

November 9, 2023

New US State Privacy Laws: A Discussion On Practical Ways To Comply With All These New Requirements

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Determine Applicability of the Laws

State*	Effective Date	Applicability-Annual Revenue**	Applicability-Annual Consumers	Applicability-Sale
CA	1/1/2020; 1/1/2023	> \$25 million OR	100,000+ OR	50%+ of annual revenue from sale or sharing of data
VA	1/1/2023		100,000+ OR	25,000+ AND > 50% of revenue from sale of data
CO	7/1/2023		100,000+ OR	25,000+ AND > any revenue from sale of data
CT	7/1/2023		100,000+ OR	25,000+ AND > 25% of revenue from sale of data
UT	12/31/2023	\$25 million+ AND	100,000+ OR	25,000+ AND > 50% of revenue from sale of data
IA	1/1/2025		100,000+ OR	25,000+ AND > 50% of revenue from sale of data
IN	1/1/2026		100,000+ OR	25,000+ AND > 50% of revenue from sale of data
TN	7/1/2025	> \$25 million AND	175,000+ OR	25,000+ AND > 50% of revenue from sale of data
MT	10/1/2024		50,000+ OR	25,000+ AND > 25% of revenue from sale of data
TX	7/1/2024	Not a small business	No minimum	No minimum
OR	7/1/2024		100,000+ OR	25,000+ AND > 25% of revenue from sale of data
DE	1/1/2025		35,000+ OR	10,000+ AND > 20% of revenue from sale of data

*This table refers only to the comprehensive state privacy laws. Other laws, such as in WA, NV, and CT SB3, that address specific types of data, including health or children's data, should also be reviewed for applicability to you

**Depending on the state, certain exceptions apply for some entities (e.g., non-profits) or certain types of data (e.g., data regulated under HIPAA)



What are You Already Doing Today?

- Your company is probably already engaged in compliance activities that could be relied on (or tweaked) to meet any new obligations.



What Data Are You Collecting in Each Applicable State?

- Many of the state laws have different requirements depending on who you are collecting data from (e.g., children, employees), what data you are collecting (e.g., sensitive data)



What is Already Included in Your Disclosures?

- Many of the state laws have similar, if not identical, disclosure requirements



What Do Your “Back End” Processes Allow You to Do (and Not Do) Now?

- You will need to consider how to process different opt-outs, opt-ins, limitations on processing, deletion requests, etc. Understanding what your systems are capable of now will help you plan your technical strategy for compliance

Create a Plan of Action

Planning Your Project

- Once you have assessed the current state of your compliance program, you will need to match those activities against the requirements of the laws that apply to you



Work with Your Business Stakeholders

How to Communicate with Your Internal Teams

- Depending on the complexity of your company and the products and services you offer, you will likely need some support from your business stakeholders. To identify who you'll need to work with, think about:

What Stakeholders Will be Required to Take Action or Implement Process Changes?	<ul style="list-style-type: none">Marketing/AdvertisingCustomer ServiceResearch and DevelopmentHRLegal, Reg Affairs, Public Affairs and ComplianceBusiness Leads
What Technical Support Will You Need?	<ul style="list-style-type: none">ITSecurityWeb DevelopersDatabase ManagersVendor Management
What Additional Support Will You Need?	<ul style="list-style-type: none">Executive Buy-InAdditional HeadcountOutside Support

- You will need to communicate clearly to each stakeholder what the changes to the law will require from them and how they can help reduce your regulatory risk

Maintain a Compliant Program

What is a “Compliant” Program?

- Given the complexities of these new state laws, it is easy to feel overwhelmed, especially in light of the lack of guidance (or even regulations) in some states. It can seem difficult to ever deem a program truly “compliant” with all these different rules. Here are some good rules of thumb to help you get (and stay) on reasonably compliant footing:

Stay Informed

Stay on top of new developments, guidance, regulations, and news about these (and any new) laws

Monitor

Test and monitor the places where you collect and process consumer data – check to make sure your website links, your GPC signals, and cookie pop ups work like they are supposed to

Use What You Have

Utilize your internal governance processes and the laws’ requirements to support your program – for example, data privacy impact assessments can be a good way to track compliance of your company’s processing activities

Map Your Data

Understand your data flows. You cannot have a full understanding of compliance if you don’t have a clear picture of where you collect data, how you use it, where you store it, and what 3rd parties you share it with (and why)

Maintain Documentation

Document everything you do. Make sure that you have organized, accessible documentation that describes how you (and others in your company) are complying

Questions & Contacts



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