

AMERICAN PAYROLL ASSOCIATION

March 17, 2022

Senator Luis R. Sepúlveda
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New York Senate
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Assemblywoman Catalina Cruz
Sponsor, A1955
New York Assembly
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Senator James Skoufis
Chair, Committee on Investigations and
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New York Senate
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Assemblyman Kenneth Zebrowski
Chair, Standing Committee on
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New York Assembly
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Re: Concerns and Comments on Proposed Pay Data Reporting Legislation, A1955/S2777

Dear Senators and Assemblypeople,

The American Payroll Association (APA) submits the following comments on A1955/S2777 legislation, which enacts expansive data requirements that could be overly burdensome to payroll professionals and their employers, as well as not have the intended outcome in terms of applicability of the data collected. The APA is concerned about the transition to any new or expanded reporting system and its potential effect on existing state systems as well as the implementing burden of collection, storage, and development on reporting of the additional data on payroll management.

About the American Payroll Association

The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

The APA understands and supports the important goal of equal pay with the collection of accurate wage data. This bill's intent of ending employment discrimination is something

the APA agrees with and considers an important public policy worthy of New York State's attention.

Overly Broad Data Collection

Under this legislation as written, a very broad amount of data is collected, split into two categories: demographic and equity measurements. Together, these categories include each employee's race, ethnicity, age, sex or gender identity or expression, job category, date of hire, salary or wages, training received, raises, promotions, disciplinary actions, terminations and benefits, including but not limited to benefits or privileges such as flexible scheduling, the ability to work from home, or the ability to bring children to work.

Payroll professionals are frequently part of employer teams to address labor compliance, ensure employees are treated fairly, and maintain business competitiveness. Therefore, the APA has an interest in how the New York Department of Human Rights (DHR) plans to collect and use pay data. The extensive detail requested from employers subject to these reporting requirements is overly broad without first considering what can conceivably be collected, stored, anonymized, and aggregated into a report. The APA would be pleased to assist DHR in identifying its data needs while preserving the important role that payroll professionals play in compliance.

Robust Compliance Education Required

APA members have extensive experience in reporting wage and other workforce information to every state workforce agency across the United States. As such, we know it may be difficult to train every employer who fits the requirements to effectively remit the necessary information.

Robust state education would be needed to prevent accidental non-compliance. Section 296-E states,

Any employer with greater than one hundred persons in employ per calendar year or who bids, applies, is awarded or receives any combination of state or municipal contracts or grant funds directly or indirectly in excess of fifty thousand dollars per calendar year shall file an annual report....

The mere bidding on or application for state or municipal contracts or grants triggers required reporting under the section. It would be imperative for all employers bidding on contracts or applying for grants to be informed of the reporting requirement prior to such actions taking place, lest they become accidentally non-compliant.

Additionally, the threshold of \$50,000 for “directly or indirectly” receiving funds is likely to place a burden on smaller employers or organizations who bids, applies for or receives multiple state or municipal grants in any single calendar year. The burden of reporting such a large amount of previously uncollected information in a singular report could disproportionately impact the ability of payroll professionals for small non-profits and employers to ensure that employees receive their earned wages on time and accurately. The failure to include a definition or explanation of how entities subject to reporting requirements would “indirectly receive” funds, which are to be included in the calculation of the \$50,000 threshold, the definition of training received, and disciplinary actions provides another opportunity for confusion and accidental non-compliance, even with a broad state education campaign to inform employers of the regulations.

Some Required Elements May be Infeasible

Elements such as training received, raises, promotions, disciplinary actions, terminations and benefits would not be easily reportable in any useful format. There would likely be many instances of “training”, for example. In order to generate coherent information on training, for example, the Department would need extensive definitions and guidance on what qualifies to be reported and how the various different kinds of training should be identified. Thousands of employers would need to be trained on how to categorize, enter, and code every qualifying event, which would be a huge undertaking. Similarly, the state may receive many instances of reportable events covering raises, promotions, and disciplinary actions, and presumably would need each to be specifically identified as to the type/nature, dates, percentage or value, and other measures.

Short Timeframe for Implementation

As written, these bills are to take effect one year after becoming law, giving both the DHR and employers subject to reporting requirements, which includes identifying and collecting data that is generally not part of employer’s HRIS systems, within a very short amount of time to establish systems to ensure compliance. The gathering, organization, and reporting of the large amount of data included in this legislation will require significant configuration and coordination between employers, third party service providers, and the state, and is a goal that will be difficult to meet in the time frame allotted.

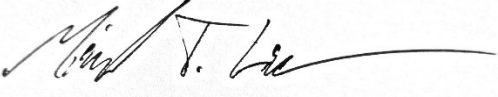
A1988/S453 As An Alternative

The APA asks that you consider some of the elements contained in A1988/S453 because we believe that it may lessen the compliance burden for employers as it ties in to existing

EEO-1 reporting that is required at the federal level by the U.S. Equal Employment Opportunity Commission. By using the same reporting requirements for companies that already file an EEO-1 and allowing them to submit the EEO-1 as opposed to an entirely new report with much broader categories and greater detail, A1988/S453 may enable the state of New York to obtain the pay data it desires without placing undue burden on payroll professionals and their employers.

Again, the APA thanks you for your time and consideration of this very important topic. To discuss further the impacts on payroll professionals or their employers and potential solutions, please contact Mike Linehan, Assistant Manager of Government Relations, at 443-254-2645 or mlinehan@americanpayroll.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Linehan", with a long horizontal flourish extending to the right.

Mike Linehan
Assistant Manager, Government Relations

For Cochair, GRTF State and Local Topics Subcommittee:

Pete Isberg
Carlanna Livingstone, CPP
Bruce Phipps, CPP

Cc:

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