Bill No:	SB 238	**Hearing Date:**	April 23, 2025
Author:	Smallwood-Cuevas		
Version:	March 26, 2025		
Urgency:	No	**Fiscal:**	Yes
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SUBJECT: Workplace surveillance tools

KEY ISSUES

This bill requires an employer to annually provide a notice, containing specified information, to the Department of Industrial Relations (DIR), of all workplace surveillance tools the employer is using in the workplace. DIR is then required to make the employer-provided notice publicly available on the Department's internet website.

ANALYSIS

Existing law:

1) Establishes the California Consumer Privacy Act (CCPA), which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civil Code §1798.100 et seq.)

2) Establishes the Consumer Privacy Rights Act (CPRA), which amends the CCPA and creates the California Privacy Protection Agency (PPA), which is charged with implementing these privacy laws, promulgating regulations, and carrying out enforcement actions. (Civil Code §1798.100 et seq.; Proposition 24 (2020))

3) Defines "artificial intelligence" to mean an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments. (Government Code §11546.45.5)

4) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA), and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50.5)

5) Requires employers to provide to each employee, upon hire, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota. (Labor Code §2101)

6) Prohibits an employer from requiring an employee to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. (Labor Code §2101)

7) Prohibits an employer from taking adverse employment actions against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee. (Labor Code §2101)

This bill:

1) Defines, among others, the following terms:

    a. "Data" to mean 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. "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.
       i. "Employer" includes an employer's labor contractor.

    c. "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.

    d. "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, 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.

2) Requires an employer to annually provide a notice to DIR of all workplace surveillance tools the employer is using in the workplace.

3) For an employer that began using a workplace surveillance tool before January 1, 2026, requires the employer to provide the notice before February 1, 2026.

4) Requires the notice to contain all of the following information:

    a. 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 gathered by the workplace surveillance tool.

    b. The name of the model and a description of the technological capabilities of the workplace surveillance tool.

    c. 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.

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

    e. The data 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 collection.

    f. A list of all entities and individuals other than the employer that will have access to the data collected from workers and consumers.

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

5) Requires DIR to make the employer provided notice publicly available on the department's internet website within 30 days of receiving the notice from the employer.

COMMENTS

1. Background:

Artificial Intelligence (AI) and Automated Decision Systems (ADS)
With technological advancements happening faster than humans can react, we often miss opportunities to pause and evaluate its impact. Until recently, advancements in technology often automated physical tasks, such as those performed on factory floors or self-checkouts, but artificial intelligence (AI) functions more like human brainpower. AI can use algorithms to accomplish tasks faster and sometimes at a lower cost than human workers can. As this technology develops, so do fears of worker displacement in more areas and industries.

According to the Pew Research Center, in 2022, 19 percent of American workers were in jobs in which the most important activities may be either replaced or assisted by AI.[1] Because technology can be used to either replace or complement the work of employees, it is difficult to identify which industries or occupations will be most impacted. What's worse, recent trends on the use of AI in employment has been reminiscent of a Hollywood movie – both fantastical and horrifying.

Bill Gates himself has warned that over the next decade, advances in artificial intelligence will mean that humans will no longer be needed "for most things" in the world.[2] Given these realities, what does the future of AI and its capabilities mean for workers? As we speak, employers are deploying AI-powered tools that monitor and manage workers, including by tracking their locations, activities, and productivity. Even more alarmingly, we are seeing employers use AI powered systems to make decisions on workers' schedules, tasks, compensation, promotions, and even disciplinary actions.

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[1] "Which U.S. Workers Are More Exposed to AI on Their Jobs?" Pew Research Center, Washington, D.C. (July 26, 2023) https://www.pewresearch.org/social-trends/2023/07/26/which-u-s-workers-are-more-exposed-to-ai-on-their-jobs/
[2] Huddleston, T. Jr. "Bill Gates: Within 10 years, AI will replace many doctors and teachers – humans won't be needed 'for most things.''(March 26, 2025) https://www.cnbc.com/2025/03/26/bill-gates-on-ai-humans-wont-be-needed-for-most-things.html

In February of 2019, Data & Society, an independent non-profit research institute, published a study evaluating the impact of algorithmic management on the workforce. The study highlights several examples where algorithmic management is becoming more common. In the delivery industry, companies from UPS to Amazon to grocery chains are using automated systems to optimize delivery workers' daily routes. In other industries, trends show an increase in remote tracking and managing using AI software. In retail and service jobs, automated scheduling is replacing managers' discretion over employee schedules, while the work of evaluating employees is being transferred to consumer-sourced rating systems.[3]

At least, these examples appear to complement the tasks of workers. Below are several other examples highlighted in a 2021 UC Berkeley study that should make us pause[4]:

- Hiring software by the company HireVue generates scores of job applicants based on their tone of voice and word choices captured during video interviews.
- Algorithms are being used to predict whether workers will quit, become pregnant, or try to organize a union, which influence employers' decisions about job assignment and promotion.
- Call center technologies are analyzing customer calls and nudging workers in real time to adjust their behavior, like coaching them to express more empathy, pace the call more efficiently, or exude more confidence and professionalism.
- Grocery platforms like Instacart are monitoring workers and calculating metrics on their speed as they fill shopping lists.
- Robots, like, for example, "smart cart" service robots in health care, are being used to transport materials (e.g., linens, meals, lab specimens) to other workers. Meanwhile, floor cleaning robots vacuum or scrub floors along a preset route programmed by workers, who also monitor and support their operation.
- In remote workers' homes, AI software is being used to track computer keystrokes.

Specifically around surveillance, AI surveillance involves the use of computer software and algorithms to analyze video footage that goes beyond motion detection. AI surveillance tools are being used to monitor areas through video, satellite or even drones. These tools can allow the systems to see and interpret information, from tracking movements in real-time to analyzing and predicting behavior. A system installed in a secure facility, for example, could use computer vision to identify unauthorized individuals, track movements within restricted areas, and detect any unusual behavior that might indicate a security breach.

The growing use of these AI tools raises several questions:

- Can AI tools ensure worker safety or do they push workers to work at a dangerous pace?
- Should workers know about AI powered tools monitoring their work?
- Do these AI tools protect against bias and discrimination?
- Should these AI tools be allowed to manage and fire a worker?
- Who should monitor and evaluate AI decisions and how?

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[3] Alexandra Mateescu, Aiha Nguyen, 2019. Data & Society. "Explainer: Algorithmic Management in the Workplace." https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf
[4] Annette Bernhardt, Lisa Kresge, Reem Suleiman, 2021. UC Berkeley Labor Center. "Data and Algorithms at Work: The Case for Worker Technology Rights." https://laborcenter.berkeley.edu/data-algorithms-at-work/

- Do our current regulatory and legal structures protect workers exposed to decisions made by AI tools?
- How much should government regulate the use of these tools?

Now is the time to ensure that as AI enters our workforce, it is used to complement the tasks of a worker – rather than replacing them – without sacrificing worker safety, living wages, and protections against discrimination and abuse.

As noted in the UC Berkeley report:

"Technology is not inherently bad, but neither is it neutral: the role of workplace regulation is to ensure that technologies serve and respond to workers' interests and to prevent negative impacts. Regulation is all the more important because employers themselves often do not understand the systems they are using. What we need, then, is a new set of 21st century labor standards establishing worker rights and employer responsibilities for the data-driven workplace."[5]

Recent Efforts to Regulate AI and ADSs
In November of 2020, California voters approved Proposition 24, the California Privacy Rights Act of 2020 (CPRA). The CPRA added new privacy protections to the California Consumer Privacy Act of 2018 (CCPA). The CPRA established a new agency, the California Privacy Protection Agency (CPPA) to implement and enforce the law. The mission of the CPPA is to protect Californians' privacy, ensure that consumers are aware of their rights, inform businesses of their obligations, and vigorously enforce the law against businesses that violate consumers' privacy rights.

Over the last several years, the Legislature has considered a multitude of bills aimed at regulating AI and its use to ensure that the privacy rights of Californians continue to be protected. AB 2885 (Bauer-Kahan, Chapter 843, Statutes of 2024) was a crucial first step in regulating this technology. AB 2885 established key definitions, including a uniform definition for "artificial intelligence," "automated decision system," and "high-risk automated decision system."

Other efforts attempted to regulate the industry by establishing requirements on the use of AI. For example, AB 2930 (Bauer-Kahan, 2024), which died on the Senate inactive file, would have established the right of individuals to know when an ADS is being used, the right to opt out of its use, and an explanation of how it is used.

There were several other attempts to regulate the use of AI in 2024, although the focus has mostly been on consumers and their privacy rights, whether it be the data social media companies collect and sell or the manipulation of elections news via fake postings. In the area of private sector labor and employment specifically, only one bill has attempted to regulate the use of AI.

SB 1446 (Smallwood-Cuevas, 2024) attempted to address the issue by requiring, among other things, that a grocery retail store or retail drug establishment that intended to implement a consequential workplace technology, as defined, notify workers, their collective bargaining representatives, and the public at least 60 days in advance of the implementation of the

[5] Ibid.

technology with a general description of the technology and the intended purpose of the technology, as specified. SB 1446 was held in the Assembly Rules Committee.

This year, there are several bills in the labor and employment space attempting to regulate the use of AI powered tools from decision making systems to surveillance.

SB 7 (McNerney), previously heard and passed by this Committee, would be the first attempt at regulating the use of ADS in the workplace in such a comprehensive way. Several other bills regulating AI are pending this year, including AB 1018 (Bauer-Kahan, 2025) which would, among other things, regulate the development and deployment of an ADS used to make consequential decisions, as defined.

AB 1221 (Bryan, 2025) would require an employer, at least 30 days before introducing a workplace surveillance tool, as defined, to provide a worker who will be affected with 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. Additionally, 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.

Finally, AB 1331 (Elhawary, 2025) would limit the use of workplace surveillance tools, as defined, by employers, including by prohibiting an employer from monitoring or surveilling workers in private, off-duty areas, as specified, and requiring workplace surveillance tools to be disabled during off-duty hours, as specified.

This bill [SB 238] compliments the above efforts by requiring employers to provide notice on the use of workplace surveillance tools to DIR and requires the Department to post such notices on its internet website.

2. **Need for this bill?**

According to the author:

"Current law currently lacks transparency and regulatory oversight over the use of artificial intelligence (AI) and workplace surveillance tools by employers. Although the Department of Industrial Relations administers and enforces laws related to employment and working conditions, no existing statute mandates that employers disclose what surveillance technologies they use, what data they collect, or who can access it.

This creates several key problems:
- Workers are unaware of the extent and nature of data collection that may affect their privacy, autonomy, or job opportunities
- There is no centralized oversight or reporting mechanism that enables the state or public to evaluate how surveillance technology is being used
- Potential harms, such as algorithmic bias, discrimination, or misuse of data by third parties, remain unaddressed under current law.

SB 238 aims to address the deficiency by introducing transparency and public accountability measures. The bill is intended to protect worker privacy and ensuring ethical use of AI in

employment settings by making surveillance practice visible to both regulators and the public."

3. **Proponent Arguments:**

According to the California Federation of Labor Unions:

"Workplace surveillance is not a new phenomenon, however, the tools currently available to employers are far more powerful and invasive than a simple camera or microphone. Employers now have access to seemingly military grade surveillance technology that can track heat signatures, biometrics, and walking patterns. A recent study published by coworker.org reported over 500 surveillance and management tools currently being sold to employers to track worker activities, interactions, and body movements. These tools are widely available and surprisingly affordable. Workers live in a constant state of surveillance and are often unaware they are even being watched.

SB 238 seeks to increase transparency in the workplace by requiring employers to disclose their use of workplace surveillance tools to the Department of Industrial Relations. Transparency is essential to foster public trust and a safe working environment."

4. **Opponent Arguments:**

According to a coalition of employer organizations, including the California Chamber of Commerce:

"The breadth of information that SB 238 requires to be reported to DIR and made publicly available online is concerning to many of our members. The definition of workplace surveillance tools in the bill is very broad and encompasses many tools that are standard and basic components of a security program on an employer's premises or cybersecurity software. Video surveillance, communications/equipment tracking, and cybersecurity software are especially necessary for workplace safety as well as the prevention and investigation of fraud and theft. For example, financial institutions must have highly sophisticated security systems, otherwise there is risk of theft or exposure of sensitive consumer information. They would be required to disclose exactly which tools they use, the names of individuals and vendors that run or receive any of that data, and what changes have been made to those systems. This is essentially requiring those institutions to provide a roadmap for bad actors to gain a better understanding of the tools they are using for fraud prevention and security measures and how to exploit them. The bill could put many entities, and more importantly their employees and consumers, in a vulnerable position by exposing exactly what tools are being used and how they are being used, who has access to sensitive worker and consumer data, and the extent of data that is being collected. This is especially true for employers with sensitive consumer data or government data where companies have state or federal contracts.

Further, SB 238 would impose a significant workload on an already overburdened DIR. For example, California has more than 1.7 million private sector businesses and an additional 3 million sole proprietorships. Because of the breadth of the definition of "workplace surveillance tools," even a security camera or server that stores emails would count under that definition, meaning that DIR would be required to sift through, label, and publish lists of

millions of different tools. Not only is that burdensome, but it is difficult to imagine how such an information overload is useful to the public."

5. **Staff Comments:**

As noted above, AI is being used in new ways not previously contemplated in current law. This bill attempts to provide transparency on what and how these technologies are being used in the workplace. These notices will provide much needed information to inform the state and the workers about tools being used by employers, which will assist in future policymaking around the use of such surveillance tools.

As conversations on this bill continue, the author may wish to consider the following:

The bill defines "worker" to mean 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. This definition is not clear as to who the authorized representative is and why they would be acting as a job applicant to an employee. *The author may wish to refine this definition to better capture the targeted population.*

Regarding the information required to be included in the notices, the bill requires it include 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 gathered by the workplace surveillance tool. *Should employers be required to include this kind of detail – especially when the employer may simply be buying a software program or contracting for a service, but they may not know which individuals specifically created the workplace surveillance tool?*

The bill requires employers to annually provide the notice on the workplace surveillance tools they are using to DIR, and requires DIR to make that notice available to the public on their internet website within 30 days. *The bill does not specify what happens to the notices after the year. The author may wish to provide further clarity on how long DIR has to keep those notices posted or if they are replaced each year by the new notices submitted.*

6. **Double Referral:**

This bill has been double referred and if approved by this Committee today, will be sent to Senate Judiciary Committee for a hearing.

7. **Prior/Related Legislation:**

SB 7 (McNerney, 2025) would, among other things, require an employer to provide a written notice that an ADS, for the purpose of making employment-related decisions, is in use at the workplace to all workers that will be directly or indirectly affected by the ADS, as specified. *SB 7 is pending in Senate Judiciary Committee.*

SB 53 (Wiener, 2025) would establish a consortium tasked with developing a framework for a public cloud computing cluster that advances the ethical development and deployment of AI that is safe, ethical, equitable, and sustainable. This bill would also create protections for whistleblowers working with specified AI models when reporting on "critical risks" and

would require developers to provide processes for anonymous reporting of activities posing such risks. *SB 53 is pending in the Senate Appropriations Committee.*

SB 503 (Weber Pierson, 2025) would require the Department of Health Care Access and Information and the Department of Technology to establish an advisory board related to the use of AI in health care services. Specifically, the bill would require the advisory board to perform specified duties, including, but not limited to, developing a standardized testing system with criteria for developers to test AI models or AI systems for biased impacts. *SB 503 is pending in the Senate Rules Committee.*

AB 1018 (Bauer-Kahan, 2025) would, among other things, regulate the development and deployment of an ADS used to make consequential decisions, as defined. Among other things, this bill would require a developer of a covered ADS to conduct performance evaluations of the ADS, require a deployer to provide certain disclosures to a subject of a consequential decision made or facilitated by the ADS, provide the subject an opportunity to opt out of the use of the ADS, provide the subject with an opportunity to appeal the outcome of the consequential decision, and submit the covered ADS to third-party audits, as prescribed. *AB 1018 is pending in the Assembly Privacy and Consumer Protection Committee.*

AB 1221 (Bryan, 2025) would require an employer, at least 30 days before introducing a workplace surveillance tool, as defined, to provide a worker who will be affected with a written notice that includes, among other things, a description of the data to be collected, the intended purpose, and how this form of worker surveillance is necessary to meet that purpose. The bill would prohibit an employer from using certain workplace surveillance tools, including one that incorporates facial, gait, or emotion recognition technology. The bill would require the Labor Commissioner to enforce these provisions, authorize an employee to bring a civil action for violations, and authorize a public prosecutor to enforce the provisions. *AB 1221 is pending in the Assembly Privacy and Consumer Protection Committee.*

AB 1331 (Elhawary, 2025) would limit the use of workplace surveillance tools, as defined, by employers, including by prohibiting an employer from monitoring or surveilling workers in private, off-duty areas, as specified, and requiring workplace surveillance tools to be disabled during off-duty hours, as specified, and subjects violators to specified penalties. *AB 1331 is pending in the Assembly Privacy and Consumer Protection Committee.*

SB 442 (Smallwood-Cuevas, 2025) would prohibit a grocery retail store or retail drug establishment from providing a self-service checkout option for customers unless specified conditions are met, including that at least one manual checkout station be staffed by an employee. This bill includes specified civil penalties for violations of these provisions and authorizes enforcement by the Division of Labor Standards Enforcement and public prosecutors. *SB 442 is pending in the Senate Judiciary Committee.*

AB 2885 (Bauer-Kahan, Chapter 843, Statutes of 2024) established a uniform definition for "artificial intelligence," "automated decision system," and "high-risk automated decision system" in California law.

AB 2930 (Bauer-Kahan, 2024) would have regulated the use of ADSs in order to prevent "algorithmic discrimination." This would have included requirements on developers and deployers that make and use these tools to make "consequential decisions" to perform impact

assessments on ADSs. This bill also sought to establish the right of individuals to know when an ADS is being used, the right to opt out of its use, and an explanation of how it is used. *AB 2930 died on the Senate inactive file.*

SB 1446 (Smallwood-Cuevas, 2024) would have prohibited a grocery or retail drug establishment from providing a self-service checkout option for customers unless specified conditions are met. SB 1446 also included a requirement that a grocery retail store or retail drug establishment that intended to implement a consequential workplace technology, as defined, must notify workers, their collective bargaining representatives, and the public at least 60 days in advance of the implementation of the technology with a general description of the technology and the intended purpose of the technology, as specified. SB 1446 also included remedies and penalties for a violation of the bill's provisions, including a civil penalty of $100 for each day in violation, not to exceed an aggregate penalty of $10,000. *SB 1446 was held in the Assembly Rules Committee.*

Several other bills in 2024 addressed related AI issues including: SB 892 (Padilla), SB 893 (Padilla), SB 896 (Dodd), SB 942 (Becker), SB 1047 (Wiener), and AB 2013 (Irwin).

AB 331 (Bauer-Kahan, 2023) would have prohibited "algorithmic discrimination," that is, use of an automated decision tool to contribute to unjustified differential treatment or outcomes that may have a significant effect on a person's life. *AB 331 was held under submission in the Assembly Appropriations Committee.*

AB 302 (Ward, Chapter 800, Statutes of 2023) required the California Department of Technology (CDT), in coordination with other interagency bodies, to conduct a comprehensive inventory of all high-risk automated decision systems (ADS) used by state agencies on or before September 1, 2024, and report the findings to the Legislature by January 1, 2025, and annually thereafter, as specified.

AB 701 (Gonzalez, Chapter 197, Statutes of 2021) proposed a series of provisions designed to ensure that the use of job performance quotas at large warehouse facilities do not penalize workers for complying with health and safety standards or taking meal and rest breaks. Among other things, this bill (1) required warehouse employers to disclose quotas and pace-of-work standards to workers, (2) prohibited employers from counting time that workers spend complying with health and safety laws as "time off task," and (3) required the Labor Commissioner to enforce these provisions.

AB 13 (Chau, 2021) would have established the Automated Decision Systems Accountability Act, which would have promoted oversight over ADS that pose a high risk of adverse impacts on individual rights. *This bill was eventually gutted and amended to address a different topic.*

AB 1576 (Calderon, 2019) would have required the Secretary of Government Operations to appoint participants to an AI working group to evaluate the uses, risks, benefits, and legal implications associated with the development and deployment of AI by California-based businesses. *The bill was held under submission in the Senate Appropriations Committee.*

SUPPORT

California Association of Psychiatric Technicians
California Federation of Labor Unions, AFL-CIO
Oakland Privacy

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
American Petroleum and Convenience Store Association
Associated General Contractors of California
California Alliance of Family Owned Businesses
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Attractions and Parks Association
California Chamber of Commerce
California Credit Union League
California Grocers Association
California League of Food Producers
California Retailers Association
Coalition of Small and Disabled Veteran Businesses
Flasher Barricade Association
Housing Contractors of California
Wine Institute

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