

AMERICAN PAYROLL ASSOCIATION

March 25, 2022

Representative Margaret O'Neil
Sponsor, LD 1945
Maine House of Representatives
Margaret.ONeil@legislature.maine.gov

Re: LD 1945, An Act To Regulate the Use of Biometric Identifiers

Dear Representative O'Neil,

The American Payroll Association (APA) requests clarity on and expansion of the exceptions for legitimate employer biometric identifier systems that protect employees in LD 1945, An Act To Regulate the Use of Biometric Identifiers. Privacy and protection of employees' personally identifiable information (PII) are of paramount concern to APA and its payroll professional members. The APA applauds the objective of the legislation to establish effective consumer protections without unduly impeding the critical functioning of business activity. However, the proposed legislation does not fully recognize employer biometric time-keeping and security systems that help ensure that employees are paid full and fair wages and limit who can access employee data.

ABOUT THE APA

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 and regulations. 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 workers.

USE OF BIOMETRIC INDICATORS IN PAYROLL MANAGEMENT

APA's payroll professional members are directly responsible for managing employees' PII and pay-related data and are keenly aware of the security risks. Because biometric systems are unique to each employee, they can provide greater protections from access by unauthorized individuals. Employers cannot sell or trade this information. They do share the information with outsourced entities, such as payroll service providers, under agreements that require the same level of data protections.

With commercial systems involving biometric identifiers, employees must acknowledge and receive training in use of the system for purposes of access, timekeeping, and payroll administration. In advance of use, employees are provided with system information and acknowledge that they received the information. The provided system information includes enrollment procedures, purpose and use, data storage and destruction, and security measures.

Biometric time-keeping systems ensure that employees hours are recorded accurately. Other employees and unauthorized individuals cannot interfere and change the hours. This ensures that employees are paid for the hours that they worked, including overtime.

Facial recognition technology, in conjunction with voice activation features, have become increasingly sought after during the COVID-19 pandemic because of their ability to provide a touchless experience for employees.

CONCERNS WITH SPECIFIC BILL PROVISIONS

Section §9603 and Employer Exceptions

The APA urges greater employer exceptions in Section §9603 to accommodate use of employer biometric systems. In Section §9603 private entities that collect or use biometric identifiers in Maine would be required to establish and make publicly available guidelines for permanently destroying biometric identifiers. The destruction must occur following the earliest of the end of the initial purpose or within one year after the individual's last interaction with the private entity. The public requirement is qualified by Subsection (3) if the biometric identifiers apply only to employees and when used solely for internal operation.

The following are provided for your consideration:

- Subsection (3) is unclear on whether the term “within the private entity” includes outsourced services, such as payroll service providers, earned wage access vendors, third-party workers compensation entities, and insurance companies. In addition, this exception only accounts for public disclosure of guidelines not to the destruction of biometric identifiers.
- The provision on the deletion of biometric information if the initial purpose for collecting is satisfied requires greater exclusions. The definition of satisfied is not clear and could leave employers and payroll professionals exposed should the definition of “satisfied” the employee uses not meet the same definition the employer uses.
- In some instances, beneficiaries are identified through biometric identifiers and this information is shared with financial institutions, such as for retirement accounts. The employer exceptions do not accommodate for access by beneficiaries.

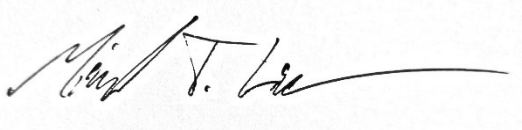
Section §9607 and Private Right of Action

The APA requests that the Maine legislature eliminate the private right of action for legitimate employer and payroll service provider biometric systems in Section §9607. There are appropriate avenues for employees to challenge employer practices through the Maine Department of Labor and Attorney General's Office. In the employment context, the private right of action opens the door for individuals and attorneys to collect huge amounts of money without protecting employees PII and payroll management systems.

The APA supports the transparency and reporting requirements in LD 1945, but also supports the use of available tools to protect employees' information and ensure that employees are paid fair and full wages. These important employee protections should not be sacrificed by restrictions on use of biometric identifiers in Maine law.

Thank you for your consideration of biometric identifiers in the employment context. To discuss these issues further, please contact me at mlinehan@americanpayroll.org or 443-254-2645.

Sincerely,



Michael Linehan,
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