

AB 1331 (ELHAWARY) – OPPOSE/COST DRIVER





COST DRIVER

June 24, 2025

TO: Members, Senate Judiciary Committee

SUBJECT: **AB 1331 (ELHAWARY) WORKPLACE SURVEILLANCE**
OPPOSE – AS AMENDED JUNE 19, 2025

The California Chamber of Commerce and the organizations listed below are respectfully **OPPOSED** to **AB 1331 (Elhawary)** as a **COST DRIVER**. While we appreciate recent amendments, **AB 1331** still raises a number of safety and security concerns for our members.

AB 1331 Still Prohibits Active Monitoring of High-Traffic Areas

One of our primary outstanding concerns with **AB 1331** is that Section 1561 prohibits monitoring or even reviewing security video footage unless one of two narrow exceptions is satisfied: 1) an employee who is in the video requests review or 2) law enforcement or a court requests review.

Break rooms and cafeterias are high-traffic areas. For example, an employee cafeteria could have hundreds of employees in it at one time. A thousand people may pass in and out of it during the day. Break rooms are also frequented by employees and may include employees' personal belongings. Security cameras are frequently used in those areas both as a deterrent to unlawful or inappropriate behavior as well as for purposes of addressing incidents in real time. We do not believe these areas fall under the same expectation of privacy as a bathroom or locker room. See *Hernandez v. Hillside, Inc.*, 47 Cal. 4th 272, 291 (2009) (collecting cases for the proposition that the right to privacy in an area like a bathroom is different from areas accessible to other staff or in workplaces with heightened security concerns).

Unfortunately, our members have had many incidents occur in these areas, including: theft of personal belongings, theft of merchandise, harassment, suspicious personnel or active shooter alerts, bringing weapons into break rooms, stalking, bringing drugs or alcohol onto work premises, selling drugs on work premises, and physical altercations. We have serious concerns that prohibiting any active monitoring of these areas and severely limiting the circumstances under which footage can be reviewed will increase the frequency of these types of incidents. It also prohibits employers from responding in real time where they are alerted about an incident or there is an active shooter warning or an employee presses a panic button in or around those areas. Further, its outright prohibition on the use of AI in video or the use of any audio, including audio analytics, would prohibit technology that allows employers to more quickly find suspicious personnel who may be on premises or suspicious activity.

While we understand the concern about using footage to spy on employees who may be organizing, the National Labor Relations Act (NLRA) already prohibits surveillance for this purpose. The NLRB has a long history of prohibiting the use of surveillance for purposes of infringing on employees' rights to organize. See *Stern Produce Company, Inc. v. National Labor Relations Board*, 97 F.4th 1 (2024) ("The Board has held that an employer tends to coerce employees if it creates an 'impression' that it is conducting surveillance of employees 'concerning the exercise of rights guaranteed by the Act'" (internal citations omitted)). We believe **AB 1331** casts too wide a net and its unintended consequences will impact workplace safety and security.

Cal/OSHA's Workplace Violence Rulemaking Recognizes that Video Cameras In the Workplace Make Workers Safer

Pursuant to recent workplace safety legislation (SB 553 – Cortese [2023]) – and in response to multiple high-profile workplace violence incidents – California put into place a workplace violence regulation in 2024. In order to ensure it was in effect more quickly than the regulatory process could allow – while still allowing Cal/OSHA's experts to adjust its text as needed – the legislation codified its protections into Labor Code 6401.9, but also provided that Cal/OSHA would undergo a rulemaking process to clean up the legislatively-endorsed text of Labor Code 6401.9. Cal/OSHA is now in the rulemaking process, and one of their preferred developments from SB 553's text *is to specifically push employers to use video cameras to monitor and record in the workplace to identify and respond to workplace violence*.¹ Cal/OSHA's draft regulation also requires employers to implement controls like cameras to "eliminate or minimize employee exposure to identified workplace violence hazards" (section 3342(c)(10)(A)), including potential employee-on-employee violence, identified as "Type 3 violence" in the regulation. Indeed, employers would be legally prohibited from monitoring cameras even if employees specifically asked them to due to a prior incident.

¹ See Cal/OSHA's recent Revised Discussion Draft, released May 13, 2025, available at: <https://www.dir.ca.gov/dosh/doshreg/Workplace-Violence-in-General-Industry/>. Specific text at proposed section 3342(b)(3) – Engineering Controls – "...Video monitoring and recording ..."

AB 1331 implicitly contradicts Cal/OSHA's workplace safety draft by prohibiting employers from monitoring such cameras in two of the most common places for employees to gather in the workplace – breakrooms and cafeterias. In fact, a meal break in the cafeteria or break room may be the largest group gathering of the entire work shift, making it all the more likely for violence to occur there. For that reason, we see **AB 1331** as contradicting the draft workplace safety regulation that Cal/OSHA is presently working on.

AB 1331 Should Allow Employers to Require Badges to be Worn at All Times and Account for On-Duty Break Agreements

While we appreciate recent amendments to ensure that there is no violation of the bill where an employee chooses to walk into certain areas² with a badge (which may be a surveillance tool under the bill's broad definition if it is also used to access secure areas), we do want to make sure that employers are also allowed to *require* identification like badges to be worn while anywhere on premises. This would include if an employee were on a lunch break or using the restroom or break room if they are on premises. Many employers like hospitals, schools, or others have such policies.

Further, proposed subdivision (b) in section 1561 allows for an exception where workers are required to remain available during meal or rest periods. However, the Wage Orders do allow for on-duty breaks where the nature of the work prevents an employee from being relieved of all duties and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to.³ We believe an exception should be included for when there are lawful on-duty meal period agreements in place.

Independent Contractors Should Not Be Included

The bill's definition of "worker" includes independent contractors, which should be removed from the bill. The above concerns are even more prominent when involving independent contractors. Contractors are often limited-term workers who are coming onto an employer's premises to do a specific job. They are new to the workplace, and often are not previously known to the employer (or its employees, customers, patients, residents, pupils, etc.), so potential security risks are heightened. And, similar to the exempt employees discussed above, the very nature of an independent contractor means that the company does not have control over their schedule. They can likely come and go as they please or take breaks at any time or place – making it impossible for an employer to even know when **AB 1331**'s prohibitions would go into effect.

For these reasons, we strongly **OPPOSE AB 1331 (Elhawary)**.

Sincerely,



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² The text in (f) references "paragraph (1) of subdivision (a)", which would only apply to bathrooms, but our understanding is that this language is supposed to apply to all of the areas listed in paragraphs (1) – (6) of subdivision (a).

³ See DLSE Guidance on Meal Periods: https://www.dir.ca.gov/dlse/FAQ_MealPeriods.htm

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California Association of Sheet Metal and Air Conditioning Contractors National Association, Chris Walker
California Association of Winegrape Growers, Michael Miiller
California Attractions and Parks Association, Sabrina Demayo Lockhart
California Automatic Vendors Council, Jennifer Roe
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AH:am