



AMERICAN BENEFITS COUNCIL

June 12, 2019

Delivered via email

Assembly Member Ed Chau
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0009

Senator Bill Dodd
California State Senate
State Capitol
Room 4032
Sacramento, CA 95814-4900

Senator Robert Hertzberg
California State Senate
State Capitol
Room 313
Sacramento, CA 95814-4900

Re: Assembly Bill 25

Dear Assembly Member Chau and Senators Dodd and Hertzberg:

We are writing regarding AB 25, which would amend the California Consumer Privacy Act of 2018 (CCPA) to exclude from the definition of “consumer” a person whose information is collected in the course of any person acting as an employee. We applaud your leadership in this important clarification, and write to ask for your help in further clarifications.

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans. Many of our members are headquartered in California and they, together with companies headquartered elsewhere, have many employees who work in California or administer health and retirement plans for individuals working or retired in California.

AB 25 clarifies that an employee is not treated as a consumer if personal information is collected within the context of the employee's employment. This is critical to ensure that employees in California can continue to receive valuable health and retirement benefits offered through work. Employers and the vendors they hire to administer benefit plans must collect certain information in the ordinary course to properly administer the benefit plans; this includes information necessary to deliver those benefits to the employee, or the employee's spouse, dependent, or beneficiary. If ordinary information used to administer plans is subject to CCPA's rules, employers may decide to limit the scope of benefits to employees in California, and may be unable to properly collect and store contact information for spouses, dependents, and beneficiaries who are due benefits. We believe AB 25 is an important step in preventing California employees from losing valuable benefits.

We have some additional suggestions and comments for further clarifications to implement the intent of AB 25:

- Ideally, the language should specifically reference the employer's employee benefit plans. While this is implicit in the "context" of employment, benefit plans are so critical to financial and health security that there should not be any doubt. This is particularly important because the current language requires that any information collected be used "solely" in the context of the individual's role as an employee.
- The language should make clear it applies to former employees and, thus by extension, to the spouse, dependent, and beneficiary of the former employee, so long as the information was collected in the context of the employer's benefit plans. To illustrate a simple example, an employer must collect address and other contact information regarding whomever an employee designates to receive life insurance or retirement accounts upon the unexpected death of the employee. To the extent the designated beneficiary also is deceased, the employer may need to collect information about other natural persons, such as the identity of the executor of the employee's estate. Collecting this routine information should not result in the beneficiary or other necessary persons being a "consumer" under CCPA.
- Generally, employers use outside vendors to administer their benefit plans, which are complex. These vendors act at the direction of the employer, who serves as fiduciary to the plan. We believe the intent of the bill is that if such a vendor, at the direction of the employer, collected information to administer the employer's benefit plans, the employer would still be viewed as having collected the information. However, we would support a clarification in this regard.

- Optimally, the definition of consumer would exclude a person whose personal information is collected and used solely for purposes *compatible* with the context of that person's role, or former role, as a job applicant, employee, contractor, or agent of the business, or for purposes compatible with the context of employment-based benefit programs, including spouses, family members and others covered by such benefit programs.

On behalf of the many Council members who employ or administer benefits to employees in California, we appreciate your efforts to improve upon CCPA. Thank you for your consideration of our views. Should you have any questions or wish to discuss our comments further, please contact me at (202) 289-6700 or by email at ldudley@abcstaff.org.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley". The signature is written in black ink and is positioned below the word "Sincerely,".

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy