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Regulatory Update

Updated California and FTC Auto-Renewal Regulations Take Effect

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Update: On July 8, 2025, the United States Court of Appeals for the Eighth Circuit blocked the FTC's amendments to its Negative Option Rule, the first part of which went into effect in January 2025 and the remainder of which was set to go into effect on July 14, 2025. The Eighth Circuit held that the FTC failed to conduct a preliminary regulatory analysis, which is required by law for proposed rule changes for which the cost of implementation on the annual economy is estimated to exceed $100 million. This client alert was originally published on May 19, 2025.

In the fall of 2024, California and the Federal Trade Commission (FTC) amended their respective auto-renewal regulations. The amendments detail new and largely parallel disclosure, consent, and cancellation requirements for any program, as defined by the relevant statute, subject to automatic renewal or continuous service terms. A first tranche of those amendments went into effect in January, and a second tranche – those requiring clear and conspicuous disclosure of material terms and express informed consent under the FTC's Negative Option Rule – will go into effect on July 14, 2025. California's amendments are effective July 1, 2025. Companies offering automatic renewal or continuous service terms, as well as terms in which a free trial is converted into a paid subscription, should review their consent, notice, and cancellation practices as the amendments continue to take effect.

FTC Rule

On October 16, 2024, the FTC announced amendments to the **Negative Option Rule**, formally known as the "Rule Concerning Recurring Subscriptions and Other Negative Option Programs." Under the amended rule (the FTC Final Rule), which unlike the California regulation applies to both B2C and B2B contracts, negative option programs, including the auto-renewal of subscription programs, must adhere to four primary requirements:

- **No Misrepresentations of Material Fact**. Sellers must not misrepresent any material fact "[i]n connection with promoting or offering for sale any good or service" subject to a negative option program, including cancellation terms or deadlines to prevent a charge.

- **Disclosure of Material Terms**. Sellers must disclose all material terms of the transaction prior to obtaining a consumer's billing information, including the fact that consumers will be charged, the frequency or date of charges, the amount the consumer will or may be charged, and information necessary for the consumer to find a cancellation mechanism. Such disclosures must be clear and conspicuous to the consumer.

- **Express Informed Consent**. Sellers must “obtain the consumer’s express informed consent” to auto-renewal terms, and such consent must be separate from any other portion of the transaction. Further, sellers must not “include information that interferes with, detracts from, contradicts, or otherwise undermines consumers’ ability to provide consent” and must keep record of a consumer’s consent for at least three years unless the seller can demonstrate by a preponderance of the evidence “that it uses processes ensuring no consumer can technologically complete the transaction without consent.”

- **Simple Cancellation**. Sellers must provide simple cancellation mechanisms that are at least as easy to use as the mechanisms by which consumers consented to the auto-renewal plans. For sales made online or over the telephone, “at least as easy to use” requires that the cancellation mechanism exist in the same medium and take no more time or effort than the consumer used when enrolling in the plan. If the cancellation mechanism operates online, the mechanism must be easy to find and cannot require that consumers interact with a live or virtual representative (e.g., a chatbot) if the consumer did not have to interact with one to enroll in the offering.

Sections of the FTC Final Rule related to the misrepresentation of material facts and simple cancellation mechanisms went into effect on January 14, 2025. Sections of the Rule requiring clear and conspicuous disclosure of material terms and express informed consent will go into effect on July 14, 2025. As the FTC Final Rule continues to go into effect, it will preempt any state auto-renewal laws (and other similar state laws) to the extent they are inconsistent with its requirements. State laws that afford greater protection than the FTC Final Rule are not inconsistent with the FTC Final Rule. Importantly, the FTC has authority, under Section 18 of the FTC Act, to obtain civil penalties and/or consumer redress for a violation of the FTC Final Rule.

California Law

On September 24, 2024, California amended the **California Automatic Renewal Law** (CARL). The amendments impose requirements on sellers that are similar to, but on the whole more burdensome than, those of the FTC Final Rule. The amendments also expand the scope of CARL to apply to free trial offers that ultimately convert to paid subscriptions (free-to-pay conversions). Prior to its amendment, CARL covered only automatically renewing subscriptions and continuous service offers.

The amendments, which will apply to contracts “entered into, amended, or extended” on or after July 1, 2025, impose the following new requirements on businesses:

- **Express Affirmative Consent**. Businesses must obtain consumers’ “express affirmative consent” to auto-renewal or continuous service terms. This requirement is in addition to businesses’ preexisting obligation to obtain consumers’ “affirmative consent *to the agreement* containing autorenewal terms.” Businesses also must keep records of consumers’ express affirmative consent for at least three years, or one year following the termination of the contract, whichever is longer.

- **Cancellation Medium**. Businesses must allow consumers to cancel their subscriptions “in the same medium” used to enroll or “in the same medium in which the consumer is accustomed to interacting with the business.”

- **Save Offers and “Click to Cancel.”** If a consumer attempts to cancel her subscription online, a business may present the consumer with a “discounted offer, retention benefit, or information regarding the effects of cancellation” (i.e., save offers), so long as the company simultaneously displays a direct link or button titled “click to cancel,” or words to that effect. If a consumer attempts to cancel by telephone, a business may only present a save offer after it has clearly and conspicuously informed the consumer that she may complete the cancellation process at any time by stating that she wants to “cancel,” or words to that effect. The California amendment’s regulation of “save offers” goes beyond the requirements set by the FTC Final Rule.

- **Notices and Reminders**. Businesses must notify consumers of any change(s) to auto-renewal plans in which they are enrolled no less than seven and no more than thirty days before the change(s) take effect. Businesses must also send consumers annual reminders – even if the auto-renewal term is not one year or longer – disclosing the automatically renewing product or service, the frequency and amount of auto-renewal charges, and the cancellation mechanism. Notice must be provided through the same medium used to obtain consent or by the same medium in which the consumer is accustomed to interacting with the business. Notably, such a requirement is not imposed under the FTC Final Rule.

Client Guidance

In light of the recent updates to state and federal auto-renewal laws, clients should adhere to the following general guidance. Paul Hastings encourages its clients to consult counsel for tailored guidance on how to comply.

- Obtain **separate express and affirmative consent** to an offering's auto-renewal or continuous service terms prior to collecting consumer billing information. Such consent may be obtained through the inclusion of a separate check box or opt-in button explicitly asking a consumer whether she consents to the auto-renewal or continuous service terms. Further, the request for consent should detail the fact that consumers will be charged, the frequency and amount of charges, as well as the means to cancel the product or service.

- Send **automatic notifications** to alert consumers enrolled in auto-renewal or continuous service plans of any changes to plan payment or service terms between seven and thirty days *before* the changes take effect.

- Send **annual notifications** to alert consumers enrolled in auto-renewal or continuous service plans of the automatically renewing nature of their product or service, the frequency and amount of auto-renewing charges, and the means to cancel.

- Add conspicuous links or buttons reading "**Click to Cancel**" alongside any discount or special offer displayed to consumers during their attempt to cancel auto-renewing or continuous service plans or offerings.

- Provide a streamlined **means for consumers to cancel** auto-renewal or continuous services that result in the prompt discontinuation of charges.

Our team at Paul Hastings monitors developments in consumer law as regulators continue to scrutinize business practices. Please contact us if you need assistance.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington, D.C. lawyers:

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