



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Standing Committee on Social Policy of the Legislative Assembly Re: Schedule 2 of Bill 149, the *Working for Workers Four Act, 2023*

**Speaking remarks delivered by Patricia Kosseim,
Information and Privacy Commissioner**

[Check against delivery]

Introduction

- Mr. Chair, Members of the Committee, ladies and gentlemen, thank you for the opportunity to present my views on Bill 149. I have provided a fuller written submission to the Committee through the Chair, and will speak to some of the highlights here.
- Accompanying me is Dr. Christopher Parsons, Manager of Technology Policy, from my office.
- My focus will be on Schedule 2 of the bill, that would amend the *Employment Standards Act* to require employers to disclose -- in any public job posting -- whether they use artificial intelligence [or AI] to screen, assess, or select applicants.
- I recognize the government's efforts to promote transparency about the use of AI in the hiring



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process. However, I do not believe this step is enough to address the significant risks associated with the increasing use of AI in Ontario.

Employee monitoring is accelerating

- AI is rapidly emerging and evolving.
- The accelerated adoption of electronic monitoring technologies *enabled* by AI is raising significant privacy concerns in the workplace.
- AI is used not only during recruitment. It can also be used throughout the employment relationship to evaluate employees' on-the-job performance.
- Analyses of employees' actions, sentiments, voice, and facial expressions can lead to inferences and predictions about their productivity, their level of attention on the job, their ability to stay calm under pressure, and their effectiveness in providing good customer service.
- In turn, these inferences and predictions can feed into employers' decisions about promotional opportunities, compensation, and even termination of employment, having significant impacts on employees' well-being and economic livelihood.

- A 2023 study [by Toronto Metropolitan University and the Future Skills Centre] found that 70 per cent of surveyed employees across Canada indicated that some aspect of their work was digitally monitored. About 32 per cent said that they experienced more invasive forms of surveillance such as location tracking, keystroke monitoring, or the collection of biometrics such as voiceprints and facial features. These employees reported significantly higher stress, lower levels of job satisfaction, and reduced trust in their employer.
- Moreover, we know, through many well-documented examples that AI is fallible and has led to inaccurate and discriminatory outcomes that could be harmful.
- For example, when Amazon developed an AI-driven system to sort through job applications, the automated tool ended up discriminating against women who applied for technical positions, based on bias in historical data used to train the algorithms.
- Other studies have found that AI hiring tools often discriminate based on inferences drawn about

candidates' names, creating additional barriers for individuals who are already disadvantaged in some way.

Transparency is not enough

- Examples like these are why the new transparency provision in Bill 149, alone, is not enough. It will not provide workers with any insight into what personal information about them is being collected and how it's being used; it won't protect their privacy against invasive uses of AI, or give them any meaningful recourse against unfair decisions based on inaccurate inferences.
- Ontario workers need protections beyond *just* being told that AI is being used, and they need protection throughout the entire employment relationship, not *just* at the initial recruitment phase.
- These issues are too big to be addressed through tweaks to the *Employment Standards Act*. That's why we need a more comprehensive approach to governing privacy protection and use of AI in the province.

- In March 2022, I raised similar concerns about Bill 88, now law, which requires certain employers to develop and make available a policy on their use of electronic monitoring technologies.
- Bill 149, *like Bill 88*, takes a very narrow and *ad hoc* approach to protecting employee privacy rights by introducing a limited transparency requirement.
- I urge the government to adopt a more comprehensive statutory regime that would cover a broader range of data protection rights -- *including* for the employment sector, and would contain appropriate guardrails for protecting Ontarians from potentially harmful digital technologies -- *including* AI.
- Federal privacy law covers only federally regulated workplaces. For decades now, British Columbia, Alberta, and Quebec have had their own laws to protect the privacy of their provincially regulated employees. Yet, in Ontario, approximately 7.5 million workers have, to this day, no statutory privacy protections.
- The kind of provincial privacy law we need for Ontario, is similar to what was proposed in the

government's 2021 white paper on modernizing privacy in our province, on which we have seen no further action since.

- Given the increasing safety- and privacy-related risks associated with the rapid emergence of digital technologies in the workplace, I believe that *all* Ontario employees should benefit from strong statutory privacy rights and that no Ontarian should be left behind.

Conclusion

- Ontario workers deserve real transparency, accountability, and privacy protection.
- While requiring employers to publicly disclose that they use AI during hiring, is a step in the right direction, it is not nearly enough to protect Ontario's workers from the use of electronic monitoring and AI in the workplace.
- The comprehensive privacy law reform that the government initiated in 2021 and that I am recommending they pursue goes beyond just tweaking or refining the existing proposal. Privacy rights in an age of digital technologies must be more

firmly entrenched within a more comprehensive and coherent privacy regime.

- Absent urgently-needed guardrails, Ontario workers will not be sufficiently protected from the real and growing threats posed by unsafe and unfair applications of AI.
- I believe clear guardrails would also benefit employers by providing them with more certain and predictable parameters within which they could innovate with greater confidence.
- I encourage the government to embark on a more thorough endeavor of law reform, and my office stands ready and willing to support that effort in any way we can.
- Thank you. I would be pleased to answer any questions you may have.