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1ST SESSION

S. 2440

To establish an interagency task force on employer surveillance and workplace technologies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2023

Mr. CASEY (for himself, Mr. SCHATZ, Mr. FETTERMAN, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish an interagency task force on employer surveillance and workplace technologies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Exploitative Workplace
5 Surveillance and Technologies Task Force Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **APPLICANT.**—The term “applicant”, with
9 respect to an employer, means an individual who ap-

1 plies, or applied, to be employed by, or otherwise
2 perform work for remuneration for, the employer.

3 (2) AUTOMATED DECISION SYSTEM.—

4 (A) IN GENERAL.—The term “automated
5 decision system” means a system, software, or
6 process that—

7 (i) uses computation, in whole or in
8 part, to determine outcomes, make or aid
9 decisions (including through evaluations,
10 metrics, or scoring), inform policy imple-
11 mentation, collect data or observations, or
12 otherwise interact with individuals or com-
13 munities, including such a system, soft-
14 ware, or process derived from machine
15 learning, statistics, or other data proc-
16 essing or artificial intelligence techniques;
17 and

18 (ii) is not passive computing infra-
19 structure.

20 (B) PASSIVE COMPUTING INFRASTRUC-
21 TURE.—For purposes of this paragraph, the
22 term “passive computing infrastructure” means
23 any intermediary technology that does not influ-
24 ence or determine the outcome of a decision,
25 make or aid in a decision (including through

1 evaluations, metrics, or scoring), inform policy
 2 implementation, or collect data or observations,
 3 including web hosting, domain registration, net-
 4 working, caching, data storage, or cybersecu-
 5 rity.

6 (3) AUTOMATED DECISION SYSTEM OUTPUT.—

7 The term “automated decision system output”, with
 8 respect to an employer, means any information, as-
 9 sumptions, predictions, scoring, recommendations,
 10 decisions, evaluations, metrics, or conclusions gen-
 11 erated by an automated decision system used by the
 12 employer with respect to a worker of the employer.

13 (4) BIOMETRIC INFORMATION.—

14 (A) IN GENERAL.—The term “biometric
 15 information” means any information generated
 16 from the technological processing of an individ-
 17 ual’s unique biological, physical, or physiological
 18 characteristics that is linked or reasonably
 19 linkable to an individual, including—

- 20 (i) fingerprints;
 21 (ii) voice prints;
 22 (iii) iris or retina scans;
 23 (iv) facial or hand mapping, geometry,
 24 or templates; or

1 (v) gait or personally identifying phys-
2 ical movements.

3 (B) INCLUSION.—The term “biometric in-
4 formation” includes information on the absence
5 of a biometric or the presence of a prosthetic.

6 (C) EXCLUSION.—The term “biometric in-
7 formation” does not include—

8 (i) a digital or physical photograph;

9 (ii) an audio or video recording; or

10 (iii) information generated from a dig-
11 ital or physical photograph, or an audio or
12 video recording, that cannot be used to
13 identify an individual.

14 (5) DATA.—The term “data”, with respect to a
15 worker, means any information that identifies, re-
16 lates to, describes, is reasonably capable of being as-
17 sociated with, or could reasonably be linked, directly
18 or indirectly, with the worker, regardless of how the
19 information is collected, inferred, or obtained, in-
20 cluding—

21 (A) personally identifiable information with
22 respect to the worker, including any name, con-
23 tact information, government-issued identifica-
24 tion number, financial information, criminal
25 background, location information, photographs,

1 biometric information, health or medical infor-
2 mation, or employment history associated with
3 the worker;

4 (B) any information related to the work-
5 place activities with respect to the worker, in-
6 cluding—

7 (i) human resources information, in-
8 cluding the contents of a personnel file or
9 performance evaluation;

10 (ii) work process information, such as
11 productivity and efficiency information and
12 time or attendance information;

13 (iii) information that captures work-
14 place communications and interactions, in-
15 cluding emails, texts, internal message
16 boards, and customer interaction and rat-
17 ings;

18 (iv) device usage and information, in-
19 cluding calls placed or precise geolocation
20 information;

21 (v) audio-video information and other
22 information collected from sensors, includ-
23 ing movement tracking, images, videos,
24 and thermal-sensor information;

25 (vi) biometric information;

1 (vii) information from a personality
2 test taken by a worker, including such a
3 test given electronically at the beginning of
4 or during a work shift or during the appli-
5 cation process;

6 (viii) inputs for an automated decision
7 system or any automated decision system
8 output;

9 (ix) information that is collected or
10 generated to mitigate the spread of infec-
11 tious diseases, including COVID–19, or to
12 comply with any Federal, State, or local
13 law; and

14 (x) information related to the ability
15 of a worker and any related workplace ac-
16 commodations; and

17 (C) online information with respect to the
18 worker that is collected while the worker is on-
19 or off-duty, including any internet protocol ad-
20 dress associated with the worker, the online
21 communication platform activity of the worker,
22 any advertisement-related tracking identifier as-
23 sociated with the worker, the internet browsing
24 history of the worker, or other digital sources or
25 unique identifiers associated with the worker.

1 (6) EMPLOY.—The term “employ” has the
2 meaning given such term in section 3 of the Fair
3 Labor Standards Act of 1938 (29 U.S.C. 203).

4 (7) EMPLOYER.—

5 (A) IN GENERAL.—The term “employer”
6 means any person who is—

7 (i)(I) a covered employer who is not
8 described in any other subclause of this
9 clause;

10 (II) an entity employing a State em-
11 ployee described in section 304(a) of the
12 Government Employee Rights Act of 1991
13 (42 U.S.C. 2000e–16c(a));

14 (III) an employing office, as defined
15 in section 101 of the Congressional Ac-
16 countability Act of 1995 (2 U.S.C. 1301);

17 (IV) an employing office, as defined in
18 section 411(c) of title 3, United States
19 Code; or

20 (V) an employing agency covered
21 under subchapter V of chapter 63 of title
22 5, United States Code; and

23 (ii) engaged in commerce (including
24 government), or an industry or activity af-
25 fecting commerce (including government).

1 (B) COVERED EMPLOYER.—In subpara-
2 graph (A), the term “covered employer”—

3 (i) means any person engaged in com-
4 merce or in any industry or activity affect-
5 ing commerce who employs, or otherwise
6 engages for the performance of work for
7 remuneration, 11 or more workers;

8 (ii) includes—

9 (I) any person who acts, directly
10 or indirectly, in the interest of a cov-
11 ered employer in relation to any indi-
12 vidual performing work for remunera-
13 tion for such covered employer;

14 (II) any successor in interest of a
15 covered employer;

16 (III) any public agency; and

17 (IV) the Government Account-
18 ability Office and the Library of Con-
19 gress; and

20 (iii) does not include any labor organi-
21 zation (other than when acting as an em-
22 ployer) or anyone acting in the capacity of
23 officer or agent of such labor organization.

24 (C) PUBLIC AGENCY.—For purposes of
25 this paragraph, a public agency shall be consid-

1 ered to be a person engaged in commerce or in
2 an industry or activity affecting commerce.

3 (D) DEFINITIONS.—For purposes of this
4 paragraph, the terms “commerce”, “person”,
5 and “public agency” have the meanings given
6 the terms in section 3 of the Fair Labor Stand-
7 ards Act of 1938 (29 U.S.C. 203).

8 (8) FEDERAL AGENCY.—The term “Federal
9 agency” has the meaning given the term in section
10 3371 of title 5, United States Code.

11 (9) GOVERNMENT ENTITY.—The term “govern-
12 ment entity” means—

13 (A) a Federal agency;

14 (B) a State or political subdivision thereof;

15 (C) any agency, authority, or instrumen-
16 tality of a State or political subdivision thereof;

17 or

18 (D) a Tribal government or political sub-
19 division thereof.

20 (10) IMPACT ASSESSMENT.—The term “impact
21 assessment” means an ongoing study on and evalua-
22 tion of the use of workplace surveillance or an auto-
23 mated decision system and the impact on workers of
24 such surveillance or system.

1 (11) INDIAN TRIBE.—The term “Indian Tribe”
2 means any Indian or Alaska Native tribe, band, na-
3 tion, pueblo, village, community, component band, or
4 component reservation individually identified (includ-
5 ing parenthetically) in the list published most re-
6 cently as of the date of enactment of this Act pursu-
7 ant to section 104 of the Federally Recognized In-
8 dian Tribe List Act of 1994 (25 U.S.C. 5131).

9 (12) LABOR ORGANIZATION.—The term “labor
10 organization” has the meaning given the term in
11 section 2(5) of the National Labor Relations Act (29
12 U.S.C. 152(5)), except that such term shall also in-
13 clude—

14 (A) any organization composed of labor or-
15 ganizations, such as a labor organization fed-
16 eration or a State or municipal labor body; and

17 (B) any organization which would be in-
18 cluded in the definition for such term under
19 such section 2(5) but for the fact that the orga-
20 nization represents—

21 (i) individuals employed by the United
22 States, any wholly owned Government cor-
23 poration, any Federal Reserve Bank, or
24 any State or political subdivision thereof;

1 (ii) individuals employed by persons
2 subject to the Railway Labor Act (45
3 U.S.C. 151 et seq.); or

4 (iii) individuals employed as agricul-
5 tural laborers.

6 (13) ONLINE COMMUNICATION PLATFORM AC-
7 TIVITY.—The term “online communication platform
8 activity” means any activity on an individual plat-
9 form-based online communication account.

10 (14) PRECISE GEOLOCATION INFORMATION.—

11 (A) IN GENERAL.—The term “precise
12 geolocation information” means information
13 that is derived from a device or technology that
14 reveals the past or present physical location of
15 an individual or of a device that identifies or is
16 linked or reasonably linkable to 1 or more indi-
17 viduals, with sufficient precision to identify
18 street level location information of the indi-
19 vidual or device or the location of the individual
20 or device within a range of 1,850 feet or less.

21 (B) EXCLUSION.—The term “precise
22 geolocation information” does not include infor-
23 mation described in subparagraph (A) identifi-
24 able or derived solely from the visual content of
25 a legally obtained image.

1 (15) SERVICE PROVIDER.—The term “service
2 provider”, with respect to an employer, means a per-
3 son that—

4 (A) collects, processes, conveys, or main-
5 tains data with respect to such employer only at
6 the direction of, in accordance with the direc-
7 tion of, and pursuant to a written contract with
8 the employer (including any terms of service or
9 service agreements);

10 (B) does not earn revenue from such col-
11 lection, processing, conveyance, or maintenance
12 of such data, except from the employer by pro-
13 viding contracted services to the employer with
14 regard to such collection, processing, convey-
15 ance, or maintenance of such data; and

16 (C) does not combine or link data associ-
17 ated with such employer with data associated
18 with another employer.

19 (16) STATE.—The term “State” means each of
20 the several States of the United States, the District
21 of Columbia, or any territory or possession of the
22 United States.

23 (17) TECHNOLOGIST.—The term “technologist”
24 means an individual with experience in fields related
25 to computational technology, or the technology in-

1 industry that produces computational technology, such
2 as advertising technology, application development,
3 artificial intelligence, computer science, cybersecu-
4 rity, data science, digital accessibility, digital
5 forensics, human-centered design, product manage-
6 ment, prototyping, service design, socio-technical
7 systems, software engineering, technology ethics,
8 user experience, or privacy rights, civil liberties, or
9 civil rights related to technology.

10 (18) THIRD PARTY.—The term “third party”,
11 with respect to an employer, means a person or enti-
12 ty—

13 (A) to which such employer transfers or is
14 able to transfer data, including any subsidiary
15 or corporate affiliate of such employer; and

16 (B) that is not—

17 (i) such employer;

18 (ii) a service provider of such em-
19 ployer with respect to the data being trans-
20 ferred; or

21 (iii) a government entity.

22 (19) TRANSFER.—The term “transfer”, with
23 respect to data, means releasing, sharing, leasing,
24 disseminating, disclosing, making available, or other-
25 wise causing to be communicated, such data—

1 (A) to a third party; or

2 (B) in the case of a third party that re-
3 leases, shares, leases, disseminates, discloses,
4 makes available, or otherwise causes to be com-
5 municated, such data, to another person.

6 (20) TRIBAL GOVERNMENT.—The term “Tribal
7 government” means the recognized governing body
8 of an Indian Tribe.

9 (21) WORKER.—The term “worker” includes
10 an applicant.

11 (22) WORKPLACE SURVEILLANCE.—The term
12 “workplace surveillance” means any collection (on-
13 or off-duty) by an employer of data with respect to
14 a worker, including the detection, monitoring, inter-
15 ception, collection, exploitation, preservation, protec-
16 tion, transmission, or retention of data concerning
17 activities or communications with respect to the
18 worker, including through the use of a product, sys-
19 tem or service marketed, or that can be used, for
20 such purposes, such as a computer, software, tele-
21 phone, wire, radio, camera, sensor, electromagnetic,
22 photoelectronic, handheld or wearable device, adapt-
23 ive computing, assistive technology, durable medical
24 equipment, or photo-optical system.

1 **SEC. 3. WORKPLACE SURVEILLANCE AND TECHNOLOGIES**

2 **TASK FORCE.**

3 (a) ESTABLISHMENT.—Not later than 180 days after
4 the date of enactment of this Act, the President shall es-
5 tablish an interagency task force, which shall be known
6 as the “White House Task Force on Workplace Surveil-
7 lance and Technologies” (in this Act referred to as the
8 “Task Force”).

9 (b) MEMBERSHIP.—

10 (1) COMPOSITION.—The Task Force shall be
11 comprised of—

12 (A) 2 members appointed by the President,
13 of whom—

14 (i) 1 shall be a representative of the
15 Department of Labor; and

16 (ii) 1 shall be a representative of the
17 Office of Science and Technology Policy;
18 and

19 (B) members who are representatives of—

20 (i) the Assistant Secretary of Labor
21 for Occupational Safety and Health;

22 (ii) the Assistant Secretary of Labor
23 for Disability Employment Policy;

24 (iii) the Administrator of the Wage
25 and Hour Division of the Department of
26 Labor;

- 1 (iv) the Secretary of Commerce;
- 2 (v) the Under Secretary of Commerce
- 3 for Standards and Technology;
- 4 (vi) the Attorney General;
- 5 (vii) the Chair of the Federal Trade
- 6 Commission;
- 7 (viii) the Chair of the National Labor
- 8 Relations Board;
- 9 (ix) the Chair of the Equal Employ-
- 10 ment Opportunity Commission;
- 11 (x) the Administrator of the Small
- 12 Business Administration;
- 13 (xi) the Director of the Domestic Pol-
- 14 icy Council;
- 15 (xii) the Director of the National In-
- 16 stitute for Occupational Safety and Health;
- 17 (xiii) the Director of the Consumer
- 18 Financial Protection Bureau;
- 19 (xiv) the United State Access Board;
- 20 and
- 21 (xv) any other Federal agency des-
- 22 ignated by the President.

23 (2) CHAIR.—The member appointed under

24 paragraph (1)(A)(i) shall service as the Chair of the

25 Task Force.

1 (3) VICE CHAIR.—The member appointed under
2 paragraph (1)(A)(ii) shall service as the Vice Chair
3 of the Task Force.

4 (4) PERIOD OF APPOINTMENT; VACANCIES.—

5 (A) IN GENERAL.—A member of the Task
6 Force shall be appointed for the life of the Task
7 Force.

8 (B) VACANCIES.—A vacancy in the Task
9 Force—

10 (i) shall not affect the powers of the
11 Task Force; and

12 (ii) shall be filled in the same manner
13 as the original appointment.

14 (c) MEETINGS.—The Task Force shall meet not less
15 than 4 times each year.

16 (d) SUBCOMMITTEES.—The Task Force may appoint
17 subcommittees or other working groups composed of Task
18 Force members appointed under subsection (b), or their
19 representatives, as may be necessary to accomplish the du-
20 ties described in section 4.

21 **SEC. 4. DUTIES.**

22 (a) IN GENERAL.—The Task Force shall study and
23 evaluate the use of workplace surveillance by employers,
24 including by studying—

1 (1) the prevalence and types of workplace sur-
2 veillance across different industries;

3 (2) how employers are collecting data via work-
4 place surveillance and are using, storing, securing,
5 and transferring such data, including—

6 (A) the types of data collected by work-
7 place surveillance;

8 (B) whether such data is provided by em-
9 ployers to a third party or otherwise ends up in
10 files maintained by a third party; and

11 (C) information on any disclosures to
12 workers by employers of workplace surveillance
13 used by the employer, and any provisions made
14 available to workers to opt-out of such work-
15 place surveillance;

16 (3) the impact of workplace surveillance and the
17 use of any automated decision system on—

18 (A) worker compensation;

19 (B) worker performance reviews and subse-
20 quent decisions related to such reviews;

21 (C) worker schedule policies;

22 (D) career advancement for workers;

23 (E) assignment of duties for workers;

24 (F) workplace safety, including with regard
25 to worker physical and mental health;

1 (G) health care and long-term care cov-
2 erage for workers;

3 (H) disciplinary or termination decisions
4 for workers;

5 (I) interviewing or hiring workers; and

6 (J) job quality;

7 (4) the implications of workplace surveillance
8 on worker organizing efforts and labor organization
9 membership;

10 (5) the impact of workplace surveillance and the
11 use of any automated decision system on vulnerable
12 populations, including workers with disabilities, low-
13 wage workers, workers of color, older workers, and
14 formerly incarcerated workers, and on gender equity
15 in the workplace;

16 (6) the feasibility of requiring impact assess-
17 ments for the use of workplace surveillance or an
18 automated decision system with respect to certain
19 employers or industries; and

20 (7) third parties and service providers and their
21 role in workplace surveillance and the technology
22 used for workplace surveillance.

23 (b) CONSULTATION.—In carrying out the duties
24 under subsection (a), the Task Force shall, to the extent
25 necessary and appropriate, regularly consult with—

- 1 (1) labor organizations;
- 2 (2) relevant stakeholders in the private sector;
- 3 (3) technologists and subject matter experts
- 4 on—
- 5 (A) workplace surveillance;
- 6 (B) technology used for workplace surveil-
- 7 lance;
- 8 (C) data;
- 9 (D) workplace safety and health; and
- 10 (E) the impact of workplace surveillance
- 11 on vulnerable populations, including workers
- 12 with disabilities, low-wage workers, workers of
- 13 color, older workers, and formerly incarcerated
- 14 workers and on gender equity in the workplace;
- 15 (4) Federal agencies that are not represented
- 16 on the Task Force; and
- 17 (5) representatives from allied or partner coun-
- 18 tries.

19 (c) REPORTS.—

- 20 (1) INITIAL REPORT.—Not later than one year
- 21 after the date of enactment of this Act, the Task
- 22 Force shall submit a report to the Committee on
- 23 Health, Education, Labor, and Pensions of the Sen-
- 24 ate, and any other appropriate congressional com-
- 25 mittee, that includes a comprehensive review of the

1 prevalence of workplace surveillance across different
2 industries and how employers are using, storing, se-
3 curing, and transferring data collected via workplace
4 surveillance.

5 (2) INTERIM REPORT.—Not later than one year
6 after the date on which the report required by para-
7 graph (1) is submitted, the Task Force shall submit
8 to the Committee on Health, Education, Labor, and
9 Pensions of the Senate, and any other appropriate
10 congressional committee, a report that includes find-
11 ings on—

12 (A) the study described in subsection
13 (a)(3) on the impact of workplace surveillance
14 and the use of any automated decision system;

15 (B) the implications of workplace surveil-
16 lance on worker organizing efforts and labor or-
17 ganization membership; and

18 (C) the effect of workplace surveillance and
19 the use of an automated decision system on vul-
20 nerable populations, including workers with dis-
21 abilities, low-wage workers, workers of color,
22 older workers, and formerly incarcerated work-
23 ers, and on gender equity in the workplace.

24 (3) FINAL REPORT.—Not later than one year
25 after the date on which the interim report required

1 under paragraph (2) is submitted, the Task Force
2 shall submit to the Committee on Health, Edu-
3 cation, Labor, and Pensions of the Senate and any
4 other appropriate congressional committee, and
5 make available to the public on the website of the
6 Executive Office of the President, a final report that
7 includes—

8 (A) recommendations to Federal agencies
9 and such committees about how to address
10 workplace surveillance and the technology used
11 for workplace surveillance; and

12 (B) recommendations on how to conduct a
13 government-wide coordinated strategy to ad-
14 dress the rise of workplace surveillance and the
15 technology used for workplace surveillance.

16 **SEC. 5. TERMINATION OF TASK FORCE.**

17 (a) **IN GENERAL.**—The Task Force shall terminate
18 60 days after the date on which the Task Force submits
19 the report required under section 4(c)(3).

20 (b) **ADDITIONAL ACTIONS.**—During the 60-day pe-
21 riod described in subsection (a), the Task Force may con-
22 clude any activities of the Task Force, including providing
23 testimony to Congress concerning the final report sub-
24 mitted under section 4(c)(3).

○