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Federal Response Unlikely Before California Privacy Law Takes Effect

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With less than a year until the California Consumer Privacy Act takes effect, businesses face growing challenges in complying. Information technology giants are calling for a unifying federal law to preempt varying state data privacy measures sure to follow California's lead, but experts say no response is likely between now and January, when CCPA gets underway.

"I rank the odds of a new federal law passing before January as very low," said Eric Goldman, a law professor at Santa Clara University, where he is co-director of the school's High Tech Law Institute. "Therefore, businesses impacted by CCPA will be forced to make the compliance investments, even if subsequent legal developments eventually moot those investments."

Touted by supporters as an enhancement of data privacy rights and consumer protections, CCPA requires businesses operating within the state to notify residents whether personal information is sold or disclosed to third parties (and allow opt-out of this sale). State residents also have the right to access portable copies of personal information, and delete it, if desired. Businesses must reply within 45 days of receipt.

Even if statutory changes to CCPA may occur before January, the scope of any ensuing amendments is unclear, Goldman said. "[They] could be purely clean up in nature; they could clarify or retrench the law to fix some of its obvious problems; or they could double-down on the law and further expand the scope of privacy protection — my best guess is that it will be a combination of all three," he said.

In the meantime, additional states are acting. "Other states are already cloning and revising CCPA," Goldman said. This variance will compound business challenges, he added.

"Regional and national businesses absolutely will have to navigate an inconsistent patchwork of state laws — there is no good way for businesses to prepare for the challenges this will pose," Goldman said. "Instead, the only way to avoid that fate is to have a federal preemptive law passed as soon as possible."

This is where businesses can play a critical role. "Every business should be actively reminding their legislators of the critical importance of passing a federal privacy law that preempts state law," he said.