

Bill Summary

The Workplace Technology Accountability Act

AB 1651, 2022

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The Problem

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Employers are increasingly using electronic monitoring to track their workers' every move and using algorithms to make decisions about them – with potentially big effects on their wages, working conditions, and race and gender equity.

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But right now, employers are adopting these largely untested technologies in a regulatory vacuum, with virtually no oversight or guardrails.

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That leaves the door wide open for abuses:

- Biased hiring algorithms that result in discrimination against people of color and women
- Productivity monitoring systems that push workers to the point of injury in warehouses
- Use of surveillance and profiling to identify workers trying to organize
- Demeaning task direction software that robs workers like hotel workers and truck drivers of their agency and skill
- Just-in-time scheduling systems that wreak havoc with retail workers' schedules and family life
- Unfair disciplinary actions based on incomplete or erroneous surveillance data
- Automatic firing by algorithm

The Workplace Technology Accountability Act

Establishes worker rights and employer responsibilities around the use of worker data, electronic monitoring, and algorithms in the workplace

Transparency

The Act ensures that:

- Employers will notify workers about all relevant data collection, electronic monitoring, and algorithms in the workplace, prior to use
- Employers will explain how these systems can affect employment decisions, including their assessment of workers' performance or productivity
- Workers will have the right to access and correct their data

Responsible Use

The Act ensures that:

- Employers will only collect worker data if it's strictly necessary for workers to do their jobs or for a valid business purpose
- Employers won't monitor workers off duty
- Employers won't use unproven or high-risk technologies like facial recognition
- Employers won't use algorithms to predict worker behaviors unrelated to their jobs
- Electronic monitoring and algorithms won't be used to automate decisions like hiring, firing, discipline, and promotion

Accountability

The Act ensures that:

- Employers will conduct impact assessments for all algorithms and data collection before use, and submit them to the state labor agency and DFEH
- Employers will consult workers throughout the assessments
- Electronic productivity systems will be reviewed by the state labor agency before implementation
- The Act will be enforced by the labor agency, and workers will have a private right of action

Key provisions, by chapter

Chapter 1: General Provisions

- The bill covers all workers, including employees, independent contractors, and job applicants.
- All protections and rights also extend to worker representatives.
- All employers are covered, including their labor subcontractors.
- Vendors that provide technology services to the employer are also regulated.

Chapter 2: Worker Data

- Employers must give workers detailed prior notice about what data they intend to collect on workers, what rights workers have, and how the data will be used to make employment decisions.
- Workers have the right to access and correct their data.
- Employers can only collect worker data if necessary for workers to do their jobs or for the employer to administer wages and benefits.
- Employers cannot sell or license worker data to third parties.

Chapter 3: Electronic Monitoring

- Employers are only allowed to use electronic monitoring for specific purposes, affecting the smallest number of workers.
- Employers must give prior notice of any electronic monitoring.
- Employers are prohibited from using electronic monitoring that results in a violation of labor and employment laws; records workers off-duty or in sensitive areas; uses high-risk technologies, such as facial recognition; or identifies workers exercising their rights under employment and labor law.
- Productivity monitoring systems must be documented and reviewed by regulatory agencies overseeing workplace health and safety before implementation.
- Employers are prohibited from relying exclusively on data from electronic monitoring when making decisions like hiring, firing, discipline, or promotion. Instead, the employer must independently corroborate the data, and provide the worker with full documentation.

Chapter 4: Algorithms

- Employers must give workers detailed prior notice before using any algorithmic decision systems. The employer must also share any relevant impact assessments.
- Employers are prohibited from using algorithms that result in a violation of labor and employment laws; make predictions about a workers' behavior that are unrelated to their job responsibilities; identify workers exercising their legal rights under employment and labor law; or use high-risk technology, such as facial or emotion recognition technologies.
- Productivity algorithms must be documented and reviewed by regulatory agencies overseeing workplace health and safety before implementation.
- Employers are prohibited from relying exclusively on outputs from algorithms when making decisions like hiring, firing, discipline, or promotion. Instead, the employer must independently corroborate the algorithms' output via meaningful human oversight, and provide the worker with full documentation.

Chapter 5: Impact Assessments

- Employers must conduct impact assessments for all algorithms and data collection systems that affect workers, and submit them to the state labor agency.
- Impact assessments must fully evaluate the risks to workers, including discrimination, health and safety, and privacy risks.
- Employers must consult workers and incorporate their feedback throughout the assessments.
- If potential harms are identified, an employer must implement mitigation measures.
- The state labor agency has the authority to take action on the impact assessments, including requiring additional information or prohibiting the use of harmful algorithms.

Chapter 6: Enforcement

- Workers have the right to seek penalties and injunctive relief for any violations of this bill, either by bringing a civil action or by filing an administrative claim.
- The state labor agency will enforce the provisions of this bill and may investigate, collect penalties, or obtain injunctive relief. It will prioritize strategic enforcement and conduct workplace audits.