



February 3, 2020

The Honorable Suzanne Bonamici
Chairwoman
Civil Rights and Human Services Subcommittee
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

The Honorable James Comer
Ranking Member
Civil Rights and Human Services Subcommittee
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

**RE: Civil Rights and Human Services Subcommittee Hearing on
The Future of Work: Protecting Workers' Civil Rights in the Digital Age**

Dear Chairwoman Bonamici and Ranking Member Comer:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, and Upturn, a nonprofit organization that advances equity and justice in the design, governance, and use of technology, we thank you for the opportunity to submit our views on hiring technologies and ask that this statement be entered into the record of the Subcommittee hearing entitled "The Future of Work: Protecting Workers' Civil Rights in the Digital Age," scheduled for February 5, 2020.

Hiring is a critical gateway to economic opportunity, determining who can access consistent work to support themselves and their families. Technology is changing every step of the hiring process. Today's workforce reflects decades of discrimination against individuals and communities that have been historically marginalized in society. With significantly more transparency, oversight, and public deliberation, some new hiring technologies might help improve upon this baseline. However, this will not happen by default.

In 2014, The Leadership Conference was pleased to join with a broad national coalition of civil rights, technology policy, and media justice organizations in endorsing Civil Rights Principles for the Era of Big Data.¹ These Principles emphasized, among other things, the importance of ensuring fairness in automated decisions. More specifically, they explained

¹ The Leadership Conference on Civil and Human Rights, Civil Rights Principles for the Era of Big Data, (Feb. 27, 2014), <https://civilrights.org/civil-rights-principles-era-big-data/>.

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Vanita Gupta

that “[s]ystems that are blind to the preexisting disparities faced by ... communities [that are disadvantaged or that have historically been the subject of discrimination] can easily reach decisions that reinforce existing inequities.”

A recent Upturn report, *Help Wanted: An Examination of Hiring Algorithms, Equity, and Bias*, conducted a survey of predictive tools throughout the entire hiring process — including sourcing (e.g., online advertising and job boards), assessments (e.g., tests, games, and video interviews), and selection (e.g., background checks and offer terms).² The report found that, at each of these stages, predictions based on past hiring decisions and evaluations can reproduce patterns of inequity, even when tools specifically intentionally exclude race, gender, age, and other protected attributes.

In October 2019, together with Upturn, the Urban Institute, and the Lawyers' Committee for Civil Rights Under Law, The Leadership Conference convened about 50 people with expertise across disciplines — from computer and data scientists, industrial and organizational psychologists, employment lawyers, and advocates to explore a path forward to ensure fairness and equity in the design and deployment of hiring algorithms. Building on those discussions, civil rights organizations are working together to identify principles for employers, technology vendors, and other organizations to advance civil rights. These are issues of active, urgent interest to a wide range of stakeholders.

While this work is ongoing, we offer the following basic recommendations to guide this Committee’s inquiry:

1. **Hiring technologies should not discriminate.** There is already ample public evidence that hiring technologies can adversely affect protected groups, even when they do not directly consider protected attributes.³ Moreover, hiring assessment technologies, which can include games and facial analysis, can create novel barriers for people with disabilities. Statistical testing for discrimination, while critical, will not guarantee that a hiring assessment is fair. All organizations involved in employment selection—including employment agencies, hiring assessment developers, and vendors—must holistically scrutinize their use of new technology.
2. **Job applicants deserve to be evaluated based on their abilities to perform the job.** Technology cannot substitute for a rigorous analysis of the skills and abilities required for a particular job. While machine learning can easily identify abstract patterns that are statistically

² Upturn, *Help Wanted: An Examination of Hiring Algorithms, Equity, and Bias*, December 2019, <https://www.upturn.org/reports/2018/hiring-algorithms/>.

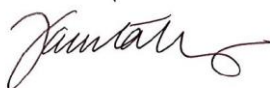
³ See, e.g., Ali et. al., *Discrimination through optimization: How Facebook’s ad delivery can lead to skewed outcomes*, April 2019, <https://arxiv.org/abs/1904.02095> (showing the potential for discrimination in Facebook’s ad delivery); Sapiezynski et. al., *Algorithms that "Don't See Color": Comparing Biases in Lookalike and Special Ad Audiences*, December 2019, <https://arxiv.org/abs/1912.07579> (showing the potential for discrimination in Facebook’s ad targeting); Dave Gershgorn, *Companies are on the hook if their hiring algorithms are biased*, Quartz, October 22, 2018, <https://qz.com/1427621/companies-are-on-the-hook-if-their-hiring-algorithms-are-biased/>; Drew Harwell, *A face-scanning algorithm increasingly decides whether you deserve the job*, Washington Post, November 6, 2019, <https://www.washingtonpost.com/technology/2019/10/22/ai-hiring-face-scanning-algorithm-increasingly-decides-whether-you-deserve-job/>.

correlated with positive job performance in a particular population, these patterns are often not clearly related to job requirements.

3. **Job applicants should be given appropriate notices and explanations.** Today, it can be difficult for applicants to know when they are being evaluated by hiring assessment technologies, or understand the nature of the assessment. This can prevent people with disabilities from knowing when and whether they will need a reasonable accommodation. Moreover, hiring algorithms should be an opportunity for job applicants, not just employers or technology companies, to receive useful insights about their performance.
4. **Employers and vendors should be more transparent about their use of hiring technologies and conduct public, third-party audits.** It can be incredibly difficult for civil society organizations, researchers, and regulators to understand how hiring technologies are being used in the market today. This inhibits a fulsome understanding of how technology is affecting job seekers' civil rights and prevents the development of remedies that may be necessary to ensure that a system works fairly and protects the interests of those that are disadvantaged or have historically been the subject of discrimination. Organizations that develop or use hiring assessments should also maintain the data necessary to audit assessments for discrimination and job-relatedness.
5. **Hiring technology should be subject to more proactive oversight.** The U.S. Equal Employment Opportunity Commission (EEOC) must have the means and tools to conduct proactive oversight and enforcement over organizations that develop and use hiring assessment technologies. In today's employment selection process, applicants cannot be expected to independently initiate complaints of discrimination.

We appreciate the Subcommittee's attention to these important issues and look forward to working with you to ensure hiring technologies are developed and used in ways that respect people's civil rights. Please contact Gaylynn Burroughs, Senior Policy Counsel at The Leadership Conference on Civil and Human Rights, at burroughs@civilrights.org or Aaron Rieke, Managing Direct at Upturn, at aaron@upturn.org if you would like to discuss these issues further.

Sincerely,



Vanita Gupta
President & CEO
The Leadership Conference



Harlan Yu
Executive Director
Upturn