

WARNING



**Your boss might be
spying on you, and it
might be dangerous.**

Plain Language Report



The **Center for Democracy & Technology** is a 25-year-old nonprofit, non-partisan organization working to promote democratic values by shaping technology policy and architecture.

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This paper is made possible with the support of the Ford Foundation.

Special thanks to Annette Bernhardt, Ryan Gerety, Aaron Rieke, Reem Suleiman, and Laura Stock for their feedback and guidance.

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Summary

Spying on workers is dangerous for health and safety.

Today, more employers are using computer programs to spy on workers. These computer programs are called **bossware**. These bossware programs can watch what workers do all the time. They can also supervise workers automatically.

In the United States, workers don't have a lot of privacy rights. But employers have the legal right to control what workers do on the job.

Employers can use bossware programs to spy on workers' movements. They can see where workers are sitting or walking. They can also see how fast or slow they are working. Employers will collect all of this information about their workers. Then, they will put this information into another bossware program that makes automatic decisions about how well workers are doing. These programs can make decisions about pay raises or warnings.

More employers are using bossware programs to make workers do their jobs faster. They are trying to stop workers from taking breaks or having downtime.

This report talks about how bossware programs can hurt workers. They are dangerous for health and safety. Here are some specific examples:

- Bossware programs can stop workers from following the law. They can even punish workers for following laws about their health and safety. Bossware programs can stop workers from taking breaks. Workers need breaks to stay awake and alert. Bossware programs can also stop workers from using the bathroom. Workers need to use the bathroom to stay healthy.
- Bossware programs can force workers to do their jobs faster. They can stop workers from having downtime. Doing more work with fewer breaks is risky. It means workers might get hurt on the job. Workers might get hurt from doing the same task over and over again without stopping.
- Bossware programs can hurt workers' mental health. They can make work more stressful. Bossware programs make jobs harder and take control away from workers. This kind of stress is called **job strain**.

There are some good laws that help workers.

Federal laws cover all workers in the United States. There are some federal laws that can help workers fight against bossware programs that hurt workers.

Here are some of those laws:

- The Occupational Safety and Health Act (**OSH Act**) says that employers have to give workers a safe and healthy place to do their jobs. They also have to follow specific rules that come from the Occupational Safety and Health Administration (**OSHA**), a

government agency. For example, employers might be breaking the law if they stop workers from using the bathroom.

- The Americans with Disabilities Act (**ADA**) says that employers have to make changes for disabled workers so they can do their jobs. These changes are called **accommodations**. The ADA also says employers are not allowed to discriminate against disabled workers. The ADA can help protect disabled workers. It says employers have to think about how their rules would affect disabled people.
- Federal laws called “**wage and hour**” laws say what employers are allowed to do when paying workers or making their schedules. These laws say employers have to pay workers even if they get up or rest while they are working. Employers also have to pay workers who turn off bossware programs.

But we need better laws to protect workers more.

Even though there are some good laws already, they aren’t enough to protect workers. The laws were made before employers started using bossware programs that spy on and punish workers.

We need better laws to protect workers. We also need to make sure workers understand their rights under the laws we already have.

Recommendations for Policymakers & Government Agencies

- Bossware programs put workers at risk for getting hurt. Bossware programs force workers to keep going without breaks, so they might get hurt because they are too tired. Bossware programs also force workers to do their jobs faster and faster, so they might get hurt from doing the same thing over and over again.

OSHA should make rules about resting, taking breaks, and how fast people can work. OSHA should also make rules about technology that affects resting, taking breaks, and how fast people can work. Then, OSHA should also make rules that say employers can’t use technology that can get workers hurt. (OSHA might need to get approval from Congress to make some of these rules.)

- OSHA should protect workers against bossware programs that can hurt mental health through job strain. OSHA should make rules about tools employers use that can increase job strain and hurt mental health.
- OSHA should make employers follow the law for workers who do their jobs from home. A lot of employers use bossware programs to spy on workers who do their jobs from home. They also use bossware programs to control workers who do their jobs from home.
- The National Institute for Occupational Safety and Health (**NIOSH**) is a government agency that does research about job safety. NIOSH should do more research about how bossware programs can hurt workers’ bodies and mental health.
- The Equal Employment Opportunity Commission (**EEOC**) is a government agency in charge of stopping discrimination at work. The EEOC should help employers understand how bossware programs can discriminate against disabled workers. The EEOC should

make sure employers know they can't use bossware programs to make rules that discriminate against disabled workers.

Recommendations for Workers & Advocates

- Advocates should make sure that workers understand their rights. Advocates should also encourage workers to keep track of bossware programs. Advocates should also encourage workers to report dangerous bossware programs.
- If disabled workers need more breaks or more time to do their jobs, they can ask for accommodations. Disabled workers should ask for accommodations from their employers if they need them.
- Sometimes bossware programs stop workers from using the bathroom when they need to go. Workers should talk to a lawyer or someone from OSHA if this happens.
- Sometimes bossware programs get workers hurt by forcing them to go too fast or stop taking breaks. Workers should file a **worker's compensation claim** if they get hurt. These claims make employers pay workers to make up for being hurt on the job. In some states, workers can tell employers if they need more breaks or to work slower when they get back.
- Workers might be afraid of being punished if they complain. Advocates should make an independent system where workers can make private reports. That way workers can tell advocates about bossware programs that put them at risk.

Recommendations for Employers

- Employers have to follow the law. Employers should know that bossware programs might break the law and hurt workers. Employers should avoid using bossware programs in ways that can hurt workers.
- Employers shouldn't use bossware programs that spy on workers and automatically cut their pay.
- Employers shouldn't use bossware programs that stop workers from going to the bathroom.
- Employers have to follow the law about giving disabled workers accommodations.
- Employers can't use bossware programs that end up punishing disabled workers who need accommodations.

I. How bossware got started

New technology to spy on workers

In 2020, the Electronic Frontier Foundation started using the new word **bossware**. Bossware means computer programs that watch what workers do. Bossware also means computer programs that make decisions about workers' activities.

Before bossware, human managers made all the decisions about workers' activities. Now, employers use workers' phones and other electronic devices to watch workers all the time. They can see what workers are doing in a lot of detail.

Employers can use bossware technology for workers who have to go to their job at a factory, warehouse, or office. Employers can also use bossware technology for workers who are outside the company, like delivery drivers or people who work from home.

Here are some examples of bossware technology that tracks what workers do:

- A warehouse worker uses a scanner that tracks every item she scans
- Software programs on laptops or cell phones that track what someone does on the laptop or cell phone
- GPS trackers that spy on a worker's location
- Computer sensors and cameras that watch someone's body movements

Employers can use bossware technology to make decisions about workers using the information from tracking them. They can put the information into other bossware programs that automatically make job assignments, get workers to do their jobs faster, or make decisions about how workers are doing.

Companies can use computer software to automatically punish or even fire workers who can't work fast enough. Sometimes, companies use computer software to punish or fire workers without a human manager getting involved at all. Even when human managers are there, companies still use software to keep track of how fast workers are doing their jobs.

Employers can make links between bossware technology that spies on workers and bossware technology that makes automatic decisions about workers. Combining both kinds of bossware programs means employers don't have to use human managers. They use these technologies instead of a human manager. Some companies that make bossware programs even design the programs to include timekeeping and pay. This means employers can automatically cut people's pay for time away from the computer.

Time Doctor is an example of a bossware program. Time Doctor takes pictures of a worker's computer screen. Then the employer can decide if the worker is on task or not. Time Doctor does let workers delete the pictures. But if a worker deletes the pictures, Time Doctor will take time out of the worker's hours so they will get paid less.

More employers can use bossware programs now. They can use bossware programs in any type of work. Bossware programs come with a lot of questions about privacy. They also have the potential to make work less fair for workers from **marginalized groups**, like people of color, disabled people, LGBTQ people, and women.

The news website *The Verge* published an article about bossware programs in 2020. They gave three examples of bossware programs that can be dangerous to workers.

Warehouses: Handheld managers

Warehouse workers use handheld scanners to track items that are getting shipped. Now, these scanners are like electronic managers for the workers. The scanners tell workers which items to get, pack, and move. The scanners also keep track of how fast workers do their jobs. This combination of automatic managing and spying is stressful.

Gabriel Mac used to work in a warehouse. He said: "I've started cringing every time my scanner shows a code that means the item I need to pick is on the ground, which, in the course of a 10.5-hour shift—much less the mandatory 12-hour shifts everyone is slated to start working next week—is literally hundreds of times a day. 'How has OSHA signed off on this?' I've taken to muttering to myself."

A lot of news stories about these scanners are about Amazon. One news story talked about technology that makes Amazon workers do their jobs faster and stop taking breaks. Amazon started using a spotlight to tell workers which package to get next. That way they wouldn't get a short rest while looking for it.

Another warehouse worker talked about "not stopping for anything for 10 straight hours, just running." After several months, his back started burning. His manager said to bend his knees while lifting stuff. But that made him slower. So another manager told him to go faster. Eventually, his back stopped working. A doctor said he had two damaged discs in his spine. He had to go on disability. He said it was because they made him work too fast.

But this isn't just about Amazon. Making workers do their jobs so fast they can get hurt happens at a lot of companies.

Call centers: Robots spying on your downtime

Call center workers also have to deal with computer programs that track what they are doing. The computer programs can also punish them for taking too long on a call or taking a break between calls. Some call center companies use software programs that even give feedback to workers about their emotions on calls.

Companies like Voci and Cogito say their computer programs can figure out if a customer needs more emotional support. But call center workers have to talk to lots of customers who are angry and sometimes abusive. A lot of call center workers have anxiety and depression. And now they have to deal with software that automatically tracks everything they do and takes away all their control.

One worker who used Cogito only had one minute to fill out complicated insurance paperwork. She also got only 30 minutes of bathroom breaks – *for an entire month*. She had to talk to customers who had terminal illnesses and dying family members all day long. And she was supposed to finish every phone call in just 12 minutes. Another worker said, “Your computer is standing over your shoulder and arbitrarily deciding whether you get to keep your job or not.” (Arbitrarily means the computer makes the decision without a good reason.)

Working from home: Your boss in your bedroom

More workers are doing their jobs from home because of the COVID-19 pandemic. Companies are still making software so employers can spy on workers who are working from home. Software programs can take pictures of workers’ computer screens, track everything workers’ type and click, watch workers through webcams, and listen to them through microphones. These software programs can track workers’ passwords, read workers’ emails, and track every website they go to.

Software can watch workers even closer than human managers. The company Crossover Technologies makes a software program called WorkSmart. WorkSmart tracks everything workers do on a computer. Then it uses the information to make a time card every 10 minutes. One computer programmer who used WorkSmart had to time his bathroom breaks inside his own house. If WorkSmart took a picture while he was in the bathroom, he wouldn’t get paid for the whole 10 minutes. He had to wait until he saw the webcam’s green light turn on, and then rush to the bathroom right after. That way he could try to get back before it took another picture.

Spying on workers and managing them by computer is a dangerous mix.

These examples show just a few places that employers use bossware technology. Employers combine spying on workers with automatic management. Then they don’t have to use human managers. Computer programs can take charge of workers’ assignments, supervision, feedback on their work, punishment, and firing. They can micromanage even more than human managers can.

There are no good research studies about how many companies use bossware technology. But one company did a survey in 2018 with 239 big companies. More than half of them were using software programs to read workers’ emails and texts, track who workers were meeting, and track workers’ body movements. The company that did the survey guessed that 80% of the companies (a lot more than half of them) would use those software programs by the end of 2020. They made that guess even before COVID-19 happened.

We gave examples from warehouses, call centers, and work from home. These examples show how more companies are using bossware programs to make workers do their jobs faster, stop taking breaks, and take away control over their work. In places like warehouses, making people work faster can be dangerous. They can get injured in accidents. Disabled workers can get hurt. Workers at Amazon warehouses can’t take bathroom breaks so they have to pee in plastic bottles and paper bags, which is dangerous for everyone’s health and safety. UPS drivers also take extra risks and cut corners with safety rules because they have to work faster to meet automatic requirements.

Bossware programs that spy on workers and manage them automatically are also bad for workers' mental health. We have decades of research that say high demands and low control are a bad mix for workers. This mix is called **job strain**. It means having a lot of pressure to get a lot of work done, but having very little control over your job. Job strain is linked to anxiety and depression. It can also be related to serious suicidal thoughts. And it can increase the risk of ulcers, heart failure, and heart attacks.

Many types of bossware programs create job strain. They help employers get work done faster. They stop workers from taking breaks or having downtime. This is dangerous for workers' privacy and ability to control their work. It's also dangerous for workers' health and safety.

II. How the law can protect workers now

There are no state or federal laws about spying on workers or automatically managing workers. There also aren't any laws about how fast employers can make workers do their jobs.

But Congress has passed some laws that are supposed to protect workers' health and safety no matter what. The two most important laws are the Occupational Safety and Health Act (**OSH Act**) and the Americans with Disabilities Act (**ADA**). These laws aren't about bossware programs. But they can still protect workers from dangerous bossware programs. This part of the report talks about three dangers the OSH Act and the ADA can protect workers from:

- (1) Stopping workers' from taking enough breaks, or stopping them from taking any breaks at all;*
- (2) Forcing workers to do their jobs faster and faster; and*
- (3) Job strain caused by lots of pressure and having little control.*

We'll also talk about how the Fair Labor Standards Act (**FLSA**) bans employers from automatically cutting workers' pay for taking short breaks. And we'll mention some other ways workers might be protected by different laws.

All of these laws only apply to workers with regular jobs, like people who go to an office every day or do loading in a warehouse. They don't apply to workers who are independent contractors, like people who drive for Uber or do freelance writing.

People with regular jobs are called "employees." If you are an employee, you have set schedules. The employer has to pay taxes for you. The employer controls how you do your job. The employer gives you tools.

Independent contractors get more control on how they do their jobs. They don't have a regular schedule. They use their own tools. They pay their own taxes. They can do the same kind of work for different companies at the same time. An independent contractor can do one project or lots of little tasks.

A. The OSH Act and OSHA Standards

The OSH Act has two important rules for employers:

- (1) The **General Duty Clause** says that employers have to give workers a job and a place to work that "are free from recognized hazards that are causing or are likely to cause death or serious physical harm." This means an employer has to make sure a job and workplace are safe.*
- (2) Another part of the OSH Act says that employers have to follow specific rules about health and safety that are made by the Occupational Safety and Health Administration (**OSHA**). OSHA is a federal government agency that can inspect workplaces and make employers follow the law. Usually, OSHA looks at employers when they go against OSHA's specific rules. They don't usually go after employers for going against the General Duty Clause.*

The OSH Act also created a government research center called the National Institute for Occupational Safety and Health (**NIOSH**). OSHA pays close attention to what NIOSH says. But OSHA also listens to private companies a lot. Private companies often oppose what OSHA wants to do. So OSHA doesn't always make specific rules that can protect every worker.

Any worker can file an OSHA complaint. This means that OSHA can investigate to see if an employer is breaking the law. If an employer is breaking the law, OSHA can fine them. But OSHA can't order them to stop breaking the law. And workers can't take their employers to court for violating the OSH Act. OSHA also says employers can't punish workers for complaining. But if an employer does punish a worker anyway, the worker has to ask OSHA to investigate. This all means that it's hard for OSHA to get employers to follow the law.

OSHA rules protect workers who need to use the bathroom. But they don't help much more than that.

OSHA has a rule that says employers have to let workers use the bathroom whenever they need to go. Employers have to let workers use the bathroom even if it's inconvenient for the employer. If someone has to use the bathroom more because they have a specific disability or because they're pregnant, their employer has to let them. Employers aren't allowed to make rules that punish workers for needing to go to the bathroom. But OSHA doesn't make employers give their employees breaks for other reasons.

OSHA doesn't have rules about other injuries, getting too tired, or working too fast. But the General Duty Clause can help.

OSHA doesn't have other rules about injuries from doing the same task over and over (these are called repetitive motion injuries) or injuries from being too tired to work. Employers do have to follow the General Duty Clause though. The General Duty Clause says employers have to give workers a safe and healthy job. OSHA hasn't really told employers before that they have to do specific things to follow the General Duty Clause. But they might have to make new rules soon.

People can get hurt by doing the same thing over and over again. This is because they use the same parts of the body a lot without breaks. When people get hurt by doing the same thing over and over again, it's called a repetitive motion injury. For example, some people have to bend down and pick up heavy boxes a lot for their job. They can get repetitive motion injuries in their backs or knees.

In May 2021, the Washington State Department of Labor and Industries gave Amazon a warning for breaking state law. Washington State has a law like the General Duty Clause. The Washington state government said that Amazon's bossware technology was forcing workers to do their jobs so fast they could get hurt. The warning said Amazon had to make a plan for how to fix the problem in the next 60 days.

Since more people realize that bossware technology can be dangerous, state and federal government agencies might be able to do something about it.

OSHA doesn't have rules about job strain or mental health.

NIOSH has done a lot of research about stress at work. But OSHA hasn't made any rules about job strain. OSHA hasn't talked a lot about mental health. OSHA hasn't told employers they have to do anything to protect workers' mental health. And the General Duty Clause only says job strain is bad if it hurts people's bodies too. But not all mental illnesses are obvious in people's bodies.

OSHA doesn't make employers keep track of workers' stress or mental health. OSHA says that a mental illness is only job-related if a worker gets a letter from a professional that says so. So workers can't get OSHA protection for dangers to their mental health.

OSHA doesn't protect people who work from home.

OSHA doesn't inspect home offices. It doesn't make employers follow any rules for home offices. It won't listen to any complaints about home offices. If a worker complains, OSHA might tell their employer about the complaint. But OSHA won't follow up about it.

More than 20 years ago, OSHA said that the OSH Act should protect people who work from home. They said employers had to follow rules about safety and health for people who work from home. But a lot of employers fought back because they didn't want to follow those rules. OSHA lost the fight in less than 2 days.

OSHA's rules say employers can't give workers dangerous tools to use at home. But employers don't have to worry about getting in trouble about what they do to people who work from home because OSHA doesn't inspect home offices. So the rule doesn't really help workers.

B. The Americans with Disabilities Act

The Americans with Disabilities Act (**ADA**) is a lot stronger than the OSH Act. But the ADA only helps

disabled workers. It doesn't help all workers.

The ADA says that disabled people have the right to reasonable accommodations. This means that employers have to make changes to how they do work so people with disabilities can do their jobs. The ADA also says that disabled people have the right to talk to their employers about what changes they need.

Bossware programs and automatic management can discriminate against disabled people. They can make jobs less fair. So the ADA makes it hard for employers to use bossware programs and automatic management.

How the ADA protects disabled people

The first part of the ADA (called **Title I**) says employers can't discriminate against workers because of disabilities. The ADA says a disability can be physical (part of the body) or mental. A disability has to limit a major life activity, like using hands, seeing, hearing, walking, lifting, speaking, reading, learning, concentrating, or communicating. Even if someone only has limits on one major life activity, that can count as a disability under the law.

The ADA has two important rules for employers:

*(1) Employers can't discriminate against **qualified** disabled people. A disabled person is qualified to do a job if they can get the work done. It doesn't matter if they need changes or help to get the work done. If they can do the work at all, they are qualified.*

(2) Employers have to make reasonable accommodations (changes) so disabled workers can do their jobs. Employers have to make changes unless it would be extremely hard for the entire company to make a change.

If an employer figures out that a worker needs changes to do their job, they have to talk to the worker to find out how they can help.

These rules mean that employers have to work with disabled workers to decide what changes to make. They have to give accommodations so disabled workers can do their jobs. And they have to judge disabled workers on how they do their jobs with accommodations, not how they would do without accommodations. For example, an employer can't judge a blind worker for how they would read regular books. They have to judge the blind worker for how they read Braille books or listen to books on a computer.

The ADA says employers can't discriminate against workers who ask for accommodations. The ADA also says employers can't punish workers for making a complaint. And the ADA says workers can go to court if their employers break the law. The ADA says that if workers win a trial, they can get paid money for being hurt. Judges can order employers to follow the law. And judges can make employers pay workers for hiring lawyers.

Here is an example of how the ADA works:

Jane is a cashier at a store. She has a chronic illness. Jane's illness makes her legs hurt if she stands up for longer than 30 minutes. Jane also has to give herself a shot every 4 hours.

Jane can do her job. She can take money and credit cards. She can count and give back change. But Jane can only do her job if she can sit on a stool at work. She has to take breaks to give herself shots. And sometimes she needs extra breaks if the store is very busy.

The ADA helps Jane. Jane's illness counts as a disability because she can't stand all the time. Once the store finds out Jane is disabled, they have to give her a stool. If they can't give her a stool, they have to talk to her about another way for her to work. The store also has to give Jane breaks for her shots. Then the store has to judge Jane on how she does her job with the stool and breaks. The store can't fire or punish Jane because she is disabled. The store also can't fire or punish Jane because she gets accommodations.

The ADA means employers have to accommodate disabled people when they use bossware programs.

The ADA protects disabled workers from dangerous bossware programs in 3 ways:

(1) The ADA says employers can't punish disabled workers for taking breaks. Bossware can stop workers from taking breaks.

Employers use bossware programs that punish workers for taking breaks and going to the bathroom. Bossware programs can limit how many breaks workers can take. Bossware programs can punish workers for taking more breaks than allowed. Bossware programs can also force workers to do their jobs so fast they can't take breaks.

These programs are against the law. Many disabled workers need breaks for their disabilities. Some people need to use the bathroom more because they can't control it, or their bodies hurt them. Some people need to rest a lot because of their hearts, muscles, bones, or pain. Some people need to rest and go slower because they get anxious or depressed, or need more time to think. Employers have to give accommodations for all of these disabled workers.

Employers might say it would be too hard to let disabled workers take more breaks. But employers can only get away with that if they can prove giving breaks would cost way too much or affect the whole company. Getting more profits isn't enough of a reason.

The federal government has already said that short breaks are common and a normal accommodation. Plus, bossware programs make the most sense for companies with lots of workers doing the same thing. Big employers would have a hard time proving that letting disabled workers take breaks would hurt the company, since they have other workers who can take over for a disabled worker on a break. And if they used bossware programs to automatically punish disabled workers for taking breaks, they would be breaking the law again.

(2) The ADA says disabled workers can get an accommodation to do their jobs slower. Bossware can force workers to rush.

Making workers do their jobs faster and faster can also hurt disabled workers. If an employer makes a rule that everyone has to work faster, they might be breaking the law. The ADA says employers can't make rules that end up discriminating against disabled people.

Employers might say it would be too hard to let disabled workers do their jobs slower. But they probably can't prove that they need everyone to work very fast. They also probably can't prove that letting some workers do their jobs slower would hurt the company.

In 2020, a mill worker went to court and asked to work slower because his hand got hurt from doing the same thing too much. In 2017, an electrical apprentice went to court and asked for breaks for his diabetes. In both these cases, judges said the workers were right. Judges said it wouldn't be too hard for the employers to give accommodations.

Employers didn't use bossware programs until recently. So they don't need bossware programs to run their companies. And they don't need to use bossware programs to force workers to go faster.

(3) The ADA says mental illnesses count as disabilities. Bossware can give workers mental health issues and stress.

The ADA says people with mental illnesses count as disabled. Workers can ask for accommodations if their jobs will hurt their mental health. If bossware programs make a worker's anxiety or panic attacks worse, they can ask for accommodations.

Here is an example:

A company uses a bossware program to get workers to do their jobs faster. The bossware program is very strict. Some workers have a lot of job strain. This hurts their mental health. The stress can cause disability.

So the workers can ask for an accommodation. They could ask for a daily or weekly goal instead. That way they can take breaks or work extra hours to meet the goal. Having more control over how fast they work and when they take breaks can make work less stressful. It wouldn't cost much for the employer. And it wouldn't really affect the worker's job.

C. Other laws can protect workers, too.

There are more federal laws that can protect workers from dangerous bossware programs. There are also some state laws that protect workers, too. Some state laws protect workers even more than federal laws. This means that even if a company is following federal laws, it could still be breaking state laws.

Federal laws ban automatic pay cuts for breaks.

The Fair Labor Standards Act (**FLSA**) says employers have to let workers take short breaks on the clock. Employers can't force workers to clock out to take a short break. Employers can't cut pay for short breaks. The Department of Labor made a rule that says breaks count as work time if they are 5-20 minutes. The rule also says workers can take breaks to use the bathroom, get coffee, call their kids, deal with a medical issue, or smoke.

The FLSA doesn't say employers have to give workers bathroom breaks. The FLSA also lets employers punish workers for taking too many breaks without permission. But the FLSA says employers still have to pay workers for short breaks.

In 2017, an important case went to federal court. This case is called *Secretary of Labor v. American Future Systems*. An employer made a rule that said workers had to log out of their computers to take any breaks. If workers logged out for more than a minute and a half, they didn't get paid for the time on break. The court said this rule was against the law. The court said that most workers can't even run to the bathroom and back in less than a minute and a half. The court said it wasn't fair to force workers to pick between getting paid and using the bathroom.

Employers can't use bossware programs that automatically cut pay for breaks. This means bossware programs can't cut pay for turning off cameras, deleting pictures of the computer screen, or leaving the desk.

The Family and Medical Leave Act (**FMLA**) also says some workers have the right to take breaks because of their diseases or disabilities. They can even take breaks in the middle of the workday. But they don't get paid for FMLA breaks.

Workers in unions might be protected when they take breaks. Some unions are protected by federal laws, like the National Labor Relations Act, or the Railway Labor Act for people who work on trains or planes. But unions only help if the union has an agreement with the employer about breaks.

State laws can protect workers if they get hurt or if their job is too dangerous.

Our report talks about federal law the most. But some states protect workers even more than the federal government does.

For example, California's state version of OSHA has rules about repetitive motion injuries. California has a rule that protects housekeepers in hotels from getting hurt from repetitive motion injuries, working too fast, and not getting breaks. Other states might make similar rules if too many workers file claims and get money.

States might also say their version of the General Duty Clause protects workers more, too.

Workers who get hurt because they're too tired, work too fast, or do the same thing too much can file a claim and get money. Some states say employers can't discriminate against workers who get hurt on the job. They even say employers have to hire them back when they get better. But other states don't protect workers that much.

III. Protecting workers: Recommendations for policymakers and government agencies

Current laws can help protect workers, especially disabled workers. But current laws aren't enough to help keep workers safe. Policymakers need to do more to make sure companies aren't making profits by hurting workers.

A. OSHA needs to make more rules about dangerous bossware programs.

OSHA is there to protect workers. That means OSHA can and should make all the rules it needs to protect workers from new dangerous technology. Right now, there are at least 3 problems with OSHA's rules:

- (1) OSHA doesn't have any rules to protect workers from getting hurt if they are too tired. OSHA also doesn't have any rules to protect workers from repetitive motion injuries.*
- (2) OSHA doesn't have any rules about job strain or mental health.*
- (3) OSHA doesn't have any rules to protect workers who do their jobs from home.*

These problems mean employers can get away with hurting workers with bossware programs.

Here is what OSHA should do:

- (1) OSHA should make rules to protect workers from getting hurt too much by doing the same thing over and over or getting too tired. OSHA should say employers can't use bossware programs to force workers to do their jobs too fast. (OSHA might need to get approval from Congress for some of this.)*
- (2) OSHA should make rules protecting workers from job strain. OSHA should also make rules about technology that causes job strain or makes it worse.*
- (3) OSHA should make employers follow the law for workers who do their jobs from home or away from a company's building.*

At the same time, NIOSH should do research about how bossware programs get workers hurt. NIOSH should also do research about how bossware programs affect mental health.

Protecting workers from getting hurt from being too tired and from repetitive motion injuries

Bossware programs make workers speed up and take breaks away. If workers go too fast, they can get tired. If they get tired, they can get hurt. Bossware programs can also make workers get repetitive motion injuries. More and more workers are getting hurt in warehouses that use bossware programs. So government agencies need to do something about bossware programs.

OSHA's website says that being tired means workers might get sick or hurt, and they should rest. Also, NIOSH has a whole office that researches how getting tired at work can be dangerous. NIOSH has said taking breaks helps workers avoid getting hurt. NIOSH also says taking breaks doesn't stop

workers from getting the job done. And OSHA is allowed to make rules about workers' safety and health – it's in the name! But OSHA hasn't made any rules that say employers have to give workers breaks.

Sadly, it isn't easy for OSHA to make rules about protecting workers from repetitive motion injuries. OSHA tried to make rules about this in 2000. But then Congress said it disapproved. Congress passed a law called SJR 6 that canceled the rule. And Congress stopped OSHA from making any other rules like it.

OSHA can't make rules that protect workers from repetitive motion injuries. So workers who get hurt have to wait until they actually become disabled so they are protected by the ADA. Then they can ask employers to make changes so they won't get hurt again. But if they're hurt too badly, they might not be able to work at all. This ridiculous situation means OSHA can't stop workers from getting hurt this way. And bossware programs will get more workers hurt since they will make workers go faster and stop taking breaks.

Congress should get rid of SJR 6. Congress should let OSHA make rules that protect workers from getting repetitive motion injuries. NIOSH should do research on how bossware programs hurt workers. The research should look at bossware programs that make workers go faster. It should also look at bossware programs that stop workers from taking breaks or resting.

But OSHA might be able to make rules even if Congress doesn't get rid of SJR 6. More research from NIOSH could help OSHA make new rules about resting, breaks, and getting hurt. More research could help OSHA make employers follow the General Duty Clause.

Meanwhile, states should copy California and make rules that protect workers from getting repetitive motion injuries.

Protecting workers' mental health from job strain

OSHA doesn't have any rules about job strain or mental health issues. The General Duty Clause doesn't talk about mental health either.

The ADA says workers can ask for accommodations if their mental health gets so bad they have a disability. But OSHA hasn't ever made rules to protect workers' mental health.

Bossware programs are a serious threat to workers' mental health. And we have decades of research about how bad job strain is for mental health. So OSHA has no excuse for not protecting workers' mental health. Bossware programs are extra bad for mental health because they make workers go faster, automatically manage them, and take away their control.

NIOSH should do research about bossware programs and job strain. NIOSH should also do research about how job strain affects workers' bodies and mental health. OSHA should make rules that say employers can't use bossware programs that cause job strain. Workers shouldn't have to wait until job strain becomes a disability or hurts them before they can get changes at work.

Making employers follow the law for people who work from home or away from the company

OSHA should make rules that protect people who work from home or away from company property. If a company uses bossware programs that watch people at home or away from company property, then the company has to follow OSHA's rules there.

The Labor Department stopped OSHA from protecting people who work from home in 2000. Back then, the Labor Department figured that people who worked from home got privacy, so they didn't need extra protection. The person in charge of OSHA back then said that OSHA would respect privacy at home and so should employers. They thought that people wouldn't have bad bosses because they would be their own bosses.

But now bossware programs mean companies can watch workers all day, even in workers' own homes. They can punish workers for leaving their desk. So companies have just as much control over the worker as in a regular office. Since companies have this much control, they should follow the same rules about safety and health.

OSHA should make employers follow the law if they use software to watch workers' computer screens. OSHA should also make employers follow the law if they use webcams or other automatic monitoring to see workers' homes or movement. And OSHA should tell employers they can't use bossware programs to stop workers from resting or taking breaks.

B. The Equal Employment Opportunity Commission should make employers follow the ADA.

The ADA gives disabled workers a lot of protection. That means disabled workers can be protected from dangerous bossware programs. Employers can't use technology or make rules that discriminate against disabled workers. Employers also can't use technology or make rules that stop disabled workers from asking for accommodations. And employers have to talk to disabled workers about what accommodations they need. They can't just let bossware programs make automatic decisions or use bossware programs so much that people don't want to disagree with the computer.

The Equal Employment Opportunity Commission (**EEOC**) is a federal government agency in charge of making employers follow the ADA. The EEOC should tell employers that they can't use bossware to discriminate against disabled workers. The EEOC should write down all the ways bossware programs can break the law. Then judges can make better decisions in disability discrimination court cases. If there are more court cases, employers might think twice before using dangerous bossware programs.

C. Lawmakers should pass laws about dangerous technology.

Federal or state laws could limit how bossware programs watch workers. Laws that protect people's privacy could stop employers from spying on workers.

Massachusetts is thinking about passing the Information Privacy Act. Section 204 of that Act would limit how employers can monitor workers. It would also put limits on how much information they can collect.

In 2018, California passed a law about people's privacy. In 2020, California made the law stronger. The law says people have the right to know what information companies are collecting on them. People have the right to get their information deleted or fixed. People also have the right to limit what information about them gets shared. The law does have an exception for employers though – but only until 2023. If California passes a law about workers' privacy before 2023, then workers could be protected too.

Federal or state laws could also stop employers from hurting workers with unfair rules.

California is thinking about passing a law called AB 701. This law would help warehouse workers. It would make warehouse companies share how much work they make workers do. It would ban warehouse companies from forcing workers to work so much they could get hurt. And it would make warehouse companies pay workers for taking breaks and resting.

AB 701 would be even better if it protected workers from getting fired unfairly. It would also be better if it made companies give warnings before firing workers. Illinois is thinking about passing a law called the Employee Security Act that would protect workers from getting fired or punished unfairly.

Laws that protect workers from how bossware programs work or what they do would also protect their privacy, independence, and dignity. Advocates should push for better laws for workers' privacy and safety. Advocates should also fight for OSHA, EEOC, and other government agencies to make companies follow the law.

IV. Recommendations for workers and advocates

Current law helps protect workers. But many workers don't know what their rights are. Other workers are afraid of standing up for themselves.

Advocates, unions, and workers should think about educating workers and employers. They should teach about current laws. They should also talk about what needs to change.

Here are some ways workers can stand up for themselves:

- Disabled workers can ask for accommodations if it's safe to say they have a disability. They can ask for more breaks. They can also ask for permission to work slower.
- Workers can talk to a lawyer or go to OSHA if bossware programs stop them from going to the bathroom.
- Workers who get sick or hurt because of bossware programs can file a claim and get money. They can then tell their employers if they have limits on how fast they work when they get back.

Even where the law isn't strong enough, workers and advocates can still keep track of dangerous bossware programs at their jobs. They should write down this kind of information:

- The names of bossware programs or tools;
- How the programs or tools work;
- What the programs or tools make workers do;
- What accommodations workers have asked for;
- How the programs made workers follow company rules; and
- How the programs got workers punished or fired.

Workers can report the dangerous bossware program to the company's Human Resources office or Legal Compliance office. They can also report the program by filing an OSHA complaint.

If workers get hurt on the job from doing the same thing over and over again, they should keep track of what happened. They should also keep track of any technology the employer uses. Workers who get hurt while working from home can also report getting hurt. They should keep track of what equipment or tools they were using when they got hurt.

Reports inside the company and complaints to OSHA are both protected by the OSH Act. Workers can also make OSHA complaints confidentially. OSHA might not talk to every worker who files a complaint. But the more workers who file complaints means OSHA will have more information about how dangerous bossware programs are. This can help OSHA start making employers follow the law. It can also help OSHA make better rules in the future.

Workers might not be able to report dangers to mental health though. The General Duty Clause only talks about getting hurt physically. And OSHA has no rules about mental health. OSHA's complaint form says it can only be used to report getting physically hurt. Even though the OSH Act should protect workers reporting dangers to mental health, workers could get punished if they try. So workers who start having anxiety, depression, or other mental health issues because of bossware programs should keep track of what's going on. They should write down what rules or technology made their mental health worse. And they can talk to a workers' rights organization or a lawyer.

Organizations that advocate for workers can also make confidential forms for workers to report dangerous bossware programs. Then they can talk to employers without naming specific workers. They can also keep track of similar problems. And they can use the information to advocate for better laws.

V. Recommendations for employers

A lot of employers think bossware programs will help their companies be more productive and make more money. But bossware programs are dangerous for workers' safety and mental health.

Bossware programs have ethical issues. They might also break the law. So employers shouldn't use bossware programs that spy on workers all the time, or that automatically manage workers.

Employers who use bossware programs should make sure their programs follow all the laws:

- Employers can't use programs that automatically cut pay for taking breaks.
- Employers can't use programs that stop workers from going to the bathroom.
- Employers still have to talk to disabled workers to figure out what accommodations they need to do their jobs.
- Employers can't use programs that punish disabled workers for using accommodations.

But employers should also think about these issues, too:

- Workers who get hurt cost companies more money. Companies have to pay more when they hire lots of people for short time frames. Companies also have to pay for medical costs and workers' compensation insurance. (This insurance covers the money companies have to pay to workers if they file a claim for getting hurt.)
- Workers with job strain might have anxiety, depression, or other mental health issues. These disabilities might make workers do less work, too.

Automatically spying on workers won't help them work faster or better. It might actually make workers do less work.

VI. Conclusion

Lots of companies are collecting information and using computer programs to control workers. Employers using bossware programs are making it worse. And it's hurting workers and violating their rights.

Current laws don't protect workers enough. But making employers follow the laws that are already out there would help a lot.

Employers that use bossware programs discriminate against disabled workers. They put all workers at risk for getting hurt. So we need lawmakers to do more.

The OSH Act should protect workers *before* they get sick or hurt – not after. The system is failing workers now. Workers have to wait until they get sick, hurt, or disabled before they can get employers to change or stop what they're doing. So workers and advocates need to fight for their rights and demand better laws.



**Warning: Your boss might be spying on you,
and it might be dangerous.**

Find more from this report and others on our
website at:

cdt.org

