HR use of AI: Best Practices Guardrails for Legal Compliance

Agenda

1 Legal Updates on Using AI in HR

2 Creating an AI Policy

3 Using AI to Do Your Job More Efficiently

4 Questions & Answers

Poll question:

Does your organization allow employees to use AI tools to help with their work?

Regulation of AI in HR

Typical pattern for regulation:
Increased Use => Increased Regulation

AI use has exploded in all areas, including and HR, and the wave or regulations is coming.

States and localities are often the first movers and that has been the case in the regulation of AI in HR.

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The first mover: NYC

New York City Local Law 144

- Enacted December 11, 2021

- Enforcement began on July 3, 2023

- Regulates the use of automated employment decision tools (AEDTs) for assessing candidates for hiring or promotion.

- Applies to jobs performed in NYC and fully remote positions that are associated with an office location in NYC.

NYC Local Law 144

Organizations that use AEDTs to "**to substantially assist or replace discretionary decision making**" must:

1. Conduct an independent bias audit before they use the AEDT and at least once a year;

2. Publish the results of their bias audits; and

3. Provide notice to job candidates and employees that the organization is using an AEDT to make employment decisions.

The great AI regulation race

Two states raced to be the first to regulate the use of AI in employment decisions.

Can you guess which states?

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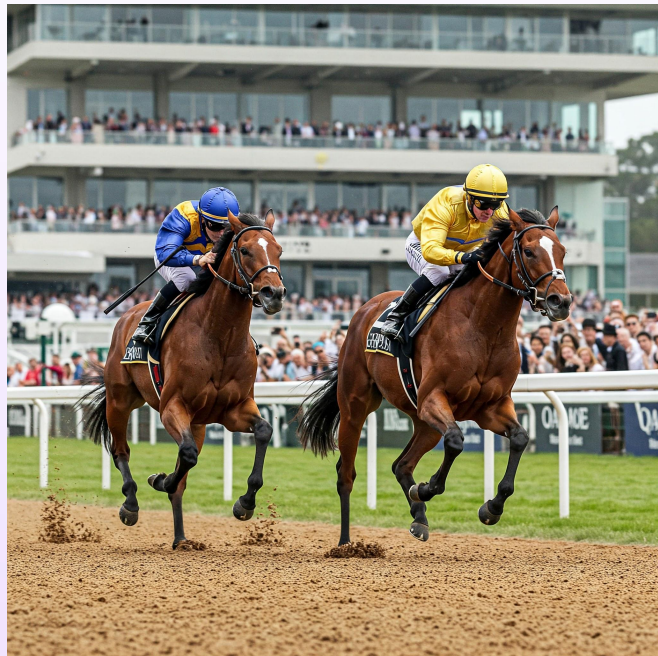
Poll question

Which two states do you think were the first to regulate the use of AI in making employment decisions?

And the winner was:

...it depends on where you draw the finish line!

- **Colorado** enacted the Colorado AI Act on May 17, 2024, and it takes effect on February 1, 2026.

- **Illinois** enacted its AI law on August 9, 2024, but it takes effect on January 1, 2026.

Colorado's Artificial Intelligence Act

- First **comprehensive regulation of AI** at the state level

- Regulates both "Developers" and "Deployers" of AI systems

- No private right of action
  - Will be enforced exclusively by the Colorado Attorney General's Office

- Takes effect February 1, 2026

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Who qualifies as a "deployer" of AI?

A "deployer" is a person doing business in Colorado that uses an AI system to help make decisions that have a substantial effect on:

- Employment or employment opportunity

- Education enrollment or opportunity

- Financial or lending services

- Essential government services

- Healthcare services

- Housing

- Insurance

- Legal services

Deployer responsibilities

Deployers of AI have an obligation to use "reasonable care" to prevent "algorithmic discrimination."

There is a rebuttable presumption that deployers used reasonable care if they take certain steps, including:

- Implementing a risk management policy and program for high-risk AI systems

- Completing an impact assessment of high-risk AI systems

- Notifying consumers that could be affected by decisions made by high-risk AI systems

- Making a publicly available statement summarizing the types of high-risk systems that the deployer currently deploys

- Disclosing to the attorney general the discovery of algorithmic discrimination within 90 days of discovery

What do regulating AI and eating elephants have in common?

Answer: Both are best done one bite at a time

- Governments don't have a great handle on what AI is yet
  - Or how to regulate it
- Some might try to eat the whole elephant in one bite
  - Like the EU or Colorado (sort of) did
- But more likely to regulate one facet of AI at a time
  - Like in California and Illinois
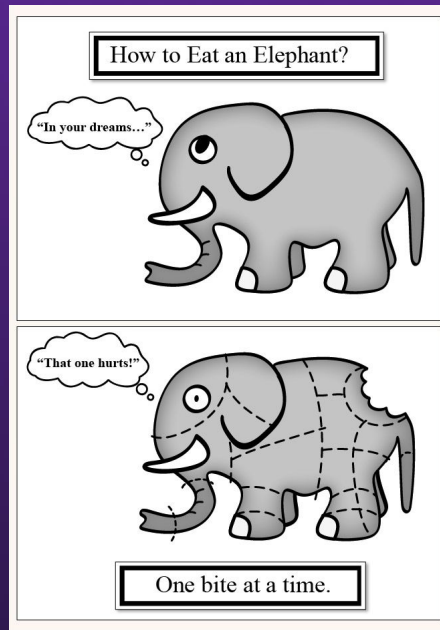
AI & decision-making in California

- **Privacy law regulates using AI to make decisions that affect people ("Automated Decision-Making Technology" or "ADMT")**
  - Applies when AI makes a decision itself or when it substantially contributes to the decision

- **Future laws could use this as a starting point or a component of a broader regulation**
  - Much AI-centered harm is caused by replacing human decision-making

- **17 states have provisions in their privacy laws that restrict how businesses use ADMT**
 - Just one applies to use of ADMT on employees….so far

Not all decisions are created equal

"Significant" decisions are the primary target for regulation

- Decisions that affect (1) financial or lending services, (2) housing, (3) education enrollment or opportunities, (4) employment or independent contracting opportunities or compensation, or (5) healthcare services

Includes using AI to facilitate decisions around hiring, work assignments, compensation, benefits, promotion, or discipline

- AI interviews, resume screening tools, schedule creators, raise/compensation calculators, etc. could all be covered
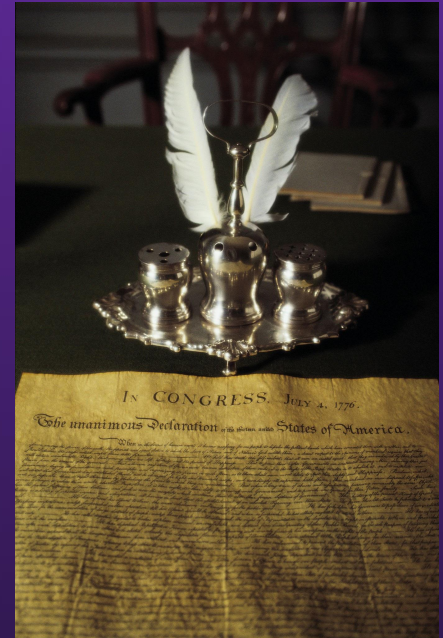
Illinois Artificial Intelligence Law

- Is an amendment to the Illinois Human Rights Act and takes effect January 1, 2026.

- Applies to any employer that has one or more employees located in Illinois for 20 or more calendar weeks.

- Prohibits employers from using AI in connection with "**recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment**" in a way that subjects an employee to any discrimination based on protected characteristics or zip code.

- Requires employers to notify employees that AI is being used to make employment decisions.

- Enforced by the Illinois Department of Human Rights.

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Does this mean you shouldn't use AI?

No—it just means you should be cognizant of when and how you use it

- A total ban on AI is unlikely in any context*

Future laws are more likely to require businesses to:

- Test AI tools for discriminatory impact;

- Make robust disclosures about how AI is deployed and the logic it uses; and (potentially)

- Allow people opt-out

Businesses that use AI to make decisions can get a head start by making sure you
1) understand the logic behind your AI tools and 2) test them for bias

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What's next?

- Over 30 states have formed AI working groups. These working groups have begun issuing their reports and recommendations, many of which will eventually become proposed legislation.

- California and New York are two states to watch. Both nearly passed state-wide AI regulations in 2024.

- Future changes could come from privacy or human rights law, so keep an eye on states that are active in those areas (e.g., the 19 states with consumer privacy laws)

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A note on biometric data

- **Six states currently regulate the use of biometric data**
  - Legislation pending in four more
- **Some laws look like traditional privacy schemes**
- **But others focus on use of AI to analyze biometric data**
  - MD: Can't use facial recognition service during job interviews without consent
  - OR: Can't use any facial recognition technology in public businesses
- **Could be the next trend in AI regulation**

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The big question: "Is AI going to replace my job?"

- Some jobs may eventually be replaced by AI, but other new jobs will be created.

- A common thought has emerged among many technology and thought leaders:

  - AI is not going to replace high skilled jobs.

  - *But* those who use AI to do their jobs better and more efficiently are going to replace those who don't use AI.

- **Understanding the strengths of AI can help you apply it in your organization and industry**

Using AI effectively

- Understand the specific strengths and weaknesses of the tools you use

    - AI is a tool and is only as effective as its wielder

- All AI output should be reviewed by a human for accuracy (AI should never be the last step)

    - Don't use it to mindlessly make decisions for you (potential employment discrimination)

- Tools should be auditable with transparent reasoning

Finding the right AI tools

- Common free tools—like ChatGPT and Gemini—do some tasks well, but struggle with other tasks

- Remember: If something is free, *you* are the product

- Paid tools will have more advanced features and data privacy options

- The best AI will be one that you customize to your needs, potentially using your own data set

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Why have an AI Use Policy?

- A policy helps you control AI use at your organization

- A policy helps your employees understand when and how they can use AI

- Good policies explain the reasoning behind the rules

- Being open, upfront, and open minded about AI can prevent employees from hiding their use

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Next steps to take

❏ Stay current on the rules governing the use of AI in employment.

❏ Have frequent conversations about AI use, security, and compliance at all levels of your organization.

❏ Consider how you can use AI tools responsibly to do your job more efficiently—while being cautious of "junk" tools that will introduce more risk.

❏ Create an AI Use Policy that meets your business' specific needs

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SixFifty's approach to AI

Ask SixFifty AI Beta

Advanced Employment Law Search

Is Montana an at-will state?

Some things to know about SixFifty AI:

SixFifty AI's Data Source

SixFifty AI draws on data from the **Employment Law Informatics Project** within SixFifty. The data from that project is what you see in Research.

Location-Specific Answers

Since employment law is different in every state, SixFifty AI can have a hard time answering questions that don't mention a location.

Verify State Lists in Research

Generative-AI tools like SixFifty AI struggle at making comprehensive lists. Any lists that SixFifty AI creates should be considered examples and not exhaustive.

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