

Legal Connections



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U.S. CONSUMER PRIVACY LAWS ARE HERE. IS YOUR BUSINESS READY?

Depending on your viewpoint, the recent proliferation of consumer privacy laws and bills in the U.S. might be viewed as long overdue or a complete mess. Perhaps both.

While the European Union has treated privacy as a basic human right for decades—and set the bar even higher when it implemented the General Data Protection Regulation in May 2018—the U.S. generally regulates privacy by industry or issue. Think GLBA for financial institutions, HIPAA for the healthcare industry and COPPA for children's online privacy. California broke this mold last year when it used the GDPR and several high-profile privacy scandals as a springboard to pass the California Consumer Privacy Act (CCPA).

The CCPA becomes effective on Jan. 1, 2020, and applies to any business

that collects, shares or sells personal information, or PI, about Californians. It requires businesses to provide specific disclosures about their privacy practices and give consumers the right to request access to or deletion of their PI. It further allows consumers to instruct businesses not to sell their PI. Violators could face penalties of up to \$7,500 per violation and a private right of action for data breaches.

Although the CCPA has understandably drawn headlines, other states are getting in on the action too. Nevada's new privacy law governing information collected and sold by website operators took effect on Oct. 1. Vermont's data broker law took effect on Jan. 1. Several other states are considering broad privacy laws akin to the CCPA or GDPR. At the federal level, bipartisan support exists for a broad privacy law; however, lawmakers disagree over the optimal scope and whether it should preempt state laws or provide a

private right of action.

With new privacy laws in place, and more on the horizon, what should businesses do? At a fundamental level, organizations should consider consumer privacy and data security issues as they're designing, operating, and managing IT systems and other business processes. This concept—referred to as "Privacy by Design"—is at the heart of most new privacy laws. Rather than serve as an afterthought, privacy compliance must instead be "baked into" all products and services, from concept through delivery.

To get started, each business should investigate its privacy practices and document how it collects, stores, uses and shares PI. Make sure to cover all data sources, service providers and third-party data recipients. This may require you to put together a cross-functional project team or hire a data mapping vendor.

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Understanding your privacy practices allows you to assess the applicability of each privacy law. Although broader than predecessor laws, new privacy laws do include exemptions and limitations. You'll then need to craft new policies and procedures that facilitate compliance with existing laws and include protocols to capture and account for any changes to your privacy practices or applicable laws.

By incorporating privacy principles into everyday decision-making, smart businesses can meet regulatory expectations and foster customer goodwill. Just keep an eye out for the next new privacy law, which is likely right around the corner. ■

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UNDERSTANDING THE HAZE OF OHIO CANNABIS LAW: THC, CBD, AND SENATE BILL 57

On Aug. 3, Ohio governor Mike DeWine signed Senate Bill (S.B.) 57 into law, opening the door for the hemp industry and products like CBD oil to become a part of Ohio's agricultural products. But what are hemp and CBD, and why are they now legal to sell in our state?

The Cannabis plant has "two primary species," marijuana and hemp. Both species are made up of two major chemical compounds: tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the psychoactive portion of the plant; it provides the "high" commonly associated with marijuana. CBD is the non-psychoactive portion; it generally does not cause any psychoactive



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effects and is associated with medicinal or therapeutic properties. While both marijuana and hemp contain CBD, "there's a much higher percentage in hemp, which also has very low (less than .3%) level of THC compared to marijuana." This explains why in most states, and at the federal level, marijuana-derived CBD remains illegal, as it is the product of a controlled

substance.

But hemp-derived CBD is a different story. The U.S. Senate's 2018 Farm Bill legalized industrial hemp (and derivatives like CBD oil) by removing hemp from the definition of marijuana in the Controlled Substances Act. Some states are developing their Pilot Industrial Hemp Programs—particularly those that did not launch programs under the Farm Bill—while others are simply still adapting to the commercial CBD market.

Ohio has finally aligned with the federal government's posture on industrial hemp. S.B. 57 excludes hemp from the definition of marijuana that is used to enforce Ohio laws governing controlled substances, thus legalizing hemp products. However, unlike the federal

Farm Bill, which did not expressly remove CBD from Schedule 1 of the Controlled Substances Act, Ohio's new law makes CBD products commercially available in stores.

The legalization of CBD oil products raises many new questions for businesses that are still largely to be determined. However, this new Ohio law does not alter employers' obligations to drug-test certain employees under federal law, including pilots, CDL drivers and many safety-sensitive positions that are still subject to random testing requirements. Covered employers must be mindful of these obligations. Ohio businesses will have to adapt as the industry develops and should stay apprised of the developments in Ohio and federal law. ■

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