Protecting Workers from Harmful AI Surveillance

EXECUTIVE SUMMARY

The increasing use of artificial intelligence (AI) in workplace surveillance poses significant risks to workers' privacy, autonomy, and well-being. **Unions play a pivotal role in protecting workers from these harms by advocating for comprehensive AI transparency and accountability standards in the workplace.** These protections should include mandatory disclosures of the use of AI-based surveillance, protection of workers' personal data, measures to prevent discrimination by AI-based technologies, on-discrimination, conducting assessments of workplace AI, and mechanisms for worker participation and oversight. Implementing these measures is an important step in ensuring that AI technologies in the workplace are used ethically and fairly, protecting workers' rights and fostering a healthier and safer work environment.

BACKGROUND

AI surveillance technologies are increasingly deployed in workplaces to monitor employee behavior, productivity, and compliance. These technologies rely on tools such as biometric scanners, facial recognition systems, keystroke logging software, and advanced analytics platforms to track workers' physical and digital activities. Although employee surveillance is not a new issue, AI enables more advanced and widespread monitoring for performance management, tracking bathroom breaks, and even flagging union-related language in communications. While these tools are often justified as means to enhance efficiency and security, they also raise significant concerns about privacy, autonomy and fairness. For example, Amazon's use of AI to track warehouse workers' productivity has led to concerns about excessive surveillance and unfair disciplinary actions.

AI surveillance poses several risks to workers, including privacy invasion, discrimination and bias, psychological stress, and lack of accountability. AI systems can gather detailed personal data, including biometric information and behavioral patterns, which can be used to monitor workers' every move. AI algorithms can also inadvertently perpetuate biases, leading to discriminatory outcomes in hiring, promotions, and disciplinary

actions. The constant monitoring enabled by AI technologies can create a stressful and oppressive work environment. Workers may feel pressured to constantly perform at peak levels, fearing that any perceived lapse in productivity could be flagged by the system.[1] Constant surveillance can lead to a lack of trust,[2] increased stress,[3] and a feeling of being constantly watched, which can negatively impact mental health.[4]

The legal framework surrounding AI surveillance in the workplace is underdeveloped. Although recording and surveillance laws limit where audio and video recording can take place and establish the consent required, these laws do not cover the use of sensing equipment, location monitoring, or other increasingly prevalent forms of AI monitoring. Existing labor laws do not adequately address the unique challenges posed by AI technologies. While such regulations as the California Consumer Privacy Act (CCPA) and the California Privacy Rights Act (CPRA) limit data collection and enforce disclosure in California, in most regions of the United States, there are no policies specifically addressing AI surveillance and monitoring or AI use more generally in the employment context. This regulatory gap leaves workers vulnerable to unchecked surveillance and potential abuses.

Recommendation 1: Adopt Comprehensive AI Transparency and Accountability Standards

According to the Bureau of Labor Statistics, there are approximately 14.4 million workers who are represented by unions in the United States. With the growing use of AI surveillance technologies in the workplace, unions serve as a powerful voice on issues related to worker safety and well-being. Unions are well positioned to further drive the implementation of the standards outlined above by noting how they align with existing government initiatives, such as the White House's Blueprint for an AI Bill of Rights[5] and the Department of Labor's Artificial Intelligence and Worker Well-Being: Principles for Developers and Employers. Unions should provide guidelines that encourage employers to adopt standards that address effects of AI in the workplace:

▸ Disclosure of AI Systems
▸ Worker Data Protection and Privacy
▸ Non-Discrimination and Accountability
▸ Impact Assessments and Reporting
▸ Worker Participation and Oversight

These standards are designed to guide employers, unions, and policymakers in the ethical and responsible deployment of AI technologies in the workplace (see Appendix 1: AI Workplace Standards Draft).

Disclosure of AI Systems

By encouraging employers to adopt workplace AI standards, unions will take a step forward in ensuring employers disclose the use of AI surveillance technologies to workers. This includes the types of data collected, the purposes of data collection, and how the data will be used. Increasing transparency about AI use and data collection will help protect workers' privacy and autonomy, enabling workers to make informed decisions about their work environments. Greater transparency also gives workers more direct recourse if they believe they were treated unfairly.

Worker Data Protection and Privacy

Unions should advocate for strict limits on data collection and for robust security measures to protect workers' personal information. AI workplace surveillance poses significant risks to data security and privacy, as these systems often collect vast amounts of sensitive information that can be vulnerable to breaches, misuse, or unauthorized access. A data security and privacy standard can mitigate these risks, ensuring that workers are protected against potential exploitation in the AI-driven workplace.

Non-Discrimination and Accountability

Workplace AI standards can address key concerns with AI related to discrimination and accountability. Workers deserve a bias-free workplace, the right to an explanation of AI-driven decisions affecting them, and a formal mechanism to appeal or challenge these decisions. Workers should be informed about how AI-driven decisions are made, particularly in hiring, promotions, and disciplinary actions. Providing workers with the right to explanation and appeal will build trust, reduce the likelihood of unjust outcomes, and potentially reduce the stress associated with AI surveillance.

Impact Assessments

Employers should conduct regular assessments of AI systems to evaluate their potential impacts on workers, particularly concerning privacy, bias, and mental health. The results of these assessments should be made accessible to workers and their representatives. Regular impact assessments can identify and mitigate potential biases in AI systems, promoting fair treatment of all workers.

Worker Participation and Oversight

AI standards can strengthen worker participation and oversight. Workers and their representatives should be involved in the design, implementation, and monitoring of AI surveillance systems in the workplace. Guidelines could include requirements that employers establish committees or working groups with worker representatives to oversee the use of AI technologies, and to align their design and implementation with workers' rights and interests. Involving workers will ensure their perspectives and concerns are considered in how AI systems are deployed and used.

Recommendation 2: Prepare Affiliate Unions to Apply Standards in Future Contract Negotiations

After adopting workplace AI accountability and transparency standards, unions should lead with these principles when negotiating future contracts. Union headquarters can distribute model contract language (see Appendix 2 for examples) to help affiliate unions integrate the standards into collective bargaining agreements. Union leaders can also provide affiliate unions with related educational materials, such as an AI surveillance fact sheet to educate workers on their rights (see Appendix 3 for a draft fact sheet).

CONCLUSION

As AI continues to transform the workplace, it is imperative that unions take a proactive stance in protecting workers from the potential harms of AI surveillance. Establishing comprehensive transparency and accountability standards will protect workers' rights and well-being. Unions are a leading voice for labor rights and play a critical role in advocating for these protections. By championing transparency, fairness, and worker participation in AI governance, unions can help ensure that technological advancements benefit workers, rather than undermine their rights. Establishing these standards not only addresses immediate concerns but also sets a precedent for the ethical use of AI in the future.

APPENDIX

Appendix 1 – AI Workplace Standards Draft: A draft describing the official unions position on AI in the workplace and reviewing standards for employers.

Appendix 2 – Model Contract Language: Proposed contract language that unions can use in negotiations with employers.

Appendix 3 – Fact Sheet: AI Surveillance in the Workplace: Quick reference guide about surveillance and workers' rights to inform and educate workers about AI surveillance in the workplace.

ENDNOTES

1   Khari Johnson, "Amazon's 'Safe' New Robot Won't Fix Its Worker Injury Problem," *Wired*, accessed September 2024, https://www.wired.com/story/amazons-worker-injury-problem/.

2   Sam Blum, "Employee Surveillance is Exploding With Remote Work — and Could Be the New Norm," HR Brew, accessed September 2024, https://www.hr-brew.com/stories/2022/01/19/employee-surveillance-is-exploding-with-remote-work-and-could-be-the-new-norm.

3   Emily Belton, "78% of Employers Engage in Remote Work Surveillance, Express VPN Survey Finds," Express VPN, accessed September 2024, https://www.expressvpn.com/blog/expressvpn-survey-surveillance-on-the-remote-workforce/#firing.

4   Reshma Saujani, "Employee Surveillance is a Working Mom's Nightmare," *Time*, accessed September 2024, https://time.com/6224729/employee-surveillance-mothers-remote-work/; "2023 Work in America Survey," American Psychological Association, accessed September 2024, https://www.apa.org/pubs/reports/work-in-america/2023-work-america-ai-monitoring.

5   "Blueprint for an AI Bill of Rights," The White House, accessed September 2024, https://www.whitehouse.gov/ostp/ai-bill-of-rights/.

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POLICY BRIEF

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