

## Businesses Beware: New Requirements for Auto-Renewing Contracts



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Companies doing business in California may be surprised to learn that California has very specific requirements for contracts that automatically renew, and that these requirements have recently become even more strict. California's Automatic Renewal Law (Bus. & Prof. Code § 17600 *et seq.*) was amended earlier this year to provide additional protections for consumers. Any business offering subscription services or using auto-renewing contracts should be aware of the changes and ensure its customer agreements comply with the new law. Renewal terms of agreements not in compliance may be unenforceable, and any goods delivered under the contract may be deemed an unconditional gift to the consumer with no obligation to pay for the goods. Additionally, businesses could be opening themselves up to large civil penalties and class action lawsuits.

The recent amendments will mostly impact subscription and auto-renewing agreements in two ways: (1) stricter disclosure and consent requirements for agreements with free-trial periods; and (2) mandates that consumers be able to cancel subscriptions online.

As of July 1, 2018, any offer for an automatic renewal agreement or subscription agreement that begins with a temporarily discounted rate, such as a free-trial period, must clearly and conspicuously explain how the rate and terms will change upon the expiration of the trial period. The law generally defines "clearly and conspicuously" to mean altering the text by varying the font size, color, or type, or by setting it off with symbols in a way that calls attention to the term so it is easily distinguished from the rest of the contract (*e.g.*, bold font, all caps, or an indented paragraph). Additionally, before charging the consumer's credit or debit card, businesses will now be required to obtain the consumer's affirmative consent to the non-discounted price or the price that will be charged at the end of the trial period.

Subscription cancellation rules have also changed. If a consumer accepts an automatic renewal offer or subscription offer online, businesses must allow the consumer to cancel the agreement entirely online. Businesses may not require

consumers to call or mail in cancellation requests. The law does provide, however, that businesses can require consumers to cancel by email so long as the business provides a pre-formatted email that the consumer can send without any additional information.

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