



# TECHEQUITY COLLABORATIVE

Before the  
White House Office of Science and Technology Policy

In the Matter of:

Request for Information: Automated Worker  
Surveillance and Management

Docket No. OSTP\_FRDOC\_0001-0004

Comments of  
TechEquity Collaborative

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# Re: Comment on Workplace Surveillance and Automated Management

TechEquity Collaborative respectfully submits the following comment in response to the White House and Office of Science and Technology Policy (OSTP) Request for Information on Workplace Surveillance and Automated Management in May of 2023. We are appreciative of the White House and OSTP's attention to these issues and their impact on workers' rights.

Our comments will center on the experience of contract workers in the technology industry. We believe that these workers—and all contracted and gig workers—are at a particular risk for harm in automated management and workplace surveillance systems due to the precarious and fissured relationship between contract workers and their employers.

Our comments reflect the first-hand experiences shared with our organization as part of our Contract Worker Disparity Project, they include:

- Importance of centering contract workers' experiences in designing interventions on workplace surveillance and automated management
- Current harms contract workers in tech are experiencing as a result of automated management and fissured workplace structures
- Proposed policy and regulatory interventions, specific to automated management and workplace surveillance, based on the experiences of contract workers we have interviewed and surveyed

Additionally, we have submitted our name to comments that were developed by the Center for Democracy and Technology (CDT) which detail the impact of these tools on workers' rights to health and safety, organize, non-discrimination, and fair compensation.

# Background and Definitions

## Background

### TechEquity Collaborative: Who We Are

At TechEquity Collaborative, we envision a world where the growth of the tech industry creates economic prosperity for everyone, and where tech sector employees and companies are engaged and active participants in making our economy equitable. Our mission is to mobilize tech workers and companies to advance structural change that addresses economic inequity at its roots. We educate the tech community on economic justice, advocate for bold public policy, and develop equitable corporate practices that build equity and opportunity in the broader economy. We run a series of initiatives that are focused on addressing inequities within the tech industry and inequities that result from tech's products and business models.

You can find more information about us at <https://techequitycollaborative.org/about/>.

### Contract Worker Disparity Project

In 2021, we launched the Contract Worker Disparity Project<sup>1</sup> that investigates how an entire class of tech workers has been locked out of tech's prosperity. We interviewed 30 contract workers one-on-one to learn about their experiences and conducted a survey of over 800 contract workers—the largest of its kind in the tech industry. Additionally, we developed four white papers documenting why companies use contractors, where this phenomenon originates from, who often takes these jobs, and what it means for the tech industry.

In 2022, we published a final report of our research findings, outlining that temporary, contract, and contingent workers, who are hired through contracting agencies, are often doing the same work as their directly-employed peers while making less money, receiving fewer benefits, and experiencing career immobility. Additionally, our research found that these workers were disproportionately Black, brown, indigenous, women, and non-binary as compared to their directly employed counterparts.<sup>2</sup> We issued a Responsible Contracting Standard with specific

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<sup>1</sup>Contract Worker Disparity Project. (n.d.). Contract Worker Disparity Project. Retrieved June 9, 2023, from <https://contractwork.techequitycollaborative.org/>

<sup>2</sup> Contract Worker Disparity Project - 2022 Report. (n.d.). TechEquity Collaborative. Retrieved June 9, 2023, from <https://techequitycollaborative.org/download-the-contract-worker-disparity-project-2022-report/>

guidance to support companies who want to ensure that they are creating resilient and healthy workplaces for their entire workforce. We passed first-in-the-nation legislation in California to address a core problem in the contract work ecosystem—lack of data and transparency.<sup>3</sup>

## Definitions

### Electronic Surveillance and Automated Management (ESAM)

As outlined in several memos directed to federal agencies, the Center for Democracy and Technology, and others, have defined Electronic Surveillance and Automated Management (ESAM) as follows:

- ESAM consists of techniques to remotely manage workforces, relying on data collection and surveillance of workers to enable automated or semi-automated decisions.
- There are several categories of workplace surveillance technologies, including: remote monitoring and tracking, gamification, and algorithmic management.
  - Remote monitoring and time tracking allows companies to enforce pace-of-work policies that may not even be known to workers.
  - Gamification describes technology that is meant to motivate workers “using video game elements, such as digital points, badges, and friendly competition.”
  - Algorithmic management is the overarching system that takes input from these surveillance technologies and makes assessments sometimes leading to disciplinary action and adjustments to increase worker productivity.
- The types of technologies that enable ESAM include: handheld devices, point-of-sale systems, mobile phones, fingerprint scanners, fitness and wellness apps, cameras, microphones, body sensors, keycards, electronic communication monitoring, geolocation tracking, collaboration tools, and customer review solicitation.

A thorough database of these types of tools has been developed by Coworker.org as part of their Bossware and Employment Tech Database.<sup>4</sup> Additionally, the University of California at Berkeley Labor Center compiled a report on the types of tools that are being utilized or developed and their potential for worker harm.<sup>5</sup>

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<sup>3</sup> TechEquity. (2022, October 5). Pay Transparency is Law in California! TechEquity Collaborative. <https://techequitycollaborative.org/2022/10/05/pay-transparency-is-law-in-california/>

<sup>4</sup> Bossware and Employment Tech Database. (n.d.). Coworker. Retrieved June 9, 2023, from <https://home.coworker.org/worktech/>

<sup>5</sup> Data and Algorithms at Work: The Case for Worker Technology Rights - UC Berkeley Labor Center. (2021, November 5). UC Berkeley Labor Center. <https://laborcenter.berkeley.edu/data-algorithms-at-work/>

## Contract Worker, Contracted Tech Worker, and Contracting Agencies

For brevity we've chosen some key words to refer to the contracting world. When we say contract workers we are referring to any worker who is hired through a third-party (vendor, staffing agency, or payroll company) but who performs their day-to-day work for a tech company. This group includes a wide-ranging set of workers from service workers (like janitors and security officers) to technical workers (like software engineers). When we say contracting agencies we are including hiring agencies, staffing agencies, payroll agencies, and vendors.

## Fissured workplace

A concept that was articulated by David Weil in his book, *The Fissured Workplace*, a fissured workplace describes the outcome of the growing scale of domestic and global outsourcing.<sup>6</sup> The basic concept was well summarized by reviewer Mike Konczal: “the result of corporations increasingly distributing activities through an extensive network of contracting, outsourcing, franchising, and ownership. Workers are less likely to work for the corporation that ultimately profits from their labor; instead, they work for a loose network of middlemen or as independent contractors. Their work is still monitored and controlled as closely as any other office worker, but they lose the protections of labor law and the ability to fully enjoy the rewards of economic growth. This is the new reality for workers in the 21st century.”<sup>7</sup>

## Importance of Including Workers in Fissured and Precarious Work Environments in ESAM Interventions

There are a variety of well documented cases of ESAM's use and impact on vulnerable populations. Our particular focus for this comment is on the experiences of contract workers within the tech industry. Our research has shown that these workers are disproportionately women, non-binary, and people of color as compared to the directly employed tech workforce. Additionally, we believe that fissured work structures heighten the opportunity for worker harm and help employers avoid accountability. Our comments center on the experiences of these workers because this is our area of expertise.

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<sup>6</sup> Weil, D. (2014). *The Fissured Workplace*. In JSTOR. Harvard University Press. <https://www.jstor.org/stable/j.ctt6wppdw>

<sup>7</sup> Weil, D. (2017). *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*. In Harvard University Press Books. Harvard University Press. <https://www.hup.harvard.edu/catalog.php?isbn=9780674975446&content=reviews>

## I. Understanding Tech’s Reliance on Third Party Contract Workforce

Tech has long been lauded as a great industry for workers providing high salaries, generous benefits, equity and stock options, and a host of fringe perks like massages, free food, and more. As the tech industry enters a new stage with new challenges, we’ve seen those famously shiny tech jobs start to look less appealing with the industry conducting wide-ranging layoffs,<sup>8</sup> standing up massive lobbying operations to fend off regulatory efforts,<sup>9</sup> and advocates are raising questions about the resiliency of their commitment to expanding equity and inclusion.<sup>10</sup> Throughout these challenges, one dynamic has stayed consistent—tech’s use of a shadow workforce to do some of the most psychologically damaging<sup>11</sup> and mission critical pieces of work in the industry.<sup>12</sup> However, many of these workers—the temporary, contract, and contingent workers who are classified differently from their directly-employed counterparts—have been locked out of tech’s prosperity.

To better understand contracted tech workers’ experiences, we interviewed over 30 current and former contract workers, and ran a survey with 800 respondents, with both qualitative and quantitative responses. Across sources and surveys, certain findings are consistent:<sup>13</sup>

- Contract workers of color are more likely to be paid hourly than annually, and to receive lower pay than white workers: 39% of contractors of color are paid annually, compared to 45% of white contractors with the majority of contractors of color earning in the \$50-85K range, compared to the majority of white contractors earning in the \$85-120K range.
- Contract workers of color are less likely to be converted to direct employment than white contract workers: 41% of respondents who were people of color said they never converted to direct employment compared to 31% of white respondents.
- Contract workers receive fewer benefits than direct tech workers: 33% of survey respondents received no benefits, compared to just 23% of private-industry workers who do not have paid vacation or sick leave.

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<sup>8</sup> Lee, R. (n.d.). Layoffs.fyi - Tech Layoff Tracker and Startup Layoff Lists. Layoffs.fyi. <https://layoffs.fyi/>

<sup>9</sup> Kang, C., McCabe, D., & Vogel, K. P. (2021, June 22). Tech Giants, Fearful of Proposals to Curb Them, Blitz Washington With Lobbying. The New York Times. <https://www.nytimes.com/2021/06/22/technology/amazon-apple-google-facebook-antitrust-bills.html>

<sup>10</sup> Tech Companies Are Quietly Defunding Diversity Pledges And Industry Layoffs Are Hitting Black And Brown Workers Hardest—Experts Say The Message Is Clear. (2022, December 8). Essence.

<https://www.essence.com/news/money-career/tech-companies-quietly-defunding-diversity-pledges/>

<sup>11</sup> Newton, C. (2020, May 12). Facebook will pay \$52 million in settlement with moderators who developed PTSD on the job. The Verge.

<https://www.theverge.com/2020/5/12/21255870/facebook-content-moderator-settlement-scola-ptsd-mental-health>

<sup>12</sup> <https://twitter.com/CaseyNewton/status/1591608302076858371?s=20&t=CSdIT-OOCZvwooDECRvRUQ>. (n.d.). Twitter. Retrieved June 10, 2023, from <https://twitter.com/CaseyNewton/status/1591608302076858371?s=20&t=CSdIT-OOCZvwooDECRvRUQ>

<sup>13</sup> Contract Worker Disparity Project - 2022 Report. (n.d.). TechEquity Collaborative. Retrieved June 9, 2023, from <https://techequitycollaborative.org/download-the-contract-worker-disparity-project-2022-report/>

- People of color are overrepresented in contract roles compared to the overall tech workforce: 44% of contractors are people of color vs. 31% in the direct workforce.

## II. Recognizing the Dangerous Conditions and Potential for Discrimination in Contract and Temp Work Across all Industries is Critical

This phenomenon is not unique to the tech industry. Research conducted by workers rights’ advocates in Illinois found that staffing agencies employing temp workers exhibited a dramatic pattern of racial discrimination in their placements. Additionally, this research found that Black and Latino workers comprise 85% of blue-collar temp assignments in Chicago but only account for 40% of the population.<sup>14</sup>

Not only is temporary and contingent work paid less—often for performing similar jobs—and overrepresented by people of color, it can be very dangerous work. Temp work has been documented as a safety risk for workers for nearly a decade.

*From a ProPublica investigation in 2015: [an] analysis of millions of workers’ compensation claims shows that in five states, representing more than a fifth of the U.S. population, temps face a significantly greater risk of getting injured on the job than permanent employees. In California and Florida, two of the largest states, temps had about 50 percent greater risk of being injured on the job than non-temps.<sup>15</sup>*

In 2013, the Occupational Health and Safety Administration developed a Temp Worker Initiative due to several reports of fatalities of temp workers—often on their first day of the job.<sup>16</sup> Since then, advocates have fought for greater protections for temp workers on the state level, including increased safety measures within the temp industry.<sup>17</sup>

Despite its harms, the prevalence and scale of contingent employment has grown steadily over the past several years, outpacing direct employment at major companies like Google, which in March 2019 employed 121,000 contract workers and 102,000 direct employees.<sup>18</sup> As tech enters a

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<sup>14</sup> Do temp agencies discriminate against Black job applicants? (2021, February 23). Chicago Tribune. <https://www.chicagotribune.com/business/ct-biz-temporary-staffing-agencies-racial-discrimination-20210223-34sof3i56rhjxhzu42xtcshx44-story.html>

<sup>15</sup> Grabell, M. (2013, June 27). The Expendables: How the Temps Who Power Corporate Giants Are Getting Crushed. ProPublica. <https://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed>

<sup>16</sup> Policy Background on the Temporary Worker Initiative | Occupational Safety and Health Administration. (n.d.). [www.osha.gov](https://www.osha.gov/memos/2014-07-15/policy-background-temporary-worker-initiative). <https://www.osha.gov/memos/2014-07-15/policy-background-temporary-worker-initiative>

<sup>17</sup> Grabell, M. (2014, August 29). California Legislature Passes Bill to Protect Temp Workers. ProPublica. <https://www.propublica.org/article/california-legislature-passes-bill-to-protect-temp-workers>

<sup>18</sup> Wakabayashi, D. (2019, May 28). Google’s Shadow Work Force: Temps Who Outnumber Full-Time Employees. The New York Times. <https://www.nytimes.com/2019/05/28/technology/google-temp-workers.html>

cycle of layoffs, there are already indications that the use of temp work—which increased dramatically after the 2008 financial crisis—will increase as companies try to keep their productivity high and their official headcount low.<sup>19</sup> Since 2019, the ratio of contractors per employee has increased by more than 60%.<sup>20</sup> More than half of all businesses with more than 25 employees use contractors.<sup>21</sup>

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<sup>19</sup> US companies turn to contract workers in face of recession fears. (2022, December 21). Financial Times. <https://www.ft.com/content/53329655-74b3-4820-a5f9-37ae39ad6d7d>

<sup>20</sup> Smialek, J., Ember, S., & Raff, K. (2022, October 12). Companies Hoarding Workers Could Be Good News for the Economy. The New York Times. <https://www.nytimes.com/2022/10/12/business/economy/companies-hoarding-workers.html>

<sup>21</sup> Wilke, L. (2022, November 29). Contract Work Is Growing As The U.S. Workforce Grapples With Labor Constraints (L. Wilke, Ed.) [Review of Contract Work Is Growing As The U.S. Workforce Grapples With Labor Constraints]. Gusto.com; Gusto. <https://gusto.com/company-news/us-contract-work-2022-survey>



## **Current harms contract workers in tech are experiencing as a result of ESAM and fissured workplace structures**

Despite facing little regulation in the workplace, ESAM is contributing to the erosion of workers' rights. In 2021, we conducted 30 one-on-one interviews with 30 contract workers performing work for a tech company. Additionally, we surveyed 800 contract workers in tech. As a result of those interviews and survey responses, as well as a review of the relevant literature, we identified patterns that are outlined in a series of white papers and a summary report we published in 2022. In many of the interviews, workers highlighted the ways in which automated and algorithmic management systems were being deployed to evaluate their work, determine their pay, and influence their ability to be promoted or be terminated.

Below are the patterns we saw in those experiences. Where possible, we've included specific, first hand stories or quotes from workers. Our interviews were conducted with express consent from each worker that outlined that we may share their experiences in order to bring awareness to this issue and advocate for change, but we may not identify the worker themselves or attribute the quotes to them or their companies. Their names and employers have been removed, additionally we have anonymized identifiable information when a worker was describing specific responsibilities or tasks within their job, to ensure that they cannot be identified and do not face retaliation or retribution for sharing their experiences.

### **ESAM erodes compensation and may lead to potential wage and hour violations**

ESAM systems are being utilized to evaluate work products and in some instances determine pay for contract workers in tech. In repeated interviews, we heard workers share similar patterns where they worked for a tech company, through a third party employer, and their work product was often reviewed and assessed by an algorithmic or automated process. In some instances, that automated process denied workers pay, deemed their work product insufficient or low quality, and created a quota system for work production based on unknown information that was often unsustainable for workers.

One worker shared that when they submitted their work product for review, it would get rejected repeatedly. When asked what the rejection was based on they said that often the system provided a vague response such as 'something went wrong'. The worker had to submit their work

product through a third party application. They were transcribing and training an artificial intelligence system. To submit their work, they had to submit individual files one by one. In order to document that they had submitted these files, for their own records, they had to take individual screenshots of each submission on their phone or computer. Generally there were approximately 600 individual files for each hour of work. To self document their submission, would result in additional unpaid time for their labor. However, the worker was always torn about whether or not to take the time to do this and save it each time, for each hour of work, because when their work product was not recorded as having been submitted, they were not paid for their work. This worker was not an independent contractor, but a W2 employee of a third party contracting agency. They shared that when they submitted and the system would reject it or not recognize the submission, they would not get paid for that hour of work.

*Interviewer: When you were denied pay for your submitted work product, would the system say you were denied 1 of the submissions out of the hundreds you sent in? Or all of them?*

*Worker: It will be that all 500 “weren’t submitted” so approximately a full 50 minutes of work that I then won’t get paid for. Even though I’ve completed the work.*

*Interviewer: What can you do when it says that?*

*Worker: Do it again.*

Workers shared that the standards around pay and employment are shifting due to the deployment of automated management systems. Many recounted that despite being a W2 employee of a contracting agency, they were only being paid for the hours they worked on a specific task, not the time they were clocked in and available to take a task or waiting for a task to be sent to them. Some shared that while this was the structure and their understanding, there were enough tasks that they did not have a lot of unpaid waiting time. However, the pay structures that many workers outlined may be in conflict with existing labor laws. We believe that the use of ESAM and lack of transparency create opaque and unclear standards that could result in violations of the Fair Labor Standards Act and/or California’s labor code including wage and hour laws, standards for piece rate, standby time, and reporting to work time.<sup>22</sup>

An additional experience that was shared by workers, outlined the way that ESAM systems were being deployed to surveil and compare workers productivity rates and contest whether or not a worker had completed an “appropriate” amount of work for the time they are said to have worked. These comparisons would theoretically lead to a reduction in pay or potential discipline. However, the workers shared that they had no way to verify if the comparison was accurate, what

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<sup>22</sup> Newsom, G. (n.d.). STATE OF CALIFORNIA. Retrieved June 10, 2023, from <https://www.dir.ca.gov/dlse/wages.pdf>

the employer deemed was an appropriate productivity rate or baseline, or whether or not there was a standard at which their pay would be reduced or they would be disciplined.

*Worker: “They do track our ratings per hour. They use one person’s ratings per hour and compare it to other workers to determine if you billed the ‘correct amount of hours’ for that time period. For instance if the co-worker average was 200 tasks/hour but I billed at 150 tasks/hour, I would get an email warning me about an imbalance between the tasks I completed and the hours I billed for that work. We are tracked and there are these unseen expectations in our tracking and productivity rates.”*

## **ESAM systems lack transparency, feedback, or recourse for workers when they face discipline or contract termination**

Workers in fissured workplaces, like contract workers in the tech industry, experience difficulty in navigating workplaces with multiple employers—often they face opaque systems for feedback and performance management, an inability to access critical tools and training for their role, confusion over how to report workplace issues or discuss pay and promotions, and often workers report that they lack clarity on when or how their contract will be renewed, extended, or ended. When ESAM systems are introduced to the fissured workplace, these difficult structures become more intractable and can drive workers' isolation and decrease their agency and ability to self advocate.

In workplaces where ESAM systems were governing performance management, transparency and feedback became non-existent. Workers reported that they were completely unaware of what criteria their work was being evaluated on, often jumping through hoops and trying to reverse engineer outcomes from the ESAM system to determine what they may have done right or wrong in their work performance. Others reported that their requests for help or feedback often went into a digital void and they were unclear if they would ever get a response and had no other way to contact their employer for feedback.

The lack of clarity also impacted contract workers' ability to take on work. From one interview with a contract worker:

*Worker: “We have our commitments to complete every week but [because we haven’t been trained or know our criteria for quality work] we have to decide if it’s worth putting out potentially bad [training] data or not working.”*

Another contract worker shared what it's like to work with an ESAM system evaluating your work product and determining your performance:

*Worker: “We are totally in the dark about how the data [we develop] is used. We can infer, but we don't know. We just keep getting tasks, again and again, something pops up [telling you it's wrong or being done incorrectly] and you wonder if you're doing something wrong? But you don't know why.”*

*Interviewer: Can you get feedback on what is going wrong or what you can do to improve?*

*Worker: Management says that they don't know or can't get the information. They tell us to just wait for 45 minutes and get another task sent to us.*

*Interviewer: What does it mean for you to not get this type of feedback?*

*Worker: If your data isn't what they are looking for, you can be fired—but you don't have management or anyone telling you what's wrong with the data.*

When we interviewed workers about the feedback process, we heard various reports but when ESAM was implemented in the workplace, most feedback practices fit into two patterns—either they can send a request for feedback to a digital system (an email, an app, etc.) or they can watch training videos to learn how to do the task. Below are some of the experiences that contract workers shared about the experience of getting feedback when ESAM is being utilized to evaluate their work product or performance.

*“There is a generic email address we can send things to. We may get an answer back in three days or we may never get an answer.”*

*“At [redacted large tech company] we receive zero feedback. There are some tasks that give you feedback but it's only when a task is being introduced to you [not once you start submitting the actual work product].”*

*“You might get a pop up that says—you got this one wrong and this is how you should do it. The pop ups can be really helpful because in general you get no help at all, no one-on-one direction or feedback—or any feedback whatsoever. It's generally just an automated system.”*

*“You can look at your worker statistics and it will tell you how many were a blind/known answer you got wrong and how many you got right. This is the only idea you can get of how well you are doing.”*

*“I would really rather have more training and guidance than being fired if you don't pass a blind test.”*

## **ESAM’s use in fissured workplaces creates another hurdle that chills worker voice and can lead to further erosion of job quality**

In our research on contract workers in the tech industry, we found that the precarious nature of a fissured workplace chilled worker voice. Because there are very few parameters for contract renewal—and most are not visible to the workers themselves but instead are terms between the tech company and the contracting agency—workers do not know how or why a contract will or will not be renewed. As a result, workers expressed that they are afraid to speak up against workplace harassment or other concerns for fear that their contract won’t be renewed. Additionally, workers do not want to be deemed “difficult to work with” as this impedes their potential for contract extension or transition to direct employment. Like most of these issues, the implementation of ESAM makes this existing precarity more extreme.

In workplaces with ESAM, contract workers reported that they had very few communication channels with other workers and experienced difficulty trying to build a peer network for feedback and troubleshooting on projects. Some contract workers reported that there was no way to know how many other workers were on the same project or what they were doing. Others shared that there was a place where you could see people working on your same project, but couldn’t communicate with them outside of exchanging information about that specific project. Many reported that their only means of communication with other workers was through company channels and was limited within those parameters. While communication with co-workers and project managers is only a part of a worker's experience—we believe that these tools and channels are critical to worker satisfaction and job quality. Ensuring that workers can communicate with their peers can help them identify opportunities to strengthen their performance, share feedback, build worker voice, and improve workplace conditions.

An additional consequence of ESAM is the ways in which these systems can be used to degrade job quality over time. One contract worker shared their experience which captures this phenomenon.

*“In my role as a contractor, I worked for the same staffing agency in three different capacities. Always that staffing agency and the only client was [redacted large tech company]. I was a full time employee for that staffing agency...I was paid by the hour. It was a minimum wage job. Then we got laid off and the [large tech company] wasn’t*

*sending tasks. [The staffing agency] got back in touch a few months later. They asked us to do the same type of work. It was the same staffing agency but they were asking us to register on a freelance website like Upwork or Guru [to do the same job that would now be paid as piece work].”*

ESAM has the ability to atomize work and workers themselves by disconnecting them from their peers, relegating feedback and job security to a pop up box, eroding workers’ compensation, and incentivizing employers to further degrade job quality.

## ESAM in the workplace must be regulated, and in some cases banned, by the federal government

The imbalance of power between workers and employers makes the regulation of ESAM urgent and critical. Already there are many stories of growing worker surveillance,<sup>23</sup> concerns around the growth of discriminatory hiring,<sup>24</sup> and the emergence of algorithms to determine who gets laid off during a recession.<sup>25</sup> Due to the spread of ESAM into many facets of work<sup>26</sup>—robust regulations and enforcement must be enacted and aggressively enforced to ensure that worker power is not further degraded in this moment of emerging technologies.

In 2022, we joined a coalition of labor unions and social justice organizations in California that introduced the Workplace Technology Accountability Act (AB 1651—Asm. Kalra) to the California legislature.<sup>27</sup> AB1651 outlined a set of policies and parameters to govern the use of ESAM in the workplace, including: workers’ data rights, accountability in electronic monitoring, use of algorithms, requirement of impact assessments, and enforcement. From a letter to the Assembly Privacy and Consumer Protection Committee, bill supporters outlined that:

*We believe that employers can and should use digital technologies in the workplace in ways that benefit both workers and their businesses, and the goal of this bill is not to stop the use of technology or to block innovation. In fact, our members can offer many examples where technology has helped make jobs safer, opened up new skills and careers, and improved the quality of products and services. But it will take the type of robust standards and guardrails established in this bill to ensure that workers are not harmed by what is a rapidly evolving set of often unproven and untested technologies, many of which employers and even engineers themselves do not fully understand. By considering this bill, the California State Legislature has the opportunity to lead the U.S. in establishing workers as key constituents in decisions about how best to govern and oversee artificial intelligence and related technological innovations.*

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<sup>23</sup> Kantor, J., Sundaram, A., Aufrichtig, A., & Taylor, R. (2022, August 15). The Rise of the Worker Productivity Score. The New York Times. <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html>

<sup>24</sup> Hsu, A. (2023, January 31). Can bots discriminate? It’s a big question as companies use AI for hiring. NPR. <https://www.npr.org/2023/01/31/1152652093/ai-artificial-intelligence-bot-hiring-eeoc-discrimination>

<sup>25</sup> Algorithms may start deciding who gets fired. (n.d.). Marketplace. Retrieved June 12, 2023, from <https://www.marketplace.org/shows/marketplace-tech/algorithms-may-start-deciding-who-gets-fired/>

<sup>26</sup> Bossware and Employment Tech Database. (n.d.). Coworker. <https://home.coworker.org/worktech/>

<sup>27</sup> Bill Text - AB-1651 Worker rights: Workplace Technology Accountability Act. (n.d.). Leginfo.legislature.ca.gov. [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB1651](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1651)

Policy interventions on ESAM that would benefit contract workers—and all workers—must include:

- Allow only for the collection of worker data that is strictly necessary for workers to do their jobs or for a valid business purpose.
- Ban unproven or high-risk technologies like facial recognition and algorithms to predict worker behaviors unrelated to their jobs.
- Ban the use of ESAM-only determinations for pay, promotions, discipline, or layoffs
- Require employers to notify workers about all relevant data collection, electronic monitoring, and algorithms in the workplace, prior to their use.
- Require employers to explain how these systems can affect employment decisions, including their assessment of workers' performance or productivity.
- Allow workers to access and correct their data.
- Require Pre-deployment and periodic review to assess for discriminatory impact; utilizing a heightened set of standards for use in the workplace.
- Require employers to submit impact assessments to relevant government agencies.
- Require proactive and inclusive engagement of impacted people in the design, deployment, and enforcement of regulations of ESAMs.<sup>28</sup>
- Create a public Registry of ESAM systems being deployed at private and public sector workplaces that includes the ability to search for algorithmic impact assessments;<sup>29</sup> as well as any pending or completed investigations of complaints and the outcome, similar to databases that catalog consumer protection violations.<sup>30</sup>

We believe that community and worker centered efforts—like the Workplace Technology Accountability Act—provide a pathway forward for policy intervention. Policies designed to support workers who will be impacted by the emergence and proliferation of ESAM must be developed with proactive, inclusive, and robust engagement of workers themselves. We appreciate the White House and OSTP for understanding the importance of public and worker engagement in the development of ESAM interventions and urge a continued effort to keep those communities engaged in the design, deployment, and monitoring of these interventions.

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<sup>28</sup> Gilman, M. E. (2022, November 2). Beyond Window Dressing: Public Participation for Marginalized Communities in the Datafied Society. Papers.ssrn.com. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4266250](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4266250)

<sup>29</sup> Leufer, F. H., Daniel. (2020, June 11). Trust and excellence — the EU is missing the mark again on AI and human rights. Access Now. <https://www.accessnow.org/trust-and-excellence-the-eu-is-missing-the-mark-again-on-ai-and-human-rights/>

<sup>30</sup> Consumer Complaint Database. (n.d.). Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/data-research/consumer-complaints/>