

## CFPB Warns Employers About Privacy Risks of AI-Powered Monitoring Tools

October 25, 2024 - This week, the Consumer Financial Protection Bureau (CFPB) issued a warning to employers using AI-based monitoring and decision-making tools, cautioning that failure to comply with federal privacy regulations and the Fair Credit Reporting Act (FCRA) could lead to legal consequences. The warning is due to rising concerns over the impact of AI-driven surveillance and evaluation tools on workers' privacy. Employers have increasingly adopted such tools, which can analyze employee behavior, performance, and even personal online activity, often without the employees' knowledge or consent.

AI-powered tools in workplaces have broadened the scope of employee monitoring far beyond traditional background checks, often collecting and processing large amounts of personal data. These technologies can monitor various forms of employee behavior, flagging certain activities or predicting outcomes like potential resignations or union organizing efforts. Some companies have even deployed AI to track employees' social media presence or customer feedback. The lack of transparency associated with these tools can expose workers to invasive scrutiny, infringing upon their privacy rights and violating the law.

The CFPB's new guidance warns that companies using third-party reports or AI-generated assessments in employment decisions must adhere to the FCRA. This federal law mandates that businesses obtain employee consent before conducting background checks and provide specific disclosures when information in these reports leads to adverse decisions, such as demotions, reassignments, or terminations. Employers are also legally obligated to offer workers a chance to dispute inaccuracies in the data.

Failure to comply with these requirements exposes employers to potential lawsuits, fines, or settlements. Earlier this year, Walgreens reached a settlement over allegations that it did not meet FCRA standards when denying employment based on background checks. Such cases demonstrate the high costs of failing to provide transparency and uphold workers' privacy rights.

The CFPB outlined several protections under the FCRA to assist workers in guarding against potential misuse of AI and third-party reporting tools in employment. Employers must secure consent from employees before collecting or using personal data. If an employment decision relies on data from a third-party report, employers are required to inform employees, especially when a negative outcome arises. Workers also have the right to dispute any inaccuracies within these reports, ensuring errors do not unduly impact their careers. Additionally, employers are prohibited from using such data for non-employment purposes, such as marketing financial products to employees.

The CFPB is attempting to set standards for businesses, ensuring that workers' personal information is handled responsibly and that privacy rights are not compromised by opaque AI systems. With this guidance, the CFPB urges employers to closely examine their use of data-driven tools to avoid potential privacy violations and ensure alignment with the FCRA.

by Jim Malmberg

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