Education

J.D., University of San Diego School of Law

B.A., University of San Diego

Admissions

California

PRESENTATIONS AND SEMINARS

Seminars and Speaking Engagements

- Panelist, "Cyber Fraud: FBI & San Diego Cyber Council Present on the Importance of Humans in Cybersecurity," 2022 Fraud Prevention and Ethics Symposium, July 2022
- Panelist, "Impacts of Nation State Sponsored Cyber Attacks," WiE National Conference, May 2022
- Panelist, "Navigating Privacy Opportunities and Challenges Globally" Cybersecurity, Privacy & Data Protection Retreat, Sub-Four Capital, May 2022
- Panelist, "Data Retention & Deletion: Building and Operationalizing Policies into Your Privacy Program," IAPP Global Privacy Summit, April 2022



- Presenter, "Governing Cyber Risk," WiE, April 2022
- Presenter, "Wisdom of Insecurity: Managing 2022 Cyber Risk," Association of Corporate Counsel, April 2022
- Presenter, "Cyber Industry," 2022 Customer + Corporate Symposium, Western Energy, February 2022
- Presenter, "Wisdom of the Tiger: Governing Privacy & Security Risk," San Diego ISSA Chapter, February 2022
- Panelist, "Cybersecurity & Fraud in 2022," Wells Fargo, February 2022
- Panelist, "An Introduction to the Role of Governance in Privacy and Cybersecurity," DLA Cyber Law Roundtable, January 2022
- Presenter, "The Current Ransomware Landscape: A Journey Through the Stars," Utah iSymposium CLE, October 2021
- Panelist, "External vs. Insider Threat: Responding to a Cyber Attack Caused by an Authorized User," IAPP Privacy.Security.Risk Conference, October 2021
- Panelist, "From CCPA to CPRA," Techno Security and Digital Forensics Conference, October 2021
- Presenter, "Rising Cyber Crimes & Working from Home," Special FBI Briefing, August 2021
- Panelist, "Mitigating Cyber Risk," Sheppard Mullin Cyber Law Roundtable, March 2021
- Presenter, "Making Space for New Laws: 2021 Privacy & Security Laws for InfoSec Pros," San Diego ISSA Chapter, February 2021
- Panelist, "Roundtable: Fostering and Strengthening Relationships 'Attorneys and Litigation Support'," International Legal Technology Association, November 2020
- Speaker, "Implicit Bias and Diversity in the In-House Counsel Setting," California Lawyers Association Shelter in Place Institute, November 2020
- Panelist, "360 Degrees of a Ransomware Attack: Decision Points in Defense, Response and Mitigation," Infragard San Diego, November 2020
- Moderator/Panelist, "Protect the Privilege: Maintaining Attorney-Client & Work Product Privilege During a Cyber Incident," USD Cyber Law Risk & Policy Symposium, October 2020
- Speaker, "2020 VIP Backstage Pass: Investigating Cyber Events & HR Matters During a Pandemic," County of Los Angeles, October 2020
- Panelist, "Cybersecurity Workshop: 'Do's and Don'ts of Incident Response'," North West Academic Computing Consortium, October 2020
- Recording Session, "Cybersecurity in the Age of Telemedicine – 'Lessons Learned'," National PACE Association, October 2020
- Speaker, "Girl Scouts Cybersecurity Workshop Sessions 'Cybersecurity Investigations'," Girl Scouts of America synED, September 2020
- Panelist, "Journey to the Cloud," InfoCgv for Legal Operators, September 2020



- Speaker, "Virtual Lunch with Leaders 'Mentorship' Webinar," San Diego Paralegal Association, August 2020
- Speaker, "Planning for a Safe Return to the Office in a Covid World," San Diego InfraGard Webinar, August 2020
- SynEdPanelist, Data Governance for Legal Operators Webinar, August 2020
- Speaker, "Cyber Instructors/Coaches Training: Wrap-Up National Collaborative Efforts," June 2020
- Panelist, "Data Privacy & Security | The New Litigation and Regulation Battleground," June 2020
- Speaker, "WITI OC Virtual Event: A Guardians of the Galaxy's approach to California's Consumer Privacy Act (CCPA)," Women in Technology International, June 2020
- Speaker, "Unique considerations in managing the risks of phishing and ransomware attack," Ernst & Young LLP, June 2020
- Panelist, "PrivacyConnect San Diego: Expert Panel Session, Q&A," One Trust, May 2020
- Speaker, "Reasonable Security and the CCPA," WSJ Pro Cybersecurity, May 2020
- Speaker, "The COVID-19 Pandemic: Special FBI Briefing on Rising Cyber Crimes & Working from Home," Infragard San Diego, April 2020
- Speaker, "'Vision: Preparing for CCPA' Speaking Presentation Timeslot," 2020 Techno Security & Digital Forensics Conference, March 2020
- Speaker, "Get Smart 'Cyber-Intelligent Corporate Counsel Reduce Risks'," American Bar Association 2020 Corporate Counsel CLE Seminar, February 2020
- Speaker, "VIP Backstage Pass 'Ethical Issues in Responding to a Cyber Attack'," Association Corporate Counsel 2020 MCLE La-Law Pooza, January 2020
- Speaker, "Center for Real Estate Cyber Security: What It Means for Commercial Real Estate," The Paul Merage School of Business, January 2020
- Speaker, "Security is Mostly a Superstition 'Reasonable Security' Under the California Consumer Privacy Act," Wall Street Journal Cybersecurity Symposium, January 2020
- Speaker, "New Technologies and the Potential Privacy & Responsibility Challenges They Present," SDSC's Annual Winter Forum on Data, December 2019
- Speaker, "GDPR and its implications," SDSC's Annual Winter Forum on Data, December 2019
- Panelist, "Risk Management Considerations," Cybercon 2019 Conference, November 2019
- Moderator, "'Reasonable Security' Under the California Consumer Privacy Act," USD 2nd Annual Cyber Law Risk and Policy Symposium, November 2019
- Speaker, "Cyber Security Discussion," Coronado Rotary Club, October 2019
- Panelist, "CISO Coalition: California Consumer Privacy Act (CCPA) Discussions," Gartner, October 2019
- Speaker, Happy Hour with Your Labor Lawyer, October 2019
- Panelist, Workplace 2020: "20/20 Vision in the Workplace," SDEAC, October 2019



- Speaker, "CCPA's Legislative Updates & Amendments," Sheppard Mullin's Cyber Law Roundtable webinar, October 2019
- Panelist, "Breakfast Panel Discussion: Automation & Compliance," PwC, September 2019
- Speaker, "Implications of the California Consumer Privacy Act and the Rapidly Changing Legal Precedents on Corporate Security," June 2019
- Speaker, "CCPA with ESET," Tech San Diego's Cybersecurity Summit, June 2019
- Speaker, "CCPA & GDPR," OneTrust PrivacyConnect Roadshow, June 2019
- Speaker, "Cyber Law Roundtable – CCPA and The Three Questions," Sheppard Mullin's Cyber Law Roundtable webinar, April 2019
- Panelist, "Tribes Are Prime Targets: Threats and Solutions for Cybersecurity & Criminal Activity," Native American Finance Officers Association, April 2019
- Speaker, "Collection of Ephemeral Messaging, Social Media & Other Emerging Media," 2019 Techno Security & Digital: Impermanence in Forensics & eDiscovery, March 2019
- Speaker, Southern California Tribal CFO Roundtable on the California Consumer Protection Act, March 2019
- Speaker, "Warrior One: Yoga & Meditation for Legal Professionals," Life & Law, January 2019
- Speaker, "Lost in Space: Navigating 'Reasonable Security,'" ISACA's San Diego Chapter, January 2019

COURTS AND FORUMS

- United States District Court for the Southern District of California
- United States District Court for the Central District of California
- United States District Court for the Northern District of California

PROFESSIONAL MEMBERSHIPS

- Vice President, Infragard San Diego, 2018-present
- Founder & Chair, Cyber Law Symposium, 2017-present
- Founder & Former Chair, Lawyers Club of San Diego – Life & Law Committee

RECOGNITIONS

- Named to *The Best Lawyers in America* for Privacy and Data Security Law (2023)

CIVIC AND CHARITABLE

- Board Member, American Red Cross of San Diego/Imperial Counties
- Founding Member and Past President, Mother Attorney Mentoring Association of San Diego
- Board Member, Kawasaki Disease Foundation