

LC004970

IN GENERAL ASSEMBLY

RELATING TO LABOR AND LABOR RELATIONS -- ARTIFICIAL INTELLIGENCE USE
AND FAIR EMPLOYMENT PRACTICES

Referred To: House Labor

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR RELATIONS"

2 is hereby amended by adding thereto the following chapter:

28-5.2-1. Definitions.

(1) "Authorized representative" means any person or organization appointed by the worker to serve as a representative of the worker including, but not limited to, a labor organization as defined in the Rhode Island labor relations act § 28-7-3, the National Labor Relations Act 29 U.S.C. § 152(5) and 5 U.S.C. § 7103(a)(4), and 45 U.S.C. § 151. "Authorized representative" shall not include a worker's employer.

(2) "Automated decision system (ADS)" means any computational process, automated system, or algorithm utilizing machine learning, statistical modeling, data analytics, artificial intelligence, or similar methods, that issues an output, including a score, classification, ranking, or recommendation, that is used to assist or replace human decision making, on issues that impact natural persons. "ADS" does not include a tool that does not assist or replace employment decision processes and that does not materially impact natural persons including, but not limited to, a junk

1 email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other
2 compilation of data.

3 (3) "Automated decision system (ADS) output" means any information, data, assumptions,
4 predictions, scoring, recommendations, decisions, or conclusions generated by an ADS.

5 (4) "Biometric information" means data generated by automatic measurements of an
6 individual's biological characteristics, such as a fingerprint, a voiceprint, eye retinas, irises, gait, or
7 other unique biological patterns or characteristics that can be used, singly or in combination with
8 other data, to identify a specific individual. "Biometric information" does not include:

9 (i) A digital or physical photograph;

10 (ii) An audio or video recording; or

11 (iii) Any data generated from a digital or physical photograph, or an audio or video
12 recording, unless such data is generated to identify a specific individual.

13 (5) "Candidate" means any natural person or their authorized representative seeking
14 employment through an application, or who is screened or evaluated for recruitment, for a position
15 of employment by a business operating in this state.

16 (6) "Continuous incremental time-tracking tool" means any system, application or
17 instrument that continuously measures, records and/or tallies increments of time within a day
18 during which an employee is or is not doing a particular activity or set of activities.

19 (7) "Department" means the department of labor and training.

20 (8) "De-identified employee data" means employee data that an employer has sought from
21 their own electronic systems, from a vendor, or from a third-party source, aggregated, combined,
22 or collected together, in a summary or other form so that the employee data cannot be identified as
23 belonging to any specific employee.

24 (9) "Egregious misconduct" means intentional or grossly negligent conduct that creates an
25 imminent and substantial risk of serious physical harm to the individual, co-workers, customers, or
26 other persons, or that results in significant, demonstrable harm to the employer's or customers'
27 property or business interests, including discrimination against or harassment of co-workers,
28 customers, or other persons, or involves criminal conduct directly related to the employee's job
29 duties.

30 (10) "Electronic monitoring tool" means any system, application, or instrument that
31 facilitates the collection of data concerning worker activities or communications by any means
32 other than direct observation by a natural person including, but not limited to, the use of a computer,
33 telephone, wire, radio, camera, electromagnetic, photoelectronic, or photo-optical system, or
34 obtaining employee data from a third-party.

1 (11) "Employee" shall have the same meaning as contained in § 28-7-3.

2 (12) "Employee information" (also referred to as "information" or "employee data") means
3 any information that identifies, relates to, describes, is reasonably capable of being associated with,
4 or could reasonably be linked, directly or indirectly, with a particular employee, regardless of how
5 the information is collected, inferred, or obtained. "Employee information" includes, but is not
6 limited to, the following: personal identity information, including the individual's name, contact
7 information, government-issued identification numbers, financial information, criminal
8 background, or employment history; biometric information, health, medical, lifestyle, and wellness
9 information, including the individual's medical history, physical or mental condition, diet or
10 physical activity patterns, heart rate, medical treatment or diagnosis by a healthcare professional,
11 health insurance policy number, subscriber identification number, or other unique identifier used
12 to identify the individual; related to workplace activities, including the following:

13 (i) Human resources information means the contents of an individual's personnel file
14 including performance evaluations;

15 (ii) Work process information, such as data relating to an individual employee's
16 performance or productivity including, but not limited to, the quality and quantities of tasks
17 performed, quality and quantities of items or materials handled or produced, rates or speeds of tasks
18 performed, measurements or metrics of employee performance in relation to a quota, and time
19 categorized as performing tasks or not performing tasks;

20 (iii) Device usage and data including, but not limited to, key stroke recording, website,
21 software, and application utilization, calls placed or geolocation information;

22 (iv) Audio, photo, or video data or other information collected from sensors, including
23 movement tracking, thermal sensors, voiceprints, or facial recognition, emotion, and gait
24 recognition;

25 (v) Inputs to or outputs generated by an automated decision system (ADS) that are linked
26 to the individual;

27 (vi) Data collected through electronic monitoring or continuous incremental time-tracking
28 tools; and

29 (vii) Data collected or generated on workers to mitigate the spread of infectious diseases,
30 including COVID-19, or to comply with public health measures.

31 (13) "Employer" means any person acting on behalf of or in the interest of an employer,
32 directly or indirectly, with or without their knowledge, but a labor organization or any officer or its
33 agent, shall only be considered an employer of individuals employed by the organization.

34 (14) "Employment-related decision" means a decision made by the employer that affects

1 wages, benefits, other compensation, hours, schedule, performance evaluation, hiring, recruitment,
2 discipline, promotion, termination, duties, assignment of work, access to work opportunities,
3 productivity requirements, workplace health and safety, or other terms or conditions of
4 employment. For persons classified as independent contractors or for candidates for employment,
5 this means the equivalent of these decisions based on their contract with or relationship to the
6 employer.

7 (15) "Essential job functions" means the fundamental duties of a position, based upon work
8 duties actually performed over the duration of employment, as revealed by objective evidence,
9 including the amount of time workers spend performing each function, the consequences of not
10 requiring individuals to perform the function, the terms of any applicable collective bargaining
11 agreement, workers' past and present work experiences and performance in the position in question,
12 and the employer's reasonable, nondiscriminatory judgment as to which functions are essential.
13 Past and current written job descriptions may be evidence as to which functions are essential for
14 achieving the purposes of the job, but may not be the sole basis for this determination, absent the
15 objective evidence described in this subsection.

16 (16) "Impact assessment" means an impartial evaluation by an independent auditor that
17 complies with § 28-5.2-2.

18 (17) "Independent auditor" means a person or entity that conducts an impact assessment of
19 an automated decision system in a manner that exercises objective and impartial judgment on all
20 issues within the scope of such evaluation or assessment. A person is not an independent auditor of
21 an automated decision system if they currently or at any point in the five (5) years preceding the
22 impact assessment:

23 (i) Are or were involved in using, developing, offering, licensing, or deploying the
24 automated decision system;

25 (ii) Have or had an employment relationship with a developer or deployer that uses, offers,
26 or licenses the automated decision system; or

27 (iii) Have or had a direct financial interest or a material indirect financial interest in a
28 developer or deployer that uses, offers, or licenses the automated decision system.

29 (18) "Meaningful human oversight" means a process that includes, at a minimum:

30 (i) The designation of at least one internal reviewer with sufficient expertise in the
31 operation of automated decision systems, sufficient familiarity with the results of the most recent
32 impact assessment of the employer's system, and sufficient understanding of the outputs of the
33 employer's system to identify potential biases, errors, discrepancies, or inaccuracies produced by
34 the tool;

1 (ii) That sufficient authority and discretion be granted to the designated internal reviewer
2 to dispute, rerun, or recommend the rejection of an output suspected to be invalid, inaccurate, or
3 discriminatory; and

4 (iii) That the designated internal reviewer has the time and resources available to review
5 and evaluate the tool output in accordance with § 28-5.2-2.

6 (19) "Periodic assessment of worker performance" means assessing worker performance
7 over the course of units of time equal to or greater than one calendar day.

8 (20) "Vendor" means any person or entity who sells, distributes, or develops for sale an
9 automated decision system to be used in an employment decision made by an employer in the state.
10 "Vendor" includes any of the vendor's agents, contractors, or subcontractors.

11 **28-5.2-2. Electronic monitoring tools.**

12 (a) It shall be unlawful for an employer to use an electronic monitoring tool to collect
13 employee information unless:

14 (1) The electronic monitoring tool is primarily used to accomplish any of the following
15 legitimate purposes:

16 (i) Allowing a worker to accomplish or facilitating the accomplishment of an essential job
17 function;

18 (ii) Ensuring the quality of goods and services;

19 (iii) Conducting periodic assessment of worker performance;

20 (iv) Ensuring or facilitating compliance with employment, labor, or other relevant laws;

21 (v) Protecting the health, safety, or security of workers, or the security of the employer's
22 facilities or computer networks; or

23 (vi) Administering wages and benefits.

24 (2) The department of labor and training standards may establish additional exceptions
25 under this subsection, pursuant to chapter 35 of title 42 ("administrative procedures act.")

26 (b)(1) The specific type and activated capabilities of an electronic monitoring tool shall be
27 narrowly tailored to accomplish the employer's intended, legitimate purpose specified under
28 subsection (a)(1) of this section;

29 (2) The electronic monitoring tool shall only be used to accomplish the employer's
30 intended, legitimate purpose specified in subsection (a)(1) of this section, and shall be customized
31 and implemented in a manner ensuring that the execution of its duties are undertaken in the manner
32 least invasive to employees of the employer, while still accomplishing the employer's legitimate
33 purposes as defined by subsection (a)(1) of this section;

34 (3) The specific form of electronic monitoring is limited to the smallest number of workers,

1 collection of the least amount of data which shall be collected no more frequently than is necessary
2 to accomplish the purpose, and the data collected, shall be deleted once the purpose has been
3 achieved;

4 (4) The employer shall ensure that any employee data that is collected utilizing an
5 electronic monitoring tool that is not necessary to accomplish the employer's intended, legitimate
6 purpose shall not be disclosed to the employer and shall be promptly disposed of by the vendor;

7 (5) The employer shall ensure that employee data is not collected when the employee is
8 off-duty; and

9 (6) The employer shall ensure that any employee data collected utilizing an electronic
10 monitoring tool that is necessary to accomplish the employer's intended, legitimate purpose, is
11 stored consistent with the state's data and cyber privacy laws, promptly disposed of as soon as the
12 data is no longer needed, and is not utilized by the employer, the vendor or any other third party
13 for any reason except, as provided in subsection (c) of this section.

14 (c) Any employer that uses an electronic monitoring tool shall give prior written notice and
15 shall obtain written acknowledgment from all candidates and employees subject to electronic
16 monitoring and shall also post said notice in a conspicuous place which is readily available for
17 viewing by candidates for employment and employees. Such notice shall include, at a minimum,
18 the following:

19 (1) A description of the purpose for which the electronic monitoring tool will be used, as
20 specified in subsection (a)(1) of this section;

21 (2) A description of the specific employee data to be collected, stored, secured, and
22 disposed of (and the schedule therefor), and the activities, locations, communications, and job roles
23 that will be electronically monitored by the tool;

24 (3) A description of the dates, times, and frequency that electronic monitoring will occur;

25 (4) Whether and how any employee data collected by the electronic monitoring tool will
26 be used as an input in an automated decision system;

27 (5) Whether and how any employee data collected by the electronic monitoring tool will
28 alone or in conjunction with an automated decision system be used to make an employment
29 decision by the employer or employment agency;

30 (6) Whether and how any employee data collected by the electronic monitoring tool may
31 be stored and utilized in discipline, in internal policy compliance, in administrative agency
32 adjudications, in litigation (whether or not it involves the employee or not as a party);

33 (7) Whether any employee data collected by the electronic monitoring tool will be used to
34 assess employees' productivity performance or to set productivity standards, and if so, how;

1 (8) A description of where any employee data collected by the electronic monitoring tool
2 will be stored and the length of time it will be retained;

3 (9) An explanation for how the specific electronic monitoring practice is the least invasive
4 means available to accomplish the monitoring purpose;

5 (10) That an employee is entitled to notice and maintains the right to refuse the sale,
6 transfer, or disclosure of their employee data, subject to the provisions of subsection (g) of this
7 section; and

8 (11) A clear and reasonably understandable description of how an employee can exercise
9 the rights described in this chapter.

10 (d) An employer shall establish, maintain, and preserve for five (5) years contemporaneous,
11 true, and accurate records of data gathered through the use of an electronic monitoring tool and
12 used in a hiring, promotion, termination, disciplinary or compensation decision to ensure
13 compliance with the employee or their authorized representative or the department requests for
14 data. The employer shall destroy any employee information collected via an electronic monitoring
15 tool no later than sixty-one (61) months after collection unless the employee has provided written
16 and informed consent to the retention of their data by the employer. An employer shall establish,
17 implement and maintain reasonable administrative, technical and physical data security practices
18 to protect the confidentiality, integrity and accessibility of employee data, appropriate to the volume
19 and nature of the employee data at issue. An employee shall have the right to request corrections
20 to erroneous employee data.

21 (e) Notwithstanding the allowable purposes for electronic monitoring described in
22 subsection (a) of this section, an employer shall not:

23 (1) Use an electronic monitoring tool in such a manner that results in a violation of labor,
24 employment, civil rights law or any other law of the state;

25 (2) Use an electronic monitoring tool or data collected via an electronic monitoring tool in
26 such a manner as to threaten the health, welfare, safety, or legal rights of employees or the general
27 public;

28 (3) Use an electronic monitoring tool to monitor employees who are off-duty or not
29 performing work-related tasks;

30 (4) Use an electronic monitoring tool in order to obtain information about an employee's
31 health, including health status and health conditions, the race, color, religious creed, national origin,
32 sex, gender identity, sexual orientation, genetic information, pregnancy or a condition related to
33 said pregnancy including, but not limited to, lactation or the need to express breast milk for a
34 nursing child, ancestry or status as a veteran or membership in any group protected from

1 employment discrimination under title 28 or any other applicable law;

2 (5) Use an electronic monitoring tool in order to identify, punish, or obtain information
3 about employees engaging in activity protected under labor or employment law;

4 (6) Conduct audio or visual monitoring of bathrooms or other similarly private areas,
5 including locker rooms, changing areas, breakrooms, smoking areas, employee cafeterias, lounges,
6 and areas designated to express breast milk, or areas designated for prayer or other religious
7 activity, including data collection on the frequency of use of those private areas;

8 (7) Conduct audio or visual monitoring of a workplace in an employee's residence, an
9 employee's personal vehicle, or property owned or leased by an employee;

10 (8) Use an electronic monitoring tool that incorporates facial recognition;

11 (9) Use an electronic monitoring tool that incorporates gait, voice analysis, or emotion
12 recognition technology;

13 (10) Take adverse action against an employee, based, in whole or in part, on their
14 opposition or refusal to submit to a practice that the employee believes in good faith violates this
15 section;

16 (11) Take adverse employment action against an employee on the basis of data collected
17 via continuous incremental time-tracking tools, except in the case of egregious misconduct; or

18 (12) Take adverse employment action against an employee based on any data collected via
19 electronic monitoring, if such data measures an employee's performance in relation to a
20 performance standard that has not been previously, clearly, and unmistakably disclosed to such
21 employee, as well as to all other classes of employees to whom it applies in violation of this section,
22 or if such data was collected without proper notice to employees or candidates pursuant to this
23 section.

24 (f) An employer shall not use employee data collected via an electronic monitoring tool for
25 purposes other than those specified in the notice provided pursuant to subsection (c) of this section.

26 (g) An employer shall not sell, transfer, or disclose employee data collected via an
27 electronic monitoring tool to any other entity unless it is required to do so under federal law or the
28 laws of the state, or necessary to do so to comply with an impact assessment of an automated
29 decision system used pursuant to this section.

30 (h) An employer shall not require employees to:

31 (1) Physically implant devices that collect or transmit data, including devices that are
32 installed subcutaneously or incorporated into items of clothing or personal accessories;

33 (2) Install applications on personal devices that collect or transmit employee data or to wear
34 or embed those devices; or

1 (3) Carry or use any device with location tracking applications or services enabled, unless
2 the location tracking is:

3 (i) Conducted during work hours only; and
4 (ii) Strictly necessary to accomplish essential job functions and narrowly limited to only
5 the activities and times required to accomplish essential job functions.

6 (i) An employer shall not rely primarily on employee data collected through electronic
7 monitoring, when making hiring, promotion, disciplinary decisions up to and including
8 termination, or compensation decisions. For an employer to satisfy the requirements of this
9 subsection:

10 (1) An employer shall establish meaningful human oversight of such decisions that are
11 based, in whole or in part, on data collected through electronic monitoring.

12 (2) A human decision-maker shall review any information collected through electronic
13 monitoring, verify that such information is accurate and up to date, review any pending employee
14 requests to correct erroneous data, and exercise independent judgment in making each such
15 decision; and

16 (3) The human decision-maker shall consider information other than information collected
17 through electronic monitoring, when making each such decision including, but not limited to,
18 supervisory or managerial evaluations, personnel files, employee work products, or peer reviews.

19 (j) When an employer makes a hiring, promotion, termination, disciplinary or
20 compensation decision, based, in whole or in part, on data gathered through the use of electronic
21 monitoring, it shall disclose to affected employees and their authorized representative within thirty
22 (30) days of the decision being made or going into effect, whichever is sooner:

23 (1) That the decision was based, in whole or in part, on data gathered through electronic
24 monitoring;

25 (2) The specific electronic monitoring tool or tools used to gather such data, how the tools
26 work to gather and analyze the data, and the increments of time in which the data is gathered;

27 (3) The specific data, and judgments based upon such data, used in the decision-making
28 process; and

29 (4) Any information used in the decision-making process gathered through sources other
30 than electronic monitoring.

31 (k) It shall be unlawful for an employer to use electronic monitoring, alone or in
32 conjunction with an automated decision system, unless the employer's proposed use of electronic
33 monitoring has been the subject of an impact assessment. Such impact assessments shall:

34 (1) Be conducted no more than one year prior to the use of such electronic monitoring, or

where the electronic monitoring began before the effective date of this section, within six (6) months of the effective date of this chapter;

(2) Be conducted by an independent and impartial party with no financial or legal conflicts of interest;

(3) Evaluate whether the data protection and security practices surrounding the electronic monitoring are consistent with applicable law and cybersecurity industry's best practices;

(4) Identify the allowable purpose(s) as defined in this chapter;

(5) Consider and describe any other ways in which the electronic monitoring could result in a violation of applicable law and, for any finding that a violation of law may occur, any necessary or appropriate steps to prevent such violation of law;

(6) Consider and describe whether the electronic monitoring may negatively impact employees' privacy and job quality, including wages, hours, and working conditions; and

(7) Be disclosed in full, in plain language, to all affected workers and their authorized representatives within thirty (30) days of the employer's receipt of the impact assessment.

(i) Workers and their authorized representatives shall have the right to comment on, challenge and bargain over the proposed monitoring based on the assessment's findings.

28-5.2-3. Anti-retaliation provisions for impacted workers.

(a) An employee shall be protected from termination, disciplinary action, retaliation, or other adverse employment action for refusing to follow the output of an artificial intelligence system, automated decision system, algorithm, or other similar technology if the following conditions are met:

(1) The employee holds independent judgment and discretion in executing their work duties, or the work duties to be performed by the employee require licensure or certification by the state, as a condition of employment, or independent accreditation by the employer;

(2) The employee has notified a supervisor, manager, or their employer that the output from the artificial intelligence system, automated decision system, algorithm, or other similar technology may, in their professional opinion and/or educational or work related- experience, lead to the harm of a natural person, damage to physical property, an illegal action, an action contrary to the licensure or certification requirements of the federal government, state, or an applicable private licensing or certifying authority, or an outcome contrary to the goal of the employer, and the employer refused or otherwise failed to adjust the output;

(3) The employee has refused to follow the output in good faith and with the knowledge or reasonable belief, based upon training, education, or experience, that the output would cause harm or have an adverse impact; or

1 (4) Due to the urgency of the potential harm or adverse impact, there is not enough time
2 for the output to be corrected through department action.

3 (b) The department of labor and training shall promulgate procedures, rules, or regulations
4 regarding the implementation of this chapter.

5 (c) The office of the attorney general shall promulgate procedures, rules, or regulations
6 necessary to further the state’s interest in protecting consumers and the public good, from violations
7 of privacy rights and harms, resulting from the use of artificial intelligence and automated-decision
8 systems.

9 (d) Such regulations shall consider, but are not limited to, bias testing, appropriate
10 disclosures, clear, conspicuous, and reasonably understandable notice, whether there exists a client-
11 professional relationship, best and current practices and models utilized by other states and the
12 federal government, to ensure the regulations are responsive to emerging technologies, and
13 appropriate additional documentation that is reasonably necessary to assist the office of the attorney
14 general to evaluate the inputs and outputs and monitor the performance of artificial intelligence and
15 automated decision-making systems, for the risk of bias or consumer harm.

16 **28-5.2-4. Civil claims for adverse employment action taken based on prohibited**
17 **conduct.**

18 (a) No employee shall be penalized by an employer in any way as a result of any action on
19 the part of an employee to seek their rights under the provisions of this chapter.

20 (b) Any employer who discharges or in any other manner discriminates against any
21 employee because such employee has made a complaint to the attorney general or any other
22 department, agency, or person, or assists in any investigation under this chapter, or has instituted,
23 or caused to be instituted any proceeding under or related to this chapter, or has testified or is about
24 to testify in any such proceedings, commits a violation of this section and shall be subject to
25 penalties as provided in title 28.

26 (c) Nothing in this chapter shall be construed to diminish an employer’s obligations under
27 state or federal law.

28 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- ARTIFICIAL INTELLIGENCE USE
AND FAIR EMPLOYMENT PRACTICES

- 1
- This act would create a comprehensive statutory framework to address and regulate the use
- 2
- of artificial intelligence in the workplace, considering the interests of employers and employees.
- 3
- This act would take effect upon passage.

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