

## What the Biden Presidency Might Mean for the Workplace

In the U.S., the President has the power to appoint the people (often subject to Senate approval) who run a long list of government agencies. Because of this, a new administration always means lots of change. Here are some potential changes to watch out for...

**EEOC** – Biden has proposed doubling the EEOC's funding so that it can better enforce the law. When the current Chair's term expires in July 2022, the EEOC will lose its Republican majority. After that, expect the EEOC to become more employee-friendly and have more aggressive enforcement action against employers.

**National Labor Relations Board (NLRB)** – This will remain Republican majority until August 2021. Expect things to start tilting towards employees after that.

**Safety** – Expect to see a renewed emphasis on safety. This is likely to mean more inspections, more emphasis on recordkeeping and a big push for preventing COVID-19 in the workplace.

**Federal Minimum Wage** – Biden is proposing raising the federal minimum wage to \$15 an hour. Given the fact that



California is already well on the way towards this goal, this might not have a big impact here.

**Pay Disparity** – Biden has committed to signing the proposed Paycheck Fairness Act, which has already been passed in the House, into law. This law aims to eliminate pay disparities between men and women who do equal work.

**Discrimination and Harassment** – Biden has also supported some laws that

would enact measures that are already in place in California. This includes the Pregnant Workers Fairness Act, which requires employers to offer reasonable work accommodations to pregnant employees, and the Equality Act, which prohibits discrimination on the basis of sexual orientation and gender identity.

PAPER BY JAN

## Primed for an Economic Recovery

Jan Gottesman, President of Spicers Paper & Kelly Paper, reports on the latest happenings in the world of paper supply and costs.

Given the impact of COVID-19 on the economy, it's no surprise that 2020 was a challenging year in the paper market. In the North American printing paper market, demand plummeted 40 to 50% in the early days of the pandemic (i.e. the April/May timeframe). Starting in June, though, demand began a steady recovery that peaked in early November. Much of that was driven by printing related to the election and, in some parts of the country, back-to-school.

Although demand subsided a little in November and December, it tends to do this every year. Personally I found this bit of "normalcy" very encouraging, and I think it bodes well as we move forward into 2021.

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## GOVERNMENT & LEGISLATIVE

## Making Sense of California's Privacy Laws, Part 2: CPRA

Consumer privacy has been a hot topic in California, both in the legislature and at the ballot box. In a recent webinar, Courtney Jensen, Legislative Advocate at Fernandez Cervantes Government Affairs, our lobbyist in Sacramento, educated PIASC members about California's privacy laws.

A replay of this information-packed webinar is available at <http://bit.ly/CA-privacy-webinar>. Our first article (available at <http://bit.ly/Article-CA-privacy>) recapping this webinar focused on the California Consumer Privacy Act (CCPA), which is currently in effect. This article recaps what Courtney shared about the recently-passed Consumer Privacy Rights Act (CPRA), which will go into effect on January 1, 2023.

### What is the Consumer Privacy Rights Act?

The CPRA was created by Proposition 24, which voters approved on November 3, 2020. The CPRA expands and amends the CCPA, making it even more onerous for businesses.

Looking forward, an important thing to know about the CPRA is that it includes an amendability clause. This clause says that the law cannot be changed by the legislature unless the changes are "consistent with and further the purpose of the CPRA." In other words, the CPRA can be expanded but it cannot be dialed back.

### When does the CPRA go into effect?

The CPRA becomes fully operative on January 1, 2023 and enforceable on July 1, 2023. Until then the CCPA is the law of the land.

### Who is responsible for enforcing the CPRA?

The CPRA creates a new privacy agency, the California Privacy Protection Agency (CPPA), which will be responsible for creating and enforcing CPRA regulations.

In most cases the Attorney General will no longer be responsible for privacy enforcement. However, the Attorney General will work alongside the Agency for prosecution of violations involving the personal information of minors.

### Who does the CPRA apply to?

The CPRA applies to for-profit companies doing business in California that collect and distribute personal information of California consumers and **meet at least one** of the following criteria:

- Have \$25 million or more in annual revenue
- Possess personal information of more than **100,000** California consumers or households
- Derive at least 50% of annual revenue from selling or sharing consumers' personal data

Note that the bolded words in this definition represent changes from the CCPA.

The definition of covered businesses was also amended to include a joint venture or partnership composed of businesses in which each business has at least a 40% interest.

### What new rights are created by the CPRA?

Under the CPRA consumers gain a variety of new rights in addition to those created by the CCPA:

- **Right to Restrict the Use of "Sensitive" Personal Information:** The CPRA creates a new category of personal information, "sensitive data." This "sensitive personal information" includes government identifiers (such as Social Security numbers), account and login information, precise geolocation data, racial or ethnic origin, religion or philosophical beliefs, union membership, genetic data, and certain sexual orientation, health and biometric information. Consumers may limit the use and disclosure of sensitive personal information for certain purposes, including prohibiting businesses from disclosing sensitive personal information to third parties. There is a new notice requirement tied to this data, as well as new requirements for making it easy for consumers to exercise this right.
- **Right to Data Portability:** Consumers may request that the business transmit specific pieces of personal information to another

entity, to the extent it is technically feasible for the business to provide the personal information in a structured, commonly used and machine-readable format.

- **Right to Correction:** If a business holds inaccurate personal information about a consumer, that consumer can request that it be corrected.
- **Right to Opt-Out of Automated Decision-Making Technology:** The CPRA authorizes the creation of regulations allowing consumers to opt-out of the use of automated decision-making technology, including "profiling," in connection with decisions related to a consumer's work performance, economic situation, health, personal preferences, interests, reliability, behavior, location or movements.
- **Right to Access Information about Automated Decision Making:** The CPRA authorizes the creation of regulations allowing consumers to make access requests seeking meaningful information about the logic involved in these decision-making processes and a description of the likely outcome based on that process.
- **Audit Obligations:** The CPRA authorizes the creation of regulations that will require mandatory risk assessments and cybersecurity audits for high-risk activities. These risk assessments must be submitted

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## BUSINESS MANAGEMENT

## New Temporary Special Rules for Flexible Spending Accounts

The president has signed into law the Taxpayer Certainty and Disaster Tax Relief Act of 2020, which includes several temporary special rules aimed at minimizing forfeitures and increasing the utility of health and dependent care flexible spending accounts (FSAs). Plans providing for one or both accounts can take advantage of these participant-friendly rules immediately.

The act permits plan sponsors to implement the following voluntary changes for health and/or dependent care FSAs:

- **Unlimited Carryovers.** All unused amounts in a health or dependent care FSA may be carried over from the 2020 plan year to the 2021 plan year and from the 2021 plan year to the 2022 plan year. This rule applies to dependent care FSAs even though carryovers are otherwise not permitted for these accounts.
- **Extended Grace Period.** The grace period for a health FSA or dependent care FSA for a plan year ending in 2020 or 2021 may be extended from 2½ months to 12 months.
- **Election Changes.** For plan years ending in 2021, participants may prospectively modify their health FSA or dependent care FSA contributions for any reason. A similar rule is already in place for plan years ending in 2020. Plan

sponsors may, however, wish to limit permitted election changes for health FSAs to avoid overspending in the accounts.

- **Post-Termination Reimbursements from Health FSAs.** An employee who ceases participating in a health FSA during 2020 or 2021 may continue to receive reimbursements from unused amounts through the end of the plan year in which the employee ceased to participate, including any grace period. Unlike reimbursements available to participants who have elected COBRA coverage following their termination, this rule does not require that the participants make further contributions to access their unspent funds.
- **Carry Forward for Aged-Out Dependents in Dependent Care FSA.** The maximum age of a dependent for dependent care FSAs may be extended from 12 to 13 for eligible dependents who aged out of eligibility during the last plan year with a regular enrollment period ending on or before January 31, 2020. Additionally, employees with unused balances for such plan year due to the application of this rule may receive reimbursements of the unused balance in the following plan year.



Plans adopting any of these voluntary changes must be amended by the end of the first calendar year beginning after the end of the plan year in which a change took effect and must be operated in accordance with the amendment's terms beginning on its effective date. Thus, calendar year plans adopting these voluntary changes will generally need to be amended by December 31, 2021.

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## GOVERNMENT &amp; LEGISLATIVE

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to the newly-established California Privacy Protection Agency on a regular basis.

**How does the CPRA change existing rights?**

The CPRA makes various changes to the rights established by the CCPA:

- **Right to Delete:** Businesses will be required to notify third parties (i.e. contractors, service providers, etc.) to delete any consumer personal information bought or received.

In this situation the consumer must make the request to the business with which they have a direct relationship. This business, in turn, makes the request from the third party.

However, the service provider or contractor does not have to delete the information if it proves impossible or involves disproportionate effort.

- **Right to Know:** Extends the “Right to Know” and “Right to Access” to personal information shared with third parties. Personal information that must be reflected in a response to a “Right to Know” request is now expanded to include any information collected on or after January 1, 2022.

In addition, consumers can also demand that businesses disclose the length of time that personal information or sensitive personal information will be kept.

- **Right to Opt-Out:** The opt-out right is expanded to cover “sharing” of personal information for cross-context behavioral advertising.
- **Opt-In Rights for Minors:** Extends the opt-in right to explicitly include the sharing of personal information for behavioral advertising. Businesses must wait 12 months before asking a minor for consent to sell or share his or her personal information after the minor has declined to provide it.

**What are some other changes made by the CPRA?**

The CPRA amends the CCPA in a wide variety of ways. Additional changes include:

- **Limits business’ liability for violations made by “third-party” businesses.** If, at the time that you disclose consumers’ personal information to a third party, you have no actual knowledge that the third party intends to commit a violation of the CPRA, you are not liable if and when they do commit a violation.
- **Removes requirement to provide access to “specific pieces of personal information”** if that personal information helps ensure security or integrity or as prescribed by a yet-to-be-written CPRA regulation.
- **Specifies how businesses can incentivize consumers** to allow the business to collect/share/

sell their data. Specifically states that businesses may offer loyalty, rewards, premium features, discounts or club card programs without running up against the law’s non-discrimination requirements.

- **Extends the CCPA’s exemptions for employees and B-to-B data** until January 1, 2023.
- **Limits targeted online advertising.** The CPRA creates a new definition of cross-context behavioral advertising that refers to advertising to a consumer based on personal information gleaned from the consumer’s activity across the internet. It also creates limits that clearly target this activity.
- **Includes email account login credentials** in the category of personal information that is potentially subject to private right of action claims in the event of data breaches.
- **Requires contracts that contain specific terms.** Businesses that share or sell consumer’s personal information will be required to enter into contracts with the service providers, contractors and third parties to which they provide this personal information. There is a long list of provisions that these contracts must contain.
- **Amends the definition of “service provider”** and creates a new definition of “contractor.” Separating “service providers” from “contractors” is primarily about

ensuring there’s a written contract in place and the service provider or contractor understands their contractual obligations and duties regarding CPRA obligations.

A contractor is “a person to whom the business makes available a consumer’s personal information for a business purpose pursuant to a written contract” containing the same restrictions that are required in a contract with a service provider, plus some additional terms.

A third party cannot be “the business with whom the consumer intentionally interacts and that collects personal information from the consumer as part of the consumer’s current interaction with the business ...; a service provider to the business; or a contractor.”

**What’s on the horizon for privacy rights in California?**

Expect more legislation on this issue, because the restrictions on the right to amend the CPRA do not prohibit legislators from trying to further extend privacy rights. Bills are already being introduced that would do so.



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## PAPER BY JAN

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In fact, the demand for printing paper is widely expected to rebound further in 2021. The timing, of course, is uncertain and largely dependent on when wide-spread availability of the vaccine enables the economy to open up. This is especially important here in Southern California, where many commercial printers cater to the travel, tourism and entertainment industries—all of which have been severely impacted by the pandemic-related closures and lockdowns.

That said, I am hopeful that by the end of the second quarter things will be in better shape.

**Demand is likely to fall short of 2019 levels**

While paper demand is predicted to rise in 2021, it is not expected to return to what was seen in 2019.

On the uncoated side 2020 demand was down by nearly 25%. We gained some of that back in the second half of 2020, and the Fast Market RISI expects demand to increase by 5% in 2021.

On the coated side, we ended 2020 with demand down 23% from 2019

levels (but up from the much-bigger lows hit in April and May). Demand is expected to further increase about 2.8% in 2021.

**The mills are continuing to reduce capacity**

The demand for printing paper has been declining an average of 2 to 5% per year for quite some time. The pandemic has simply caused things to speed up. To balance supply with demand the North American mills have been steadily reducing capacity, by either idling mills or reengineering machines to make products that are in greater demand.

In the North American market, both the coated and uncoated printing paper sectors had actual or announced capacity reductions in 2020. In the coated paper market, for example, Verso eliminated about 900,000 tons of capacity. In the uncoated paper market, Domtar and PCA (formerly Boise Cascade) are planning to convert 600,000 tons of capacity to liner board or packaging products in 2021.

While prices held steady in 2020, these capacity reductions, combined

with the anticipated business recovery, are likely to result in price increases. We’re already seeing prices starting to rise in other parts of the world for both paper and pulp. Here in North America there was a price increase on coated web products that went into effect in January, followed by an announced price increase for SBS board which will take effect in February. Watch for more price increases in other sectors as the year goes on.

**It’s not all doom and gloom**

Looking ahead, I see three bright spots for commercial printers here in Southern California. Number one is the print packaging area, which has been growing at a nice pace even during the pandemic. Number two is the pent-up demand for travel and entertainment that is likely to be unleashed once the economy starts to open up. This, of course, will lead to increased demand for printing, which in turn drives demand for printing paper.

Number three is the fact that, in spite of everything, it is still a huge market...a huge market that is primed for recovery in 2021.

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## PIASC Events Calendar

JAN  
25**WEBINAR: OSHAlogs.com- Ease of Submitting OSHA Form 300 (Presented by OSTs)**

Monday, January 25 at 11:00 am PT Online  
www.piasc.org/events.

MAR  
24**WEBINAR: How to Gain Client’s Trust in Managing Their Data (Presented by PIM)**

Wednesday, March 24 at 9:30 am PT  
Online  
www.piasc.org/events

FEB  
8**WEBINAR: Importance of Respiratory Protection (Presented by OSTs)**

Monday, February 8 at 11:00 am PT Online  
www.piasc.org/events

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