

The Future is Here: AI, Compliance, and the Modern Workplace

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NINTH ANNUAL

Women in Business

CONFERENCE

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Agenda

- How traditional employment laws apply to emerging AI tools.
- The latest in AI-specific legislation and what's coming next.
- Actionable strategies for reducing legal risk while embracing innovation.



Artificial Intelligence



- "Artificial intelligence": a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. "Artificial intelligence" includes generative artificial intelligence.
- "Generative artificial intelligence" means an automated computing system that, when prompted with human prompts, descriptions, or queries, can produce outputs that simulate human-produced content, including, but not limited to, the following:
 - (1) textual outputs, such as short answers, essays, poetry, or longer compositions or answers;
 - (2) image outputs, such as fine art, photographs, conceptual art, diagrams, and other images;
 - (3) multimedia outputs, such as audio or video in the form of compositions, songs, or short-form or long-form audio or video; and
 - (4) other content that would be otherwise produced by human means.

Generative AI Depends on Data



- Generative AI systems differ in that they can learn from data, adapt over time, and make autonomous adjustments without being limited to pre-defined rules.

→ Generative AI eats and processes data.

The quality and quantity of data significantly impacts the effectiveness of AI learning and output.

How AI is Being Used in HR



Microsoft Copilot's Answer



“AI is being used in **nearly every major HR function**, from hiring to retention, and it’s reshaping HR from an administrative function into a strategic, data-driven powerhouse. At its core, **AI automates repetitive tasks, analyzes workforce data at scale, and supports better decision-making**, allowing HR teams to focus on people-centric work.”

Microsoft Copilot. (2026, May). Response to “How is AI being used in Human Resources.” Microsoft Copilot.

HR Operations & Self-Service

- Chatbots handle routine questions about benefits, PTO, and policies.
- AI also automates document generation and workflow approvals.

Goal: Free up time for HR to focus on strategic work.



Recruitment and Talent Acquisition



- AI-driven tools are being used to scan resumes to prioritize applications using certain keywords.
- Testing software that provides “job fit” scores for applicants or EEs regarding their personalities, aptitudes, cognitive skills or perceived “cultural fit” based on their performance on a game or on a more traditional test.
- AI-based system can also analyze trends in business cycles, EE turnover rates, and growth projections. This system then predicts the number of EES a company may need in specific roles and departments over a given period.
- AI-powered interview platforms assess candidate responses in video interviews, evaluating facial expressions, tone, and language to predict things like skills, fit, or likelihood of success.

Goal: Accelerate the hiring process and ensure a more objective evaluation of applicants.

Employee Onboarding



- Larger organizations are starting to use chatbots and virtual assistants to **streamline** their hiring and onboarding processes. This allows applicants and new hires to ask specific questions that these systems can respond to with instantaneous information.

Goal: Facilitate a smooth transition into the organization.

Employee Engagement and Retention



- AI can help to gauge EE engagement by analyzing data from surveys, feedback, and other social collaboration tools.
- HR can use that data to target problem areas.
- Conduct predictive analysis to identify turnover risks.

Goal: Improve EE satisfaction; reduce turnover.

Training and Development



- AI can provide EES with personalized learning and development paths to continuously build upon their skill sets.
- AI can allow managers to track EE progress and recommend training based on individual performance, interests, and upskilling potential. Delivery of training modules (monitors, reminds, and scores).
- For worker safety, the technology can identify hazards like near misses between humans and machines or spot a worker improperly lifting a box, potentially reducing the risk of harm to EES and liability for OSHA violations.
- Develop personalized career paths – map out tangible links between positions.

Goal: Make training effective and tailored to the EE. Make it easier to determine who can be developed to eventually take over higher positions. Spot problem areas.

Performance Management and Pay



AI can streamline *continuous* performance tracking by collecting and analyzing data from different sources (project management, time tracking software).

- Build competency models/skills matrix.
- Automated technology can be incorporated into compensation processes to predict salaries, assess market fairness, or evaluate pay equity.
- Provide feedback and professional coaching.

Goal: Streamline the process; provide more accurate feedback and support to EES.

What Challenges Come With Using AI in Employment?



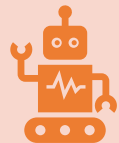
Challenges



The Human “Gap” – AI technology cannot assess whether an applicant could be a good fit for an organization’s culture or other key characteristics that human judgment is necessary for.

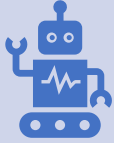


Ethical Concerns – AI algorithms are based on human input and management – which can reinforce bias or create unfairness. Requires vetted design and constant monitoring.



Employee Resistance – some EEs will fight AI; concerns with loss of “human” element in HR

Challenges (cont'd)



Integration Issues – time and cost of integrating AI with existing HR systems.



Data Privacy – strong data protection measures are required to ensure compliance with privacy regulations.



Legal Compliance

Existing employment laws
Emerging laws and regulations

Existing Employment Laws



Title VII of the Civil Rights Act of 1964 (Title VII) — Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin in employment practices.

Americans With Disabilities Act (ADA) — ADA prohibits discrimination against individuals with disabilities.

Age Discrimination in Employment Act — against applicants and EEs who are 40 years of age or older.

Equal Pay Act – Prohibits sex-based inequities in compensation.

Worker Adjustment and Retraining Notification (WARN) Act – Imposes certain notice requirements related to plant closings and mass layoffs.

Similar state and local laws.

Refresher: Disparate Treatment vs. Disparate Impact



- **Disparate Treatment:** intentional discrimination of members of a protected class).
- **Disparate Impact:** facially neutral practices or policies that have a disproportionate effect on members of a protected class.
- Even if an AI system is designed to be neutral, if it has a discriminatory effect on a protected class, an employer can be held liable under the disparate impact theory.

Examples



- What if the AI model bases hiring decisions on criteria such as ratings, pay and titles or key phrases that skew in favor of or away from people with disabilities?
- What if AI makes inferences based on an applicant's religion, age, sexuality, genetic information or disability status learned from either the internet, social media or the applicant's resume or interview?
- Though AI may not intentionally screen out or favor certain protected classes, what if AI's "choice" could cause a discriminatory impact?

iTutorGroup v. EEOC (2023)



iTutorGroup's application software was programmed to automatically reject female applicants aged 55+ and male applicants aged 60+. The EEOC filed suit under the Age Discrimination in Employment Act. Settled for \$365,000 covering a class of affected applicants. Significant because the EEOC explicitly named the algorithm as the discriminatory mechanism.

Mobley v. Workday

- Lawsuit involves a plaintiff, Derek Mobley, who alleges that Workday’s algorithmic tools used to screen applicants disparately impacted applicants based on protected traits, such as race, age or disability.
- Specifically, Mobley claims that despite being qualified, he has been turned down for more than 100 jobs with companies across different industries that used Workday's platform because he is African-American, over 40, and has disability.
- On May 16, 2025, a judge ruled that his age discrimination case can proceed as a nationwide collective action under the ADEA, potentially involving hundreds of thousands or even millions of job seekers.
- In allowing the collective action, the Court found:
 - Workday (vendor) may be liable as an “agent” if its tech influences hiring decisions.
 - Bias in training data was sufficient to justify class treatment.
 - Centralized evidence of how the AI screens applicants supported claims of systemic age discrimination.



State Laws – Big Picture



- Most state legislation is aimed at three major concerns:

1. **Disclosing when AI is used in employment decisions.**

AI tools can lack transparency. AI systems are complex and may generate decisions based on reasoning that programmers cannot explain; this is known as the "black box" problem.

2. **Ensuring that AI is Not Used For or Results in Discrimination (intentional and unintentional) in employment decisions.**

AI-driven outputs can replicate biases in the data on which they are trained. Allowing options for human review or appeal.

3. **Data collection and retention.**

State Laws – Big Picture(cont'd)



- **Risk Assessment and Audit Requirements:** Most state laws require regular bias audits and impact assessments of AI systems used in employment decisions. This includes requirements for employers to create AI risk management policies and programs, and complete impact assessments for all AI systems, on at least an annual basis.
- **Transparency and Notification:** Certain jurisdictions require notification when a job applicant directly interacts with an automated system, including states such as California, Colorado, and Illinois.
- **Vendor Relationships:** Some proposed rules treat vendors as agents of employers by virtue of providing AI systems, creating additional compliance obligations and potential liability for the performance of third-party AI tools.
- **Documentation and Record-Keeping:** Multi-state employers need robust documentation systems to demonstrate compliance across different jurisdictions. Note - each jurisdiction has different requirements for data retention and reporting.

Illinois Human Rights Act Amendments



- Effective 1/1/2026 – Makes it a civil rights violation for an employer to use AI tools in hiring and other employment decisions **where it has a discriminatory effect on the basis of protected classes**. Employer intent is not relevant.
- The amendment broadly defines AI as “a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments” and explicitly “includes generative artificial intelligence (GAI).”
- Using “**zip codes as a proxy for protected classes**” is also specifically prohibited.
- The amendment requires the employer to **provide notice to EEs** whenever they are using AI with respect to “recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.”

Illinois Proposed AI Rule under the IHRA



- 5/15/26 – IDHR issued proposed amendments to the Act regarding the use of AI in employment
- An ER must not use artificial intelligence in any covered employment decision unless the ER provides notice of such use of artificial intelligence to its EES, including prospective EES, and their exclusive bargaining representatives.
 - Notice is required when an ER is using artificial intelligence (including ongoing uses) to influence or facilitate a covered employment decision.
 - Notice is required regardless of whether the ER's use of artificial intelligence has the purpose or effect of subjecting employees to unlawful discrimination.

IL Artificial Intelligence Video Interview Act



Notification Before Recording

- Employers must notify candidates before any video interview where AI will analyze responses. The Illinois Department of Labor guidance specifies that notification must occur:
 - At least 5 business days before the scheduled interview
 - In writing via email or the application portal
 - In the candidate's preferred language if requested
 - With clear identification of the employer and AI vendor
- IDOL Advisory Opinion 2026-02 states that AI disclosure must appear "prominently and conspicuously" in standalone communication.

Explanation of AI Functionality

- Beyond simple notification, employers must explain what the AI analyzes. Section 5(b) requires

disclosure of:

- Specific characteristics evaluated (facial expressions, word choice, tone, etc.)
- How characteristics relate to job requirements
- The AI vendor's identity and contact information
- Whether human reviewers will also assess the interview
- How long the recording and analysis will be retained

IL Artificial Intelligence Video Interview Act (cont'd)



Explicit Consent Requirement

- The 2026 amendment replaced implicit consent with explicit written consent. Candidates must affirmatively agree to AI analysis—continuing with the interview no longer constitutes consent. Section 10 mandates:
 - Consent must be obtained **after** the explanation is provided
 - Candidates must have the option to proceed without AI analysis
 - Declining AI analysis cannot disqualify candidates from consideration
 - Consent can be withdrawn at any time before final hiring decision
 - This creates practical challenges. If a candidate declines AI analysis mid-process, employers must provide an alternative evaluation pathway.
- Video recordings and AI analysis must be deleted within 30 days unless:
 - The candidate is hired (retention for employment records)
 - The candidate provides written consent for longer retention
 - A legal dispute arises requiring preservation
- Section 15 also grants candidates the right to request copies of:
 - Their video recordings
 - AI-generated assessments and scores
 - The criteria used for evaluation
 - Any human reviewer notes

Data Retention and Deletion

IL Artificial Intelligence Video Interview Act (cont'd)



Right to Human Review

- Any candidate can request that a human reviewer—not just the AI system—evaluate their interview. The IDOL FAQ clarifies:
- Human review must be conducted by someone with hiring authority
- The human reviewer must watch the actual video, not just read AI scores
- Candidates must be notified of the human review outcome within 10 business days
- Human review decisions supersede AI recommendations

Penalties and Enforcement

- The Illinois Attorney General and Department of Labor share enforcement authority. Penalties went up significantly in 2026:
- Violation Type Penalty Range
- Failure to notify \$1,000 - \$5,000 per candidate
- Inadequate explanation \$500 - \$2,500 per candidate
- Missing consent \$2,500 - \$5,000 per candidate
- Data retention violation \$1,000 per day
- Retaliation against \$10,000 + actual complainant damages
- The law also creates a private right of action.

Even Claude Agrees – Human Intelligence Rules



“The core tension is that AI can make HR faster and more scalable, but employment decisions are deeply human — and getting them wrong has lasting consequences for people's lives. The organizations navigating this best tend to treat AI as a decision-support tool rather than a decision-maker, and maintain clear human accountability at every stage.”

Anthropic Claude for Windows (2026, June). Response to “What challenges come with using AI in employment?” Anthropic Claude.

Strategies to Reduce Risk



Best Practices for Mitigating Risk



- **Conduct an internal AI assessment.** What AI tools are already in play or contemplated? Do they augment the decision-making process or are they designed to make or be a controlling factor in making decisions?
- **Vet AI vendors** so that you understand and can explain steps they have taken to ensure their systems operate fairly and without bias. Make sure that this is documented and regularly updated.
- **Get AI vendor contracts reviewed (and revised, if necessary)** to ensure that they include indemnification provisions.
- **Develop strong AI policies** – focused on transparency, non-discrimination, and data privacy.
- **Stay on top of the ever-changing landscape** of laws in every jurisdiction that your company has an EE working. It is necessary to ensure compliant use of AI in the workplace.

Best Practices (cont'd)



- **Train HR and supervisors** on the proper use of AI tools, both public open-source AI tools and closed AI tools, how AI tools collect data and use it, and how it “makes decisions.”
- **Be vigilant about privacy laws and electronic monitoring disclosure laws.** Ensure that private and sensitive job applicant and EE information used by AI is shielded from disclosure to third parties.
- **Ensure that applicable notice and disclosure requirements are in place.**
- **Create an ongoing monitoring program** that ensures internal, human oversight of all aspects of AI use in employment.
- **Be prepared to explain the business reasons** for use of electronic management/algorithmic tools. An ER must understand and be able to explain how an AI system and its algorithms work; otherwise, it makes it very difficult to defend against legal claims.
- **Consider reasonable accommodations where appropriate.**

Best Practices (cont'd)



- **Implement routine and regular (e.g., monthly, quarterly) audits/assessments of the AI tools and workforce analytics to confirm no disparate impact against protected groups. When possible, be sure that these audits are conducted under legal attorney-client privilege.** Correct identified issues with urgency.


AI impact assessments typically include:

- Purpose and scope: What is the system designed to do? Who will be affected by its outputs?
- Data and privacy: What data is used? Are there consent, access, or privacy concerns?
- Fairness and bias: Does the system treat individuals equitably across race, gender, age, and ability?
- Transparency and explainability: Can stakeholders understand how decisions are made?
- Accountability: Who is responsible if the AI system causes harm or errors?
- Human oversight: Is there a fallback or appeals mechanism if the AI gets it wrong?

Thank you!



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