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United States Senate

WASHINGTON, DC 20510

August 26, 2022

The Honorable Marty Walsh
Secretary of Labor
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Walsh:

I write to urge the Department of Labor to consider the largely unchecked spread of invasive and exploitative workplace surveillance and technologies across the United States. The implementation of novel technologies to track, monitor, manage and discipline workers is growing due to an imbalance of power in the workplace and a lack of legal protections or regulatory restrictions on these behaviors. Without oversight, more and more intrusive technologies will be implemented in the workplace. It is incumbent on the Department of Labor to stay at the forefront of these issues on behalf of workers and to monitor and regulate workplace privacy and technology issues before they become the norm.

Presently, there is little oversight, accountability or transparency over how emerging workplace technologies and monitoring are impacting workers across the labor market. Decisions are being made solely by employers without consultation or input from workers. Workers deserve a seat at the table when policies and decisions are being made that impact their workplaces and privacy in such a significant way. Employers are not required to disclose how and what data is being collected on employees. In fact, a growing share of this is being handled by third-party vendors with little disclosure as to how and where these companies are handling worker data and ensuring it is securely stored.

Further, the increased reliance on algorithms and automated systems have left many workers with limited insight into how these systems are being used to make employment and wage decisions, including on workers' performance and productivity.¹ The constant monitoring even occurs when workers take short breaks, such as to use the bathroom or pump breast milk, which counts as idle time that lowers their productivity scores and puts them at risk of being

¹ Kantor, Jodi and Sundaram, *The Rise of the Worker Productivity Score*, The New York Times (August 14, 2022), <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html>.

disciplined.² Alarmingly, employers are using these technologies to violate, monitor or preempt their workers' right to organize.

Some workers are now even managed primarily or entirely by algorithms and automated systems which can make employment decisions with little or no meaningful human oversight. There are reports of Amazon workers being senselessly fired via email by bots.³ Likewise, many so called "gig economy" workers are primarily managed by algorithms, which determine the pay, ratings and tasks they are offered. Workers disciplined or terminated by these systems are often left with few options to dispute these decisions or engage with a human manager to understand how these decisions were made. Warehouse and e-commerce workers, in particular, are being subjected to novel and high-risk technologies without impact assessments on their potential effects on wages, job quality and physical and mental health. Novel and high-risk technologies, including but not limited to facial and emotional recognition, biometric monitoring, wearables, productivity management systems and algorithm-driven employee performance systems, should be studied so that we can better understand how these could cause injury or affect workers' mental health. While the role of technology to make workplaces safer is important, we need a holistic approach to consider their effects.

Emerging workplace technologies, privacy and surveillance should be treated as a new facet of protecting worker safety and rights. Given the unprecedented nature of these technologies and the historic imbalance in power between workers and their employers, I am especially concerned about the potential impacts on our most vulnerable workers and how this could worsen inequality and discrimination in the labor market and across the economy.

On August 11, the Federal Trade Commission announced its intent to "crack down on harmful commercial surveillance" with potential rulemaking on commercial surveillance and lax data security practices for consumers.⁴ I encourage the Department of Labor to undergo a similar, interagency process for the unique issues and challenges that workers face in the workplace on these issues. I would also be interested to hear from you what authorities or resources the Department might need to be able to tackle these issues.

I commend the Biden-Harris Administration for being a champion for working men and women and their rights in the workplace. Under your leadership, the Department of Labor has been fulfilling its promise to foster and promote the welfare of workers across the country. I believe that these issues align with the Biden-Administration's agenda to lift up the rights and dignity of workers and create forward-looking labor policy to anticipate evolving workplace needs.

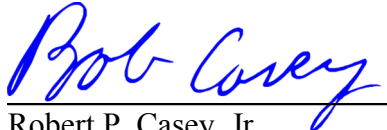
² Wiessner, Daniel, *Amazon didn't give workers breaks to pump breast milk – lawsuit*, Reuters (August 1, 2022), <https://www.reuters.com/legal/litigation/amazon-didnt-give-workers-breaks-pump-breast-milk-lawsuit-2022-08-01/>.

³ Soper, Spencer, *Fired by Bot at Amazon: 'It's You Against the Machine'*, Bloomberg News (June 28, 2021), <https://www.bloomberg.com/news/features/2021-06-28/fired-by-bot-amazon-turns-to-machine-managers-and-workers-are-losing-out>.

⁴ *FTC Explores Rules Cracking Down on Commercial Surveillance and Lax Data Security Practices*, Federal Trade Commission (April 11, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-explores-rules-cracking-down-commercial-surveillance-lax-data-security-practices>.

Thank you for your consideration. I look forward to working with the Department of Labor to craft responsible, forward-looking labor policy that means all workers, everywhere, have a reasonable right to privacy and protections in the workplace.

Sincerely,



Robert P. Casey, Jr.
United States Senator

CC: The Honorable Lauren McFerran, Chairman, National Labor Relations Board
CC: The Honorable Lina Khan, Chair, Federal Trade Commission