Statement Endorsing New York's BOT Act

S.7623B (Hoylman-Sigal) / A.9315A (Alvarez)

Across the country, employers are increasingly using electronic surveillance and automated management systems (commonly referred to as "bossware") to monitor and collect data on workers and AI-powered automated employment decision tools (AEDTs) to make decisions that can alter the course of workers' careers and livelihoods. Companies often claim that these tools improve efficiency and productivity. Too often, however, these systems are used in ways that discriminate, erode job quality, threaten workers' health and safety, invade workers' privacy, widen the power gap between employers and workers, target workers who speak up, and otherwise harm workers.

Companies use bossware most frequently in vulnerable lower-wage jobs where workers are disproportionately from historically marginalized groups, including immigrants, women, people of color, and people with disabilities, thus magnifying existing inequities in the workplace and labor market. Meanwhile, bias is a persistent problem with AEDTs, as is the fact that many tools simply do not work. Workers often are not even aware when these technologies are being used and rarely have the opportunity to challenge unfair or discriminatory decisions that are made using them.

S.7623B / A.9315A, the Bossware and Oppressive Technologies (BOT) Act, would provide crucial protections to workers in the face of the threats posed by these technologies by regulating both bossware and AEDTs. The BOT Act would radically improve protections for workers in New York by:

- Limiting the circumstances under which employers can use technology to surveil workers and collect their data;
- Requiring companies to provide meaningful notice and conduct rigorous impact assessments and validation studies when deploying bossware or AEDTs; and
- Giving workers greater input overall in the use of data-driven technologies in the workplace and labor market.

Reining in harmful bossware systems

To regulate bossware systems, the BOT Act would:

- Impose data minimization requirements on employers who engage in electronic surveillance. Employers would only be permitted to collect worker data for specific, enumerated purposes, and only to the extent necessary to achieve those purposes;
- Require employers to disclose the nature and purposes of electronic monitoring;
- Prohibit electronic monitoring that has certain harmful effects or that uses particularly invasive means, such as monitoring that "incorporates facial recognition, gait, or emotion recognition technology" or that "threaten[s] the health, welfare, safety, or legal rights of employees;"
- Bar employers from selling employee data;
- Prohibit employers from relying solely on data gathered through electronic monitoring when making employment decisions; and

- Ensure greater transparency and fairness when employers use AI to evaluate and discipline employers.

Targeting discriminatory and unreliable AEDTs

The BOT Act would require an employer to do the following before using an AEDT:

- Conduct pre-deployment and annual/ongoing impact assessments conducted by independent auditors to check both for validity and whether the tool is likely to result in any form of unlawful discrimination, including limits on accessibility for disabled workers;
- Submit the impact assessment report, or an accessible summary thereof, to the Civil Rights Department;
- Fix any sources of discrimination identified during the impact assessment;
- Provide candidates with information regarding what an AEDT measures, how it measures it, how it factors into the decision-making process; and
- Give candidates "a meaningful opportunity to request a reevaluation of the results of an employment decision made or assisted by an" AEDT.

The bill would also prohibit the use of AEDTs that violate antidiscrimination laws or that incorporate pseudoscientific techniques such as facial analysis, gait analysis, or emotion recognition.

The BOT Act's definition of AEDT explicitly extends to tools that make recommendations, not just final decisions. This ensures that companies cannot evade the law simply by having a human rubber stamp an AEDT's recommendations. The BOT Act would also protect not only active job applicants but also anyone else "screened or evaluated for recruitment" by an AEDT. This ensures that the law would cover targeted job advertisements and other recruitment tools that play an increasingly vital role in candidate screening.

A model for centering workers in workplace technology

Effective workplace technology regulation means providing clear and robust safeguards against harmful, arbitrary, or discriminatory uses of automated systems in the workplace. It also means establishing baseline protections that provide for fairness and transparency in discipline and termination. In addition, it means requiring employers and vendors to provide meaningful and comprehensive information to all stakeholders regarding the systems they develop and deploy. The BOT Act would accomplish these goals.

The undersigned organizations have endorsed S7623B / A.9315A, the BOT Act.

A Better Balance
Athena Coalition
Autistic Self Advocacy Network (ASAN)
Center for Democracy & Technology (CDT)
Center for Law and Social Policy (CLASP)
Center on Race & Digital Justice (CR&DJ)
Communications Workers of America (CWA)
Electronic Frontier Foundation (EFF)
Electronic Privacy Information Center (EPIC)
NAACP Legal Defense & Educational Fund, Inc. (LDF)
National Black Worker Center (NBWC)
National Center for Law and Economic Justice
National Employment Law Project (NELP)
National Employment Lawyers Association (NELA)
National Employment Lawyers Association - New York (NELA-NY)
National Institute for Workers' Rights
National Partnership for Women & Families
National Women's Law Center (NWLC)
New York Civil Liberties Union (NYCLU)
Oxfam America
PowerSwitch Action
Restaurant Opportunity Centers - New York (ROC-NY)
Surveillance Resistance Lab
Surveillance Technology Oversight Project (S.T.O.P.)
Upturn