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Paper Title:

The Law of Worker Data Privacy Harms

Abstract:

We are witnessing a rapid digital transformation in low-wage workplaces, where employers use artificial intelligence and algorithms to track everything from a hotel workers body temperature to the nuances of their cleaning patterns, or even analyze the facial expressions and tone of fast-food workers as they interact with customers. Employers can then use the resulting data not only to manage and control workers performance on the job, but to accrue other distinct value from that data. This phenomenon—the datafication of employment—raises serious concerns for workers’ privacy rights, as their biometric, personal, and performance data is collected, processed, and sold without meaningful oversight or consent. As the World Economic Forum noted, workers have limited agency over their data due to technological complexity, lack of transparency, and inadequate legal protections.

For the 26 million low-wage workers in the U.S.—disproportionately immigrants, women, and people of color—worker data rights are virtually nonexistent. Scholars have underscored that U.S. privacy law is insufficient to address these emerging issues. One scholar describes the legal landscape as an awkward split between privacy and intellectual property rights, with workers generally losing out on both ends. Others have raised concerns about data mining practices that enable employers to infer personal information beyond what is directly observable.

This article builds on existing literature by querying what rights low-wage workers might locate in the data generated through their work and whether current legal frameworks, rooted in individual contracts and managerial prerogative, can protect their privacy in this new technological era. Without meaningful safeguards, the extraction and exploitation of workers’ data risks deepening existing power imbalances, with profound implications for their privacy, dignity, and autonomy.

In examining these issues, this project seeks to chart the outer limits of legal protections for worker data in a rapidly evolving digital landscape, asking how the law can better address the growing surveillance and exploitation of low-wage workers’ personal and work-related data.