

# **BIG BROTHER WATCH**

**Big Brother Watch Briefing  
on the Employment Rights  
Bill for Second Reading in  
the House of Commons**

**October 2024**

## **About Big Brother Watch**

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous technological change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

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## SUMMARY

- Big Brother Watch believes that the Government have missed a vital opportunity in the Employment Rights Bill to protect workers from the harms caused by growing worker surveillance. The Bill must be revised in the course of its passage through Parliament to protect workers from the harms arising from excessive high-tech worker surveillance; to protect workers' privacy, dignity, health; and to uphold key rights to equality and non-discrimination.
- **LEGAL PROTECTIONS:** Loopholes in existing laws allow employers to exploit deeply invasive new surveillance technologies, prompting the urgent need for clearer legislation to protect workers. However, the Employment Rights Bill fails to address these pressing issues, contravening Labour's manifesto commitments *and* calls for new legal protections from unions and privacy organisations.
- **ENFORCEMENT:** A significant gap exists between law and practice, with many organisations routinely bypassing legal requirements without consequences. While the ICO has issued guidance on data protection and workplace monitoring, many employers fail to comply. To address this, the ICO requires greater resources. Further, the government must ensure there is clear guidance on how AI and automated systems used in employment can comply with anti-discrimination laws. This would help to reduce the detrimental impact on employees and legal uncertainty for employers.
- **CONSULTATION:** The Department for Business and Trade is currently seeking input from selected stakeholders on making the introduction of surveillance technologies in the workplace subject to consultation and negotiation with trade union or employee representatives. **It is important that the Secretary of State confirms during Second Reading that this consultation will be concluded in time for the Government to amend the Employment Rights Bill to include any resulting surveillance consultation duty.** However, a duty to consult trade unions about the introduction of surveillance technologies is not enough to protect workers' rights from these novel risks. **The Secretary of State must confirm that the Government is open to amending the Employment Rights Bill to include meaningful legal protections for workers against the harms of high-tech employer surveillance.**

## INTRODUCTION

1. The Employment Rights Bill offers a crucial chance for the Government to protect workers from the rise of excessive employment surveillance practices. However, its current drafting fails to capitalise on such an important opportunity and, in doing so, fails to properly protect workers' rights in line with the digital age.
2. The Bill was published on 11<sup>th</sup> October 2024 by the Department for Business and Trade (DBT) as part of the Government's plan to reform the labour market, developed from Labour's pre-election pledge to "make work pay".<sup>1</sup> Despite specifically acknowledging the invasion of privacy brought about by surveillance technology, spyware, and discriminatory algorithmic decision making and committing to "ensure that rights and protections keep pace with technological change", "safeguard against discrimination" and "put worker voice at the heart of Britain's digital transition" in Labour's 'Make Work Pay' plan, these vital safeguards are completely absent from the Bill.<sup>2</sup> This is a significant change in policy trajectory that hamstrings the very purpose of the Employment Rights Bill, by failing to properly fulfil Labour's pledge to support people in enjoying "dignity and respect" at work.<sup>3</sup>
3. In anticipation of Second Reading in the House of Commons, we would like to draw your attention to the problems caused by excessive workplace surveillance to demonstrate the importance of safeguarding against it, and propose areas where action is needed in order to better protect workers' privacy, health and fair treatment.

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<sup>1</sup> Department for Business and Trade, "Make Work Pay", 10 October 2024, <https://www.gov.uk/government/collections/make-work-pay>; The Labour Party, "Labour's plan to make work pay", 24<sup>th</sup> May 2024, <https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>

<sup>2</sup> The Labour Party, "Labour's plan to make work pay", 24<sup>th</sup> May 2024, <https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf> 9.

<sup>3</sup> The Labour Party, "Employment Rights Green Paper: A new deal for working people", <https://labour.org.uk/wp-content/uploads/2022/09/Employment-Rights-Green-Paper.pdf> 3.

## THE RISE OF WORKPLACE SURVEILLANCE

4. Workers in the UK are under increasingly heavy surveillance from their bosses and employers. Significant advances in technology, falling costs, and the shift to home working during the pandemic have all been key driving factors in the rise of worker surveillance. Employers are increasingly adopting surveillance tech by default and for convenience, despite it being neither necessary nor proportionate. From AI-powered 'emotion recognition' cameras watching bus drivers to spyware tracking every click and keystroke of office workers, it is clear that the reach of high-tech workplace surveillance is rapidly expanding, posing a serious threat to workers' privacy and undermining their autonomy, health, and eroding trust in workplace relations.<sup>4</sup>
5. Many invasive technologies are being introduced under pretence of improving productivity, efficiency and counter fraud, but are often used to monitor workers' every move and even make decisions against them. Reports have found that large employers, such as BT and Barclays, have implemented such technologies, demonstrating the growing normalisation of routine worker surveillance, from installing desk sensors that monitor toilet breaks to piloting continuous facial recognition checks for office workers.<sup>5</sup> Such applications of surveillance technology effectively sideline the importance of privacy, dignity and data protection for workers by invasive and disproportionate means – and are rarely justified. Big Brother Watch successfully pushed back against Barclays' desk sensors, which were removed in 2020.<sup>6</sup>
6. While some workers and unions have successfully pushed back against such invasive practices, these victories, thought important, are not enough to stop the growing trend.<sup>7</sup> They reveal a deep-rooted systemic problem in which, without safeguards, companies will continue to introduce excessive surveillance at the expense of workers' privacy, health, and fair treatment.

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4 Big Brother Watch, "Bossware: the dangers of high-tech worker surveillance and how to stop them", 19<sup>th</sup> September 2024,

<https://bigbrotherwatch.org.uk/wp-content/uploads/2024/09/BosswareWebVersion.pdf> 4.

5 "Why office workers could soon be filmed all day at their desks", Metro, 23<sup>rd</sup> September 2024,

<https://metro.co.uk/2024/09/22/office-workers-soon-filmed-day-desks-21650922/>

6 Barclays scraps 'Big Brother' staff tracking system – BBC News, 20 February 2020:

<https://www.bbc.co.uk/news/business-51570401>

7 "IWGB Private Hire Drivers", Twitter, 23<sup>rd</sup> July 2024,

[https://x.com/UPHD\\_IWGB/status/1815737205219791115](https://x.com/UPHD_IWGB/status/1815737205219791115)

7. The negative impact of excessive worker surveillance is far-reaching: it harms workers' mental and physical health,<sup>8</sup> leading to stress,<sup>9</sup> higher turnover and a loss of skilled labour. For employers, the consequences include poor management practices, the potential for higher costs relating to worker downtime, training replacements, and both lower levels of productivity due to stressed and unhappy staff *and* lower quality work due to staff striving to meet automated quantified productivity goals. These issues culminate to create a cycle of inefficiency and loss that affects the broader economy and overall workforce stability. These practices not only contribute to a toxic work environment but also can have broader societal impacts, including significant costs to public institutions like the NHS.<sup>10</sup> As employees experience stress, burnout, physical harm or mental health issues linked to excessive workplace surveillance, they may increasingly rely on healthcare services,<sup>11</sup> frustrating the Government's wider plans to 'get Britain working' and restore the NHS.
  
8. Big Brother Watch, alongside other rights organisations and unions, has sounded the alarm over the privacy harms, work intensification, widespread discrimination, and unfair treatment that intrusive worker surveillance technologies are unleashing.<sup>12</sup> Although employers already have some legal obligations regarding workplace surveillance, e.g. under UK GDPR, Big Brother Watch has found that there are gaps in the law and enforcement of existing laws that keep workers at risk of novel harms arising from unfair, intrusive and harmful surveillance – gaps that it is timely, appropriate and necessary for the Employment Rights Bill to address.<sup>13</sup>

8 IPPR, "Watching Me, Watching You: Worker Surveillance in the UK After the Pandemic", March 2023, <https://ippr-org.files.svdcdn.com/production/Downloads/worker-surveillance-mar23.pdf> 15.

9 Information Commissioner's Office, "Data Protection and Monitoring Workers", 4<sup>th</sup> October 2023, <https://ico.org.uk/media/for-organisations/uk-gdpr-guidance-and-resources/employment-information/employment-practices-and-data-protection-monitoring-workers-1-0.pdf>; "How Worker Surveillance Is Backfiring On Employers", BBC Work: In Progress, 30<sup>th</sup> January 2023, <https://www.bbc.com/worklife/article/20230127-how-worker-surveillance-is-backfiring-on-employers>

10 Health and Safety Executive, "Costs to Great Britain of workplace injuries and new cases of work-related Ill Health – 2021/22", <https://www.hse.gov.uk/statistics/cost.htm>

11 Jennifer Nahrgang, Frederick Morgeson and David Hofmann, "Safety at work: a meta-analytic investigation of the link between job demands, job resources, burnout, engagement, and safety outcomes", *Journal of Applied Psychology*, 2011, 96(1), <https://pubmed.ncbi.nlm.nih.gov/21171732/> ;

12 See for example Big Brother Watch, "Bossware: the dangers of high-tech worker surveillance and how to stop them", 19<sup>th</sup> September 2024,

<https://bigbrotherwatch.org.uk/wp-content/uploads/2024/09/BosswareWebVersion.pdf>; TUC, "Intrusive Worker Surveillance Tech Risks 'Spiralling Out of Control' Without Stronger Regulation, TUC Warns" 28<sup>th</sup> February 2022, "<https://www.tuc.org.uk/news/intrusive-worker-surveillance-tech-risks-spiralling-out-control-without-stronger-regulation>"; Unite the Union, "Unite warns safeguards needed on hi-tech work monitoring", 31<sup>st</sup> March 2021,

<https://www.unitetheunion.org/news-events/news/2021/march/unite-warns-safeguards-needed-on-hi-tech-work-monitoring>; Worker Info Exchange, "Managed by Bots: Data-Driven Exploitation in the Gig Economy", December 2021, <https://www.workerinfoexchange.org/wie-report-managed-by-bots>

13 Big Brother Watch, "Bossware: the dangers of high-tech worker surveillance and how to stop them", 19<sup>th</sup> September 2024,

## LEGISLATIVE CHANGES

9. Companies are rolling out high-risk surveillance technologies at an astounding pace without sufficient transparency, accountability, or oversight mechanisms, and often without meaningfully consulting workers. There needs to be stricter regulation, clearer guidelines, greater employee involvement, and better transparency and accountability – for example, by **legally requiring companies to perform algorithmic impact assessments if using AI or algorithmic systems likely to be high-risk.**
10. Some workplace monitoring can be contextually justified. However, in some cases, technologies pose such an overwhelming risk to privacy that they should not be used at all, such as so called “emotion-recognition” technology. This technology has been widely criticised as being founded in pseudoscientific concepts, with the potential to threaten privacy rights, restrict access to services and opportunities, and undermine equality, non-discrimination, and freedom of expression.<sup>14</sup> This impacts everyone, with particularly detrimental impact upon minority ethnic groups and disabled and neurodivergent people.<sup>15</sup> The risk of harm has prompted the ICO to issue a warning to companies to avoid “emotion AI”, stating that companies should not make meaningful decisions based on tech that is neither functional, accountable, nor backed by science.<sup>16</sup>
11. Although there are some existing protections relevant to workplace surveillance, many of these are insufficient. In particular, Article 22 UK GDPR grants the right not to be subject to a solely automated decision. However, a lack of clarity over the extent to human involvement in such a decision creates space for employers to exploit loopholes and implement intrusive AI whilst sidestepping legally required safeguards. In such cases of ambiguity, legislation must be amended to close the gaps that allow for such exploitative practices – for example, **a simple legislative amendment to clarify that human involvement in a decision must be *meaningful* in**

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<https://bigbrotherwatch.org.uk/wp-content/uploads/2024/09/BosswareWebVersion.pdf>

14 Article 19, “Emotion Recognition Technology Report”, <https://www.article19.org/emotion-recognition-technology-report/>

15 European Data Protection Supervisor, “Tech Dispatch on Facial Emotion Recognition”, 26 May 2021, [https://www.edps.europa.eu/system/files/2021-05/21-05-26\\_techdispatch-facial-emotion-recognition\\_ref\\_en.pdf](https://www.edps.europa.eu/system/files/2021-05/21-05-26_techdispatch-facial-emotion-recognition_ref_en.pdf) 3 ; Report of the Special Rapporteur on the Rights of Persons with Disabilities, Human Rights Council, 28<sup>th</sup> December 2021, <https://documents.un.org/doc/undoc/gen/g21/397/00/pdf/g2139700.pdf> 15-16.

16 ICO, “‘Immature biometric technologies could be discriminating against people’ says ICO in warning to organisations,” 26<sup>th</sup> October 2022, <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/10/immature-biometric-technologies-could-be-discriminating-against-people-says-ico-in-warning-to-organisations>



**order for a decision to not be considered solely automated, would help to close the current loophole.** Clearer definitions and stricter guidelines are also necessary to ensure that companies are accountable and that workers' privacy is properly protected.

12. There is a major lack of transparency over the use of surveillance technologies at work, as they are frequently imposed without proper consultation of workers or their representatives.<sup>17</sup> For example, automated decision-making is increasingly being used in recruitment, line management, performance ratings, shift allocation and to make decisions about who is disciplined or made redundant – all decisions that directly affect workers' wellbeing and livelihoods.<sup>18</sup> Trust levels are fractured when surveillance is hidden behind impenetrable algorithms that are introduced by stealth, not explained to workers, or introduced for one reason but then used for further purposes without transparency. Earlier this year, the trade union Unite criticised a bus company for secretly installing audiovisual recording equipment in buses to record drivers – and by proxy, passengers – without their knowledge or consent.<sup>19</sup> This raised serious concerns over violations of privacy and data rights, as well as demonstrating how a lack of transparency and consultation creates a toxic work environment where employees feel their rights and dignity are being undermined.

13. Power imbalances in the workplace leave workers particularly vulnerable to intrusive surveillance and rights infringements. The inherent asymmetry between workers and employers often leaves unfair practices unchallenged. Workers often lack access to information about how or why monitoring technologies are being used and may fear retaliation if they raise concerns or objections. It is essential that employees are not kept in the dark about how monitoring systems impact decisions that affect them. Transparency from employers, along with early consultation and engagement with workers and their representatives, is critical. **New legal requirements are necessary to ensure employers are more transparent about high-risk workplace surveillance.**

<sup>17</sup> ICO, "How Can We Comply With The Data Protection Principles When Using Surveillance Systems?", accessed 23rd August 2024, <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/cctv-and-video-surveillance/guidance-on-video-surveillance-including-cctv/how-can-we-comply-with-the-data-protection-principles-when-using-surveillance-systems>

<sup>18</sup> Big Brother Watch, "Bossware: the dangers of high-tech worker surveillance and how to stop them", 19<sup>th</sup> September 2024, <https://bigbrotherwatch.org.uk/wp-content/uploads/2024/09/BosswareWebVersion.pdf> 2.

<sup>19</sup> Unite, "Brighton buses accused of Big Brother bugging of drivers and passengers", 30 May 2024, <https://www.unitetheunion.org/news-events/news/2024/may/brighton-buses-accused-of-big-brother-bugging-of-drivers-and-passengers>

14. However, while employees should be meaningfully involved in discussions around these technologies and fully informed about how their data will be used, a duty to consult alone cannot eliminate the harm posed by privacy-invasive tools. Transparency and consultation are necessary, but are not sufficient justification for the introduction of intrusive worker surveillance.
15. Surveillance technology is a risk to everyone, but the often low levels of accuracy of some forms of biometric surveillance disproportionately impact marginalised or vulnerable people. Research shows that many of the algorithms underpinning facial recognition technology disproportionately misidentify black and minority ethnic groups, making its increasingly prevalent use in workplaces particularly alarming.<sup>20</sup> This is exemplified in the gig economy where jobs are held disproportionately by people of colour, often migrant workers,<sup>21</sup> meaning that people who are often in vulnerable situations are subjected to increased scrutiny from private companies with a higher chance it will go wrong. For example, in March 2024 a gig economy worker received a payout from Uber Eats after racially discriminatory facial recognition checks prevented him from accessing the app to secure work.<sup>22</sup> This emphasises the serious harm excessive workplace surveillance can cause, underscoring the need for biometrics and other surveillance tech to only be used cautiously, in a non-discriminatory way, and lawfully, which is likely to be only in exceptional circumstances. Although surveillance technologies should never be the first port of call, more safeguards are needed for when employers can justify their use. To address the issues caused by hidden biases and prejudices within algorithmic systems, **a legal obligation should be placed upon companies to perform bias testing before using a surveillance system.** This would require employers to proactively prove that technologies used in the workplace are not biased, rather than burdening employees with the difficult task of proving that they are.
16. Given these clear risks, Labour's position in its manifesto and, many Labour MPs' previous support of legislation in this area,<sup>23</sup> it is surprising and disappointing that workplace surveillance is not addressed in the Bill. All

20 Managed By Bots, Worker Info Exchange, December 2021, [https://5b88ae42-7f11-4060-85ff-4724bbfed648.usrfiles.com/ugd/5b88ae\\_8d720d54443543e2a928267d354acd90.pdf](https://5b88ae42-7f11-4060-85ff-4724bbfed648.usrfiles.com/ugd/5b88ae_8d720d54443543e2a928267d354acd90.pdf);

21 London School of Economics, Race And The Platform Economy, 9th November 2021, <https://www.lse.ac.uk/research/research-for-the-world/race-equity/race-and-the-platform-economy>

22 BBC News, Payout For Uber Eats Driver Over Face Scan Bias Case, 26th March 2024, <https://www.bbc.co.uk/news/technology-68655429>

23 Artificial Intelligence (Regulation and Workers' Rights) Bill, Private Members' Bill, 17<sup>th</sup> May 2023, <https://bills.parliament.uk/bills/3464>

workers, whether unionised or not, must be empowered to challenge excessive monitoring practices, and legislation designed to protect workers' rights must reflect the significant risks posed by surveillance technology and the increasingly digitalised nature of the workplace. Failure to address this in the Employment Rights Bill will leave workers inadequately protected in an environment where issues are already prevalent and certain to increase.

## ADDRESSING THE ENFORCEMENT GAP

17. While existing legal protections and guidance from the ICO offer some guardrails for workplace surveillance technologies in theory, a significant gap remains between law and practice. Many organisations routinely circumvent legal requirements without consequences, revealing a troubling enforcement gap. This is evident in cases where workers have successfully resisted unfair practices - such as when drivers and their union challenged the imposition of 24/7 internal-facing CCTV, which was justified by flimsy claims of "insurance purposes" and despite the vehicles also being legitimately used for personal reasons.<sup>24</sup> Other cases include Big Brother Watch's victories challenging employers' unlawful mandatory biometric surveillance policies.<sup>25</sup> Although such victories are important, they are illustrative of a broader issue where companies frequently bypass legal obligations, underscoring a clear problem with enforcement.
  
18. The ICO has issued guidance on data protection in workplace monitoring<sup>26</sup> and provided limited examples of interpretations of rights within employment contexts.<sup>27</sup> However, it is apparent that many employers still do not follow the guidance. There is a clear need to increase the ICO's resources to better uphold the public's information rights and ensure organisations meet their legal obligations, for workers and employers alike.

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<sup>24</sup> Big Brother Watch, "Bossware: the dangers of high-tech worker surveillance and how to stop them", 19<sup>th</sup> September 2024, <https://bigbrotherwatch.org.uk/wp-content/uploads/2024/09/BosswareWebVersion.pdf> 55.

<sup>25</sup> Workers Fighting Compulsory Facial Recognition With Big Brother Watch – And Winning, Big Brother Watch, 22nd December 2020: <https://bigbrotherwatch.org.uk/blog/workers-fighting-compulsory-facial-recognition-with-big-brother-watch-and-winning>

<sup>26</sup> ICO, "Data protection and monitoring workers", 4<sup>th</sup> October 2023, <https://ico.org.uk/media/for-organisations/uk-gdpr-guidance-and-resources/employment-information/employment-practices-and-data-protection-monitoring-workers-1-0.pdf>

<sup>27</sup> ICO, "Rights related to automated decision making including profiling", <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/rights-related-to-automated-decision-making-including-profiling/#ib4>

19. It is well established that AI and other automated systems can lead to discrimination, but this has not prevented discriminatory outcomes arising from their use.<sup>28</sup> Many employers lack a clear understanding of how existing anti-discrimination laws apply to these technologies. Without proper guidance, they may fail to properly address bias in their systems. This highlights the need for government-issued guidance to help organisations ensure compliance with the Equality Act 2010, and implement bias testing and correction methods. Such guidance should establish standards and best practices for employers, ensuring that AI systems used in employment-related decisions comply with existing equality and non-discrimination laws. By doing so, the Government would not only protect workers from potentially biased or unfair automated processes but also reduce legal uncertainty and risk for employers.

## CONCLUSION

20. Evidence from Big Brother Watch, unions, privacy experts, leading researchers on the future of work and Labour's own position overwhelmingly demonstrates the need to legislate to protect workers from the harms caused by excessive high-tech surveillance. Without strong legal safeguards, employees remain vulnerable to invasive monitoring practices that threaten their privacy, autonomy, and rights in the workplace. Legislation is essential to ensure that employers are held accountable, that workplace surveillance is justified, transparent and proportionate, and that workers are protected from the misuse of emerging technologies. Only through clear, enforceable laws can the Government safeguard workers from the novel threats of surveillance tech at work.

21. It is vital that MPs account for the potential impact of this Bill on workers' right to privacy, dignity, and fair treatment. Amidst ongoing discourses around the dangers of AI and need to improve workers' rights, the Employment Rights Bill is the perfect opportunity to address these concerns in order to protect workers, support employers, and benefit the economy. For further information on workplace surveillance and how to address it, please see Big Brother Watch's recent report: "[Bossware: The dangers of high-tech worker surveillance and how to stop them](#)".

<sup>28</sup> See for example Centre for Data Ethics and Innovation 'Review into bias in algorithmic decision-making', November 2020, [https://assets.publishing.service.gov.uk/media/60142096d3bf7f70ba377b20/Review\\_into\\_bias\\_in\\_algorithmic\\_decision-making.pdf](https://assets.publishing.service.gov.uk/media/60142096d3bf7f70ba377b20/Review_into_bias_in_algorithmic_decision-making.pdf)