

News & Insights

Hilary Wise for the Journal Record - AI Is Screening Your Applicants. Is Your Business Protected?

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Artificial intelligence has become a fixture in modern recruitment, and it is easy to see why. AI resume screening tools can evaluate thousands of applications and identify top candidates in the time it takes a human reviewer to read only a few. That efficiency saves organizations time and money.

Despite these benefits, AI technology is proliferating faster than the laws designed to govern it, creating a compliance gap that exposes employers to legal liability. Lawsuits are emerging based on claims AI tools discriminate against applicants on the basis of protected characteristics such as race, age, and disability. For example, the plaintiffs in pending class action *Mobley v. Workday, Inc.* allege, in part, that a leading AI screening tool has been eliminating qualified applicants based on their age. The court rejected Workday's argument that the Age Discrimination in Employment Act (ADEA) only permits disparate impact discrimination claims by employees, and not by applicants. The case is ongoing and demonstrates how courts may evaluate AI screening tools and employer liability moving forward.

The EEOC and the DOL have withdrawn previous guidance on AI and workplace discrimination. Employers, however, should not take this as a sign to become complacent. Employees and applicants may still bring lawsuits alleging AI discrimination.

Here are some measures you can take now to mitigate risk while the legal landscape continues to develop:

1. Audit your technology for bias. You should test any AI tools before deploying them and regularly thereafter, to ensure they are not discriminating against groups of applicants.
2. Be discerning when selecting AI vendors. Ask directly what efforts they take to prevent bias. Carefully scrutinize warranty, disclaimer, and indemnity provisions in vendor agreements.

3. Maintain human oversight. AI tools can help screen applicants, but you should not rely on them alone. Establish a policy requiring human review of AI-generated screening results before advancing or rejecting any applicants. This will lower legal risk and prevent missing out on qualified candidates.
4. Consider providing notice to applicants. Some states require employers to disclose to applicants the use of AI screening tools, although Oklahoma does not yet.
5. Document everything. Retain records of criteria used in screening applicants, the results, and all subsequent human review. If an applicant files an EEOC Charge of Discrimination, this documentation will be instrumental in your defense.
6. Finally, stay informed. Monitor for legal and regulatory developments, and update policies and procedures promptly when needed to ensure compliance.

By following these simple guidelines, your company can enjoy the benefits of AI technology while mitigating the risks that come with it. Where the law is silent, proactive employers will always be better protected than reactive employers.

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