

COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

White House Office of Science and Technology Policy

on

Request for Information: Automated Worker Surveillance and Management

88 Fed. Reg. 27,932

June 15, 2023

The Electronic Privacy Information Center (“EPIC”) submits these comments in response to the White House Office of Science and Technology Policy (“OSTP”)’s Request for Information posted on May 3, 2023. OSTP is soliciting comments on the impacts of automated worker surveillance systems such as “risks to workers, including to their health and safety, equal employment opportunities, privacy, ability to meet critical needs, access to workplace accommodations, and exercise of workplace and labor rights, including their rights to form or join a labor union.”¹

The Electronic Privacy Information Center is a public interest research center in Washington, D.C., established in 1994 to focus public attention on emerging civil liberties issues and to secure the fundamental right to privacy in the digital age for all people through advocacy, research, and

¹ <https://www.federalregister.gov/documents/2023/05/03/2023-09353/request-for-information-automated-worker-surveillance-and-management>

litigation.² EPIC has consistently advocated for the right to be free from the effects of inaccurate, biased, or otherwise harmful scoring and screening techniques.³

EPIC applauds OSTP's continued focus on the harmful impacts of new and emerging technologies, including automated worker surveillance. As its comment, EPIC submits its 2019 complaint to the Federal Trade Commission against job applicant screening company HireVue and provides a suggested reading list of important work on worker surveillance, both by EPIC and other authors. EPIC's complaint against HireVue highlights both the harmful use of facial recognition on job applicants and the inherent risks of unleashing algorithmic decision-making systems without enacting safeguards.

Today's surveillance of workers and job applicants inflicts at least two kinds of harms. First, pervasive surveillance is bad for workers, allowing companies to deny workers' rights to break time, reasonable accommodations, and organizing and by increasing stress through ultimately unhelpful productivity monitoring. This same invasive monitoring denies workers human dignity and their right to privacy. Second, automated monitoring and evaluation systems are likely to make mistakes, falsely flagging workers as unproductive or applicants as unsuited because algorithmic decision-making systems are often inaccurate and discriminatory. EPIC urges the OSTP to take a broad view of worker surveillance and consider the multiplicity of harms created by surveillance, both when it works as intended and when it goes off the rails. EPIC also urges OSTP to define worker surveillance broadly to include surveillance in the hiring process.

² EPIC, *About Us* (2023), <https://epic.org/about/>.

³ See, e.g., EPIC, *Screened and Scored in the District of Columbia* (Nov. 2022), <https://epic.org/screened-scored-in-dc/>; EPIC, *Ban Face Surveillance* (2023), <https://epic.org/campaigns/ban-face-surveillance/>; EPIC, *Screened and Scored in the District of Columbia* (Nov. 2022), <https://epic.org/screened-scored-in-dc/>; EPIC, *AI & Human Rights* (2023), <https://epic.org/issues/ai>.

Suggested Reading on Worker & Job Applicant Surveillance

- Complaint of EPIC, *In re Hirevue* (2019), <https://epic.org/documents/in-re-hirevue/>
- Algorithmic Decision-Making Generally:
 - EPIC, *Screened and Scored in the District of Columbia* (Nov. 2022), <https://epic.org/screened-scored-in-dc/>
 - EPIC, *Generating Harms: Generative AI's Impact & Paths Forward* (May 2023), <https://epic.org/wp-content/uploads/2023/05/EPIC-Generative-AI-White-Paper-May2023.pdf>
 - EPIC, *Liberty at Risk: Pre-Trial Risk Assessment Tools in the U.S.* (Sept. 2020), <https://archive.epic.org/LibertyAtRiskReport.pdf>
 - Todd Feathers, *False Alarm: How Wisconsin Uses Race and Income to Label Students "High Risk"*, *The Markup* (Apr. 27, 2023), <https://themarkup.org/machine-learning/2023/04/27/false-alarm-how-wisconsin-uses-race-and-income-to-label-students-high-risk>
- State of Worker Surveillance Today:
 - Veena Dubal, *On Algorithmic Wage Discrimination* (Jan. 19, 2023), UC San Francisco Research Paper (forthcoming), *available at* <https://ssrn.com/abstract=4331080> or <http://dx.doi.org/10.2139/ssrn.4331080>
 - Jodi Kantor & Arya Sundaram, *The Rise of the Worker Productivity Score*, *N.Y. Times* (Aug. 14, 2022), <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html>
 - Drew Harwell, *Contract lawyers face a growing invasion of surveillance programs that monitor their work*, *Wash. Post* (Nov. 11, 2021), <https://www.washingtonpost.com/technology/2021/11/11/lawyer-facial-recognition-monitoring/>
- Similar Harmful Surveillance Practices:
 - Complaint of EPIC, *In re Online Test Proctoring Companies* (Dec. 9, 2020), <https://epic.org/documents/in-re-online-test-proctoring-companies/>
 - Comments of EPIC to Fed. Trade Comm'n in re COPPA Rule Review, (Dec. 11, 2019), <https://epic.org/wp-content/uploads/apa/comments/EPIC-FTC-COPPA-Dec2019.pdf>

Respectfully Submitted,

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