



Violating the [Telephone Consumer Protection Act \(TCPA\)](#) could land your business in some hair-raising legal waters.

Consumers can now [file class-action lawsuits](#) for violations such as: “Robocalls, or robotexts, to collect between \$500 and \$1,500 per call or text. The TCPA also lets consumers take legal action against telemarketers who don’t honor the national do-not-call list and collect \$500 per call, for every phone call beyond the first one.”

Clearly, not complying with TCPA could be damaging for any business. The question is: How can businesses differentiate between TCPA compliant and non-compliant calls? Good question. Let’s see.

3 Differences Between TCPA Compliant and Non-Compliant Calls

It can happen to any business... They think they’re following the law when they’re actually breaking it. That’s why the following differences between TCPA compliant and non-compliant calls are based on the [TCPA’s own rules](#). Let’s dive in.

1. Consent for Artificial or Prerecorded voice

Businesses are considered non-compliant if they DO NOT receive consent to use an automated dialing system or a prerecorded voice to call the following people:

- 911 or any other emergency service, which includes the following: hospitals, health care facilities, poison control centers, and more.

- Guests or patients in hospitals, health care facilities, elderly homes, etc.
- Any service that charges for calls, such as paging services, cellphone services, mobile radio services, and so on.

Businesses can stay compliant by gaining consent before every single call.

What's an easy way to get consent from customers?

Well, at least one person has a good answer:

Nicole Strickler, shareholder and partner at Messer Strickler Ltd.

In our [Litigation Defense Webinar](#) (which details powerful tactics for winning or avoiding lawsuits), Nicole Strickler said this about gaining consent:

“If you build consent into your scripts correctly, it can serve as quite the tool in defeating the class action, if your policy or procedure is: every time the collector is speaking to the consumer they say something to the effect of ‘Is this a good number to call you on?’ and the consumer says ‘yes.’”

She went on to justify why this is so critical:

“Building that script into your policy can serve as a nice defense tool because, for class action context, if I can provide that type of evidence to the consumer attorney to say, ‘Hey, maybe on this one-off call or account we didn’t have consent, but let me tell you what our policy and procedure is and here’s a bunch of examples of us using it over the past X amount of time, so you’re never going to get class certification because this is a one-off, this isn’t a pattern or practice of calling without consent.’”

Another good practice is to use [cell phone scrubbing](#).

Businesses can routinely “scrub” their list of phone numbers, removing any customers who have not consented to receive their calls.

2. Sending a Fax to Unauthorized Fax Machines

Businesses would be considered in non-compliance if they send an “unsolicited advertisement” to a fax machine using a fax machine, a computer, or any other device.

However...

Businesses would be in TCPA compliance if they:

- Already had an “established business relationship” with whom they were sending the fax.
- The business obtained the fax machine’s number through “voluntary communication.”
- Or, the call center found the fax machine’s number through publicly available information such as a business website, directory, or advertisement.

3. National Do-Not-Call (DNC) List

Businesses would be found non-compliant in a lawsuit if they call consumers who have placed their number on the [National Do Not Call \(DNC\) Registry](#), maintained by the Federal Trade Commission (FTC).

New businesses have 31 days to comply with the DNC. After that, businesses that make 2 or more calls to numbers on the DNC list can be found in violation of the TCPA. To remain TCPA compliant, the FTC requires businesses to have reliable methods that ensure they don't call numbers on the DNC list.

One way to do this is to maintain an internal DNC list so agents can easily check each number before calling.

Another way is to upload a list of DNC numbers into the contact database so that when new lists are uploaded, they're automatically "scraped" for DNC list numbers and excluded from calling campaigns.

Beyond TCPA Compliance: A Manager's guide to running a successful and compliant cold calling/texting operation.

Staying TCPA compliant is a necessary pain for businesses everywhere.

Too bad it's not the only one they have to worry about.

From Health Insurance Portability and Accountability Act (HIPAA) to the Fair Labor Standards Act (FLSA) and many more, managers must maintain compliance across a host of different regulations.

And frankly, keeping up with all of them *fee/s* almost as bad as paying the settlement money for violating them.

For more Telemarketing Information, check out this link: [Telemarketing Sales Rules](#) .