RWDSU
Retail, Wholesale and Department Store Union

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AI Insight Forum: Privacy & Liability

Written Statement

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The Retail, Wholesale and Department Store Union (RWDSU) represents approximately 100,000 workers in the United States. RWDSU members work in retail, including apparel retail and grocery retail, pharmacies, food service, food processing, warehousing and distribution, cannabis, carwashes, agriculture and more. Much of our members' work is impacted by some form of new technology utilizing AI. Workers with their unions should be able to fully participate in decisions over which technologies are developed, how they are used in the workplace, and how the resulting productivity gains are shared.

The discussion around privacy and liability is a critical one, particularly pertaining to workers at their place of work. Currently workers have very little say or even know what data is collected on them, how employers are combining that data with algorithmic software to make decisions, and how these systems impact workers' jobs and livelihoods.

Without regulation, workplaces are now sites of experimentation, where untested and faulty algorithmic software systems based on dubious science directly or indirectly harm workers.1 And workers feel the impact of the use of these new digital technologies through intensification and speedup, deskilling and automation, suppression of the right to organize, hazardous working conditions, discrimination, loss of autonomy and privacy, and growth of contingent work.

The following examples are highlights of how technology and AI has been deployed in the sectors in which we actively organize and represent workers. The examples are industry specific, but we know that these technologies are often easily adapted to other industries and so we will likely see their deployment economy-wide. I will focus first on examples of AI in the workplace, then the impact of this new technology on workers, and last on potential solutions.

Examples of New Technology and AI in the Workplace

- *Digital Privacy Rights*: Hundreds of thousands of Amazon fulfillment center workers need to download Amazon's proprietary AtoZ app on their personal devices in order to work at Amazon; the app provides the work schedule and pay stubs, allows workers to claim overtime and extra shifts, request time off, and receive messages from

management. To download the app on their personal devices, workers must allow Amazon access to their geolocation/GPS, photos/media/files, camera, microphone, and wifi-connection information. Amazon can sell the data collected to any 3rd party companies and the data cannot be deleted. Amazon's use of its AtoZ app to monitor, manage, and evaluate workers – both on and off the job – poses a risk to workers health and safety, equal employment opportunities, privacy, access workplace accommodations, and exercising workplace and labor rights, including their rights to form or join a labor union.

- *Termination by AI*: At some companies, AI makes automatic determinations about whether a worker has a job. Amazon uses the AtoZ app for human resources (HR) functions. Often, this app represents the only relationship a worker holds with HR – there is no human they can talk to on site that can address issues like paid time off, wages paid, or other essential issues. This also means that there is often no human to call either – workers sometimes spend hours on the phone waiting for a human to pick up the phone to ask a simple question about their work and benefits. At the same time, this app is also how workers are notified of termination. Based on algorithmically managed quotas and time on task standards, workers who fail to meet productivity thresholds are automatically (robotically) terminated via the app.

- *Monitoring by Robots*: Many grocery stores across the United States have begun utilizing a robot in the store, one such version is referred to as "Marty." These robots are used to monitor inventory, identify hazardous situations like spills, and communicate with customers, but there is evidence that they are also monitoring workers themselves. These robots are equipped with cameras and also may have the potential to record audio, which may have a chilling effect on workers communicating amongst themselves. Many retail stores are also using biometric monitoring such as facial recognition to monitor customers. This is supposedly for loss prevention, but there are many other uses for collecting this data, such as creating data points on consumer habits to improve sales and marketing, or tracking purchase history with biometric data and selling these data points to other companies.

- *Data Collection*: Current technology collects an extensive array of data about workers that violate worker privacy. Some gathered in the workplace, ie: location in the workplace, bathroom use, coworker interaction, scanning rate/smartphone app interaction, interaction with customers, etc. Other data is bought from 3rd parties, ie: social media activity, credit reports, driving history, consumer activities, criminal background checks, etc.

- *Electronic monitoring*: This technology is a particularly invasive form of data collection that entails extensive and continuous monitoring of worker behaviors and actions. While not new, digital monitoring has allowed passive data collection technologies such as sensors embedded in workplace equipment, devices, and wearables that can capture a wide range of data on worker locations, activities, and interactions with coworkers. Employers also use GPS technologies embedded in vehicles or in workers' personal smartphones to monitor their presence on job sites, and track their locations while out on

the field. Although data-driven technologies can be used to benefit workers, for example, reducing workplace accidents, the lack of engagement with workers and their union representatives and lack of regulation makes it too easy to enable this technology to be used to oppressively control labor, deskill jobs, suppress the right to organize and reinforce race and gender inequality.

- *Thousands of Cameras*: Many companies are beginning to blanket their facilities with cameras, but Amazon takes the cake. One accounting noted over 1,000 cameras in a single Amazon facility. These cameras, in combination with the handheld GPS devices and in some cases "haptic feedback" wristbands that vibrate to indicate to workers they are moving in the wrong direction from the next task, are used to monitor every aspect of a worker's shift. These cameras, as well as radio-frequency handheld scanners, were also used to monitor social distancing by workers during the COVID-19 pandemic. Workers who were identified to have been within 6 feet of another worker were disciplined or fired for violating the social distancing policy. There were also concerns raised that these cameras were used to monitor voting during a mail-ballot union election at an Amazon facility. These cameras create fear among workers that any communication with coworkers that is not for the direct purpose of fulfilling an order could be recorded and used for discipline.

- *Next Gen Shopping Carts*: In line with the move to self-checkout and the attempt to phase out the cashier, some grocery stores are piloting the Next Gen Shopping carts, which allow shoppers to scan and pay for their groceries as they shop. These carts use a sensor array that uses AI-powered cameras and barcode scanners to identify whatever you put in or take out and create a live receipt. AI and GPS monitoring allows the carts to suggest purchases and highlight sales on nearby items as you shop. Note this is all occurring while retailers are complaining about the increase in retail theft, yet the one thing we know about retail theft is that it increases when no one is working at the front of the store.

- *Time Off Task Monitoring*: Amazon uses a system called Time Off Task (TOT) as one measure of productivity. A worker who is not actively moving towards their next task is no longer on task. If a worker fails to be on task too many times or for too long of a time will be disciplined. TOT is measured by a radio-frequency handheld scanner that each worker carries. This device monitors movement and task completion. In some facilities, bathrooms are so far away from a worker's work station that they are unable to travel to the bathroom and back without violating the TOT policy. This leads workers to either the unhealthy practice of not using the bathroom regularly, or sometimes going to the bathroom in bottles. TOT is able to be measured down to second due to this new technology in the workplace.

- *Quotas*: Amazon, and also other companies like meat packing companies, use a form of work-pace quota to monitor work productivity. This quota is based on the number of tasks completed during a certain period of time. Quotas may be tracked through radio-frequency handheld scanners or other means and are often algorithmically managed, meaning they are automatically adjusted in real time. A proprietary algorithm monitors productivity rates and increases them based on the individual worker's productivity. This

leads to a constant increase in work speed: if you work harder, the work gets harder. Workers who fail to meet set quotas are disciplined.

Impacts on Workers

Mental Health

- AI has the potential risk of harming workers' mental health.
- With no human HR, there is no one to discuss and negotiate issues that arise in the workplace, leading to despair.
- With constantly increasing work speed due to algorithmic management, workers are under increasing pressure.
- Constant monitoring, such as through handheld devices and cameras, creates paranoia and the sense that workers can never relax.

Physical Health

- Physical health can be damaged by AI
- Competing with robots can speed work to unhealthy levels.
- Robotic failures can lead to injury for nearby workers.

Chilling Effect on Workers' Right to Organize

- Cameras everywhere, often equipped with sound recording devices, and coupled with AI to capture key words spoken, such as "union," can allow employers to identify workers exercising their freedom of association before workers are ready to inform the employer.
- Handheld GPS devices can identify workers standing next to each other and target workers for time off task, which means workers are less likely to take time to speak with each other while on the job.

Job Loss

- Employers often say that new technology will create new job opportunities for existing workers, but experience shows that most new technology does not result in upskilling of existing workers as employers typically bring in new workers already trained in new technology rather than retrain existing workers.

Impact on Wages and Hours

- Automated scheduling and digital tracking of hours allows employers to nickel and dime workers like never before. Historically, when calculating hours worked, employers have rounded up to the nearest 15-minute increment. Now, many employers like Home Depot who recently announced this change, are paying workers to the nearest minute. Automatic scheduling means there is no human present with which a worker can discuss issues with scheduling.

Solutions

- *Transparency*. Workers should be notified of all AI uses in the workplace and their potential impacts on work. They should also be notified of any data collection and how

the employer is using the data. Some of our existing union contracts require notification prior to deployment of new technology.

- *Accountability*. Workers, or a state agency, should have some decision-making power in relation to the deployment of new technology and AI in the workplace. Workers should not be guinea pigs for the testing and deployment of new workplace technologies. As AI and new technology becomes more invasive and powerful, it is incumbent on the state to set up a mechanism for approving the deployment of new workplace technologies.

- *Standards*: Regardless of the type of technology deployed, there should be minimum standards to protect workers and communities from potential abuses of AI and new technology. This is challenging given the varied use of technology across sectors, but we should not shy away from setting a bottom line for protecting workers.

Workers should have access to, and influence over, data collected on them. There should be guardrails on data processing, the data minimization principle should be enshrined in law, and workers should have the full right of explanation when data is used by a company.

Any state funds used to support the development of technology within the workplace should require that workers impacted by the potential technology be consulted in the development process. This would help to ensure that from the outset technology is developed in order to empower workers, not undermine them.