



National Payroll Reporting Consortium

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Government Relations

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September 7, 2021

The Honorable Kristerfer Burnett
The Honorable Zeke Cohen
The Honorable Ryan Dorsey
The Honorable John Bullock
Baltimore City Council
City Hall
100 N. Holliday Street
Baltimore, MD 21202

Re: Ordinance 21-0001, Prohibiting Face Surveillance Technology

Dear Council Members Burnett, Cohen, Dorsey, and Bullock:

The National Payroll Reporting Consortium¹ and American Payroll Association² are asking for your help in clarifying Ordinance 21-0001, which broadly prohibits the use of facial recognition technology in Baltimore. We understand and appreciate the underlying concerns and your efforts to sponsor the ordinance. However, because the ordinance and exclusions are unclear and involve criminal penalties, including imprisonment, it is urgent that lawmakers clarify the intent and application to private sector commercial systems that are in widespread use today.

Our concern is that the prohibition could be applied to commercial human resource and payroll systems that are widely used today, such as facial-recognition timeclocks, as well as security measures such as access control systems which serve to authenticate employees. Employers use such technology to improve safety and integrity in the workplace, and the application of this ordinance in the employment context could adversely affect the perception of Baltimore as a business-friendly city.

We believe that such broad prohibitions were not intended. If that is the case, it may be relatively easy to clarify and address widespread concerns and questions by publishing guidance on a city website.

¹ The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services to roughly 2 million employers nationwide, covering over 36% of the private-sector workforce, as well as software developers that provide software to enable such services.

² The American Payroll Association (APA) is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and workers.

In particular, we refer to a relevant exclusion in the ordinance that could apply to commercial timeclocks and physical access control systems, but the ordinance is not clear. In Section 41-4(B)(3)(II) "EXCLUSION," the ordinance provides:

"FACE SURVEILLANCE SYSTEM" DOES NOT INCLUDE:

- (A) A BIOMETRIC SECURITY SYSTEM DESIGNED TO SPECIFICALLY TO PROTECT AGAINST UNAUTHORIZED ACCESS TO A PARTICULAR LOCATION OR AN ELECTRONIC DEVICE

Separately, and apparently only applicable to police surveillance and city operations, in Section 18-5(A) "EXCLUSION FROM DEFINITION," Ordinance 21-0001 states:

FOR PURPOSES OF THIS SECTION, "SURVEILLANCE TECHNOLOGY" DOES NOT INCLUDE THE FOLLOWING DEVICES, HARDWARE, OR SOFTWARE:

- (5) PHYSICAL ACCESS CONTROL SYSTEMS, EMPLOYEE IDENTIFICATION MANAGEMENT SYSTEMS, AND OTHER PHYSICAL CONTROL SYSTEMS

Because physical access control systems and employee identification management systems are specifically referenced in Article 19. Police Ordinances, which Section 18-5(B) defines as reserved for city systems and operations only, the implication is that the exclusion is *not* available to private-sector employers.

Because the ordinance involves potential criminal penalties of up to 12 months imprisonment plus \$1,000 fines with each day a separate offense, businesses are anxious to confirm whether exclusions apply to commercial, private sector access control systems, timeclocks, and employee identification management systems.

As background on employee identification management and timeclock systems involving facial recognition, employees must: enroll in advance to access the systems; receive training on how to use the systems; and consent to the systems for identification, access, timekeeping, and payroll administration purposes. Employees review information about the systems, including the purpose, data storage and security, before consent and enrollment. Employees can also opt out if they are uncomfortable with the biometric system and instead use a pin or other identifier to log in.

These systems do not operate as broad "surveillance" devices. Rather, individuals must specifically enroll in the facial recognition feature and, when they choose to use facial recognition to subsequently access a secure area or to clock in or out on the device, they must position and move their face in specific ways for the system to activate and compare their face to the mathematical faceprint measures they previously enrolled. Accordingly, a member of the public could not have facial information captured accidentally. Biometric measures are translated into algorithmic strings which link to an employee ID in the payroll or time system, which outside the system could not be linked to a specific individual.

Facial recognition technology, in conjunction with voice activation features, have become more important to employers due to the COVID-19 pandemic to improve employee safety, i.e., eliminating the need for all employees to touch a common screen in order to log in to a timekeeping system.

The following is an example of a "Frequently Asked Question" that could be added to a city website for your consideration:

Q: Does the ordinance prohibit private sector employers from using facial-recognition features in timeclocks and access control systems?

A: No. The ordinance permits private-sector employers to use facial recognition systems for access control, employee identification management systems, employee time clocks, and other security systems. This includes timeclock applications with facial recognition features and access control systems for both physical access (e.g., to secure buildings and areas within buildings) and electronic computer systems.

Further, recognizing that the ordinance is set to expire after 2022, we would appreciate an opportunity to work with you and interested stakeholders on any future versions of the ordinance. Your attention to these concerns is appreciated. Please contact us for further discussion or if you have questions.

Sincerely,



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Cc: Mayor Brandon M. Scott