

# AMERICAN PAYROLL ASSOCIATION

June 29, 2021

Mr. James L. Shea  
Baltimore City Solicitor  
Office of Legal Affairs  
City Hall, Room 101  
100 N. Holliday Street  
Baltimore, MD 21202

Re: Ordinance 21-0001 Prohibiting Face Surveillance Technology

Dear Mr. Shea:

The American Payroll Association (APA) appreciates the opportunity to offer recommendations concerning recent Ordinance 21-0001, which would broadly prohibit the use of facial recognition technology in Baltimore. We ask that your office consider publishing guidance, such as “Frequently Asked Questions,” to clarify the applicability to systems in common use today. For example, facial-recognition timeclocks and physical access control systems.<sup>1</sup> This is particularly urgent in light of the criminal penalties, including imprisonment, which are possible under the ordinance.

Prosecution of employers for using such technology to improve safety and integrity in the workplace could adversely affect the perception of Baltimore as a business-friendly city. We believe that your extensive private sector background would uniquely enable the City Solicitor’s office to quickly clarify and avert what may otherwise be widespread concerns and questions for the business community.

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## <sup>1</sup> Sample Frequently Asked Question

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 would include 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.

The ordinance appears to have exclusions which could apply to commercial timeclocks and physical access control systems, but the ordinance is not entirely clear. In particular, the ordinance provides:

§ 41-4. (B)(3)(II). "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

§ 18-1. (C)(2). FOR THE 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;

Most of the exclusions in the ordinance address city organizations and systems, but these provisions appear to extend to commercial as well as government systems. Because the ordinance involves potential criminal penalties of up to 12 months imprisonment plus \$1,000 fines, with each day being a separate offense, we believe that businesses will be anxious to confirm whether these exclusions apply to commercial, private sector access control systems, timeclocks, and employee identification management systems.

As background information on commercial employee identification management and timeclock systems involving facial recognition, employees must enroll in advance to access such systems, be trained to use the system, and consent to system use for purposes of identification, access, timekeeping, and payroll administration purposes. Employees would have reviewed information in advance of providing consent, including enrollment procedures, data storage, and security measures.

These systems do not operate as broad "surveillance" devices, recording any face in view of the device. Instead, individuals must specifically enroll in the facial recognition feature. When they choose to use facial recognition to subsequently access a secure area or clock in and out on the device, they must position and move their face in specific ways for the system to activate. The system will then compare their face to the mathematical faceprint measures provided during the enrollment process. Accordingly, a member of the public could not have facial information ("faceprint") captured accidentally.

There could be situations where the timeclock is potentially viewable to the public, but the controls would still apply. Facial recognition technology, in conjunction with voice

activation features, have become increasingly sought after during the COVID-19 pandemic for their ability to provide a touchless experience for employees.

Again, the APA seeks clarity on the applicability of the ordinance in order to assist payroll professionals in meeting their compliance obligations. We welcome the opportunity to discuss this further with you.

Sincerely,



Alice P. Jacobsohn, Esq.  
Director, Government Relations

For   Cochairs, GRTF State and Local Topics Subcommittee:  
      Pete Isberg  
      Carlanna Livingstone, CPP  
      Bruce Phipps, CPP

Cc:    Jason Perkins-Cohen, Director, Mayor's Office of Employment Development  
      Members of the City Council Public Safety and Government Operations Committee

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#### **About the APA**

The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. In addition, 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.

APA's GRTF monitors the development and use of innovative payroll technologies within the employer community and helps educate policymakers and regulators about the uses and benefits of technology. The GRTF has supported numerous legislative and regulatory initiatives that provide employers with clear guidance on their responsibilities under the law.