

# ALERT

October 2020

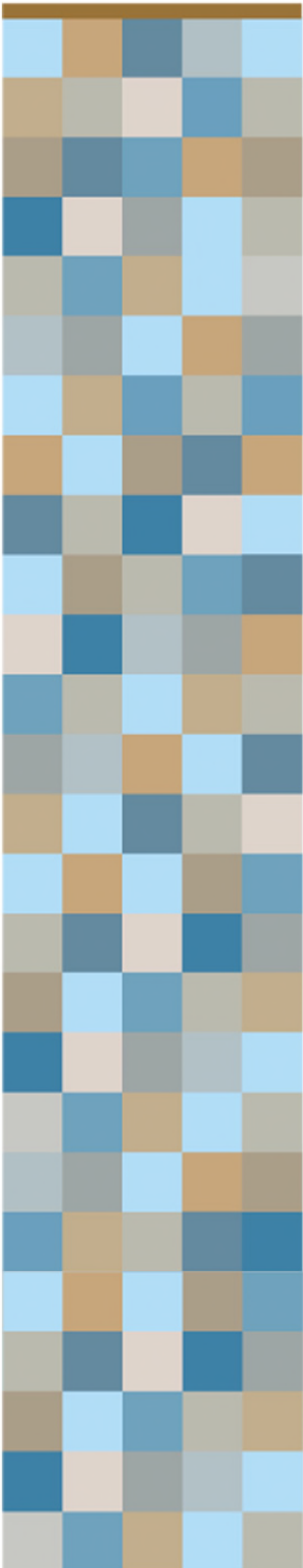
## California Extends The Sunset Of The CCPA's Employee & Business-To-Business Exemptions

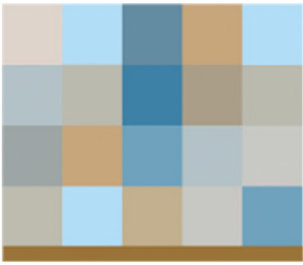
By: **Terese L. Arenth & Stephen Breidenbach**

On September 29, 2020, California Governor Newsom signed Assembly Bill 1281 ("AB 1281") into law, which is good news for employers and those who engage in business-to-business ("B2B") transactions that fall within the scope of the California Consumer Privacy Act of 2018 ("CCPA"). AB 1281 continues in effect employee and B2B exemptions of the CCPA until January 1, 2022. Prior to the extension provided by AB 1281, these exemptions were scheduled to become ineffective on January 1, 2021.

By way of background, commencing on January 1, 2020, the CCPA granted a consumer residing in California various rights with regard to personal information relating to that consumer that is held by a business. Among other things, the CCPA requires a business that collects personal information about a consumer: (i) to inform the consumer at or before the point of collection what personal information will be collected and the purposes for which it will be used (the "Right to Know"), (ii) to delete the consumer's personal information upon the consumer's request (the "Right to Deletion")(subject to certain exceptions such as the retention of the consumer's personal information if necessary for the business to detect security incidents, protect/defend against legal claims or various internal uses), and (iii) to disclose the consumer's right to direct the business not to "sell" the consumer's personal information (the "Right to Opt-out"), which is defined broadly to include all data sharing with third parties, when money or other valuable consideration is involved. Under the CCPA, employees and persons who engage in business transactions with you in their professional capacity are considered consumers.

Both the employee exemption and the B2B exemption exclude certain categories of what would otherwise be personal information from falling within the scope of the CCPA. Under the employee exemption, information collected about a natural person in their capacity as a job applicant, employee, owner, director, officer, medical staff member, or contractor of the business is exempt from most of the key provisions of the CCPA. While a business is still required to provide notice of collection of personal information from an employee, it does not need to provide an employee with a Right to Know, Right to Deletion or Right to Opt-out. (Of note, the employee exemption does not apply to the right to bring a private right of action in the event of a data breach).





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The B2B exemption exempts from most of the CCPA personal information reflecting a written or verbal communication or a transaction between the business and the consumer, if the consumer is a natural person who is acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency and the communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from that company, partnership, sole proprietorship, nonprofit, or government agency. The Right to Opt-out still applies with respect to this category of personal information but the Right to Know and Right to Deletion do not and there is no requirement to provide notice of collection.

Of note, although AB 1281 extends the employee and B2B exemptions from January 1, 2021 until January 1, 2022, the California Privacy Rights Act (CPRA) is on the California ballot for the November 3, 2020 election. If voted into law, the CPRA would amend the CCPA to include more expansive and stringent compliance obligations but not alter the employee and B2B exemptions in their current form and would actually continue them to January 1, 2023.

If you have any questions regarding this Alert, please feel free to reach out to [Terese Arenth](mailto:Terese.Arenth@moritthock.com) at (516) 880-7235 or [tarenth@moritthock.com](mailto:tarenth@moritthock.com) or to [Stephen Breidenbach](mailto:Stephen.Breidenbach@moritthock.com) at (516) 880-7285 or [sbreidenbach@moritthock.com](mailto:sbreidenbach@moritthock.com)



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