July 22, 2019

The Honorable Roger Wicker  
Chair  
Committee on Commerce, Science, & Transportation  
United States Senate  
Washington, D.C. 20510

The Honorable Maria Cantwell  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate  
Washington, D.C. 20510

RE: Consumer Data Privacy Legislation and Employee, Applicant, and Contractor Data

Dear Chair Wicker and Ranking Member Cantwell:

Expanding privacy rights for American consumers via consumer privacy legislation should not undermine employers’ efforts to provide wages, benefits, and safe workplaces. Unfortunately, most federal and state consumer data privacy measures—including the California Consumer Privacy Act (CCPA)—would inadvertently make this tradeoff. In drafting consumer data privacy legislation, Congress should consider the unintended consequences of sweeping employee, contractor, agent and job-applicant data in with consumer data protections.

Under California’s law, “consumer” is defined as “a natural person who is a California resident.” That means the rights granted by the CCPA—including consumers’ right to be forgotten, to have prescribed forms of disclosure, and to opt out of the transfer of personal data—could be applied to employee, job-applicant, contractor and agent data.

While these rights may be a positive development for consumers, they do more harm than good if applied broadly in the employment context.

1. There are clear and vital reasons for employers to process employment-related personal information about employees and contractors. Employers collect and process information about workers that is essential for issuing pay checks, administering benefits—such as health insurance and paid leave—and withholding taxes.

In addition to these significant employment-related issues, there could be safety and security concerns. California Assembly Member Ed Chau, a key sponsor of the CCPA, noted that an employee accused of sexual harassment could request that complaints about them be removed from company files. Another concern is that an employee requesting disclosure of household data could gain access to sensitive information of other individuals.
2. **There is no consensus or call for federal regulation of employee, contractor, agent or job-applicant data privacy**—unlike what is happening with online consumer data. In the case of consumer privacy, a broad and bipartisan cross section of groups—primarily referencing examples involving online consumer data—has indicated support for such legislation.

3. **Much of the employment-related data employers collect and process is required by state and/or federal law and is already protected** by laws such as HIPAA (regulating health information uses) and the Fair Credit Reporting Act (regulating background checks and other uses of personal information).

California legislators did not intend that the CCPA cover employment-related data. Recognizing that their state’s law could be read to include data associated with the employer relationship, sponsors of the CCPA, led by Mr. Chau, are working to avoid the issues listed above by amending the law to refine its definition of “consumer.”

Recently, the California Assembly unanimously passed a bill (AB 25) amending the CCPA to exclude employment-related data collected by a business from a person in their capacity as an employee, job applicant, contractor, or agent. The bill ensures that workers retain their rights as consumers by mandating that the employment-related data must be used “for purposes compatible with the context of that person’s activities for the business as a job applicant, employee, contractor, or agent of the business.” Having passed out of the Assembly, the California Senate is now considering the bill.

In addition to important items such as establishing a uniform federal standard on data privacy, the employer community supports efforts like AB 25 that would appropriately distinguish employment-related data from consumer data.

**Congressional Action Requested:** As Congress works on consumer privacy legislation, we encourage members to think about the inherent differences between employment-related and consumer data. Any federal consumer privacy legislation must be clear in its scope—focused on consumers. Such consideration would enhance legislation that addresses consumer privacy concerns while avoiding undermining employers’ efforts and obligations to provide leading wages, benefits, and a safe workplace.

Sincerely,

HR Policy Association
The American Staffing Association
The Society for Human Resource Management