Watching the Watchers: The New Privacy and Surveillance Under COVID-19

Aiha Nguyen

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About the Author

AIHA NGUYEN

Program Director — Labor Futures, Data & Society

Aiha leads the Labor Futures Initiative at Data & Society, which seeks to better understand emergent disruptions in the labor force as a result of data-centric technological development, and create new frames for understanding these disruptions through evidence-based research and collaboration with stakeholders. Aiha guides research and engagement, with a birds-eye view of the stakeholders and actors in the field of labor and technology. She brings a practitioners perspective to Data & Society, having worked for over a decade in community and worker advocacy and organizing.

Prior to joining Data & Society, she worked to raise job standards for retail, airport, and other service workers, and addressed issues of food access, safety and security, and local governance at the Los Angeles Alliance for a New Economy (LAANE). She has authored reports analyzing outsourced passenger service work at LAX; the impact of automated self-checkout systems on public safety and jobs; and a baseline study of Orange County's philanthropic community.

About the Series

In this essay series, *Watching the Watchers: The New Frontier of Privacy and Surveillance under COVID-19*, McGill's **Centre for Media, Technology and Democracy** explores the policy, legal and ethical issues of (new) surveillance tactics in times of crisis.

In the wake of the 2020 global pandemic, governments and corporations around the world are adopting unprecedented data-gathering practices to both stop the spread of COVID-19 and transition to safer and more economically stable futures. This essay series examines how public and private actors are using pandemic response technologies to capitalize on this extraordinary moment of upheaval. It convenes a diverse group of experts to examine the policy, legal, and ethical challenges posed by the use of tactics that surveil and control populations around the world. With a focus on wide-ranging topics such as cybersecurity, racial justice, and worker surveillance, among others, this series offers a roadmap as policymakers confront the privacy and human rights impacts of crises like the novel coronavirus in the years to come.

Introduction

By the end of March, New York City, the epicenter of the COVID-19 pandemic in the United States, was already beginning to look like a ghost town. Many businesses had closed their doors and begun instituting work-from-home policies. Governor Andrew Cuomo declared a state of emergency and suspended all activities deemed non-essential, leading to panic buying of toilet paper, flour, and home office equipment.[1] On the other side, workers in grocery stores and warehouses were putting in extra hours to pack, deliver, and stock to meet a growing demand for household products. In the medical field, hospitals were stretched to their limit yet were asked to find even greater capacity for an impending wave of COVID patients. The demand for health care, food production, and delivery surged as the pandemic gripped the city.

As unemployment numbers grew, the federal government passed emergency legislation providing most qualifying Americans with a one-time infusion of up to $1,200. Unemployed Americans received an extra $600 in unemployment benefits in the initial months of the pandemic, and independent contractors were eligible for benefits for the first time ever.[2] However, millions of immigrants and those who quit their jobs for fear of contracting the virus were excluded from these programs. Emergency legislation like the Families First Coronavirus Response Act granted enhanced paid leave for employees who contracted the virus, but contained major loopholes for large employers like Amazon and exempted workers classified as independent contractors, such as food delivery workers.[3] The effect was that "essential workers" received an infusion of cash but still had to work in hazardous conditions.

Compounding the difficult situation in which essential workers found themselves was the unwillingness of the U.S. Occupational Safety and Health Administration (OSHA), the government agency responsible for enforcing workplace safety, to take steps to ensure employers were fulfilling their legal duties to provide a "place of employment which are free from recognized

hazards that are causing or are likely to cause death or serious physical harm to his employees."[4] As the impact of the pandemic grows, OSHA and other federal agencies with oversight over the workplace continue to resist calls to expand regulatory authority for the extenuating circumstances or enforce existing regulations.[5] Rather, federal oversight agencies are leaving this responsibility to states and employers to decide how to address this public health crisis.

As a result, in the workplace, employers have no federal requirements for instituting measures to mitigate COVID-19. Employers have the discretion to institute measures that could range from large-scale facilities improvements to work-from-home policies to offering soap and wash stations. Most states have emphasized solutions like wearing masks in public, social distancing, contact tracing, and health and symptom monitoring. These responses, although designed for a general public, have become the basis for many corporate workplace health and safety policies as well.

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> A new acceptance of monitoring and surveillance of disease and contagion in workplaces has many implications for workers and employment, including normalizing increased surveillance in the name of public health

While some employers are taking extra measures, most employers are focusing on hygienic and behavioral changes rather than more effective, extensive changes to mitigate the spread of the disease. Specifically, these measures rely on measuring, monitoring and data collection, and emphasize altering individual behavior. A new acceptance of monitoring and surveillance of disease and contagion in workplaces has many implications for workers and employment, including normalizing increased surveillance in the name of public health, emphasizing individual responsibility, shifting accountability to workers, and new privacy implications with the integration of new data-centric tools in this space.

Pandemic Protection in a Regulatory Vacuum

In the United States, the Occupational Safety and Health Act (OSH) is the body of law governing workplace health and safety for most private sector employers and their employees. The OSH Act established the Occupational Safety and Health Administration (OSHA), which is responsible for promulgating rules and enforcing regulations meant to protect employees while at work. However, since COVID-19 became a global pandemic, OSHA has resisted issuing even temporary standards to protect workers from the coronavirus. The agency insists that it can enforce workplace safety with its current mandate and has only provided voluntary, unenforceable guidance to employers on recommended steps.[6] The most comprehensive guideline OSHA offered was a 35-page "Guidance on Preparing Workplaces for COVID-19".[7] The guidelines follow traditional infection prevention and industrial hygiene practices outlined by the Center for Disease Control and Prevention (CDC).[8] The guidelines follow a hierarchy of controls, or measures that employers can institute in order of effectiveness, to reduce the exposure of employees to hazards.
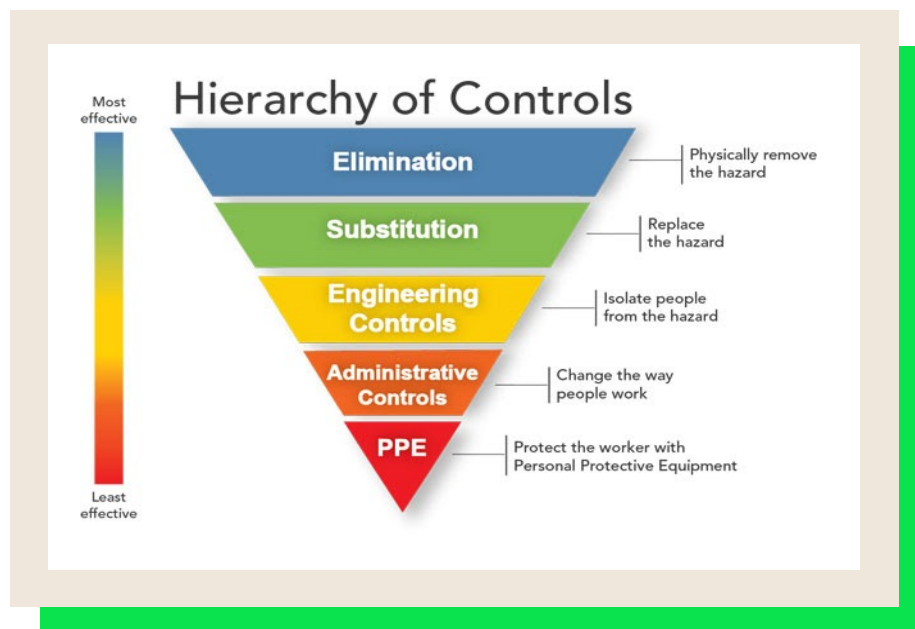
Engineering controls are used to reduce exposure to hazards without relying on changes in behavior and are often the most effective solutions. These types of changes include improved air filters and ventilation, as well as physical barriers. *Administrative controls* are changes in policies or protocols that require action by employees or employers such as allowing employees to work from home or a policy that allows sick workers to stay home, staggered schedules and training on use of PPE. *Safe work practices* are a form of administrative controls that are meant to reduce the duration and frequency, or intensity of exposure. These measures can include providing tissues and hand sanitizer, encouraging regular hand washing, and designating no-touch surfaces. Finally, *Personal Protective Equipment (PPE)* like masks, gloves, and gowns can be useful to prevent certain exposures but do not remove the hazard in any way. However, in offering these as recommendations instead of requiring that employers take more comprehensive measures, this gives the impression that the measures are of equal weight and don't have to be taken in order of effectiveness.[9]

Furthermore, guidance that is not enforced suggests that employers can take no measures at all. OSHA issued an interim enforcement response memo to regional offices further downplaying the importance of COVID-19 and the agency's expected response. The memo informs staff that they should treat complaints related to COVID-19 as non-formal if they are from non-emergency or non-healthcare facilities and narrowly tailored to the types of injuries that should be reported.[10]

These recommendations changed little for workers who struggle to protect themselves at work, which indicates companies' failures to adopt these guidelines. OSHA has not been enforcing its rules, even in the healthcare industry, and it has come under fire for not investigating dangerous working conditions in industries, like meat packing, that have been kept open by a presidential executive order to meet high demand.[11]

The result of the regulatory vacuum has been a rapid spread of the disease in certain workplaces. As of July 2020, over 700 healthcare workers have died from the virus and according to one estimate, 38,000 workers in meatpacking have been infected. [12,13] The United States Department of Agriculture (USDA) waived processing line speed limits in some poultry plants to maintain high production levels, a decision that conflicts with the CDC's recommendation that businesses slow their production lines and increase spacing between workers.[14] Hospital

employees have been asked to work with inadequate PPE and employers have retaliated against workers for speaking out. Health care workers are recognizing the failure of the federal government to protect them, and they are appealing to state governors to establish mandatory workplace safety standards such as PPE, social distancing, and stronger whistleblower protections.[15]

Because the federal government has failed to establish any required mandates, the responsibility devolves to individual states to issue mandatory protections for workers. A few states have issued comprehensive mandatory standards for employees but most have not. This leaves employers in most states free to set their own standards and policies for workplace health and safety during the pandemic.

Tracking, Measuring, and Monitoring

Governments have adopted a variety of approaches to "flatten the curve" in order to reduce rates of infection, hospitalization, and ultimately, deaths. These include stay at home orders, requirements to wear masks, and social distancing. However, orders to close businesses and limit gatherings were always meant to be temporary. From the beginning of the pandemic there was public disagreement over how far to take public health measures because of the novelty of the coronavirus and few answers about the future. The medical community's best estimates projected that a vaccine wouldn't be available for over a year. Given this long-term uncertainty, public officials and businesses began to turn to other solutions. Even as vaccines were being developed, there were simultaneous efforts to create a means of identifying and minimizing the spread of the disease.

As conversations about reopening began, OSHA and the CDC issued more recommended but not mandatory safety guidelines.[16] OSHA in particular outlines the following principles that employers should consider as they reopen: (1) Hazard Assessment, (2) Hygiene, (3) Social Distancing, (4) Identification and Isolation of Sick Employees, (5) Return to Work After Illness or Exposure, (6) Controls - Engineering Controls, Administrative Controls, Safe Work Practices, and PPE, (7) Work Flexibilities, (8) Training, and (9) Anti-Retaliation.

Although the principles are discrete, they overlap and rely on employers instituting engineering controls, administrative controls, and PPE. For example, administrative controls are meant to influence behavior, thereby achieving social distancing goals, but maintaining a 6-foot distance could also be achieved by instituting engineering controls like reconfiguring offices. These measures are not equally effective, but without a clear mandate, employers can choose to implement the protocol that suits their interests rather than the one that is most effective at protecting worker health and safety.

This also means policies vary dramatically from industry to industry, occupation to occupation, and even among employees in the same company. Most employers are focusing on hygienic and administrative controls meant to shift behavior rather than hard engineering controls to enhance workplace safety. Some companies have allowed long-term work from home situations, installed barriers and staggered schedules for higher-wage, "white collar" occupations while low-wage workers in those same companies are subjected to regular temperature checks and protocols meant to encourage employees to maintain a 6-foot distance.

With OSHA only offering voluntary guidance, employer responses have mirrored state policies meant to track and monitor the spread of the disease. The most common workplace health and safety changes track with state public health recommendations, such as: social distancing, wearing masks, testing, and monitoring for symptoms and illness. Employers are using a variety of technologies to detect, identify, and monitor workers and their behavior in an effort to create a sense of safety and expedite a return to normal business activity.

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Worker health screening

Many businesses including grocery stores, restaurants, and retailers such as Walmart, Kroger, and Darden Restaurants are taking workers' temperatures at the start of their shifts, using a range of instruments from basic thermometers to more sophisticated heat sensors. In nursing homes, regular testing of patients and staff who could potentially introduce the virus into facilities is becoming a requirement in order to protect patients and other health professionals. Some states, like New York, have mandated bi-weekly testing of nursing home workers.[17] In addition, some employers are asking workers to complete questionnaires about their activities as part of daily employment screenings.

The National Basketball Association's attempt to restart the season provides an interesting example of the centrality of testing and hygiene in a post-pandemic work environment. In preparation for July games at the Disney World Complex in Florida, the NBA released a 113-page handbook for players, team staff, and teams. The policy requires quarantine upon arrival at the sports facility and daily testing for the virus. The league is also offering players a wearable monitor in the form of a ring that can be used to track temperature, heart rate, and respiration, among other biometrics, and can display an "illness probability score."[18]

Distancing tools

In logistics, Amazon has developed a Distance Assistant, a software that applies machine learning to cameras positioned in warehouses to identify high traffic areas and encourage social distancing. As people walk by the cameras, a monitor distinguishes between "individuals remaining 6 feet apart [who] are highlighted with green circles, [and] those who are closer together [who] are highlighted with red circles."[19] Amazon has made the software open source for others to use and create their own Distance Assistants.

Similarly, Ford Motor Company has developed a watch that could be worn by workers to help them keep the requisite 6-foot distance from one another. The app is part of a suite of new safety measures the company will institute, including thermal scanning to track fevers, and masks and face shields. The new safety measures were developed in partnership with the United Auto Workers, the union representing Ford factory workers.[20]

Digital contact tracing

Contact tracing is also gaining popularity as a solution because it is potentially cheap, scalable, undetectable and non-invasive, and can be developed considerably faster than a vaccine. Public health agencies already use contact tracing as an established method for containing epidemics.[21] What is new however, is the CDC's recommendation that public health agencies explore using digital tools to expand their reach and reduce the demand for staffing.[22]

Generally, contact tracing can be broken down into following steps: case investigation, contact tracing, contact support, and self-quarantine. Digital

tools can help with *case investigation*—identifying everyone an infected person may have come in close contact with—and *contact tracing*—notifying exposed people. However, support for those who have been at risk is less feasible through digital means and thus far, there are no plans to use digital tools to enforce self-quarantine in the US, although such measures have been implemented in other countries.

The decision by Google and Apple to collaborate on an application programming interface (API) that would run on both Android and Apple operating systems makes widespread use of digital contact tracing a possibility by addressing a major barrier to access and compatibility.[23] The two operating systems effectively power almost all smartphones in the world. Using GPS on phones, contact tracing can collect minute pieces of sensitive data about individuals. Many countries, including the US, have not passed data protection laws to guide the use of these tools. Privacy experts fear data can be used for non-public health purposes, combined with other identifying information, or stored for extended periods of time.[24] The Apple and Google venture attempts to address these privacy concerns by decentralizing information and requiring user consent to share information.[25] As Apple CEO Tim Cook tweeted, "Contact tracing can help slow the spread of COVID-19 *and* can be done without compromising user privacy."[26]

Consulting giant PricewaterhouseCoopers (PwC) created a tool called Check-In for clients eager to bring employees back into offices; the tool will also be used among the company's quarter of a million employees across the world. According to Tom Puthiyamadam, a digital leader working on the project for PwC, employers can normalize the use of contact tracing tools.[27]

Contact tracing digital tools are also available through wearable devices like electronic watches.[28] Companies that have developed new contact tracing wearables like Halo, Estimote, and COVID Radius sometimes even refer to these tools as workplace safety wearables that can provide statistics on effectiveness of distancing in the workplace and real-time reporting of status by users of these devices (https://www.proxxi.co/halo, https://estimote.com/, https://romware.com/covid-radius/). Existing wearable devices are also being repurposed. For example, CarePredict sells a wearable device called Tempo that tracks location, pulse rate, and other biometrics (https://www.carepredict.com/). Originally marketed to caregivers and family members of senior clients, Tempo is now

being used to address COVID-19 as a contact tracing tool. According to the Tempo, the device can review 14 days of information about who an individual was in contact with and for how long.[29]
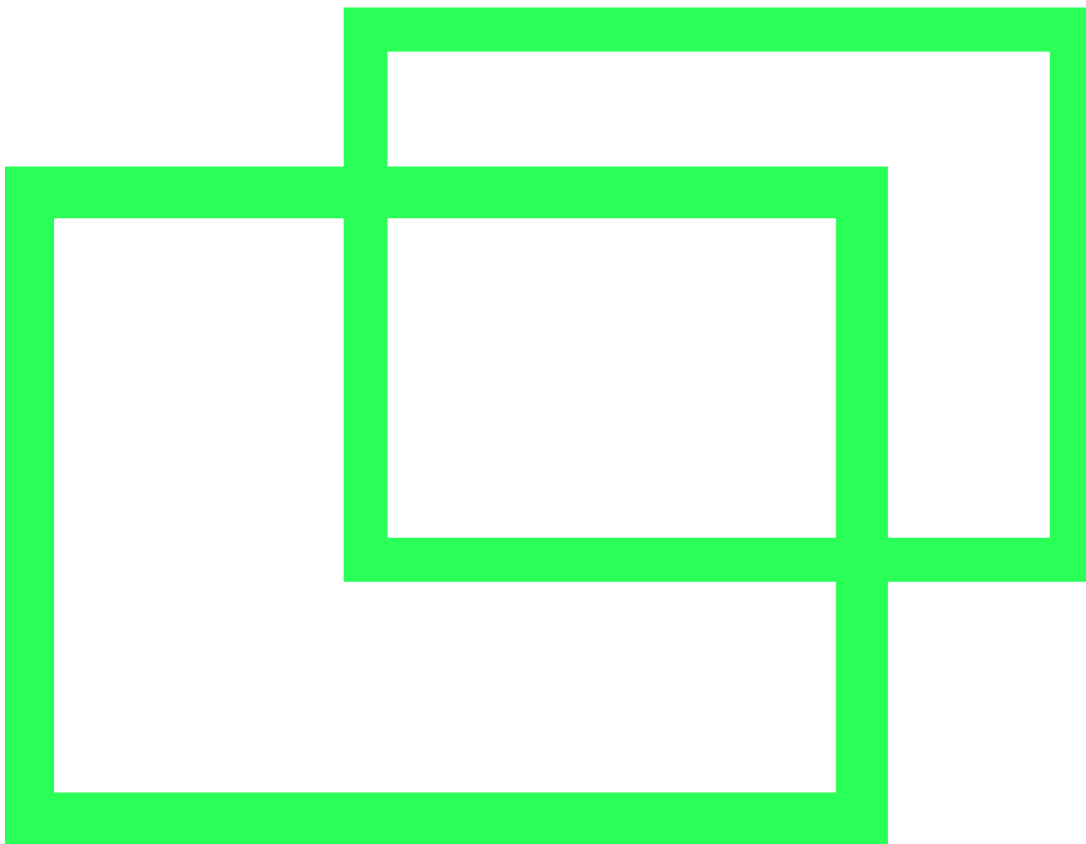
The Implications

Without leadership from the federal level about how to handle the pandemic, states and municipalities are creating their own rules that vary dramatically. Most states have emphasized solutions like wearing masks in public, social distancing, contact tracing, and health monitoring. These responses, although designed for a general public, have become the basis for many company policies as well. Specifically, these solutions rely on measuring and monitoring; they emphasize altering individual behavior rather than changing conditions in workplaces to make them safer. A new, near universal adoption of monitoring and surveillance of disease and contagion in workplaces has many implications for workers and employment.

Surveillance is a trade-off for normalcy

The accepted narrative is that widespread testing, screening, and tracking of employees is necessary to protect people in the workplace and will allow a return to some sense of normalcy. This position is championed by health professionals in certain industries, like nursing homes, where a prudent testing strategy is critical to preventing outbreaks among the most vulnerable populations.[30] But even in an office environment, many employers are concerned that unless office spaces are safe, workers will not return. It's still unclear how long COVID will be a significant threat and when these precautions will no longer be necessary. However, contact tracing or Distance Assistants may remain in workplaces for much longer than anticipated, even after a vaccine is found. As Shoshana Zuboff's work has shown, pervasive data collection and extraction are becoming an entrenched part of every economic sector.[31]

Prior to 2020, companies were keen to develop trust with employees as they introduced new productivity monitoring technology into workplaces. According to an Accenture report, data mined from emails, calendars, and sensors would reveal the hidden DNA of companies that "has the power to improve everything

from innovation to agility to cybersecurity to employee performance and engagement." This would ensure that companies remain competitive, however this had to be done with a high level of trust from employees—losing employee trust could result in a drop in future revenue growth.[32] Since COVID, the emphasis on trust and voluntary participation is seemingly less important.

However, participation was never a real choice for low-wage employees. COVID-19 has made that myth of willing participation evident for all workers. Employers can require that workers participate in contact tracing or other monitoring as a condition of employment, as PricewaterhouseCoopers's Puthiyamadam recognized. Low-income workers in particular, have always been vulnerable to employers' expectations of participation in monitoring. While employees sometimes welcome new technology if it makes their job easier, refusing to participate can carry heavy consequences, making consent seem meaningless. In addition, this type of surveillance is rhetorically convincing because it is being built in the name of public health or "for good." To participate in this form of monitoring is even deemed an act of "national solidarity, as a contribution to keeping your fellow citizens safe."[33]

> **"** Low-income workers in particular, have always been vulnerable to employers' expectations of participation in monitoring.

Neither OSHA standards nor the OSH Act prohibit employers from screening for COVID-19, as long as it is applied in a "transparent manner applicable to all employees." Many governments have provided little in the way of accountability measures for use of digital tools. This is a problem because questions about what data is collected, where it goes, who it can be shared with, and how it's stored are all decisions that are made through the design of technology.[34]

Particularly for lower income and minority workers, these technical public health solutions threaten to add a new layer of surveillance onto historically over-surveilled populations, further deepening systemic inequalities. New tools

that seek to track, test, and prevent the spread of COVID-19 are being introduced with no real ability for employees to object and little consideration from employers or governments about privacy due to the severity of the pandemic.

Shifting liability and costs

An added consequence of COVID-19 on workplace safety is a shift in who is liable and who assumes the costs. Guidance from the CDC, OSHA and the White House suggest that employers are responsible for instituting measures to allow for a safe return to work. However, these guidelines are voluntary. A failure to implement adequate safety measures carries few consequences for employers. Since March, OSHA has received over 5,000 reports of COVID-related health and safety violations, but to date the agency has found wrongdoing in just one case. In some instances, greater safety measures were only put in place after public displays of worker unrest. The dearth of liability for employers and enforcement by oversight authorities has pushed the responsibility of compliance onto individual workers.

Recently, Smithfield, a major meat packing employer, deflected claims that inadequate safety measures were the cause of outbreaks in their facilities. Potentially spurred by xenophonic rhetoric of minority populations, the employer accused workers of bringing the virus into facilities. In Wisconsin, elected officials have made comments that meatpacking workers are not "regular folks," and a Smithfield representative claimed the mostly immigrant workforce's overcrowded living quarters, multi-generational households, and use of public transit were the causes of infection because such lifestyles differed from those of "traditional American families."[35,36]

This type of blaming and shaming has historical roots in the US. To take just one example, in the early 1900s Chinese immigrants in San Francisco—at the time, a mainly male, laborer population—were deemed a threat to the moral and physical health of the population. The Chinatown community was more broadly marked as different and deviant because of housing conditions and domestic arrangements. This belief led to public health campaigns to rid the community of disease through the use of greater surveillance, travel bans, and quarantining.[37] The underlying accusation was that workers live in communities that are atypical, overcrowded, and lack good hygiene practices. Health and safety is the responsibility of employers, but hygiene is personal.

The challenges of clearly identifying points of infection have led business interests to seek protection from lawsuits filed by sick workers and customers. Many businesses are already asking patrons and in some cases employees to sign waivers releasing them from future lawsuits if they contract coronavirus. However, according to one source, out of over 2,500 related cases filed in the US, less than one percent were employment based.[38] Regardless, some states have passed liability shield legislation specific to the healthcare industries. Congressional Republicans have promised to introduce liability protection for all businesses, identifying it as a measure crucial to restarting the economy.[39] Democratic legislators and worker rights organizations are concerned this could protect employers who aren't taking measures to protect employees and who restrict workers' rights to seek redress.[40] Given regulatory agencies' reluctance to either mandate or investigate, preventing employees from appealing to the courts essentially deprives workers of almost all means of holding employers accountable.

Fears about lawsuits are coupled with fears of increased costs of operations post-COVID. In the nursing home industry, there is an ongoing battle between employers, the state, and insurance providers over who is responsible for the cost of testing patients and workers. New York determined that employee testing was medically necessary and should be covered, but without a clearly identified responsible party, insurance providers and unions insisting these measures are the responsibility of employers while employers claim they cannot shoulder the financial cost.[41] Caught in the middle, nursing home workers, some of the lowest paid workers in the healthcare industry, must pay the costs out of pocket and in some cases wait for test results without pay.[42]

Screening as a disciplinary tool

Empowering employers to essentially set their own health and safety rules means that guidelines for preventing the spread of COVID at work have become disciplinary tools. These types of health and safety measures are becoming company policies that are even built into employment contracts, as demonstrated by the NBA team handbook. Alternatively, for some employers new company policies may not make it apparent that violating social distancing, face covering or other COVID-related factors will have any repercussions. However, a recent case at an Amazon facility in Shakopee, Minnesota suggests that health and safety guidelines can be used to discipline. According to Amazon, an employee was terminated for "inappropriate language,

behavior, and violating social distancing guidelines."[43] In this case, the situation emerged when an internal Amazon memo revealed that the company had detailed data on infection rates within its warehouse.

The NBA team handbook, on the other hand, is explicit that breaking protocols can result in a "warning, fine, suspension or even dismissal from the campus." In addition, the league is relying on self-policing through an anonymous tip line to report violations and enforce protocols. This harkens to a striking shift: it is the responsibility of employers to comply with OSHA guidelines, but new workplace health and safety protocols turn employer responsibility into a disciplinary tool for employees. This is not a new phenomenon, but rather part of a trend. Many employers already surveil their workers and collect data about their work habits—data that is used to discipline and regiment worker behavior.[44]

> " It is the responsibility of employers to comply with OSHA guidelines, but new workplace health and safety protocols turn employer responsibility into a disciplinary tool for employees.

Privacy implications

The growth in productivity and biometric technologies in the workplace have already brought up new privacy questions. Courts have found that employers have wide discretion to institute monitoring when the equipment or technology is employer-owned, the employer has a legitimate business interest, or when it occurs during normal working hours. The likelihood that these COVID-specific measurement and tracking measures will be unfairly applied in workplaces only adds to these privacy concerns.

PwC's contact tracing app currently relies on employees using a company phone or agreeing to download the app onto their personal devices.[45] However, it's unclear whether all employers will ask for their employees' consent. According to the retail worker advocacy organization, United for Respect, Walmart managers have previously asked workers to download an app onto their

personal devices that checks inventory and scans mis-shelved items. Managers tell workers that the app will make their lives easier, but skip over the fact that location services do not automatically turn off once workers clock out. Similarly, contact tracing apps are being marketed as beneficial for workers, and workers have little sense that they can object to using them.

Legal scholar Ifeoma Ajunwa's research into wearables shows these tools can help improve worker health and safety. Much like specially designed eyeglasses capable of helping the wearer avoid danger or SmartCaps used in trucking to measure employee alertness, Amazon's Distance Assistant is meant to help employees navigate potentially dangerous environments.[46] However, such tools can have many purposes. A contact tracing app can inform managers of all interactions between coworkers and even record minute details of these interactions including with whom, where, how long, and if equipped with microphones or cameras, the subject of discussions.

Recently, Kroger's grocery division, Harris Teeter, started checking employee temperatures. But according to a BuzzFeed article, the roll out of this new mandatory protocol was inconsistent and lacked clear controls to protect employee privacy. The specifics of who, when, and where temperatures were taken were inconsistently applied from store to store, readings were radically inaccurate, and several employees reported that managers wouldn't disclose their temperature reading to them. The company's refusal to provide workers with their own information raised red flags about how the company was protecting employee health information, rights, and privacy.[47] Any effort to require adequate spacing, PPE, and testing to minimize risk to the virus in workplaces is welcome. However, focusing on technological solutions to shift behavior without guardrails to protect worker privacy is problematic.

Workers should be concerned about how data-collection on worker health and safety will stretch beyond the pandemic, and be used to make decisions related to health benefits, workplace injury, and workers compensation. OSHA and CDC are careful to remind employers to abide by the Americans with Disabilities Act (ADA), Health Insurance Portability and Accountability Act (HIPAA) and Equal Employment Opportunity Commission (EEOC) rules but leave room for employers to determine how employees are screened for COVID-19. This leaves open questions about how temperature checks and test results are retained and protected, and whether that information is part of the workplace health and safety record of employers.

Conclusion

The COVID-19 pandemic is a landmark event that is reshaping workplace health and safety. COVID-19 is a workplace health and safety issue, as well as a public health issue more broadly. For the past few months, not all workers were able to follow stay-at-home orders and socially distance, and therefore unable to safeguard themselves from risk. Low-wage and "essential workers" continued to work, and were disproportionately exposed to infection.

Current public health orders emphasize individual responsibility, but workplace health and safety is the responsibility of employers. The failure to mandate strong oversight has shifted the responsibility from employers onto individual workers. This is problematic for workers who end up shouldering more responsibility and costs, and ultimately puts workers in a more precarious position. Moreover, workers are finding themselves in the uncomfortable and sometimes dangerous position of policing customers in restaurants, grocery stores and on public transit. Workers must enforce company policies but often have little say in decisions about which methods will best minimize risk, particularly as parts of the country begin to reopen and are beset with high rates of infection.

While hard fought battles by labor and the public for hazard pay, paid sick leave, and PPE are commendable, health and safety should be a fundamental right in the workplace that should be granted without a struggle. In fact, companies like Amazon and Kroger will soon revoke these benefits even though the dangers posed by COVID-19 remain. Unfortunately, workplace health and safety has been undermined at a critical moment, which is often when these infrastructures are tested. Technical solutions cannot solve this larger issue and threaten to further weaken workers' ability to maintain autonomy at work and have some control over their workplace conditions. Labor and worker rights can reprioritize health and safety as a fundamental workplace right and be used to advocate for full funding and staffing of OSHA as well as championing the right of employees to refuse to work in hazardous conditions, a right to sue employers for endangerment, and strengthen whistleblower protections.

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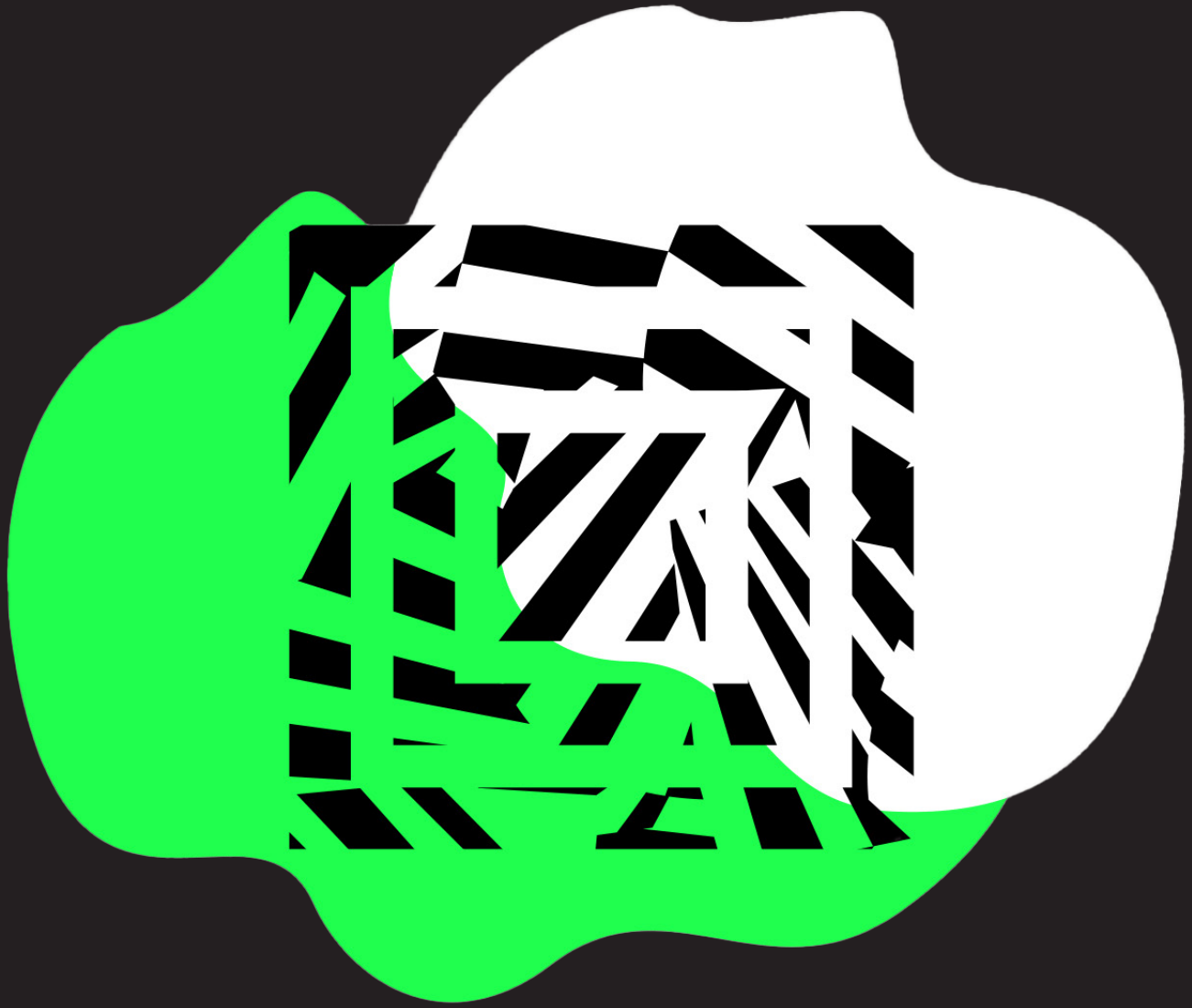
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Designed by Codi Hauka