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California Legislature Takes Aim at AI-Powered Mind Reading, But Questions Remain

California Employment Law on **September 23, 2026**

The California Legislature recently passed Assembly Bill 1883 ("AB 1883"), which would prohibit employers from using artificial intelligence ("AI") workplace surveillance tools for two specific purposes: recognizing employees' emotional states or collecting employees' neural data.

Earlier versions of AB 1883 were considerably broader. Among other things, prior versions would have restricted the use of surveillance tools to infer protected activity or protected characteristics, regulated facial-recognition technology used in disciplinary decisions, and covered certain independent contractors. The bill now heads to Governor Gavin Newsom's desk for signature.

Notably, the bill provides for a private right of action, in addition to public enforcement. Available remedies would include injunctive relief, punitive damages, reasonable attorneys' fees and costs, and penalties of up to $500 for each "violation." The bill does not define what constitutes a "violation"—for example, if a violation accrues for each employee who is surveilled, or whether individual employees could accrue multiple violations (e.g., each pay period) for the same act of surveillance.

Below are some of the key provisions of the bill:

- **Broad Definition of Workplace Surveillance Tools:** The bill broadly defines a "workplace surveillance tool" as "any system, application, instrument, or device that collects or facilitates the collection of employee data, activities, communications, actions, biometrics, or behaviors by means other than direct observation by a person," and the definition expressly includes "video or audio surveillance, continuous incremental time-tracking tools, geolocation, electromagnetic tracking, photoelectronic tracking, or that utilizes a photo-optical system or other means."
- **Recognition of Emotional State:** Employers would be prohibited from using an AI-powered workplace surveillance tool to recognize—or make inferences or

predictions about—an individual's emotional state. This restriction arguably could encompass tools that purport to assess employee stress, frustration, or sentiment through facial expressions, voice patterns, movements, or other behavioral signals.

- **Collecting Neural Data:** Employers also would be prohibited from using an AI-powered workplace surveillance tool to collect "neural data," defined as information generated by measuring activity in an employee's central or peripheral nervous system that is not inferred from non-neural information. This definition arguably could reach emerging technologies such as brain-computer interfaces and certain wearable devices.
- **Broad Safety Exception:** The bill would not prohibit an employer from using workplace surveillance tools to "ensure safety." This exception may permit, for example, AI-enabled tools designed to detect driver fatigue, clinician burnout, employee distress, impairment, or other conditions that could create an immediate workplace hazard—even if the tools analyze indicators potentially associated with an employee's emotional state or neurological data. However, the bill does not define what it means to "ensure safety," and the exception's precise scope is unclear. Assuming AB 1883 becomes law, employers intending to rely on this exception should be prepared to identify the specific safety risk being addressed, explain how the tool mitigates that risk, and ensure that the data collected is not repurposed for non-safety uses.
- **Limited Federal-Compliance Exemption:** AB 1883 contains a narrow exemption for certain aerospace, national-security, military, space, and defense operations when use of the surveillance tool is reasonably necessary to comply with a federal statute, federal regulation, or binding federal contract.

We'll continue to monitor how AB 1883 progresses.

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