Why IT and HR Need to Align
New Technologies Generate New Employment Liability

January 29, 2026

Thomas Eron and Samuel Wiles

BOND SCHOENECK & KING ATTORNEYS

Presenters

Thomas G. Eron

Member
teron@bsk.com
Syracuse, NY

Samuel P. Wiles

Associate
swiles@bsk.com
New York, NY

BOND SCHOENECK & KING ATTORNEYS

HR Recertification Credits

1.0 General HRCI Credits

The use of this seal is not an endorsement by the HR Certification Institute of the quality of the activity. It means that this activity has met the HR Certification Institute's criteria to be pre-approved for recertification credit.

1.0 SHRM PDCs

Bond, Schoeneck & King PLLC is recognized by SHRM to offer Professional Development Credits (PDCs) for the SHRM-CPSM or SHRM-SCPSM. This program is valid for 5.0 PDCs for the SHRM-CP or SHRM-SCP.

Certificates of Attendance will be emailed to attendees at the conclusion of this presentation.

Survey Questions

- How frequently do your IT and HR leaders meet to address strategic matters?
  - a) monthly b) quarterly c) annually d) no regular meeting
- In the assessment of potential new technology, HR personnel are included in the vetting process? a) Yes b) No
- In the rollout of software applications, HR policies are reviewed and updated? a) Yes b) No
- Our standard workplace investigation procedure includes designated IT personnel in the fact gathering stage? a) Yes b) No

"A computer can never be held accountable. Therefore a computer must never make a management decision."

- IBM Training Manual, 1979

Why IT and HR Must Align

- Traditionally independent and siloed departments, now must work together to ensure compliance and minimize risk
- Rapid pace of technological change and implementation requires both IT and HR to assess whether a new software or technology carries risk.
  - HR cannot simply use new tools like ChatGPT or rely on vendors without inquiry and IT cannot simply implement new technology without assessing HR compliance risk.
- Old situations, but new problems present risk and opportunity
  - Often things that seem "new" are simply a new telling of an old story.
- Legislative and regulatory approach will necessitate further interaction.

BOND SCHOENECK & KING ATTORNEYS

Case Study - Moderna

- Moderna recently announced the creation of the role for "chief people and digital technology officer".
- The Company is working heavily with OpenAI on integrating with its ChatGPT system to help have a "transformative impact on the workforce."
  - The new officer explained having these GPT's in house is "like your virtual HR, AI agent. It's what would normally be a junior-level HR analyst type, we've now converted into a GPT."
- An article noted, "by combining the roles, this signals that digital acumen is no longer optional for HR leadership, or any other function for that matter — everyone is expected to be digitally native in this new world."
  - "Moderna's efforts don't seem to be just about efficiency or cost-cutting — it appears to represent a shift, first in many, in how companies define work, design roles and deploy intelligent systems across their organizations."

Trends to Monitor Going Forward

- **Merger of IT and HR**
  - Recent survey of 1,000+ IT leaders found that 93% believe bringing IT and HR together would be beneficial and 64% predict a complete merger within 5 years.
- **Accelerated Pace of Change and Complexity of the Workplace**
  - Survey: Average number of software applications that employees are required to use increased from 6 to 11 in past 5 years.
- **Workplace and Remote Work Monitoring**
  - In connection with continued remote work and monitoring software, employers may identify a continued need or desire to monitor employees.
- **Data Foundation and Security**
  - There is a need to maintain consistent, accurate, and useful data, particularly if an employer seeks to rely upon this data for its workforce decision making.
- **Fragmented Legal Landscape**
  - State and local regulations; no current national legal framework.

BOND SCHOENECK & KING ATTORNEYS

What are benefits and challenges of continued integration?

- According to the report, "The Experience Silo: The Future of HR and IT" which surveyed 1,100 IT leaders, there are expected benefits to continued cooperation and integration.
  - Fewer delays in digital transformation projects
  - Helping employees quickly learn and adopt new digital tools
  - Accelerating and smooth out onboarding
  - Improved productivity and retention
- What are barriers to integration?
  - Lack of clear ownership over new and existing responsibilities
  - Poor communication between HR and IT teams
  - Differing priorities between the two departments

"Alignment supports proactive risk governance and minimizes reactive clean-up."

Goals for this Presentation

Gain a better sense of risks – both known and unknown – associated with increased use of technology

Breakdown silos between IT and HR to ensure your company is aware of all risk while also maximizing advantages new technologies have to offer

Remove assumptions that HR and IT may have about their respective departments when making decisions

Identify key topics where the departments should collaborate

BOND SCHOENECK & KING ATTORNEYS

Roadmap

- Time & Attendance and IT's Role
- Social Media and the Role of IT and HR
- Remote Work, Accommodations, and Productivity
- Hiring: Pitfalls and Opportunity
- Proposed and New Legislation
- The Future is Now: Litigation in the AI Era

- Background Checks
- Workplace Investigations
- Employee Use (and Misuse) of AI
- Unionized Workplaces
- Pay Equity and Compensation Transparency
- Cybersecurity and Social Engineering
- Reliance Upon Third-Party Vendors and Employer Liability
- Biometrics

Time & Attendance Technology and IT's Role

Individual Responsibilities for Each Department

IT's Responsibilities

- Implementing and maintaining timekeeping systems
- Ensuring timekeeping systems comply with data protection and privacy laws and ensuring cybersecurity
- Implementing controls to prevent time theft (by employer or employee)
- Providing technical support to ensure employees can accurately track time

HR's Responsibilities

- Establishing and communicating time tracking policies and requirements to employees.
- Training managers and employees on proper timekeeping procedures
- Auditing time records for accuracy and compliance.
- Ensuring employees are properly classified in the system.

BOND SCHOENECK & KING ATTORNEYS

Understanding Compensable Time

- The issue of whether time is "compensable" is fact dependent, but the use of technology or hour tracking software can introduce risks.
  - o Employees must be paid for all time they are "**suffered or permitted**" to work. If you require or allow an employee to work, the time spent is generally hours worked.
  - o Generally, this includes preliminary and postliminary work, remote/off-duty work, travel time, and training & seminars. These are also fact dependent.
- But what does compensable time mean for a remote or mobile workforce? And how does technology impact time tracking?
- New York's Attorney General is highlighting issues related to employers using time-tracking software.
  - o An investigation found UPS underpaid workers during the holiday season by "failing to record all hours worked, requiring widespread off-the-clock labor, and manipulating timekeeping systems to reduce paid hours." Employees used mobile application to login.
  - o Assessing who is tracking hours and how they are tracked is crucial.

Logging in for the remote workplace

- Courts generally consider whether the employer should have acquired knowledge of an employee's hours worked through "reasonable diligence."
- According to the DOL's guidance, one method of exercising reasonable diligence is to provide a reporting procedure through which employees can report unscheduled time worked. Time reported, whether or not it was performed at the direction of the employer, must be paid.
- "Booting Up" time – is it compensable?

Biometrics for login

- Use of biometrics (fingerprints, facial scan, iris scan, etc.) are prevalent and used by employers to track employee time.
  - Might not be as innocuous as it appears. New technology necessarily implicates current law which varies by State.
  - New York Labor Law Section 201-a prohibits employers from requiring the fingerprinting of employees as a condition of obtaining or continuing employment.
    - "Fingerprint" vs. "finger geometry scan"
- New York City: "Biometric Identifier Information Ordinance ("BIPA").
  - New York City's BIPA is more related to notifying customers about the use of biometric technology.
- What biometrics are required and why?
  - What problem is the employer trying to solve? Does this really address time theft or having employees clock in for each other?
- HR and IT coordination on the implementation

Reimbursements for Equipment and Minimum Wage

- Hypothetical: IT policy requires employees to purchase or use certain equipment, without HR review of these requirements.
  - Includes requiring employees to incur expenses for things like cell phone usage, VPNs, webcam, printers, internet, etc.
- Employers must reimburse where expenses cause employee compensation to decrease below minimum wage and/or any requirement overtime.
  - If IT requires equipment for non-exempt employees, HR should be involved in that discussion.
- New York law, "[t]he minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by an employer."
- NY Law also requires reimbursement of "necessary business expenses"
- Lost or unreturned property

BOND SCHOENECK & KING ATTORNEYS

Scheduling

- Scheduling is becoming more automated, and certain vendors may provide a service with predictive scheduling or "AI driven" scheduling options, but these present risks
  - Vendors may offer these services, but proper vetting and compliance requirements remain.
  - HR must be prepared to create scheduling policies/identify vendors and IT must be prepared to maintain records and address issues
- For example, Starbucks and New York City's Fair Scheduling Act
  - The Fair Scheduling Act mandates employers provide predictable scheduling and mandates premium payments to employees for short-notice changes.
  - Starbucks settled with the DCWP for $39 million, demonstrating the need to monitor and comply with local ordinances.
  - Important for HR to make IT aware of these issues, and for IT to work with HR and employees to ensure software is usable and complies with regulations.

NYC Consumer and Worker Protection

BOND SCHOENECK & KING ATTORNEYS

Where do IT and HR need to Coordinate?

- Time tracking software
  - Must capture all compensable time – particularly for non-exempt employees with mobile or remote jobs. Work with IT to assess whether systems and security are "compensable" within applicable labor law.
  - IT can audit whether time clock systems begin tracking hours worked before or after system logins are completed or location of logins.
- Scheduling
  - Jurisdictions like New York City are taking a greater interest. Ensure scheduling software meets legal requirements and that managers are trained on compliance.
- Booting up and logging in requirements and complications
  - Possibly compensable, but do login procedures take significant time? Are there procedures for prompt IT assistance and reporting to HR to evaluate potential compensable time?

Remote Work – Communications, Accommodations, and Productivity

Baseline Requirements for Remote/Hybrid Work

- We've learned from the pandemic that remote work, in some form, is a fact of life. Now, how do IT and HR manage that going forward?
- Establishing the remote work assignment
- Issues: equipment, security, usage (separating business and personal activities)
- Policy and individual agreements
- Equal parts IT and HR throughout

Remote Work – Communication and Monitoring

- **Policies**
  - Who is eligible for remote work
  - Expectations on responsiveness, communication, and availability
  - Hybrid schedules and expectations for in-person attendance
- **Software applications**
  - Assessing tools employees use such as Teams, Zoom, etc. Assess who is rolling out new technology – i.e. does HR know IT is rolling out a new tool?
  - VPN logs, keystroke logging, and other access tools – assess when there is a need to monitor.
- **Privacy concerns**
  - New York Computer Tracking – Civil Rights Laws 52-C
    - Requires every private-sector employer to provide notice of its electronic monitoring practices to all employees (1) upon hiring, via written or electronic acknowledgment, and (2) in a "conspicuous place" viewable by employees (i.e. your laptop's login screen)

Remote Work – Communication and Monitoring

- Internal communication
  - Establish predictable check-ins such as one-on-ones.
  - Standardize use of channels – avoid employees relying on unauthorized channels for work related purposes
- Are employees fooling the system?
  - How to assess? Technology? More Analog methods? Ensure employees still meet performance metrics.

- Use performance management and objective criteria rather than simply monitoring "online time."

"Undetectable" Mouse Jiggler

Remote Work – Accommodation Issues

- Can remote work be an accommodation under the ADA, NYSHRL, NYCHRL, etc.? Yes!
- Assess the following:
  - Can the employee perform her **essential functions** of the job while working remotely?
  - Would a work-at-home arrangement impose an **undue hardship** on the employer?
- While HR typically manages this analysis, IT has a key role with respect to the interactive process and the undue hardship analysis.

BOND SCHOENECK & KING ATTORNEYS

Remote Work – Accommodation Issues

- Essential Functions for Remote or Mobile Work
  - Is working on-site itself an essential function?
  - Prior performance in a remote setting by this employee or others
  - Interacting with other employees, customers, vendors in person
- Potential Accommodations
  - Does AI or other software provide a reasonable accommodation? Could be something like speech-to-text, AI agents that reduce cognitive load, transcription services
- Undue Hardship Analysis
  - Assess – does providing this technology have a monetary cost? Cybersecurity risk? Adverse impact on work quality? Alternative accommodations?

Introducing New Technology: Legal and Practical Considerations from the HR Perspective

- Assessing legal compliance
  - Privacy
  - Name, image and likeness
  - Notice requirements
- Operational issues to support implementation
  - Policy review
  - Training
  - Anticipating employee response
  - Monitoring and addressing compliance and misuse

Access to More Powerful AI at Work

- Workplaces may offer employees opportunities to use more advanced AI systems. This comes with risks.
  - Employees misusing AI for inappropriate purposes such as deepfakes for harassment and discrimination.
- Deepfake related fraud attempts surged by over 3,000 percent in 2023, with the number of deepfake files skyrocketing from 500,000 in 2023 to an estimated 8 million by 2025.
- What can employers do to minimize risk of misuse of employer sponsored AI or similar software?
  - Revise harassment policy to specifically address AI or artificial images
  - Create or implement watermark detection or similar safeguards
  - Collaborate with other teams to determine whether escalation is necessary

BOND SCHOENECK & KING ATTORNEYS

"Shadow AI"

- Shadow AI is essentially the practice of employees using AI without the explicit permission of employers or non-permitted uses.
    - Example: Employees using tools like ChatGPT to automate tasks like text editing or data analysis without the employer's approval.
- One-Third of employees acknowledge providing sensitive company information to AI tools without permission.
    - This could result in data breaches and other security concerns.
- Employees relying upon Shadow AI is a result of many factors, but this could include a lack of clear policies, training, or enforcement of policies.

BOND SCHOENECK & KING ATTORNEYS

Hiring: IT and Risk of Disparate Impact

Where do IT and HR Collaborate in Hiring?

- Current landscape of hiring
  - Depending on employer size, the use of technology or vendors can augment traditional hiring efforts.
- Ensuring your IT teams are building, maintaining, and relying upon correct and unbiased data sets.
  - Where are you drawing your data from? Is it reliable?
- Implementing and maintaining applicant tracking systems, resume screening, video platforms, and data security
  - How are you collecting resumes? How are they being stored and processed?
- Training managers on software/AI use and employment decisions

Hiring: Legislation and Regulation on the Horizon

- NYC Local Law 144: Back from the dead?
    - Local Law 144 regulates potential bias and discrimination in automated employment decisions.
    - Law requires employers to conduct bias audits and provide notice to candidates when automated tools are used. DCWP can impose fines.
    - New York State recently audited this law and found a poor record of compliance
- Notwithstanding poor compliance or implementation, employers in NYC should expect this law to come back into existence.
    - Lina Khan involvement. She has expressed an interest in using laws already on the books.
    - A statewide bill of this kind is pending in Albany
- Colorado, California, and Illinois are stepping into this field as well

BOND SCHOENECK & KING ATTORNEYS

Fishing or Phishing for Applicants?

- Employers should be more weary of applicant phishing schemes or fake applicants, particularly for remote only jobs.
  - o Even if it is not AI or Deepfaked, employers should confirm who they are actually interviewing and assessing risk for phishing schemes.
- Scammers are innovative and becoming capable of creating a persona for remote jobs
  - o Deepfake tools used by remote applicants to fake voice or image during interviews. FBI warned employers in January 2025 of a growing threat of North Korean IT workers who are infiltrating US companies through remote work to steal sensitive data.
- Also assessing whether a candidate is using an AI or interview assistance program in the background
  - o Person might not be scamming the interviewer, but could be using a "performance enhancement drug" to interview well.

BOND SCHOENECK & KING ATTORNEYS

Employee Use of AI or Similar Software and Data Risks

Hypothetical Misuse by HR or Hiring Manager

- Blackacre Co. received an overwhelming number of applications for its new analyst position.
- The in-house recruiter tasked with reviewing resumes is overwhelmed and cannot keep up with the number of applicants.
  - Blackacre has a policy forbidding the use of AI for work purposes – including using personal devices for AI use, but it has not trained its employees on this policy
- The recruiter uses an AI tool on her personal device (emailing the resumes to her personal account) and feeds in all of the applications to save time and prompts it with "select the ten best applicants for Blackacre's open position."
  - Ten resumes come back, the rest are eliminated from contention.

Hypothetical Continued

- The ten resumes, it turns out, all come from the same area. Further, the resumes are all for white, male applicants with backgrounds from the same university.
- The applicants who were not selected for the position are all rejected from the position.
  - Bonus points: The recruiter drafted the email using an AI tool and inadvertently included an AI watermark in the rejection email.
- Turns out, the remainder of the applicants were from lower ranked universities or universities from areas with majority-minority populations.
- Those applicants realize there is an issue and bring suit.
- Can Blackacre defend its hiring decision?

Questions?

Thank You

The information in this presentation is intended as general background information.
It is not to be considered as legal advice.
Laws can change often, and information may become outdated.