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SB-238 Workplace surveillance tools. (2025-2026)

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AMENDED IN SENATE MAY 01, 2025

AMENDED IN SENATE MARCH 26, 2025

CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

SENATE BILL

NO. 238

Introduced by Senator Smallwood-Cuevas

January 29, 2025

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

LEGISLATIVE COUNSEL'S DIGEST

SB 238, as amended, Smallwood-Cuevas. Workplace surveillance tools.

Existing law establishes the Department of Industrial Relations in the Labor and Workforce Development Agency to administer and enforce various laws relating to employment and working conditions.

This bill would require an employer to annually provide a notice to the department of all the workplace surveillance tools the employer is using in the workplace. The bill would require the notice to include, among other information, the ~~data~~ *personal information* that will be collected from workers and consumers and whether they will have the option of opting out of the collection of personal ~~data~~ *information*. The bill would require the department to make the notice publicly available on the department's internet website within 30 days of receiving the notice. The bill would define "employer" to include, among other entities, public employers, as specified.

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

~~(a) "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 worker, regardless of how the information is collected, inferred, or obtained.~~

~~(b)~~

1550. (a) "Department" means the Department of Industrial Relations.

~~(e)~~

(b) (1) "Employer" means a person who 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. This shall include 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.

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

(d) *"Significant updates or changes" means changes that materially alter the function or scope of the surveillance tool, including new forms of data collection or analysis capabilities or new third-party access. Routine maintenance or changes that do not affect the tool's functionality or data use are not considered significant.*

~~(d)~~

(e) "Worker" means a natural person or that person's authorized representative acting as a job applicant to, an employee of, or an independent contractor providing service to, or through, a business or a state or local governmental entity in a workplace.

~~(e)~~

(f) "Workplace surveillance tool" means any system, application, instrument, or device that collects or facilitates the collection of worker-~~data~~; *personal information*, activities, communications, actions, biometrics, or behaviors, or those of the public, 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 use of a photo-optical system or other means.

1551. (a) (1) An employer shall annually provide a notice to the department of all workplace surveillance tools the employer is using in the workplace.

(2) An employer who began using a workplace surveillance tool before January 1, 2026, shall provide the notice described in paragraph (1) before February 1, 2026.

(3) *An employer is not required to report tools that are used exclusively for basic information technology operations, such as spam filters, antivirus software, or server uptime monitors.*

(b) The notice shall contain all of the following information:

(1) The individuals, vendors, and entities that created the workplace surveillance tool and the individuals, vendors, and entities that will run, manage, or interpret the worker-~~data~~ *personal information* gathered by the workplace surveillance tool.

(2) The name of the model and a description of the technological capabilities of the workplace surveillance tool.

(3) Any significant updates or changes made to the workplace surveillance tool that are already in use or any changes on how the employer is using the existing workplace surveillance tool.

(4) Whether the workplace surveillance tool will affect consumers or other individuals in addition to workers.

(5) The ~~data~~ *personal information* that will be collected from workers or consumers by the workplace surveillance tool and whether they will have the option to opt out of personal-~~data~~ *information* collection.

(6) A list of all entities and individuals other than the employer that will have access to the ~~data~~ *personal information* collected from workers and consumers.

(7) Whether the employer has disclosed the use of the workplace surveillance tool with the affected workers and consumers.

(c) The department shall make the notice publicly available on the department's internet website within 30 days of receiving the notice from the employer.