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Southampton

REGULATING FOR THE FUTURE OF WORK

Algorithmic Management and Workers' Rights

Context

The rapid adoption of new digital surveillance and algorithmic management (AM) technologies are transforming the world of work and employment relations. These systems, which combine extensive monitoring with data analytics and automation, are now used by companies for hiring, task allocation, performance evaluation, and even termination decisions. While potentially offering efficiency gains, and the appearance of objectivity, these systems raise significant concerns for workers' rights, autonomy, and securing a decent future of work.

This brief outlines the key challenges presented by the integration of digital surveillance and algorithmic management tools, and proposes actionable recommendations to safeguard workers' rights in the era of algorithmic management.¹ The UK currently lacks targeted regulation against the harms of these complex systems, and our existing patchwork of legal frameworks struggle to provide appropriate protection. Without taking the steps identified here, therefore, the UK risks failing to address the challenge of algorithmic management and ensure decent work for all in the age of AI.

Key Recommendations



Strengthen Worker Voice

Give workers a say over the use of monitoring and AM technologies by mandating 'workplace technology representatives' and introducing duties on companies to consult and negotiate over the adoption of these systems.



Protect Rights at Work

Ban 'automatically unfair' AM and surveillance systems that are manifestly disproportionate and prohibit fully automated decision-making over critical employment decisions.



Enhance Oversight and Enforcement

Introduce new rights that allow all individuals whose work is affected by algorithmic management systems to understand and challenge the use of surveillance and AM systems, irrespective of their employment status. Create a specialist regulator or enforcement unit with powers to licence and audit AM systems.

Algorithmic Management and the Digital Transformation of Work

Algorithmic management and digital monitoring systems are now being deployed throughout the employment relationship to carry out or facilitate the management of workers:

Recruitment is frequently carried out with the assistance CV and social media screening tools, and algorithmic systems that analyse and score applications or interviews.

Work allocation can be carried out by systems that set shift patterns or issue minute-by-minute instructions over what and how individuals should perform tasks.

Performance evaluation may be carried out by combining intensive worker monitoring, and collection of granular location and performance data, with algorithmic processing systems that create ranking or productivity scores for workers.

Pay and remuneration can also be set via algorithmic processes that calculate personalised rates of pay based on collection and analysis of performance and personal data.

Dismissal and disciplinary processes may be automated, or triggered, where AM systems identify productivity issues or infractions of company policies.

These new uses of technology create three key problems:

1. Fundamental rights

The extensive data collection and monitoring inherent in AM pose significant threats to workers' privacy and has a chilling effect on the exercise of other rights such as freedom of expression and association. These rights are threatened both at and away from the workplace, as surveillance often extends to workers' personal communications and activities. AM systems have also been shown to produce biased and discriminatory outputs, threatening workers' rights to equality and non-discrimination.

2. Decent work

AM can lead to the intensification of work pace and unsustainable performance expectations that are detrimental to workers' mental and physical health. It reduces worker autonomy and de-skills managers and workers alike by directing decision-making and diminishing the need for human expertise. Constant monitoring and real-time algorithmic performance evaluations heighten control over workers, and their sense of subordination. Errors or biases in AM

system's outputs can lead to unfair treatment, and the lack of transparency makes it difficult to identify and address these issues.

3. Worker voice

AM operates with a lack of transparency, with workers unaware of the systems in place, the decisions being made, and the data being processed. This opacity makes it difficult for workers to challenge or influence management decisions. Additionally, understanding these systems requires technical expertise that most workers (and employers) do not possess. Worker voice is further frustrated by the fact workers subject to these technologies generally have little to no input in their development.



Regulating for the Future of Work: a New Generation of Rights

Existing employment and data protection law does impose some important constraints on the use of surveillance and algorithmic management technologies.² However, the UK currently lacks a comprehensive regulatory framework that provides adequate protection to workers against the multiple threats posed by these new tools.

A number of new legal mechanisms are needed to address the current regulatory gap.

Enhance worker voice over algorithmic management and workplace surveillance

- a) Mandate 'technology representatives' in every workplace to ensure worker voice on AM issues and avoid their potential harms, even in the absence of a trade-union presence.
- b) Facilitate worker voice by imposing new transparency obligations on AM system designers and employers; requiring them to conduct and share detailed Algorithmic Impact Assessments with workers and their representatives.
- c) These impact assessments should set out what technologies are being deployed in the workplace, the data being collected and processed and how these are used to produce outputs, as well as how surveillance and AM systems are being used to make or support decisions.
- d) Workers and their representatives should have the opportunity to input into the development of impact assessments, and rights to demand explanations and reviews of AM system outputs..

Protect rights at work

- a) Companies and employers should not be permitted to deploy surveillance or algorithmic management systems

where they are unable, or unwilling, to provide workers and their representatives with detailed Algorithmic Impact Assessments.

b) Workplace technologies that cannot ever be justified as legitimate and proportionate management practices should be prohibited as 'automatically unfair'. Examples include tools that predict or infer emotional and mental states, bio-chipping, fully automated dismissal and disciplinary processes, automated decisions significantly impacting working conditions, and tools with manifestly disproportionate effects on workers' privacy or other fundamental rights.

c) Legal protections against surveillance and algorithmic management systems should not be restricted to those with employee or worker status but extend to all those performing work personally who are affected by these systems.

Robust enforcement and oversight

- a) Create a specialist regulator, or enforcement unit within the Government's new Fair Work Agency, with powers to licence and audit AM systems, ensuring they demonstrably operate within the law before they can be marketed or implemented.
- b) Incentivise compliance throughout AM supply chains by imposing robust penalties and joint liability on system developers and vendors for rights violations arising from their products.
- c) Improve enforcement by allowing trade unions to bring collective claims on behalf of those whose rights are breached by AM systems.

¹Based on comprehensive analysis in J. Atkinson and P. Collins, *Algorithmic Management and a New Generation of Rights at Work* (Institute of Employment Rights, 2024).

²Relevant legal frameworks include Data Protection Act 2018 and UK GDPR, the Equality Act 2010, the Health and Safety at Work etc Act 1974, protections from dismissal contained in the Employment Rights Act 1996, and employers' common law duties in contract and tort. For more detail on these see Atkinson and Collins (n 1).



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Authors

Dr Joe Atkinson

Lecturer in Employment Law
University of Southampton School of Law

Alistair Sackley

Specialist Policy Officer
University of Southampton Web Science Institute

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