

HOUSE BILL REPORT

HB 1672

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to technology used by employers in the workplace.

Brief Description: Addressing technology used by employers in the workplace.

Sponsors: Representatives Kloba, Stonier, Fosse, Doglio, Parshley, Berry, Reed, Cortes, Bronoske, Ryu, Ramel, Scott, Taylor and Simmons.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/11/25, 2/19/25 [DPS].

Brief Summary of Substitute Bill

- Creates restrictions and limitations on when and how employers may electronically monitor employees.
- Creates restrictions and limitations on when and how employers use automated decision systems, especially when making employment-related decisions.
- Requires the Department of Labor and Industries to enforce restrictions related to electronic monitoring and automated decision systems, and grants it power to make necessary rules.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair; Bronoske, Obras and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; McEntire.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Benjamin McCarthy (786-7116).

Background:

Electronic Monitoring of Employees.

Employees are generally protected from unwarranted publicity, interference, and intrusion into their private affairs. But employers may electronically monitor employees in the workplace with certain restrictions.

Some of the restrictions include:

- It is generally illegal to intercept, record, or transmit private communications, unless all the participants in the conversation consent. However, an employer may monitor business calls if the employer has a legitimate business reason to do so.
- An employer may have the right to monitor an employee's email messages, unless the employee has a reasonable expectation of privacy regarding the employee's email.
- An employer cannot require employees to give the employer access or allow the employer to view an employee's personal social networking account.

Limitations on Employee Monitoring in Other States.

New York requires private employers to provide notice prior to engaging in electronic monitoring. The notice must be in writing and acknowledged by the employee. The notice must also be posted in a conspicuous place. There are certain exceptions to this requirement.

California employers have certain obligations when they collect personal data belonging to employees. Employees' rights include knowing about the collection of their data, knowing how the data will be used, and the right to opt out of the sale of their personal data.

Summary of Substitute Bill:

Electronic Monitoring.

Electronic monitoring is the collection of information concerning employee activity or communication by any means other than direct, in-person observation.

When Employers may Monitor Employees. An employer may only engage in electronic monitoring of an employee if the employer's purpose is to:

1. assist or allow the employee to accomplish an essential job function;
2. monitor production processes or quality;
3. ensure compliance with applicable employment or labor laws;
4. protect the health, safety, or security of the employee; or
5. track time worked or production output for purposes of determining employee compensation.

If an employer's purpose is one of the ones listed above, an employer may engage in electronic monitoring if:

1. the electronic monitoring is necessary to accomplish the employer's purpose;
2. the form of the electronic monitoring is the least invasive means of accomplishing the employer's purpose;
3. the form of the electronic monitoring used affects the smallest number of employees and collects the smallest amount of data necessary to accomplish the employer's purpose; and
4. any data produced through electronic monitoring is only accessed by authorized personnel and only used for the purpose and duration that employees have been given notice of.

Notice Required Before an Employer Uses Electronic Monitoring. Before engaging in electronic monitoring, an employer must provide notice to each employee who will be monitored. The notice must include:

1. a description of the form of monitoring;
2. a description of the purpose of the monitoring and why monitoring is necessary to accomplish that purpose;
3. a description of how the data generated by the monitoring will be used;
4. a description of the technologies that will be used to conduct the monitoring;
5. whether and how the information will be used to inform employment-related decisions;
6. the name of any person conducting the monitoring on the employer's behalf;
7. the name of any person, apart from the employer, who will have access to the data and why the person will have access;
8. the positions within the employer who will have access to the data;
9. when, where and how frequently the monitoring will occur;
10. how long data generated by the monitoring will be retained and when it will be destroyed;
11. how the employee may access the data and the process to correct any errors; and
12. information about employees' rights under this act.

An employer is not required to give notice prior to monitoring an employee if the employer has reasonable grounds to believe that the employee is engaged in conduct that is: (1) illegal; (2) violates the legal rights of the employer or another employee; or (3) creates a hostile work environment, and the monitoring is likely to produce evidence of this conduct.

An employer that utilizes electronic monitoring must provide a list, once a year, to each monitored employee of all monitoring systems currently in use related to that employee.

When an Employer May Not Use Electronic Monitoring. Electronic monitoring may not be used for an otherwise permissible purpose if the use: (1) violates state or federal labor or employment law; (2) monitors workers who are off duty and not performing work-related tasks; (3) identifies employees who are exercising legal rights; (4) audio-visually monitors

bathrooms, locker rooms, breakrooms, and other similarly private areas; or (5) is used to determine the frequency with which employees visit bathrooms, locker rooms, breakrooms, or other similarly private areas.

An employer may not use audio-video monitoring of any space within the employee's residence, personal vehicle, or property owned or rented by the employee, unless monitoring is necessary to ensure the employee's health and safety or verify the security of the employer's or client's data.

Prohibited Forms of Monitoring. An employer may not use an electronic monitoring system that incorporates any form of facial, gait, or emotional recognition technology.

Employers are prohibited from requiring an employee to install an application on a personal device, to wear a device, or attach, embed, or physically implant a device on the employee's clothing that can be used for the purpose of electronic monitoring, unless it is necessary to accomplish the employee's essential job function and limited to the times and activities necessary to accomplish the essential job functions. Any location tracking function must be disabled outside of the times when the employee is engaged in activities necessary to accomplish essential job functions.

Employers are prohibited from requiring employees to physically implant a device on the employee's body for purposes of employment monitoring.

Automated Decision Systems.

Automated decision systems are algorithmic or computational processes that are used to make or assist in making decisions, judgments, or conclusions.

Prohibited Uses. An employer may not use automated decision systems in a manner that:

1. violates state or federal law;
2. makes predictions about employee behavior that is unrelated to essential job functions;
3. identifies, profiles, or predicts the likelihood that an employee will exercise legal rights;
4. makes predictions about an employee's emotions, personality, or other sentiments; or
5. uses customer or client data, including reviews and feedback, as an input of the automated decision system.

An automated decision system used by an employer may not use facial, gait, or emotion recognition technology.

Employment-Related Decisions. An employment-related decision is an employer decision that: (1) affects an employee's compensation, benefits, or terms and conditions of employment; (2) relates to the discipline, evaluation, promotion, or termination of an employee; or (3) relates to hiring of an individual or employee for a position or job.

An employer may use an automated decision system when making employment-related decisions if: (1) the automated decision system outputs are corroborated by human oversight of the employee; (2) the employer has conducted an impact assessment, as described below; and (3) the employer has provided the notice required for the use of electronic monitoring. An employer may not use an automated decision system output regarding an employee's physical or mental health to make employment-related decisions.

Impact Assessment. Before using an automated decision system, an employer must create a written impact assessment that includes:

1. a detailed description of the automated decision system and its purpose;
2. a description of the data utilized by the automated decision system;
3. a description of the outputs produced by the automated decision system and the types of employment-related decisions in which those outputs may be used;
4. the rationale for the use of the system;
5. a detailed assessment of the potential risks of the system, including errors; discrimination based on certain traits; violating or chilling the exercise of employee's rights; harming employee's physical health, mental health, safety, sense of well-being, dignity, or autonomy; harming an employee's privacy; and negative economic or material impacts to employees;
6. a detailed summary of measures taken by the employer to address or mitigate the identified risks; and
7. a description of the methodology used in preparing the assessment.

Security of Data Produced by Electronic Monitoring and Outputs of Automated Decision Systems.

Any person involved in data production or utilization of electronic monitoring technology or automated decision systems must have reasonable privacy and security procedures in place to protect employee's personal information.

Enforcement of Violations Related to Electronic Monitoring and Automated Decision Systems.

Employees may file complaints with the Department of Labor and Industries (L&I) if an employer violates the requirements related to electronic monitoring or automated decision systems. If L&I finds that an employer has violated this act, L&I may order a civil penalty of not less than \$1,000. The penalty for the first violation may not exceed \$1,000. The penalties may not exceed \$10,000 and must follow a schedule for enhancing penalties as determined by L&I rulemaking. L&I may enforce the penalties by filing an action in superior court.

Employers may not retaliate against employees who exercise employee rights related to electronic monitoring and automated decision systems.

Rulemaking by the Department of Labor and Industries.

L&I may adopt and implement rules to carry out and enforce this act.

Substitute Bill Compared to Original Bill:

The substitute bill narrows the definition of "employer" by removing state and municipal public employers.

The substitute bill prohibits employers from using electronic monitoring for an otherwise permissible purpose under the act, if the monitoring would: violate state or federal labor or employment law; monitor employees who are off duty and not performing work-related task; identify employees who are exercising legal rights; audio-visually monitor bathrooms, breakrooms, or other private spaces; be used to determine the frequency with which an employee uses bathrooms, breakrooms, or other private spaces; or audio-visually monitors space within an employee's residence, personal vehicle, or other space except under certain circumstances.

Appropriation: None.

Fiscal Note: Requested on February 20, 2025.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) This is about making employers be transparent and providing guidelines for that transparency. It prohibits monitoring during employees' personal time and in private areas. This requires employers to limit the data collected to a minimum. While most monitoring is for a good purpose, the more data that is collected, the greater the risk to employees that the data will be breached. There are some technical changes for the bill. Law enforcement employees are heavily monitored; a general application of this to law enforcement employees might be a problem. There are concerns that automated decision-making systems, especially those that use artificial intelligence, might have a potential for bias.

(Opposed) Banks use automated decision systems in many of their everyday processes, including lending decisions and security. The definitions in this bill are overly broad and include everyday tech like GPS or time clocks. This creates too much red tape. While the goal is appreciated, this is not the right place to start. Law enforcement and corrections workplaces are unique—they are heavily surveilled by employers—there should be an exemption for these employers. This does not allow employers to use surveillance for legitimate purposes like protecting trade secrets and cybersecurity. This bill could allow employees to request data from the employer every day or every hour; there is no cap on the

number of requests. This bill would prohibit an employer from having security cameras on the perimeter of the employer's business, because the cameras would surveil employees coming in and out of the business who are technically off the job. We support the notice obligations, but there are loopholes that need to be closed and language that needs to be tightened up. There are First Amendment concerns about this.

Persons Testifying: (In support) Representative Shelley Kloba, prime sponsor; and Matthew Scherer, Center for Democracy and Technology.

(Opposed) Brad Tower, Community Bankers of Washington; James McMahan, WA Assoc Sheriffs and Police Chiefs; Crystal Leatherman, Washington Retail Association; Morgan Irwin, AWB; and Rose Feliciano, TechNet.

Persons Signed In To Testify But Not Testifying: None.