

EMPLOYEE MONITORING & AUTOMATED DECISION SYSTEMS OVERVIEW

This bill proposes significant restrictions on how employers in Vermont can use electronic monitoring on employees and how they can utilize automated decision systems (ADS) for employment-related decisions. It mandates strict conditions for monitoring, including necessity, purpose limitation, and minimization, and requires detailed prior notice to employees. The bill prohibits certain types of monitoring outright (e.g., in private areas, off-duty, using facial/emotion recognition). It also restricts the use of ADS, prohibiting sole reliance on ADS outputs for employment decisions, mandating impact assessments before use, requiring human oversight, and providing employees with notice and rights regarding the data used and decisions made.

BACKGROUND

The use of technology to monitor employees and automate employment decisions is rapidly increasing. Employers utilize various tools, from keystroke logging and GPS tracking to sophisticated AI-powered systems for hiring, performance evaluation, and task management. While these technologies can offer benefits like efficiency and safety compliance, they also raise significant concerns regarding employee privacy, fairness, potential discrimination, and the transparency of decision-making processes. Current employment laws often lag behind the pace of technological advancement, leaving gaps in protection for workers. This bill seeks to establish clear rules and safeguards for the use of these powerful technologies in the Vermont workplace.

PROBLEM

- **Invasive Monitoring:** Employees may be subject to constant or excessive electronic surveillance, including monitoring of private communications, activities during non-work hours, or monitoring in private spaces, leading to a loss of privacy and autonomy.
- **Lack of Transparency:** Employees are often unaware of the extent, purpose, or methods of electronic monitoring, or how the data collected is being used, particularly in automated decision systems.
- **Algorithmic Bias and Discrimination:** Automated decision systems used in hiring, promotion, or discipline can perpetuate or amplify biases present in data, leading to discriminatory outcomes based on protected characteristics (race, gender, age, disability, etc.).
- **Unfair or Inaccurate Performance Evaluation:** Monitoring tools, especially those tracking productivity minute-by-minute, may not accurately reflect an employee's overall contribution or account for necessary breaks, potentially leading to unfair disciplinary actions. Relying solely on automated outputs without human context can be problematic.
- **Chilling Effect on Rights:** Fear of surveillance can discourage employees from engaging in legally protected activities, such as discussing wages, organizing, or reporting workplace issues.

- **Health and Safety Concerns:** Constant monitoring can increase employee stress and negatively impact mental well-being. Monitoring personal devices or vehicles raises significant privacy concerns.
- **Lack of Recourse:** Employees may lack clear mechanisms to access the data collected about them, correct inaccuracies, or appeal decisions made using automated systems.

SOLUTION

The bill aims to address these problems by implementing the following measures:

- **Strict Conditions for Electronic Monitoring:**
 - Permits monitoring *only* for specific, legitimate purposes (e.g., accomplishing essential job functions, safety, security, legal compliance, performance assessment over daily or longer periods).
 - Requires monitoring to be *necessary* and the *least invasive* method to achieve the stated purpose.
 - Mandates data minimization (smallest number of employees, least amount of data, least frequent collection necessary).
 - Limits access to monitored data to authorized persons for the notified purpose.
- **Comprehensive Notice Requirements:**
 - Requires employers to provide detailed written notice (in the employee's primary language) at least 15 days *before* monitoring begins, outlining the purpose, methods, data use, retention period, access rights, etc. Specific notice is required for productivity/performance monitoring.
 - Requires annual notification of monitoring systems in use for each employee.
 - Exception to prior notice exists only for narrowly tailored investigations of suspected illegal activity or rights violations.
- **Prohibited Monitoring Practices:**
 - Bans monitoring in private areas (bathrooms, breakrooms, etc.), monitoring off-duty employees, monitoring legally protected activities, and monitoring personal residences/vehicles (with narrow exceptions for safety/security).
 - Prohibits collecting data about protected characteristics.
 - Forbids using facial, gait, voice, or emotion recognition technology.
 - Restricts requiring monitoring apps/devices on personal devices unless essential for the job and limited in scope/time. Location tracking must be disabled off-hours.
- **Restrictions on Automated Decision Systems (ADS) in Employment:**
 - Prohibits using ADS in ways that violate the law, predict behavior unrelated to essential job functions, predict exercise of legal rights, or predict emotions/sentiments.
 - Forbids *sole reliance* on ADS outputs for employment decisions; requires corroboration through human oversight.

- Requires employers to conduct and document a written *impact assessment* before using an ADS, evaluating its purpose, necessity, data use, validity, reliability, and potential risks (discrimination, privacy harms, etc.).
- Mandates prior notice to employees before using ADS for employment decisions, detailing the system's purpose, logic, data inputs, outputs, and employee rights.
- **Employee Rights:**
 - Grants employees the right to access data collected about them via monitoring or ADS within 7 days of request.
 - Grants employees the right to request correction of erroneous data.
- **Data Privacy and Security:**
 - Requires employers and vendors to implement reasonable security measures to protect employee data.
 - Requires vendors to return/destroy data upon contract termination.
- **Anti-Retaliation:** Prohibits employers from retaliating against employees for exercising their rights under the act.
- **Enforcement:** Leverages existing state enforcement mechanisms for labor law violations.

KEY DEFINITIONS:

- **Electronic Monitoring:** Collecting employee activity/communication data by means other than direct observation (e.g., computer, camera, phone).
- **Automated Decision System (ADS):** An algorithm or computational process used to make or assist employment-related decisions.
- **Employment-related Decision:** Any decision affecting hiring, compensation, benefits, terms, discipline, evaluation, promotion, or termination.
- **Employee:** Includes current employees, job applicants, and independent contractors.

EFFECTIVE DATE:

The act takes effect July 1, 2025.

This legislation seeks to balance employer needs with fundamental employee rights to privacy, fairness, and non-discrimination in an increasingly technology-driven workplace.