April 9, 2021

The Honorable Patty Murray   The Honorable Richard Burr
Chair of the Health, Education, Labor, and Pensions   Ranking Member of the Health, Education, Labor,
Committee   and Pensions Committee

Re: Call for Public Comment on Workforce Policies

Dear Chair Murray and Ranking Member Burr:

We are pleased to submit this letter and attached resources for consideration as the Committee begins bipartisan discussions on workforce policies. We ask the Committee to ensure that workforce training programs provide education about job-seekers' rights and employers' responsibilities, particularly as employers rely more heavily on opaque hiring technologies.

Many employers have begun to use technology at every stage of the hiring process, including to advertise for positions and affirmatively attract applicants, automate resume screening, administer and evaluate aptitude and personality assessments, and analyze applicants' faces and voices in virtual interviews.[1] These tools pose enormous risks for discrimination on the basis of disability, race, and other protected characteristics. Advocates have called on employers and vendors to conduct in-depth assessments of these tools to identify bias, and to increase transparency about when and how these tools are used. Advocates have also called on regulators to proactively investigate these tools to determine whether they violate civil rights laws.

Still, many jobseekers are unfamiliar with the use of these technologies and the risks they may pose. This lack of familiarity paired with existing discrimination in hiring can lead to increased barriers to employment, particularly for people of color, people with disabilities, English language learners, English speakers with non-native accents, as well as transgender, nonbinary, and gender nonconforming people, among others.

Everyone deserves a fair chance at obtaining a good job, and especially now, when so many working people have lost jobs during the pandemic, Congress must ensure that the communities hardest hit by the economic and health effects of the pandemic are not shut out of opportunity because they lack information about the hiring process. A cottage industry of private companies has begun to emerge to train workers with financial means on how to craft effective resumes for algorithmic screening and succeed in virtual interviews, giving rise to yet further inequities in access to employment for those without the means to afford such training.

In July 2020, a group of organizations signed on to a statement of Civil Rights Principles for Hiring Assessment Technologies. This set of principles seeks to "guide the development, use, auditing, and oversight of hiring assessment technologies, with the goals of preventing discrimination and advancing equity in hiring." The principles are organized into five categories; nondiscrimination, job-relatedness, notice and explanation, auditing, and oversight and accountability. The notice and explanation category details that applicants should be

---

[1] Upturn, *Help Wanted: An Examination of Hiring Algorithms, Equity, and Bias*, December 2018, https://www.upturn.org/reports/2018/hiring-algorithms/.

meaningfully notified about how they will be assessed in hiring, so they can seek redress under existing laws or request accommodations.

To that end, we ask that the Committee work with the civil and worker rights advocacy community and employers to create training to better ensure that the workforce can self-advocate when encountering hiring technologies like video interviews, gamified assessments, and resume screens. Training tools should be made available to jobseekers so that jobseekers can access employment opportunities and understand their rights not to be discriminated against in the hiring process. This training should be culturally appropriate, sensitive to the needs of jobseekers in various industries, accessible to a wide range of learners, and taught by trusted individuals in the community.

Substantively, the training should, among other topics, help people know about the use of hiring technologies, understand the metrics by which they may be evaluated and their right to ask for accommodations when appropriate, identify potential discrimination, and explain what to do if jobseekers experience discrimination in the hiring process. Trainings should advise employers to share information about how their hiring technologies evaluate candidates, including reasons for automated rejections, because this hiring technology is often developed without the transparency that candidates need to meaningfully challenge how the system may be evaluating them or to request accommodations.

Training is an important first step to prepare jobseekers for modern challenges in hiring processes. However, we urge the Committee to incorporate the Civil Rights Principles for Hiring Assessment Technologies in efforts to support the workforce beyond training as well. As mentioned above, the range, prevalence, and advancement of hiring technologies must be met with clearer guidance, proactive investigation, and rigorous enforcement mechanisms.

Thank you for your consideration. For more information, please contact Olga Akselrod (oakselrod@aclu.org), Ridhi Shetty (rshetty@cdt.org), Sarah David Heydemann (sheydemann@nwlc.org), Gaylynn Burroughs (burroughs@civilrights.org), and Aaron Rieke (aaron@upturn.org).

Sincerely,

American Civil Liberties Union (ACLU)

Center for Democracy & Technology

National Women's Law Center

The Leadership Conference on Civil and Human Rights

Upturn

Attachments:

Civil Rights Principles for Hiring Assessment Technologies, July 2020,
https://civilrights.org/resource/civil-rights-principles-for-hiring-assessment-technologies/

Center for Democracy & Technology, *Algorithm-driven Hiring Tools: Innovative Recruitment or Expedited Disability Discrimination?*, December 2020, https://cdt.org/wp-content/uploads/2020/12/Full-Text-Algorithm-driven-Hiring-Tools-Innovative-Recruitment-or-Expedited-Disability-Discrimination.pdf.

Upturn, *Essential Work: Analyzing the Hiring Technologies of Large Hourly Employers*, March 2021, https://www.upturn.org/static/reports/2021/essential-work/files/upturn-essential-work.pdf.