Presenters

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Artificial Intelligence

- Developed rapidly since ChatGPT was launched in 2022

- As of September 8, 2025, over 1,080 AI-related bills have been introduced across all 50 states this year alone.

"Any machine-based system that, for any explicit or implicit objective, infers from the inputs the system receives how to generate outputs, including content, decisions, predictions, or recommendations, that can influence physical or virtual environments"

Driving U.S. Innovation in Artificial Intelligence

- The Bipartisan Senate AI Working Group provided a roadmap to lay the foundation for a better understanding of their policy choices and the implications surrounding AI.
- Discussed various topics of AI's impact including:
  - The Inaugural AI Forum
  - Supporting U.S. Innovation in AI
  - **AI and the Workforce**
  - High Impact Uses of AI
  - Elections and Democracy
  - Privacy and Liability
  - Transparency, Explainability, Intellectual Property, and Copyright
  - Safeguarding Against AI Risks
  - National Security

Recommendations for AI in the Workforce

- Concerned about the potential displacement of workers from the growing use of AI. Suggests legislation incentivizing training, retraining, and providing the skills necessary for the private sector workforce to navigate a world with AI.
- Consider relevant internal and external stakeholder voices (including employers, unions, employees) when developing AI systems.
- Develop ways to combat disruptive workforce displacement.
- Improve U.S. immigration system to enable entry of more high-skilled STEM workers to advance AI.
- Establish a workforce development advisory board to advise the USDOL on which types of public and private sector initiatives involving AI promote consistent workforce development improvements.

NY Artificial Intelligence Training Pilot Program

- NYS government partnership with InnovateUS to provide AI training for more than 150 government agencies.
  - Designed to teach NYS employees about to responsibly used AI as a public-sector employee.

- Pilot program apart of Gov. Hochul's innovative agenda to advance NY leadership in AI and "ensure equitable growth of the AI industry in New York, including training students for AI-enabled jobs, funding NY AI startups, supporting small businesses with AI adoption and tracking the potential impact of new technologies on the workforce."

Employer's Use of AI in Decision-making

- The use of generative artificial intelligence (AI) has become increasingly popular among employers.
  - Decision-making algorithms can learn from data and adapt over time to make more tailored decisions.
  - Filter candidates whose qualifications from their resumes align with the job description.
  - Manage high-volume applicant pools and create a fairer hiring process.
- Use of AI in hiring, firing, and other key employment decisions.
  - *E.g.*, Applicant Tracking Systems (ATS), skills-based search engines to match applicants with open positions, AI powered interview platforms, automated performance evaluation systems, pay calculations, etc.

AI Screening Candidates & Disparate Impact

- Significant legal risks under existing anti-discrimination laws.
  - Title VII, the ADEA, and ADA
- Even if AI tool is facially neutral, growing concerns that the decisions could have an unintentional discriminatory effect on a protected class.
  - Employer could be liable for violating Title VII under a disparate impact theory.
- Audit, audit, audit!

Rollback of EEOC Guidance on Disparate Impact

- In 2021, the EEOC launched the "Artificial Intelligence and Algorithmic Fairness Initiative" to guide employers on using AI in compliance with federal civil rights laws.
- EEOC published "The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Access Job Applicants and Employees" - guidance on disparate impact and its implications with the ADA.
- All Biden-era guidance rolled back by the Trump Administration in 2025, <u>but</u>
  - Employers may still be held liable for discriminatory use of AI under federal law because private right to sue.
  - Employers also may be held liable under state / local laws.

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EEOC v. iTutorGroup

- Settlement between Equal Employment Opportunity Commission (EEOC) and iTutorGroup Inc. and its affiliates over alleged age discrimination in hiring from the use of automated decision-making tools.

- EEOC claimed the tutoring service used a software to automatically reject both female candidates over the age of 55 and male candidates over the age of 60 for tutoring positions in violation of the ADEA.

- Tutors treated as independent contractors, not employees, who are not covered by the ADEA, but iTutor settled to pay over $365,000 to the applicants automatically rejected based on age.

Mobley, et. al v. Workday, Inc.

- Class action employment discrimination case alleging that Workday's artificial intelligence (AI) based applicant recommendation system discriminated against job applicants based on race, age, and disability.
  - Applied for hundreds of jobs and rejected without an interview because of his age.
- Workplace website collects, processes, and screen's job applications and can "reduce time to hire by automatically dispositioning or moving candidates forward in the recruiting process."
  - Uses embedded artificial intelligence and algorithmic decision-making tools in combination with employee referrals to determine if the employer should accept or reject the application.
- Two different AI decision making tools used by Workday: Candidate Skills Match (CSM) and the Workday Assessment Connector.

Legal Risks from the Employee's Use of AI

AI Misuse by Applicants

- "Deepfake tools" used by remote applicants such as using artificial intelligence to fake their voice or image during interviews.

- Risk of unqualified candidates, cyberattacks, theft of sensitive information, or even embezzlement by fake applicants.

- In January 2025, Federal Bureau of Investigation warned employers of a growing threat of North Korean IT workers who are infiltrating U.S. companies through remote work to steal sensitive data and extort money from them.

Using AI to Harass Other Employees

- "Deepfake harassment" = use of AI generated videos to harass others in the workplace.

- No federal law to address AI harassment in the workplace specifically, but other laws like the TAKE IT DOWN Act address the removal of non-consensual intimate images.

- Examples of "deepfake harassment" include using AI to create a fake audio recording of another employee to interfere with a workplace investigation or a fake recording using discriminatory/explicative language towards another employee.

AI as a Reasonable Accommodation

- With growing use of AI, possible for employees to request AI as a reasonable accommodation in the workplace.

- There have been lawsuits filed in the context of students requesting to use AI technologies to help with coursework and on exams.

Risks Related to Confidential Information

- Cloud-hosted large language models (like ChatGPT) retain the information you upload and use it to train other models.

- Such information may be stored on the cloud forever.

- Companies need to ensure their employees are not sharing sensitive information – such as trade secrets, legal documents, and medical records – with these AI systems.

Best Practices

- Implement an AI use policy to regulate the use and manage the risk of AI at your company.
- Conduct regular audits of any AI decision-making software for potential bias and disparate impacts on protected groups.
- If using AI vendors, ensure that you have reviewed their policies and they comply with anti-discrimination laws.
- Include human oversight to check decisions made by artificial intelligence.
- Avoid risks by strengthening remote hiring process to identify individuals engaging in this type of activity but being mindful of obligations under the anti-discrimination laws.
- Don't automatically disregard employee's AI accommodation requests.
- Be cautious about "evidence" in harassment investigations.

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New York's AI Laws

New York Senate Bill S822

- Effective February 14, 2025
- Amendment to the New York State technology law and the civil service law.
- Relates to the disclosure of automated decision-making tools.
- Requires office of information technology services to maintain artificial intelligence inventory.
- Use of AI systems cannot affect existing employee rights under their employers CBAs or existing relationships with other employee organizations.
- AI systems cannot result in the discharge, displacement, or alter the rights or benefits of employees.

NY Amends WARN Act for AI Related Layoffs

- Effective March 2025, NY companies engaging in mass layoffs must disclose whether those layoffs had to do with the use of technological innovation, specifically AI.
- The NYDOL amended WARN notices to include:
  - A checkbox asking whether the layoffs are related to technological advancement; if yes THEN
  - Employers must select what type of technology was used (i.e., AI, automation, etc.)
- No guidance provided by NYDOL as to what AI or automation processes entail.
- Unsure how NYDOL will use the information it collects.

New York City Local Law 144

- Effective July 5, 2023
- To use "automated employment decision tools," employers must (1) ensure the tool has been subject to a bias audit within the last year; and (2) the results of that audit publicly are available online.
- Employer must provide notice within at least 10 business days if the automated decision-making tool will be used in assessing the candidate and the job qualifications and characteristics the tool uses in that assessment.
- Applied to employers when a job is located in NYC (at least part-time) or the job is remote but the location associated with it in NYC,

New York Proposed AI Legislation

- Proposed 10 bills regulating the use of AI and its impact on employment law.
- Examples of proposed legislation include:
  - NY AB 1952: Requires employers to notify candidates if AI was used to make hiring decisions.
  - NY SB 1854: Establishes NY Workforce Stabilization Act to require businesses to conduct artificial intelligence impact assessments on the application and effect of AI in employment decisions.
  - NY SB 4394: Development of criteria for use of AI employment decision making tools
  - NY AB 768: New York Artificial IntelligenceConsumer Protection Act: regulates algorithmic decision making and prevent unlawful differential treatment or impact against any individual or a group of individuals based on age, race, disability, ethnicity, national origin, religion, etc.
  - NY AB 4947: Amendment to the New York Privacy Act by allowing consumers to challenge certain decisions made by AI.

Employment-Related AI Laws in Other States

Colorado (1/2)

- Effective June 30, 2026

- <u>Algorithmic Discrimination</u> – Any condition in which the use of an artificial intelligence system results in an unlawful differential treatment or impact that disfavors an individual or group of individuals on the basis of their actual or perceived age, color, disability, ethnicity, genetic information, limited proficiency in the English language, national origin, race, religion, reproductive health, sex, veteran status, or other classification protected under the laws of this state or federal law.

- Employers are required to use reasonable care to protect against any known or reasonably foreseeable risks of algorithmic discrimination.

Colorado (2/2)

- The statute also requires covered employers to
  - Implement risk management policies and programs
  - Complete annual impact assessments
  - Provide various notices to employees regarding its use of AI
  - Disclose to the Colorado Attorney General within 90 days of discovering algorithmic discrimination

Texas

- Effective January 1, 2026

- Prohibits employers from deploying an AI system with the intent* to unlawfully discriminate against a protected class in violation of state or federal law.

    Disparate impact alone is not sufficient to demonstrate an intent to discriminate

Illinois

- Amendment to the Illinois Human Rights Act

- Effective January 1, 2026

- Civil rights violation to:
  - Use AI that has the effect of subjecting employees to discrimination
  - Use zip codes as a proxy for protected classes
  - Fail to notify employees of the employer's use of AI

California (1/2)

- New regulations took effect October 1, 2025
- "It is unlawful for an employer or other covered entity to use an automated-decision system or selection criteria (including a qualification standard, employment test, or proxy) that discriminates against an applicant or employee or a class of applicants or employees on a basis protected by the [California Fair Employment and Housing Act], subject to any available defense. Relevant to any such claim or available defense is evidence, or lack of evidence, of anti-bias testing or similar proactive efforts to avoid unlawful discrimination, including the quality, efficacy, recency, and scope of such effort, the results of such testing or other effort, and the response to the results."

California (2/2)

- Examples of automated employment decisions potentially implicated by the regulations:
  - Using computer-based assessments or tests, such as questions, puzzles, games, or other challenges to:
    - Make predictive assessments about an applicant or employee
    - Measure an applicant's or employee's skills, dexterity, reaction-time, and/or other abilities or characteristics
    - Measure an applicant's or employee's personality trait, aptitude, attitude, and/or cultural fit
    - Screen, evaluate, categorize, and/or recommend applicants or employees
  - Directing job advertisements or other recruiting materials to targeted groups
  - Screening resumes for particular terms or patterns
  - Analyzing facial expression, word choice, and/or voice in online interviews
  - Analyzing employee or applicant data acquired from third parties

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Maryland Facial Recognition Law

- Prohibits employers from using a facial recognition service for the purpose of creating a facial template during an applicant's interview without consent from the applicant.

- Facial Template – "[T]he machine-interpretable pattern of facial features that is extracted from one or more images of an individual by a facial recognition service."

New Jersey Guidance

- NJ Division of Civil Rights issued new guidance regarding the use of AI in January 2025.

- The guidance clarified that the New Jersey Law Against Discrimination prohibits algorithmic discrimination.

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.

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