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AB-1221 Workplace surveillance tools. (2025-2026)

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AMENDED IN ASSEMBLY MAY 06, 2025

AMENDED IN ASSEMBLY APRIL 21, 2025

AMENDED IN ASSEMBLY MARCH 28, 2025

CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

ASSEMBLY BILL

NO. 1221

Introduced by Assembly Member Bryan

~~(Coauthor: Assembly Member Elhawary)~~(Coauthors: Assembly Members Elhawary and Lowenthal)

(Coauthor: Senator McNerney)

February 21, 2025

An act to add Part 5.7 (commencing with Section 1550) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1221, as amended, Bryan. Workplace surveillance tools.

Existing law establishes the Division of Labor Standards Enforcement within the Department of Industrial Relations. Existing law authorizes the division, which is headed by the Labor Commissioner, to enforce the Labor Code and all labor laws of the state, the enforcement of which is not specifically vested in any other officer, board, or commission.

This bill would generally regulate the use of workplace surveillance tools and an employer's use of worker data. The bill would, among other things, require an employer, at least 30 days before introducing a workplace surveillance tool, to provide a worker who will be affected a written notice that includes, among other things, a description of the worker data to be collected, the intended purpose of the workplace surveillance tool, and how this form of worker surveillance is necessary to meet that purpose. The bill would define "employer" to include public employers, as specified. The bill would prohibit an employer from transferring, selling, disclosing, or licensing worker data to a vendor, unless the vendor is under contract to analyze or interpret the worker data and the contract includes certain terms. The bill would prohibit an employer from using certain workplace surveillance tools, including a workplace surveillance tool that incorporates facial, gait, or emotion recognition ~~technology~~; *technology, except as specified. The bill would also prohibit an employer from using a workplace surveillance tool to infer specified categories of information about a worker, including, among others, their immigration status, veteran status, ancestral history, religious or political beliefs, disability status, criminal record, or credit history.* The bill would require the Labor Commissioner to enforce the bill's provisions, would authorize an employee to bring a civil action for specified remedies for a violation of the bill's provisions,

and would authorize a public prosecutor to enforce the provisions. The bill would subject an employer who violates the bill's provisions to a civil penalty of \$500 for each violation. The bill would define various terms for purposes of its provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 5.7 (commencing with Section 1550) is added to Division 2 of the Labor Code, to read:

PART 5.7. Workplace Surveillance Tools

1550. As used in this part:

(a) "Agency" means the Labor and Workforce Development Agency or any of its designees.

(b) (1) "Authorized representative" means a person or organization appointed by the worker to serve as an agent of the worker.

(2) "Authorized representative" does not mean a worker's employer.

(c) (1) "Employer" means a person or governmental entity that directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, benefits, other compensation, hours, working conditions, access to work or job opportunities, or other terms or conditions of employment, of any worker, including all branches of state government, or the several counties, cities and counties, and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof.

(2) "Employer" includes an employer's labor contractor.

(d) "Employment-related decision" means a decision by an employer that impacts wages, wage setting, benefits, compensation, hours, work schedule, performance evaluation, hiring, discipline, promotion, termination, job tasks, skill requirements, responsibilities, assignment of work, access to work and training opportunities, productivity requirements, workplace health and safety, and any other terms or conditions of employment.

(e) "Public prosecutor" has the same meaning as defined in Section 180.

(f) "Neural data" means information that is generated by measuring the activity of an individual's central or peripheral nervous system, and that is not inferred from nonneural information.

(g) "Vendor" means a third party, subcontractor, or entity engaged by an employer or an employer's labor contractor to provide software, technology, or a related service that is used to collect, store, analyze, or interpret worker data or worker information.

(h) "Worker" means a natural person, an employee of, or an independent contractor providing service to, or through, a business or a state or local governmental entity in a workplace.

(i) "Worker data" means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a covered worker, regardless of how the information is collected, inferred, or obtained.

(j) "Workplace surveillance tool" means any system, application, instrument, or device that collects or facilitates the collection of worker data, activities, communications, actions, biometrics, or behaviors, or those of the public that are also capable of passively surveilling workers, by means other than direct observation by a person, including, but not limited to, video or audio surveillance, continuous incremental time-tracking tools, geolocation, electromagnetic tracking, photoelectronic tracking, or that utilizes a photo-optical system or other means.

1551. (a) (1) At least 30 days before introducing a workplace surveillance tool, an employer shall provide to any worker that will be directly or indirectly affected a plain language, written notice, pursuant to subdivision (e), in the language in which routine communications and other information are provided by the employer to workers.

(2) The employer may provide the notice via a simple and easy-to-use method, including an email, a hyperlink, or another written format.

(3) The notice shall be separate from any other communication and shall not contain any information on another subject.

(b) An employer who began using a workplace surveillance tool before January 1, 2026, shall provide the notice described by subdivision (a) before February 1, 2026.

(c) An employer shall maintain an updated list of all workplace surveillance tools in use and provide the notice described by subdivision (a) to any worker hired after the date on which the employer complied with subdivision (a).

(d) An employer shall provide additional notice to workers within 30 days of any significant updates or changes made to the workplace surveillance tool or in how the employer is using the workplace surveillance tool.

(e) The notice required by this section relating to workplace surveillance tools shall contain all of the following information:

(1) A description of the worker data to be collected, the intended purpose of the workplace surveillance tool, and how this form of worker surveillance is necessary to meet that purpose.

(2) A description of the specific activities, locations, communications, and job roles that will be electronically monitored and the technologies that will be used.

(3) The frequency of surveillance and worker data collection.

(4) A description of where, how, and for how long worker data will be stored.

(5) Information about who is authorized to access the worker data gathered and under what conditions, including the names of vendors.

(6) Whether the workplace surveillance tool will be used to make employment-related decisions and which decisions those will be.

(7) The right of a worker to access and correct worker data collected by the workplace surveillance tool.

(8) A written policy informing the worker about how the worker can access the worker data.

1552. (a) An employer shall not transfer, sell, disclose, or license worker data, including deidentified or aggregated data, to a vendor, including another employer, unless the vendor is under contract to analyze or interpret the worker data, and the contract includes all of the following terms:

(1) The vendor shall not transfer, sell, disclose, license, or otherwise distribute the worker data.

(2) The vendor implements reasonable security procedures to protect the worker data from unauthorized or illegal access, destruction, use, modification, or disclosure.

(3) The vendor and employer agree to be jointly and severally liable for data breaches experienced by the vendor to the extent the breach involves worker data provided by the employer.

(4) The vendor shall not transfer, sell, disclose, license, or otherwise distribute any product that results from the vendor's analysis or interpretation of the worker data, except to provide the agreed-upon product to the employer.

(b) (1) Subject to paragraph (2), an employer, or a vendor acting on behalf of an employer, shall not share worker data with another person or governmental agency unless it is necessary to obtain information from the business or worker for an investigation by the governmental agency of a failure to comply with a specific state law that the governmental agency is responsible for enforcing.

(2) An employer, or a vendor acting on behalf of an employer, shall not share worker data with law enforcement except pursuant to a valid court order.

(c) An employer or vendor shall keep worker data secure by preventing unauthorized access and implementing a security system with up-to-date cybersecurity safeguards in place.

(d) Worker data collected by an employer or a vendor shall be accessible only to authorized personnel.

(e) If a data breach occurs, the employer shall give notice to workers of the specific categories of data that were impacted in the security breach as soon as possible.

(f) A vendor shall return to the worker and employer all worker data collected through a workplace surveillance tool in a user-friendly format and delete any remaining copies of the worker data at the end of the vendor's contract with the employer.

(g) An employer using data collected from a workplace surveillance tool to make employment-related decisions shall retain that worker data for at least five years from the date the worker data was collected.

(h) An employer shall allow a worker to correct inaccurate worker data and obtain worker data collected by its workplace surveillance tool by making a digital or paper form available to the worker upon request within five business days of that request.

(i) An employer shall collect, use, and retain worker data only that is reasonably necessary and proportionate to achieve the purposes disclosed pursuant to subdivision (e) of Section 1551 for which the personal information was collected or processed.

1553. (a) (1) An employer shall not use a workplace surveillance tool that does any of the following:

~~(1)~~

(A) Prevents compliance with or violates any federal, state, or local law.

~~(2)~~

(B) Identifies, obtains, or infers information about workers engaging in activity protected by state or federal law.

~~(3) Obtains or infers a worker's immigration status, veteran status, ancestral history, religious or political beliefs, health or reproductive status, history, or plan, emotional or psychological state, neural data, sexual or gender orientation, disability, criminal record, credit history, or status protected under Section 12940 of the Government Code.~~

~~(4)~~

(C) Incorporates facial ~~recognition~~, *recognition unless it is used strictly to open a locked device or grant access to locked or secured areas*, gait recognition, neural data collection, or emotion recognition technology.

(2) An employer shall not use a workplace surveillance tool to infer a worker's immigration status, veteran status, ancestral history, religious or political beliefs, health or reproductive status, history, or plan, emotional or psychological state, neural data, sexual or gender orientation, disability status, criminal record, credit history, or status protected under Section 12940 of the Government Code.

(b) (1) An employer shall not rely primarily on worker data from a workplace surveillance tool to discipline or discharge a worker.

(2) If an employer's use of worker data collected by a workplace surveillance tool contributes to a disciplinary or discharge decision by the employer, the employer shall do all of the following:

(A) Use a human reviewer to conduct the employer's own investigation and compile corroborating or supporting information for the decision, including, but not limited to, supervisory or managerial evaluations, personnel files, employee work product, or peer reviews.

(B) (i) Notify the worker that the disciplinary or discharge decision was made using worker data collected by a workplace surveillance tool, provide the worker and the worker's authorized representative with an opportunity to request access to and obtain surveillance and corroborating data, and provide the worker with an opportunity to correct any erroneous worker data by making a paper or digital request form available to the worker at the time the decision is communicated.

(ii) A request pursuant to clause (i) shall be made within five business days of the notice required by clause (i).

(C) The employer shall make any valid correction of worker data within 24 hours of the worker's request and shall change the disciplinary or discharge decision made if the worker data validates the change.

1554. An employer shall not discharge, threaten to discharge, demote, suspend, or in any manner discriminate or retaliate against any worker for using, or attempting to use, their rights under this part, filing a complaint with the Labor Commissioner alleging a violation of this part, cooperating in an investigation or prosecution of an alleged violation of this part, or any action taken by the worker to invoke or assist in the enforcement of this part, or for exercising or attempting to exercise any right protected under this part.

1555. (a) The Labor Commissioner shall enforce this part, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate a violation or maintain the status quo pending the completion of a full investigation or hearing through the procedures set forth in Section 98.3, 98.7, 98.74, or 1197.1, including issuing a citation against an employer who violates this part and filing a civil action. If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 98.74 or 1197.1, as applicable.

(b) Alternatively to subdivision (a), an employee who has suffered a violation of this part, or the employee's exclusive representative, may bring a civil action in a court of competent jurisdiction for damages caused by that ~~adverse action~~, *violation*,

including punitive damages.

(c) This part may also be enforced by a public prosecutor pursuant to Chapter 8 (commencing with Section 180) of Division 1.

(d) In any civil action brought pursuant to this section in the superior court in any county where the violation in question is alleged to have occurred, or where the person resides or transacts business, the petitioner may seek appropriate temporary or preliminary injunctive relief, punitive damages, and reasonable attorney's fees and costs as part of the costs of any action for damages.

(e) An employer who violates this part shall be subject to a civil penalty of five hundred dollars (\$500) per violation.

1556. This part does not preempt any city, county, or city and county ordinance that provides equal or greater protection to workers who are covered by this part.

SEC. 2. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.