Employers Council®

Resource Guide

Employers Guide to Managing AI in the Workplace

Summary: This guide provides HR and legal considerations for employers to understand artificial intelligence (AI), identify effective uses of AI, and to mitigate the risks posed by AI in the workplace.

*Employers Council staff periodically update our members-only documents. To access the most current version of this document, click this **permalink**.*

Introduction

The use of technology incorporating artificial intelligence (AI) is widespread and dramatically increasing in society and workplaces of all types and sizes. Employers must be aware of the implications and potential impacts. HR professionals who are knowledgeable about the perils and promises of AI will be able to support the organization in identifying useful ways to leverage AI to achieve business results and mitigate risks. This guide is intended to assist HR professionals in evaluating the use of AI in the workplace.

Relevant resources and expertise available to Employers Council members are introduced.

What Is AI?

AI can be defined in many ways, and no single legal definition has been settled on in the United States.

Congress defined "AI" to mean a "machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments" in the National Artificial Intelligence Initiative Act of 2020, section 5002(3).

For the purposes of this guide, AI describes a wide array of technologies that leverage mathematics (algorithms, statistics, etc.) and large quantities of data to power tools (software, cloud platforms) that identify patterns, recognize trends, predict outcomes, and generate new forms of content.

AI is a tool that, like any other, can be used properly to achieve objectives in the workplace. It is unlike other tools, however, in that it is constantly evolving, offers very powerful capabilities, is easily misused, and can be unpredictable. These complex characteristics pose risks to employers that must be closely monitored by trained and knowledgeable staff.

EXAMPLES OF COMMON AI APPLICATIONS

Individuals and organizations use AI in a variety of ways, including the following:
- Pattern recognition and prediction: Video and music streaming services like Netflix, YouTube, and Spotify deploy AI to track users and offer options for them based on their history as well as patterns from other users.
- Voice recognition tools: Millions of people use Alexa and Siri in their homes to change music or purchase items online.
- Large language models (LLMs): These are embedded in text and email software and assign probabilities to words printed in emails and texts to help finish phrases and sentences for users. LLM uses are becoming more widespread in predicting and understanding trends across several industries.
- Biometrics (facial recognition and retinal and fingerprint scanning): The Transportation Security Administration (TSA) uses biometrics to confirm the identity of airport passengers; some private sector employers use biometrics to limit and validate employee access to sensitive resources.
- Generative AI: This newer form of AI technology is quickly being adopted by society and utilized by employers. It scans, retrieves, and generates new forms of content from the data pool it is attached to in response to prompts entered by the user; content can

include text, images, and audio files. ChatGPT is an example of a text platform that has been quickly adopted by millions of users to assist with schoolwork, workplace tasks, and personal uses.

LIMITATIONS OF AI

AI is reliant on the data pools it is attached to, the quality of the programming used, and the "training" used to guide the development of the mathematical models it uses to generate results. Limitations include the following:

- Data set limitation – AI is attached to a given data set, and thus, its results are limited to that data set. Common generative AI tools are limited to data as of a certain date, and thus, more current data may be absent from the results.
- Bias – The data sets used by AI include historical data that contains the biases of the authors of the information.
- Programming errors – AI generates results from humans who program and train it, so it is subject to human error.
- Hallucination – This term is used to describe the tendency for generative AI tools to create false results; the AI seeks to provide the next best option in response to a query, even if this is inaccurate. For important decision-making on sensitive matters, AI results should be critically evaluated and not fully relied upon.

USES OF AI

Use of AI is widespread in society, often in subtle ways that are not apparent to the user. For example, customers of video streaming services are offered options for viewing based on their history and those of other viewers with a similar viewing history. It's the same with streaming music services and online shopping platforms. This automatic and passive feature does not require the viewer to activate it.

Increasingly, free generative AI websites are being used by people to draft content for many purposes, such as education reports, job applications, common personal documents (wills, shopping lists, travel itineraries, etc.)

BUSINESS USES OF AI

Employers in all industries use technology platforms and services that include AI to improve business results. Organizations can also create proprietary AI and embed features into their systems. The potential business benefits of AI include the following:

- Efficiency and productivity – Human labor can be supplemented with cost-effective automation.
- Quality – Using continuous AI monitoring and measurement in workflows can identify errors, defects, and service gaps that impact the customer experience.
- Enhanced customer service – Chatbots using increasingly sophisticated generative AI technology can provide on-demand customer assistance and enable value-added conversations.
- Improved profitability – Improving human efficiency and productivity enhances profitability; replacing human labor with AI can be cost-effective.

- Innovation – Employees using AI can quickly obtain information and use data to identify new opportunities to improve how work is done and possibly new business opportunities.
- Competitive advantage – By boosting business outcomes, a competitive advantage can be achieved.
- These benefits are achieved by supplementing or replacing human labor with lower-cost automated AI capabilities, providing always-available assistance in a cost-effective manner, utilizing data and monitoring technology to quickly identify problems and opportunities that could not be identified by a human.

HR Considerations

With society and employers quickly adopting AI, HR professionals must be ready to lead on the use of AI in HR practices and identify new ways to contribute to organizational success.

Examples of common applications of AI in HR practices include the following:
- Recruiting
  - ATS (applicant tracking systems) have been in use for years and have often been riddled with bias. Newer versions may be embedded with AI capabilities to effectively identify promising and more diverse candidates; these still require close monitoring for bias and disparate impacts on protected groups.
  - Employers are upgrading their career portals to include chatbots (powered by AI) that interact with applicants in a more useful way than plain text. Applicants can ask questions, and the AI bot can respond and even assist with completing an application.
  - AI bots scan the Internet and social media for promising recruits, proactively contact them, offer information about the employer, and entice them to learn more and apply for vacant positions.
- Hiring/onboarding
  - Time-consuming data collection and entry completion tasks are automated, and new hires can be assisted by AI to answer questions, gather information, and complete required forms.
  - New hires are provided with AI assistance to select benefits and obtain customized guidance on benefit options. Tireless and patient, AI can be more helpful than humans for repetitive, detail-oriented interactions.
- Performance management and feedback
  - AI technology monitors employees on the job to measure performance. When skill gaps are identified, it notifies supervisors with specific metrics.
  - Employees use AI tools to self-monitor and improve personal performance by accessing a library of learning opportunities provided by the AI virtual coach. Virtual assistants (VA) help employees do their work.
- Training and coaching
  - Research indicates AI technology can be especially useful for employee training, especially for learners who may feel intimidated or overlooked by live instruction delivered to a class of other employees.
  - AI is infinitely patient, capable of answering numerous questions, and offers customized instruction to accommodate individual learner needs in a way that is not practical or cost-effective for human instructors. Virtual coaching services can be affordably delivered on a scale and supplemented by in-person coaching assistance.

- Engagement and retention
  - By monitoring a wide array of data points in the workplace, AI tools identify PQBs (pre-quitting behaviors) of employees and alert managers and HR. PQBs could include reduced email/text/chat activity, poor attendance, missed deadlines, etc., all signs of an employee disengaging and withdrawing from the workplace. This can prompt retention interventions, such as stay interviews, and reveal areas of concern, such as discrimination, harassment, or bias. Trends identified for a specific team may indicate a manager is struggling and needs support.
- Separation
  - AI automates the exit process and gathers exit data.
  - Promising employees, considered "regrettable turnover," can be re-recruited by AI bots that monitor their online activities and maintain connection.
- Foundational HR
  - Generative AI is used to draft common HR documents, such as job descriptions*, sample policies*, employee handbooks*, interview questions*, strategic plans for specific projects (e.g., DEI), training plans, and more.*
  - *IMPORTANT: Generative AI cannot be relied upon for accurate and legally compliant content; it can expose the employer to higher levels of risk. Extreme care must be taken when using generative AI content for HR documents. AI must never be fully relied upon. See "Legal" below.
- Strategic HR
  - AI platforms provide data to inform the development of strategic HR actions that support organizational objectives. Additionally, the platforms can monitor progress toward goals and identify gaps that require attention.

When AI applications are used in the workplace, HR professionals should carefully assess their use and consider the following factors and suggested actions:
- Transparency
  - Is it possible to identify and readily explain how the AI tools evaluate data and deliver results? If not, this can be problematic if the data is questioned internally (by leadership) or externally (by an investigative agency or in court if a decision using AI data is challenged).
- Bias audit
  - AI tools have been criticized as having bias bult into them by the humans who programmed or trained them using data that was biased; this can be intentional or unintentional bias. Either way, it is not lawful and must be avoided.
  - A bias audit is a monitoring action to verify an AI tool is not generating biased results. Learn more in [this article](#).

LEGAL CONSIDERATIONS

Technology powered with AI is evolving rapidly and the U.S. legal system is responding in a disjointed manner and is not keeping pace with the challenges that are emerging as the use of AI expands by society. There is no single, widely accepted legal definition of AI, which leaves room for interpretation and uncertainty across jurisdictions.

States have passed laws that limit the use of AI and impose requirements on employers. Here are some examples:

- Illinois: The Artificial Intelligence Video Interview Act imposes notification requirements to applicants when AI tools are being used and other limitations.
- New York City: The *New York City Automated Employment Decision Tools Law* requires employers to conduct bias audits when using AI In the employment process as well as notifications to applicants and employees about the AI technology being used. Learn more in [this Employers Council article](#).
- Other states have proposed legislation in the works as of the date of this guide's publication.

At the federal level, although no new legislation has been passed as of the writing of this guide, other important developments have taken place that suggest the direction of future federal legislation:
- The Biden Administration has published a [Blueprint for an AI Bill of Rights](#) that outlines rights of individuals in all areas of life, including the workplace.
- The Equal Employment Opportunity Commission (EEOC) has issued important guidance to employers on the non-discriminatory use of AI; learn more in [our article](#).
- Bills were introduced in the 2023 118th Congressional session to limit the use of AI, require disclosure of AI tools, and mandate the use of a human in making employment decisions (the [Stop Spying Bosses Act](#) and the [No Robot Bosses Act](#)).

Other countries are enacting laws to provide protections and guardrails around the use of AI to protect personal identity and privacy. It is informative to note what is happening in the European Union (EU). EU citizens have rights described in the General Data Protection Regulation (GDRP) and proposed new legislation called the EU AI Act.

Despite limited legislative action that is specific to the use of AI by employers, it is important to understand how existing laws are being applied to cases involving AI technology.

Discrimination
- As previously described, AI technology can generate biased results that have an illegal discriminatory disparate impact. For example, an ATS (applicant tracking system) may be programmed with biased data technology that screens out members of a protected class (women, people aged 40+, people with disabilities, veterans, people of different races and religions, etc.). This would violate Title VII of the Civil Rights Act and be subject to investigation by the EEOC and state agencies that prohibit discrimination.

  Takeaway: Monitor AI tools used in recruiting, hiring, succession planning, performance management, etc., for evidence of bias. Conducting a bias audit is an effective strategy to identify problems that require fixing.

- AI technology used to monitor employee performance may create risks of violating the Americans with Disabilities Act (ADA) if an employee is unable to obtain a reasonable accommodation or an employer did not identify the need to offer such to an employee.

  Takeaway: Evaluate AI tools to understand how they monitor employees and consider how this may impact those with disabilities. Do not solely rely on AI technology to evaluate employee performance.

Confidentiality and privacy
- Employees who use AI technology to enroll in benefits and benefits counseling may have their data exposed and used in an illegal manner.

  Takeaway: Avoid using AI technology in any way that violates current or former employees' medical privacy rights; investigate tools and verify they are not exposing employee data to misuse.

National Labor Relations Act (NLRA)
- Employers can use AI tools to track and monitor employees on the job for legitimate performance management reasons, security, and safety.
- Surveillance technology using AI programming may be considered to violate the rights of employees to engage in protected concerted activity if it imposes an undue suppressing impact or fears of retaliation by management.

  Takeaway: Avoid using AI tools in a way that violates employee rights to engage in protected concerted activity as defined under the NLRA and any other similar state laws. Employers should consider whether an employee could feel workplace AI limits their right to protected concerted activities with their coworkers, whether they belong to a union or not.

Copyright/confidentiality/intellectual property protection
- Employers may purchase AI technology tools or subscribe to services using AI. The terms and conditions of the agreement will define ownership rights of content created using those tools.
- When staff use free generative AI tools to complete business activities, employers must be aware of the risks this poses; the ownership of content created when using AI technology tools is not always clear. Confidential and proprietary information may be exposed and accessed online by others.

  Takeaway: Seek legal advice to determine the ownership of content when AI tools are used for work purposes. Draft policies on the appropriate use of AI technology in the workplace and train staff on the use of all AI tools to protect confidentiality and intellectual property.

Emerging and unknown legal risks
- Laws are lagging AI tech developments and the resulting uses by employees and employers. There is a lack of clear guidance for courts to rule on cases that come before them.

  Takeaway: Maintain awareness of emerging local/state and federal laws, case law, and regulations issued by federal agencies; seek legal guidance for novel situations to evaluate and mitigate risks.

Action Steps

Draft an AI strategic plan.

HR leaders can collaborate with other leaders in the workplace to identify a strategy for effectively using AI in the workplace, to mitigate risks, and to leverage this emerging technology to achieve business results.

- Engage internal stakeholders to include a diverse array of perspectives, including:
  - Leadership
  - Legal counsel
  - Finance officer
  - IT manager
  - Risk manager
  - Cybersecurity expert
- Involve community stakeholders to provide perspectives on the use of AI.
  - Bias embedded in AI recruiting and application screening platforms has been a major concern among many communities that have evidence of harm done to their constituents by biased algorithms.
  - Engaging with diverse communities to review the use of AI can build trust for relationship building and encourage partnerships to achieve desired objectives in recruiting, hiring, and other business objectives.
- Components of an AI strategy:
  - Determine approved uses of AI and define processes to evaluate new uses of AI.
  - Identify potential linkages between AI tools in various departments that may create more value and avoid information silos.
  - Define desired AI skills of the workforce.
  - Specific goals for the use of AI technology to improve may include the following: revenue/profitability, ROI metrics, productivity, customer satisfaction, etc.
  - Identify when a human is in the loop (HITL): To mitigate the potential worst risks of AI, always include a human in a process that uses AI so important decisions are reviewed by a trained and effective staff person and not fully automated.
  - Notify customers and end users when AI is used to gather and provide information.
  - Include AI bias audits for any uses of AI that may have a disparate impact on applicants or employees.

Review existing policies and practices that may be impacted by AI and draft policies that govern the use of AI in the workplace.

- Address employee use of AI tools that are and are not provided by the employer.
- Current and newly hired employees may already be using AI tools to do their work; provide training on new expectations.
- Evaluate the use of AI already in place
  - Survey employees to identify how employees are already using AI tools to determine any areas of concern.
  - Conduct AI bias audits for any uses of AI that may have a disparate impact on applicants or employees.
- Evaluate the use of AI in HR processes

- o Employers are fully responsible for the outcomes of the tools they use in the workplace. If an AI product is biased against protected groups, the employer is held responsible by the EEOC or state agency in the case of a claim of discrimination.
  - o Review all vendors and products used in HR processes to assess the use of AI and identify any areas that may require deeper review. Pay close attention to tools that are used for screening applicants, evaluating eligibility for hire, and any post-hire actions that may involve monitoring, assessment, and measurement of employees in the workplace.
  - o Identify areas for HR operational improvement where new AI tools are useful to boost efficiency, productivity, and improved performance to achieve organizational objectives.
- • Educate
  - o Self: Continually expand understanding of AI technology, concepts, and definitions of bias and legal concepts. For example, this may include enhanced understanding of statistics, legal definitions, and sociological dimensions of bias. Expanding skill sets will enable HR professionals to leverage AI advances, identify potential problematic uses of AI, and provide informed consultation to organizational leaders.
    - ▪ Tip: See "Member Resources" and "External Resources" at the end of this guide.
  - o Staff: Develop and provide training to employees on policy and appropriate uses of AI tools. Offer additional resources and opportunities to learn and apply AI to improve workplace operations.
    - ▪ Tip: AI tools offer new ways of doing work and can encourage innovation and creativity. Consider experimentation. Encourage teams to experiment in group meetings with AI tools to identify ways they may be used to improve individual, team, and organizational performance.
- • Awareness
  - o Stay aware of fast-moving/evolving developments in technology by reviewing trusted news sources, including professional organizations and networks.
  - o Surveil competitors to identify the adoption and deployment of new technology.
  - o Keep a close eye on evolving legal considerations, laws, and regulations.
    - ▪ Tip: Employers Council continually provides guidance in the News section of the members website, and members-only resources are updated as needed.

Resources

EMPLOYERS COUNCIL MEMBERSHIP

Sample employee handbook policy
 Use of Content-Generating AI Software

Whitepapers
 Applications and Resumes - Review
 Pre-employment Testing

Articles
 Organizations Are Unleashing the Power of AI in the Workplace
 New York City AI Bias Law May Pave Way for Others
 EEOC Releases New Technical Assistance Resource on AI Disparate Impact
 AI Tools: The Potential Benefits and Pitfalls for Employers
 If You Use AI in the Hiring Process, Be Careful Not to Violate the ADA
 Be Careful Where You Recruit
 EEOC Cautions Employers that Use of AI May Discriminate Against Disabled Workers
 Steps to Choosing an HR Software Solution
 CCH Daily News frequently includes useful articles on AI in the workplace, including surveys and legal updates. To access, log into Member Central.

Members-Only Community
 Engage with other Employers Council members to discuss questions and ideas on the use of AI. To access, log into Member Central, look for Community, and click on Open Forum.

EXTERNAL SOURCES OF INFORMATION

U.S. Government Agencies
 EEOC
 Artificial Intelligence and Algorithmic Fairness Initiative
 Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964
 The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees.
 Navigating Employment Discrimination In AI and Automated Systems: A New Civil Rights Frontier: provides written testimony offering perspectives from a variety of leaders in business, education, government, nonprofit, science, community, and legal experts; access the meeting transcript here .

 National Institute of Science and Technology (NIST)
 Artificial Intelligence Risk Management Framework (AI RMF 1.0): offers useful infographics and models to assess and manage AI risks.

Towards a Standard for Identifying and Managing Bias in Artificial Intelligence: provides a deep dive into bias (human, systemic, computational) and how that relates to AI; useful infographics provided.

Trustworthy & Responsible AI Resource Center: a source of information for ongoing AI development.

U.S. Department of Education
Artificial Intelligence and the Future of Teaching and Learning: presents useful information about the use of AI in teaching modalities and human learning.

U.S. General Accounting Office
ARTIFICIAL INTELLIGENCE: Key Practices to Help Ensure Accountability in Federal Use: provides useful discussion of engaging stakeholders in discussions about the use of AI.

Colorado Civil Rights Division
List of protected classes in Colorado is broader than in other states.

Other sources of information

European Union AI Act
Employers with employees who are citizens of the EU should review and stay aware of future developments; the EU AI Act may offer a glimpse of rights that future U.S. federal legislation may address.

Massachusetts Institute of Technology
Computer Science & AI Laboratory (MIT-CSAIL): offers news and research reports on AI development.

Sloan School of Business Management: Ideas That Matter offers articles on AI, data, business practices, and more

MagicSchool.ai
Free AI resources for teachers to assist with lesson planning and more.

Kahn Academy
Free online lessons to learn more about AI.

Cornell University – ILR School
Tip Sheets - brief comments on current topics, including AI.
Pre-quitting Behaviors Identified

Select Software Reviews
Free service to help employers identify and compare HR tech.