

1 H.262

2 Introduced by Representatives Priestley of Bradford, Chapin of East
3 Montpelier, Hooper of Burlington, Masland of Thetford,
4 McCann of Montpelier, McGill of Bridport, Minier of South
5 Burlington, Nugent of South Burlington, and Olson of
6 Starksboro

7 Referred to Committee on

8 Date:

9 Subject: Labor; employment practices; fair employment; electronic
10 monitoring; automated decision systems

11 Statement of purpose of bill as introduced: This bill proposes to restrict the
12 use of electronic monitoring of employees and the use of automated decision
13 systems for employment-related decisions.

14 An act relating to restricting electronic monitoring of employees and the use
15 of employment-related automated decision systems

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. 21 V.S.A. § 495q is added to read:

18 § 495q. ELECTRONIC MONITORING OF EMPLOYEES; AUTOMATED
19 DECISION SYSTEMS; RESTRICTIONS; EXCEPTIONS

20 (a) Definitions. As used in this section:

1 (1) “Algorithm” means a computerized procedure consisting of a set of
2 steps used to accomplish a determined task.

3 (2) “Automated decision system” means an algorithm or computational
4 process that is used to make or assist in making employment-related decisions,
5 judgments, or conclusions. The term “automated decision system” includes
6 algorithms and computational processes that are derived from machine
7 learning, statistics, data processing, or artificial intelligence.

8 (3) “Automated decision system output” means information, data,
9 assumptions, predictions, scoring, recommendations, decisions, or conclusions
10 generated by an automated decision system.

11 (4) “Data” means information obtained by any means that, directly or
12 indirectly, identifies, relates to, describes, may reasonably be associated with,
13 or could reasonably be linked to an employee, including:

14 (A) personal identifying information;

15 (B) biometric information;

16 (C) health, medical, lifestyle, and wellness information;

17 (D) information related to workplace activities;

18 (E) human resources information and personnel files; and

19 (F) information related to the employee’s internet and digital

20 activities, including electronic communications, private social media activity,
21 and personal internet protocol address.

1 (5) “Electronic monitoring” means the collection of information
2 concerning employee activities or communication by any means other than
3 direct, in-person observation, including through the use of a digital device;
4 computer; telephone; wire; radio; camera; or electromagnetic, photoelectronic,
5 or photo-optical system.

6 (6) “Employee” means an individual who in consideration of direct or
7 indirect gain or profit is employed by an employer. As used in this section,
8 “employee” includes job applicants and independent contractors providing
9 services, directly or indirectly, to an employer.

10 (7) “Employer” means a person who directly or indirectly employs or
11 exercises control over the wages, benefits, other compensation, hours, working
12 conditions, access to work or job opportunities, or other terms and conditions
13 of employment of an employee. For purposes of this section, “employer”
14 includes the employer’s agents, labor contractors, or other affiliates or
15 subcontractors through which individuals perform work on behalf of the
16 employer or otherwise provide services that are integrated into the employer’s
17 business operations.

18 (8) “Employment-related decision” means any decision made by an
19 employer that:

20 (A) affects an employee’s compensation, benefits, or terms and
21 conditions of employment;

1 (B) relates to the discipline, evaluation, promotion, or termination of
2 an employee; or

3 (C) relates to the hiring of an individual or employee for a position or
4 job.

5 (9) “Essential job function” means a fundamental duty of a job or
6 position that an employee with that job or position must be able to perform, as
7 revealed by objective evidence, such as the amount of time an employee
8 spends performing a function, the terms of any applicable collective bargaining
9 agreement, the employee’s past and present work experiences, and the
10 employee’s performance in the position. The employer’s reasonable,
11 nondiscriminatory judgment as to which job functions are essential may be
12 relevant evidence but not the sole basis for a determination as to which
13 functions are essential, the determination of which requires consideration of
14 objective evidence.

15 (10) “Periodic assessment of an employee’s performance” means the
16 assessment of an employee’s performance over the course of units of time
17 equal to or greater than one calendar day.

18 (b) Employee monitoring restricted. An employer shall not engage in
19 electronic monitoring of an employee unless all of the following requirements
20 are met:

21 (1) the employer’s purpose in utilizing the electronic monitoring is to:

- 1 (A) assist or allow the employee to accomplish an essential job
2 function;
- 3 (B) monitor production processes or quality;
- 4 (C) ensure compliance with applicable employment or labor laws;
- 5 (D) protect the health, safety, or security of the employee, clients, or
6 the public;
- 7 (E) secure the employer’s physical or digital property;
- 8 (F) conduct periodic assessment of employee performance; or
- 9 (G) track time worked or production output for purposes of
10 determining the employee’s compensation;
- 11 (2) the specific form of electronic monitoring is necessary to accomplish
12 the purpose identified pursuant to subdivision (1) of this subsection and is used
13 exclusively to accomplish that purpose;
- 14 (3) the specific form of electronic monitoring is the least invasive
15 means, with respect to the employee, of accomplishing the purpose identified
16 pursuant to subdivision (1) of this subsection;
- 17 (4) the specific form of electronic monitoring is used with the smallest
18 number of employees, collects the smallest amount of data necessary to
19 accomplish the purpose identified pursuant to subdivision (1) of this
20 subsection, and is collected not more frequently than necessary to accomplish
21 that purpose; and

1 (5) the employer ensures that only authorized persons have access to any
2 data produced through the electronic monitoring and that the data is only used
3 for the purpose and duration that the employee has been notified of pursuant to
4 subsection (c) of this section.

5 (c) Required notice for employee monitoring.

6 (1) At least 15 calendar days prior to commencing any form of
7 electronic monitoring, an employer shall provide notice of the electronic
8 monitoring to each employee who will be subject to it. The notice shall, at a
9 minimum, include the following information:

10 (A) the specific form of electronic monitoring;

11 (B) a description of the intended purpose of the electronic monitoring
12 and why the electronic monitoring is necessary to accomplish that purpose;

13 (C) a description of how any data generated by the electronic
14 monitoring will be used, including whether and how the data generated by the
15 electronic monitoring will be used to inform employment-related decisions;

16 (D) a description of the technologies that will be used to conduct the
17 electronic monitoring;

18 (E) a description of the specific activities, locations, communications,
19 and job roles that will be electronically monitored;

1 (F) the name of any person conducting electronic monitoring on the
2 employer's behalf and any associated contract language related to the
3 monitoring;

4 (G) the name of any person, apart from the employer, who will have
5 access to any data generated by the electronic monitoring and the reason why
6 the person will have access to the data;

7 (H) the positions within the employer that will have access to any
8 data generated by the electronic monitoring;

9 (I) when, where, and how frequently monitoring will occur;

10 (J) the period of time for which any data generated by the electronic
11 monitoring will be retained by the employer or another person and when that
12 data will be destroyed;

13 (K) notice of how an employee may access the data generated by the
14 electronic monitoring and the process to correct any errors in the data;

15 (L) a cover sheet that concisely summarizes the details contained in
16 the notice;

17 (M) notice of an employee's rights pursuant to this section and the
18 judicial and administrative remedies available for redressing the wrongful use
19 of electronic monitoring; and

20 (N) instructions on how an employee can file a complaint against an
21 employer for violations of this section.

1 (2) If an employer uses electronic monitoring to track employee
2 productivity or performance, the employer shall include the following
3 information in the notice required by subdivision (1) of this subsection:

4 (A) the performance or productivity standards by which employees
5 will be assessed and how employees will be measured against those standards;

6 (B) how performance or productivity data will be monitored and
7 collected, including the identity of the employees subject to such monitoring
8 and when, where, and how the monitoring and data collection will occur; and

9 (C) any adverse consequences for failing to meet a performance or
10 productivity standard and whether there is any bonus or incentive program
11 associated with meeting or exceeding each standard.

12 (3)(A) Notice of electronic monitoring provided pursuant to this section
13 shall be written in plain, clear, and concise language and provided to each
14 employee in the employee's primary language.

15 (B) An employer shall provide a new, updated notice to employees if
16 it makes any significant changes to the manner of electronic monitoring or to
17 the way that the employer utilizes the electronic monitoring or any data
18 generated by it.

19 (4) Notwithstanding subdivisions (1) and (2) of this subsection, prior
20 notice of electronic monitoring shall not be required if:

1 (A) the employer has reasonable grounds to believe that the
2 employee is engaged in conduct that:

3 (i) is illegal;

4 (ii) violates the legal rights of the employer or another employee;

5 or

6 (iii) creates a hostile work environment; and

7 (B) the electronic monitoring is reasonably likely to produce
8 evidence of the conduct, is otherwise conducted in compliance with the
9 provisions of this section, and is narrowly tailored to the purpose of identifying
10 the conduct.

11 (5)(A) An employer that utilizes electronic monitoring shall annually
12 provide each of its employees with a list of all electronic monitoring systems
13 currently in use by the employer in relation to that employee. The list shall be
14 provided in the primary language of the employee.

15 (B) As used in this subdivision (5), “currently in use” means that the
16 employer:

17 (i) is currently using the system in relation to the employee;

18 (ii) used the electronic monitoring system in relation to the
19 employee within the past 90 days; or

20 (iii) intends to use the electronic monitoring system in relation to
21 the employee within the next 30 days.

1 (d) Prohibitions on employee monitoring. Notwithstanding the purposes
2 for electronic monitoring set forth in subdivision (b)(1) of this section,
3 electronic monitoring shall not be used:

4 (1) in any manner that violates State or federal labor, employment, civil
5 rights, or human rights laws;

6 (2) in relation to employees who are off-duty and not performing work-
7 related tasks, including employees on-call;

8 (3) to identify, punish, or obtain information about employees exercising
9 legal rights, including rights guaranteed by labor and employment laws;

10 (4) for audio-visual monitoring of bathrooms, locker rooms, changing
11 areas, breakrooms, smoking areas, areas designated for the expression of breast
12 milk, employee cafeterias, lounges, or other similarly private areas;

13 (5) to determine the frequency with which employees visit or use
14 bathrooms, locker rooms, changing areas, breakrooms, smoking areas,
15 employee cafeterias, lounges, or other similarly private areas;

16 (6) for monitoring, including audio-visual monitoring, of any space
17 within an employee's residence or personal vehicle, or a property owned or
18 rented by the employee, unless the monitoring is necessary to ensure the
19 employee's health and safety or to verify the security of employer or client
20 data;

1 (7) to obtain information about an employee’s actual or perceived age,
2 color, disability, ethnicity, genetic information, limited proficiency in the
3 English language, national origin, race, religion, pursuit or receipt of
4 reproductive health care, sex, sexual orientation, gender identity or expression,
5 marital status, family responsibilities, personal appearance, immigration status,
6 political affiliation or association, neurodiversity, veteran status, or other
7 classification protected under State or federal law;

8 (8) to take adverse employment action against an employee on the basis
9 of data collected via continuous incremental time-tracking tools; or

10 (9) in a manner that harms health or safety or violates the legal rights of
11 any employee.

12 (e) Restriction of employee monitoring through personal devices.

13 (1) An employer shall not require an employee to install an application
14 on a personal device for purposes of electronic monitoring or to wear a device
15 or attach, embed, or physically implant a device on the employee’s clothing
16 that can be used for electronic monitoring, unless the electronic monitoring is:

17 (A) necessary to accomplish the employee’s essential job function;

18 and

19 (B) limited to only the times and activities necessary to accomplish
20 the essential job functions.

1 (2) Any location tracking function of an application or device shall be
2 disabled outside of the times when the employee is engaged in activities
3 necessary to accomplish essential job functions.

4 (3) An employer shall not require an employee to physically implant a
5 device on the employee's body for purposes of employee monitoring.

6 (f) Restrictions on use of automated decision systems.

7 (1) An employer shall not use an automated decision system in a manner
8 that:

9 (A) violates or results in a violation of State or federal law;

10 (B) makes predictions about an employee's behavior that are
11 unrelated to the employee's essential job functions;

12 (C) identifies, profiles, or predicts the likelihood that an employee
13 will exercise the employee's legal rights;

14 (D) makes predictions about an employee's emotions, personality, or
15 other sentiments; or

16 (E) use customer or client data, including customer or client reviews
17 and feedback, as an input of the automated decision system.

18 (2)(A) An employer shall not solely rely on outputs from an automated
19 decision system when making employment-related decisions.

20 (B) An employer may utilize an automated decision system in
21 making employment-related decisions if:

1 (i) the automated decision system outputs considered in making
2 the employment-related decision are corroborated by human oversight of the
3 employee, including supervisory or managerial observations and
4 documentation of the employee’s work, personnel records, and consultations
5 with the employee’s coworkers;

6 (ii) the employer has conducted an impact assessment of the
7 automated decision system pursuant to subsection (g) of this section; and

8 (iii) the employer is in compliance with the notice requirements of
9 subdivision (4) of this subsection (f).

10 (3) An employer shall not use any automated decision system outputs
11 regarding an employee’s physical or mental health in relation to an
12 employment-related decision.

13 (4) Prior to using an automated decision system to make an
14 employment-related decision about an employee, the employer must provide
15 the employee with a notice that complies with subdivision (c)(3)(A) of this
16 section and, at a minimum, contains the following information:

17 (A) a plain language explanation of the nature, purpose, and scope
18 for which the automated decision system will be used, including the specific
19 employment-related decisions potentially affected;

20 (B) the logic used in the automated decision system, including the
21 key parameters that affect the output of the automated decision system;

1 (C) the specific category and sources of employee input data that the
2 automated decision system will use, including a specific description of any
3 data collected through electronic monitoring;

4 (D) any performance metrics the employer will consider using with
5 the automated decision system;

6 (E) the type of outputs the automated decision system will produce;

7 (F) the individuals or entities that developed the automated decision
8 system;

9 (G) the individual or entities that will operate, monitor, and interpret
10 the results of the automated decision system;

11 (H) information about how an employee can access the results of the
12 most recent impact assessment of the automated decision system;

13 (I) a description of an employee's rights, pursuant to subsection (j) of
14 this section, to access information about the employer's use of the automated
15 decision system and to correct data used by the automated decision system;

16 and

17 (J) a statement that employees are protected from retaliation for
18 exercising the rights described in the notice.

19 (g) Impact assessment of automated decision systems.

20 (1) Prior to utilizing an automated decision system, an employer shall
21 create a written impact assessment of the system that includes, at a minimum:

1 (A) a detailed description of the automated decision system and its
2 purpose;

3 (B) a description of the data utilized by the system;

4 (C) a description of the outputs produced by the system and the types
5 of employment-related decisions in which those outputs may be utilized;

6 (D) an assessment of the necessity for the system, including reasons
7 for utilizing the system to supplement nonautomated means of decision
8 making;

9 (E) a detailed assessment of the system’s validity and reliability in
10 accordance with contemporary social science standards and a description of
11 any metrics used to evaluate the performance and known limitations of the
12 automated decision system;

13 (F) a detailed assessment of the potential risks of utilizing the system,
14 including the risk of:

15 (i) discrimination against employees on the basis of race, color,
16 religion, national origin, sex, sexual orientation, gender identity, ancestry,
17 place of birth, age, crime victim status, or physical or mental condition;

18 (ii) violating employees’ legal rights or chilling employees’
19 exercise of legal rights;

20 (iii) directly or indirectly harming employees’ physical health,
21 mental health, safety, sense of well-being, dignity, or autonomy;

1 (iv) harm to employee privacy, including through potential
2 security breaches or inadvertent disclosure of information; and

3 (v) negative economic and material impacts to employees,
4 including potential effects on compensation, benefits, work conditions,
5 evaluations, advancement, and work opportunities;

6 (G) a detailed summary of measures taken by the employer to
7 address or mitigate the risks identified pursuant to subdivision (E) of this
8 subdivision (1); and

9 (H) a description of any methodology used in preparing the
10 assessment.

11 (2) An employer shall provide a copy of the assessment prepared
12 pursuant to subdivision (1) of this subsection to an employee upon request.

13 (3) An employer shall update the assessment required pursuant to this
14 subsection any time a significant change or update is made to the automated
15 decision system.

16 (4) A single impact assessment may address a comparable set of
17 automated decision systems deployed by an employer.

18 (h) Prohibitions on facial, gait, voice, and emotion recognition technology.
19 Electronic monitoring and automated decision systems shall not incorporate
20 any form of facial, gait, voice, or emotion recognition technology.

21 (i) Protection of employee privacy.

1 (1) An employer; any person that develops, operates, or maintains
2 electronic monitoring or an automated decision system on behalf of an
3 employer; and any person who collects, stores, analyzes, interprets,
4 disseminates, or otherwise uses data produced or utilized by electronic
5 monitoring or an automated decision system shall implement reasonable
6 security procedures and practices appropriate to the nature of the data to
7 protect employees' personal information from unauthorized or illegal access,
8 destruction, use, modification, or disclosure.

9 (2) Any person that develops, operates, or maintains electronic
10 monitoring or an automated decision system on behalf of an employer and any
11 person who collects, stores, analyzes, interprets, disseminates, or otherwise
12 uses data produced or utilized by electronic monitoring or an automated
13 decision system shall, upon termination of the contract with the employer:

14 (A) return all data and automated decision system outputs to the
15 employer; and

16 (B) destroy all data and automated decision system outputs in the
17 person's possession.

18 (j) Employee right to access and correct data.

19 (1) Within seven days of receiving a request, an employer shall provide
20 an employee with access to any data that relates to the employee that was

1 produced or utilized by electronic monitoring or an automated decision system
2 used by the employer.

3 (2) Within seven days of receiving a request to correct potential errors
4 identified by an employee, an employer shall:

5 (A) correct the erroneous information or data and provide the
6 employee with a notice that complies with subdivision (c)(3)(A) of this
7 section, explaining the steps taken by the employer; or

8 (B) provide the employee with a notice explaining that the employer
9 has not corrected the information or data and describing the steps the employer
10 has taken to verify the accuracy of the disputed information or data.

11 (k) Retaliation prohibited. An employer shall not discharge or in any other
12 manner retaliate against an employee who exercises or attempts to exercise the
13 employee's rights under this section. The provisions against retaliation set
14 forth in subdivision 495(a)(8) of this subchapter shall apply to this section.

15 (l) Enforcement. The provisions of section 495b of this subchapter shall
16 apply to this section.

17 Sec. 2. EFFECTIVE DATE

18 This act shall take effect on July 1, 2025.