



Webinar 7 – April 9, 2025

## Wage and Hour Updates

### WEBINAR OUTLINE

#### INTRO/SETTING THE STAGE

- Changing Times: The Use of AI in the Workplace

#### UNDERSTANDING THE LEGAL LANDSCAPE OF AI IN THE WORKPLACE

- Benefits of AI for Employers
- Challenges of AI for Employers
- Implementing Proactive Measures to Ensure Compliance

#### RECENT UPDATES RELATED TO AI LEGISLATION AND GUIDANCE

- Local Government
- The Federal Level
- Key Takeaways

#### HRtelligence TIPS

## I. INTRO/SETTING THE STAGE

### A. Changing Times: The Use of AI in the Workplace

In recent years, the increased use of artificial intelligence has transformed the way in which we live and work. Artificial intelligence has redefined the workplace from selecting candidates for hire, analyzing data, and payroll processing. While artificial intelligence has proven to lower costs and optimize processes, it can also pose several risks in the workplace.

- Artificial intelligence is revolutionizing the workplace, making it more efficient and effective.
- The main benefits of AI technology included reducing costs, improving productivity and efficiency, and helping employees in learning and development.
- Utilizing AI solutions and tools, employers can focus on the most important business challenges, increase operational capacity, and positively influence the overall business success.
- While AI solutions and tools can promote greater efficiency, they also pose challenges related to privacy, transparency, and cost.

## II. UNDERSTANDING THE LEGAL LANDSCAPE OF AI IN THE WORKPLACE

Artificial intelligence (AI) is quickly transforming the employment landscape, automating tasks, streamlining processes, and enhancing decision-making while also raising concerns about increasingly complex legal compliance.

As AI integration in employment practices grows, employers must ensure compliance with existing and emerging laws. To ensure legal compliance with AI in employment, employers should proactively assess AI practices for potential biases and inaccuracies.

### A. Benefits of AI For Employers

- **Efficiency:** AI streamlines processes, making them faster and more efficient.
- **Personalization:** AI enables employers to offer more personalized experiences to candidates and employees which can boost brand loyalty and employee retention.
- **Scalability:** AI can process and manage large volumes of data and multiple tasks without a proportional increase in resources.
- **Data-Driven Decisions:** AI-generated data insights can be leveraged to make informed decisions, from talent acquisition to workforce management.

## B. Challenges of AI For Employers

- **Privacy and security:** AI creates serious risks related to data privacy and security, especially when sensitive employee information is at stake.
- **Bias and fairness:** Like humans, AI-influenced systems can impart bias in the hiring process. Employers must objectively oversee decision-making processes and outcomes to measure fairness and equitability.
- **Ethical issues:** The use of AI can create challenging ethical situations. Companies must carefully evaluate how their technology choices impact accountability, transparency, discrimination, and the organization's mission and values.

How AI Can Affect Existing Laws:

- **Discrimination**
- **Americans with Disabilities Act (ADA)**
- **Title VII of the Civil Rights Act of 1964**
- **Data Protection and Privacy**
- **National Labor Relations Act**

## C. Implementing Proactive Measures to Ensure Compliance

- **Conduct Bias Audits:**  
Regularly assess AI algorithms and systems for potential biases and implement measures to mitigate any identified biases.
- **Ensure Transparency:**  
Clearly explain how AI technologies are used in employment decisions and ensure the decision-making process is transparent.
- **Provide Notice:**  
Notify job applicants and employees of the use of AI in employment decisions, as required by law.
- **Document AI Policies and Practices:**  
Develop clear policies around AI usage, promote transparency with the workforce, and supplement AI systems with human oversight.
- **Data Privacy:**  
Implement strong data privacy measures, limiting data collection to what is necessary for specific business purposes, and ensuring employees can dispute or correct inaccuracies in their data.

- **Training and Awareness:**  
Educate HR and IT teams regarding AI discrimination and the legal requirements related to AI in employment.
- **Onboarding AI Tools:**  
Develop guidelines for onboarding and using AI tools, including training requirements and processes for licensing and oversight.
- **Monitor Legal Developments**  
Keep track of legal developments in this area, especially if your company has offices nationwide or operates in multiple states.
- **Address Ethical Issues:**  
Consider ethical issues such as confidentiality, reliability of AI results, employee surveillance, and job displacement.

### **III. RECENT UPDATES RELATED TO AI LEGISLATION AND GUIDANCE**

#### **A. Local Government**

This is a focus nationwide -- states such as California, Colorado, Georgia, Illinois, New York, and Washington have adopted, or are considering adopting, AI regulations.

##### *New York City*

One of the first to address AI use and employment decision-making, New York City's AI Law, which took effect in July 2023, makes it unlawful for an employer to use an automated employment decision tool (AEDT) to screen candidates for employment or promotion in New York City unless certain criteria are met, including:

- The AEDT has undergone an independent bias audit no more than one year prior to its use
- A summary of the most recent bias audit is made publicly available on the employer's or employment agency's website
- The employer must notify candidates living in New York City at least 10 business days before an interview that AI will be used, the job qualifications and characteristics that the tool will assess, and instructions for how to request an alternative selection process

#### **B. The Federal Level**

On January 23, 2025, President Trump issued a new Executive Order titled "Removing Barriers to American Leadership in Artificial Intelligence."

This EO replaces President Biden's Executive Order 14110 of October 30, 2023, titled "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence," which was rescinded on January 20, 2025, by Executive Order 14148.

The Trump EO signals a significant shift away from the Biden administration's emphasis on oversight, risk mitigation and equity toward a framework centered on deregulation and the promotion of AI innovation as a means of maintaining US global dominance.

### **Key Differences Between the Trump EO and Biden EO**

- The Trump EO frames AI development as a matter of national competitiveness and economic strength, prioritizing policies that remove perceived regulatory obstacles to innovation.
- The Trump EO focuses on decreasing barriers to innovation and positioning the United States to be a global leader in AI.
- The Trump EO mandates an immediate review and potential rescission of all policies, directives and regulations established under the Biden EO that could be seen as impediments to AI innovation.
- The Biden EO focused on AI development, placing significant emphasis on addressing risks such as bias, disinformation and national security vulnerabilities and focused on regulation of AI.

### **The EEOC and DOL Guidance Rescinded**

Biden-era guidance on responsible AI use has recently been removed from public-facing websites of certain federal agencies including the EEOC, OFCCP and DOL.

#### EEOC

After Commissioner Andrea Lucas became acting chair of the EEOC, the following documents were removed from the agency's website:

- The [May 2023 technical assistance document](#) on AI compliance issues under Title VII, advising employers to assess AI tools for potential adverse impacts on any group protected under Title VII.
- The May 2022 technical assistance document (and associated "Tips for Workers" document) on potential violations of the Americans with Disabilities Act (ADA) through AI use, including improper "screen outs" of individuals with disabilities by AI decision-making tools or impermissible inquiries about such disabilities.
- The December 2024 fact sheet, "Wearables in the Workplace: The Use of Wearables and Other Monitoring Technology Under Federal Employment Discrimination Laws," which warned that tracking technology embedded in wearable devices (e.g., tracking an employee's location, heart rate, electrical brain activity or fatigue) could violate the ADA.

Employers should note that the agency's Strategic Enforcement Plan for Fiscal Years 2024–2028, which prioritizes regulating employers' use of technology (including AI and machine learning) through enforcement, remains in effect until a quorum of commissioners can modify or revoke it.

## DOL

The DOL also has removed certain guidance documents from its website, including:

- An April 2024 Field Assistance Bulletin that outlined ways AI use can violate federal employment laws, such as the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), and even the Employee Polygraph Protection Act (EPPA).
- An October 2024 road map of best practices for developers and employers, including AI principles for worker well-being. This document emphasized employers' use of AI for the benefit of workers and encouraged responsible data use and job protection.

## OFCCP

Similarly, the DOL's Office of Federal Contract Compliance (OFCCP) removed its April 2024 guidance, "Artificial Intelligence and Equal Employment Opportunity for Federal Contractors," from its website. This guidance alerted federal contractors to compliance obligations for using AI and the need to monitor whether AI and automated systems adversely impact protected groups.

## C. Key Takeaways

### **Federal anti-discrimination laws still apply to AI tools**

Although the EEOC and DOL have withdrawn their AI guidance or identified such guidance as potentially "out of date," existing federal employment laws remain fully applicable to AI-driven hiring and workplace decision-making. Employers remain liable for:

- **Disparate impact discrimination:** AI tools that disproportionately exclude or disadvantage protected groups may violate Title VII, even if the bias is unintentional.
- **Disability discrimination:** AI systems that screen out candidates on disability-related characteristics may trigger liability under the ADA. Employers are responsible for ensuring reasonable accommodations when utilizing AI.
- **Vendor liability:** Employers can still be held responsible for AI-related discrimination, even if the tool was developed and implemented by a third-party vendor.

AI systems must be monitored regularly to ensure compliance with anti-discrimination laws. Employers utilizing AI systems should therefore conduct internal audits of those

systems, require vendors to provide transparency into their AI algorithms, and carefully review any AI-liability provisions in their vendor agreements.

*Note: Employers must still comply with the myriad federal and state anti-discrimination laws governing the use of AI tools in the workplace, including Title VII, the Age Discrimination in Employment Act (ADEA) and the ADA. These laws prohibit discrimination, which can include not just overt discrimination, but also practices that result in disparate treatment of protected classes or in differing outcomes for protected classes (disparate impact). In addition, the FLSA and other employment laws continue to apply when AI tools are used for employee tracking or monitoring.*

### **Increased State and Local AI Regulation**

As federal agencies have shown a policy shift, state and local governments are moving forward with AI regulations.

This federal shift to a more pro-innovation approach leaves states and local jurisdictions to fill the regulatory gap. The legislation pipeline is filled with bills seeking to regulate employers' use of AI tools. Several pending bills would impose audit/notice, policy, reporting and transparency requirements on employers using AI, with significant penalties for noncompliance.

While most target algorithmic discrimination, some also address other anticipated impacts from using AI in the workforce, including worker displacement.

*Note: For example, New York Gov. Kathy Hochul proposed a plan to "support workers displaced by AI," which includes a directive to the state's Department of Labor to require businesses submitting notices of worker layoffs to its Worker Adjustment and Retraining Notification system to state whether a layoff is related to the business's use of AI.*



*Key Takeaways to Consider to Mitigate Legal Risk:*

- **Be transparent:** Job candidates and employees should be informed of AI tools being used in their selection process or evaluations. On the flip side, employers may want to ask for confirmation that candidates did not use AI to produce application materials.
- **Prepare for accommodations:** Have accommodation plans in place should a candidate seek a disability accommodation, particularly recognizing that many laws and federal regulations instruct employers to provide an alternative to the AI tool.
- **Develop AI usage policies:** In crafting policies, employers should consider how their employees may use AI along with how employers want them to use the technology. Policies should have usage guidelines and best practices.