American Staffing Association

ARTIFICAL INTELLIGENCE IN STAFFING
How to Maximize Benefits and Minimize Risk

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Fisher Phillips

AI is already saving staffing firms time and money so they can focus on growing their businesses.

This new technology can help source candidates, write job descriptions, reduce bias, streamline interviewing, improve onboarding, drive sales, and so much more. But, AI also introduces legal and regulatory challenges that must be addressed. In the following sections, you'll find detailed insights and actionable steps on how to maximize the benefits of AI while minimizing the risks within the staffing industry.

WHAT'S INSIDE

- 4 ways staffing firms are using AI right now
- Risks and benefits of AI for interviewing
- Legal risks of AI and what to do about them
- AI legislative and regulatory outlook

STAFFING FIRM USE OF AI TECHNOLOGY
(IT'S MORE THAN YOU THINK!)

The use of artificial intelligence (AI) has exploded in recent years. For industries like staffing, that have heavy volume on the recruitment and hiring side of the employment process, AI can bring powerful efficiencies and save staffing firms both time and money. However, this is really only the tip of the iceberg. Many staffing firms are using AI (or thinking about doing so) in a variety of ways, including the following:

HIRING

AI technology can be a powerful tool and save staffing firms a lot of time and effort during the hiring and onboarding process. For example, consider the following:

Recruiters spend a substantial amount of time searching for candidates and culling through hundreds of resumes. By leveraging AI, recruiters and staffing firms alike can quickly source the best candidates without wasting time performing repetitive, administrative tasks such as reviewing resumes or setting up candidate meetings.

It takes time to write job descriptions that get the attention of candidates and while also adhering to the patchwork of salary disclosures and other requirements. Generative AI products can assist with the development of engaging job descriptions – at least solid first drafts – that will give you a head start to focus on legal compliance.

AI-fueled "smart" chatbots can answer questions about the job or application process and provide candidates with immediate help at any time.

When used correctly, generative AI can also reduce instances of bias. For example, assisting in identifying the sorts of masculine-leaning terms in a job description that may dissuade women from applying (e.g., "driven," "objective," "determined," etc.). These objective mechanisms will enable staffing agencies to increase diversity hiring goals.

AI can also use predictive analytics to analyze candidate data, resumes, social media, online behavior, and other data sources to predict which candidates are most likely to be successful in the role.

The technology can also broaden the talent pool by identifying potential candidates who may not have applied to the job or who didn't use the "right" keywords in their resumes but have the requisite skills and qualifications – and even make first contact with hidden gems.

Beyond helping your staffing firm find candidates, AI can also assist in evaluating your recruiting methods and tracking the efficiency of your recruiting method at each stage of the process. You can think of this aspect as an analytical tool to help you evaluate your process, rather than a direct application of AI technology to help you find placement.

AI IN INTERVIEWING
While really part of the overall hiring process, the rapid explosion in products and tools designed to help staffing firms in the interview process warrants some specific discussion on its own.

Some tools use AI chatbots to conduct initial interactions (including scheduling) with candidates to free up time for interviews with an actual person, while other tools do much of the heavy lifting of actually interviewing candidates by leading them through a set of guided questions. After the interview is conducted, AI tools can also assist with video interview analysis and sentiment analysis to help you narrow the pool of interviewees to those who best meet your staffing firm's needs.

The use of AI in interviewing has some benefits and risk about which to be aware (more on that in the next chapter!).

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TRAINING AND ONBOARDING

Staffing firms are increasingly relying on AI to assist with employee training and other aspects of the onboarding process. Due to the heavy remote nature of staffing firm relationships with their new hires, many firms have already long relied on online training programs. AI takes that approach to a whole new level. AI training can be easily customized for a particular jurisdiction and even can be customized for particular languages and other cultural traits. Whereas online training would take hours or days to customize with a real-life trainer making each change or tweak, AI training can be changed (to reflect new developments) or customized in a manner of minutes.

PERFORMANCE MANAGEMENT

An often overlooked use of AI involves tools that can assist with performance management. AI tools can help you solicit and analyze client evaluations about placements, saving your time and giving you consistent and objective feedback about placements. This can result in better pay-for-performance metrics and improve employee morale and quality of life by making them feel confident that evaluations are consistent and standard across the board, and not arbitrary or subjective.

SALES

In a sales-driven industry like staffing, AI some potential great benefits as well. AI tools can help your sales staff generate leads and identify clients/targets. AI can also help you spot trends in client placement needs so that you can respond rapidly to satisfy changing customer needs. Moreover, at an administrative level AI can help you evaluate your sales process to ensure consistency and quality of your sales staff and client pitches. For example, there are a number of AI tools aimed at sales performance that can monitor pitches and remind you sales staff to hit key points during calls with potential clients.

CONCLUSION

Some staffing firms are well down the path of utilizing AI technology to streamline their processes and save both time and money, while others are just beginning to dip their toes into the AI water. The key takeaway is that AI can potentially assist staffing firms in many ways beyond the obviously efficiencies in the hiring process (such as resume screening and the like). Moreover, the universe of AI tools that can assist employers (including staffing firms) is rapidly growing and there are new tools and uses almost on a daily basis. AI will be fully integrated into HR processes in the future, and staffing firms that are late to the game may be at a competitive disadvantage compared to the competition.

AI IN STAFFING

RISKS AND BENEFITS OF USING AI IN THE INTERVIEW PROCESS

As noted in the previous chapter, there has been a marked increase in the availability and use of AI tools that can potentially assist staffing firms in the interview process.
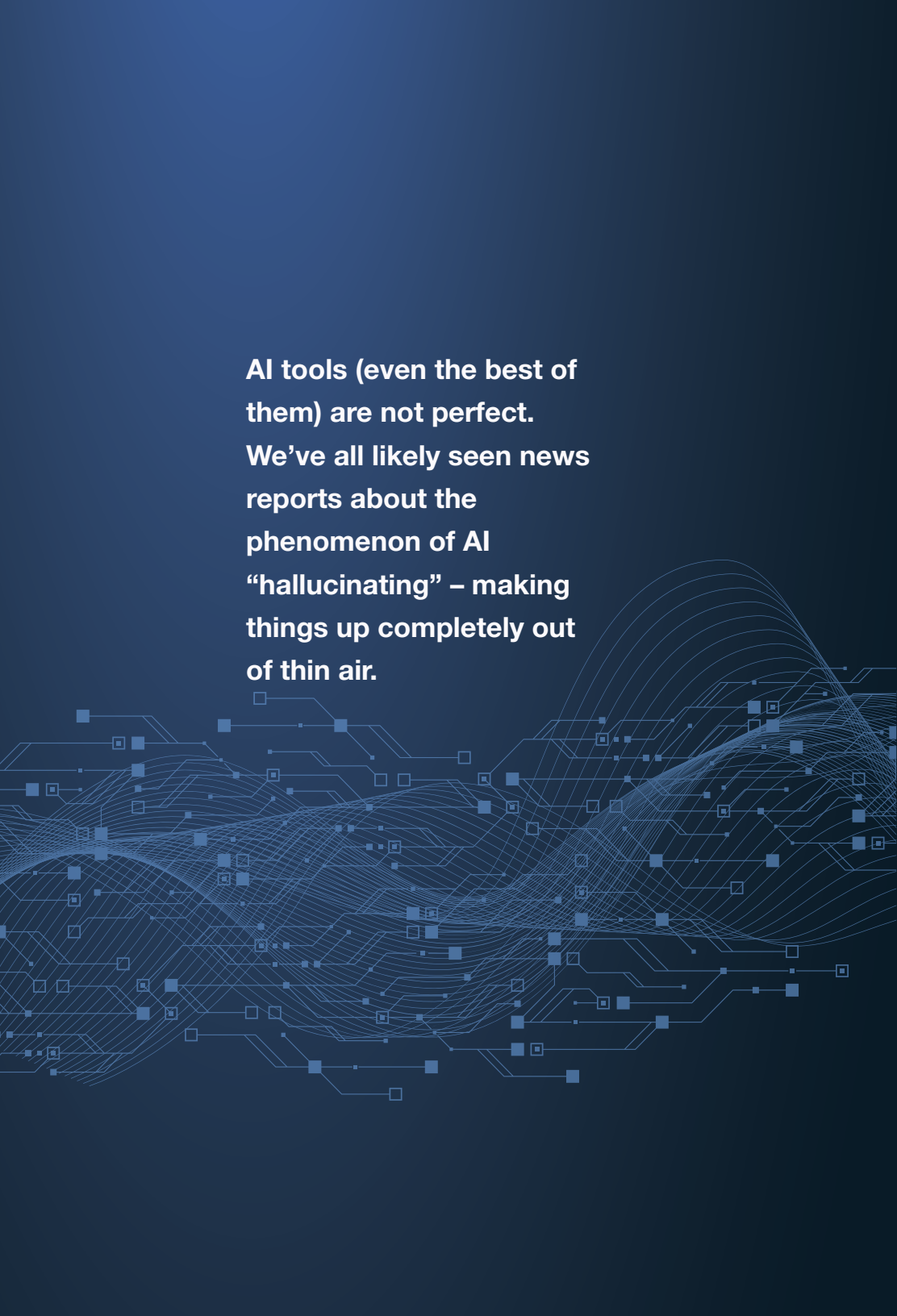
Some tools use AI-powered facial scanning during remote interviews to evaluate the applicant by analyzing speech patterns, facial expressions, and eye movements in order to determine whether the candidate would be a good fit for the position. One of the goals in using these tools is to avoid the subjective influences that can impact a hiring decision, including pre-existing biases and prejudices.

Like any other tool or technology, there are risks and benefits to consider. Before implementing the use of AI technology in the hiring process, staffing firms should consider these pros and cons, including the following.

BENEFITS

Scale – AI interview tools can help staffing firms respond to unforeseen upticks in client demand more quickly than possible with in-person interviews. Suppose a client indicates that they have a new contract and will need an additional 500 contract workers in the next month to keep up with demand. Whereas it could take weeks or months for you to interview potential placements in person, AI can help you scale up and complete this process much more quickly. AI tools also allow candidates to be interviewed at a time that is convenient for them (literally any hour of the day or night) rather than be limited to an interviewer's availability.

Consistency – One common criticism of in-person interviewing is that each interviewer is different. Some ask completely different questions. Some are good at asking follow-up questions and getting clarifications, while other interviewers are more passive. One key benefit of AI interview tools is that staffing firms can ensure that candidates are being asked the same questions and being evaluated based on consistent criteria.

AI tools (even the best of them) are not perfect. We've all likely seen news reports about the phenomenon of AI "hallucinating" – making things up completely out of thin air.

Predictive Analytics – As mentioned above, AI tools can help with a number of predictive analytics to help staffing firms find the right candidates. Some of these tools help evaluate interviewee answers and can even measure for things like authenticity and genuineness. Other tools can analyze speech patterns, facial expressions, and eye movements to determine whether the candidate would be a good fit for the position. These may be subtle analytics that are beyond the scope of an actual interviewer.

Real-Time Feedback – Let's face it. The interview process can be time-consuming as you wait for interviewers or recruiters to meet with candidates, evaluate them, and summarize their findings for you. In contrast, AI can provide you with virtually immediate results and analysis following a candidate interview. This can markedly speed-up your process and help you rapidly respond to client demands for placements, as noted above.

Bias Mitigation – In theory, AI interview tools can help prevent against bias and discrimination in the interview process by avoiding the subjective influences that can impact hiring, included pre-existing biases and prejudices of interviewers. However, as noted below, AI can be a double-edged sword when it comes to issues like bias, so there are some bias risks to look out for as well.

RISKS

Data Privacy and Security – It is likely that an interview with a potential candidate may include confidential or private information (either about the staffing firm itself or the personal information regarding the candidate). Like any other technology, staffing firms will want to ensure that they are protecting such private information, preventing disclosure, and otherwise complying with any applicable privacy law requirements about information disclosed or retained during the interview process.

Unreliable Algorithms and Lack of Human Judgment – AI tools (even the best of them) are not perfect. We've all likely seen news reports about the phenomenon of AI "hallucinating" – making things up completely out of thin air. For AI-assisted interview tools, there is a risk from over-reliance. Anny time an employer utilizes AI-based technology to assist in its decision-making, the employer must understand that they must be the final decision-maker – not the AI-powered tool. While these tools and related analytics are powerful and can assist with accurate, bias-free assessments, these tools cannot replace independent judgment or common sense.

Bias/Fairness – As mentioned above, the goal of the use of AI in the interview process is to ensure subjectivity and weed out inherent bias and potential discrimination by humans. However, staffing firms need to be cautious here. There is significant concern (and even the beginning of significant litigation) over allegations that various AI tools may actually contribute to bias and discrimination (especially over time as AI tools may develop "machine bias."

These concerns and recent litigation illustrate the risks that AI systems can inadvertently be biased, either because of bias in the data itself or in how the algorithm processes the data. It may result in an unintended elimination from consideration of certain candidates with disabilities, foreign-born candidates, and in other discriminatory ways.

To avoid such risk, it is essential to ensure that the use of AI is supplemental to the human aspect of hiring. It is key that you retain a healthy dose of human judgment in workplace decision-making (included interviews). If not audited and tested regularly, AI can potentially introduce bias and create discrimination claims for staffing firms. For this reason, you should regularly conduct bias audits to help root out any unintentional discrimination in the workplace or hiring process.

Ethical Concerns – Some have expressed concern about the ethical use of AI to replace functions that have traditionally been performed by a human (such as interviewing a candidate for employment). While some surveys indicate that employees appreciate the flexibility and ease that AI interviews provide, it is possible that some candidates may have a different perspective and be "turned off" by an impersonal interview by an AI chatbot or other tool. Staffing firms should monitor the pulse of candidate feedback regarding AI interview tools and make sure they are not missing out on potential good candidates that may simply not want to participate in an AI interview.

Costs – AI interview tools can be costly, a factor that must be taken into account by staffing firms in evaluating whether to incorporate them into their interview processes. However, as more tools become available over time, these costs may come down. In addition, staffing firms should evaluate the costs of AI interview systems compared to the costs of retaining HR staff or recruiters to conduct in-person interviews.

CONCLUSION

Like any other use of AI technology, there are potential benefits and risks that staffing firms must consider before deploying new tools. There are some tremendous potential benefits from the use of AI in the interview process that can save both time and money. But there are also some potential downsides that should be considered, ideally in consultation with good legal counsel. This is definitely one area where it is prudent to look before you leap.

AI IN STAFFING

LEGAL RISKS OF THE USE OF AI

Now that we've taken a look at some of the practical potential uses and pros/cons for staffing firms integrating AI into their operations, let's consider some of the legal risk associated with the use of AI.

BIAS AND DISCRIMINATION

Federal and state enforcement agencies and legislatures have increasingly focused on AI as a potential source of employment discrimination claims under existing law.

This generally arises as a potential "disparate impact" claim – one in which it is alleged that the facially neutral use of an AI tool has had a disparate impact on a protected class. Remember that in these types of claim the focus is on the effect of employment actions, not the motive. These are evidence-based and statistical claims; therefore, the use of AI algorithms in employment decisions fits these types of potential claims perfectly.

The use of AI to assist with employment-related tasks is under a microscope thanks to some high-profile missteps.

As early as 2022, the Equal Employment Opportunity Commission (EEOC) ramped up its enforcement of federal anti-discrimination laws by targeting staffing firms for alleged workplace bias, filing no fewer than 10 lawsuits against staffing agencies alleging hiring discrimination in FY2022. This followed the agency's warning about using AI technology to make staffing decisions that unintentionally led to discriminatory practices.

The EEOC stepped up its efforts in 2023, launching a broad initiative to ensure AI workplace tools comply with anti-discrimination laws and releasing technical assistance warning those employers that deploy AI that it will apply long-standing legal principles to the evolving environment in an effort to find possible Title VII violations.

Due to the open-source nature of these tools, there arise some pretty obvious data security and privacy concerns. For example, what if one of your employees loads your entire confidential client list into an AI tool in order to perform an analysis or develop a customer pitch for future clients?

In August 2023, the EEOC settled its first AI discrimination-related lawsuit where an AI-powered hiring selection tool automatically rejected women applicants over 55 and men over 60. While the Trump Administration has removed certain EEOC guidance related to AI, it is expected that we will see a significant increase in legal actions from plaintiffs' attorneys because of AI in the workplace.

This lawsuit illustrates the risks that AI systems can inadvertently be biased, either because of bias in the data itself or in how the algorithm processes the data. It may result in an unintended elimination from consideration of certain candidates with disabilities, foreign-born candidates, and in other discriminatory ways. For example, chatbots can inadvertently receive information about a candidate's disability that could lead to discrimination claims.

To avoid such risk, it is essential to ensure that the use of AI is supplemental to the human aspect of hiring. It is key that you retain a healthy dose of human judgment in workplace decision-making. If not audited and tested regularly, AI can potentially introduce bias and create discrimination claims for employers. For this reason, you should regularly conduct bias audits to help root out any unintentional discrimination in the workplace or hiring process.

DATA SECURITY AND PRIVACY

The most common generative AI tools are based on machine learning, where the technology learns from data inputted into the tool without being expressly programmed. In other words, these are data-driven tools that grow over time based on the data that users upload into the system.

Due to the open-source nature of these tools, there arise some pretty obvious data security and privacy concerns. For example, what if one of your employees loads your entire confidential client list into an AI tool in order to perform an analysis or develop a customer pitch for future clients? Or what if an HR employee uploads personal information about employees into an AI tool in order to assist with the drafting of a performance evaluation. Similar concerns exist with respect to other data or information that may constitute trade secrets or be protected by attorney-client privilege.

Therefore, staffing firms should work with any vendors to determine what protections and safeguards are in place to mitigate these risks. Many businesses are working with AI vendors to establish guardrails and "closed" systems which

are do not share data that is uploaded into the AI tool. Staffing firms should also be aware that even if you develop internal AI systems with these safeguards, employees may still try to utilize outside public generative AI tools for work-related purposes. Therefore, you should look to establish clear policies about the use of outside AI tools and mechanisms to ensure that such policies are complied with and enforced.

INTELLECTUAL PROPERTY AND OWNERSHIP

The use of AI tools raises potential serious issues regarding intellectual property, ownership and copyright infringement. There is significant current litigation against several GenAI providers based on allegations that information or images utilized or created by the tools are (or are based on) the intellectual property of others.

These issues could filter down to a staffing firm's use of AI as well. For example, what if one of your marketing employees asks GenAI to develop some content for your firm's website and the tool comes back with language that is taken directly from a competitor (and copyrighted by them?) Or one of your employees uses AI to assist in a rebranding of your firm's logo, but the logo it provides is based on the copyrighted logo of another company?

Staffing firms should be cautious about these issues and work with AI vendors and legal counsel to ensure that AI tools are not being used in a manner that could subject the firm to liability for these types of intellectual property claims.

LEGISLATIVE/REGULATORY COMPLIANCE

AI is a growing area for regulation at the federal, state and local levels. As discussed above, existing theories of law related to employment discrimination already potentially apply to the use of AI in employment. However, regulators at the federal, state and local level are proposing new regulation specific to AI.

For staffing firms that operate in multiple jurisdictions, compliance with such regulation will be tricky and we are seeing a patchwork of different law passed at the state (and local) levels around the country in the absence of comprehensive federal regulation of AI.

IN THE NEXT CHAPTER, WE'LL TAKE A LOOK AT THE CURRENT REGULATORY LANDSCAPE AND THE REGULATORY OUTLOOK FOR THIS YEAR AND BEYOND.

AI IN STAFFING

AI LEGISLATIVE AND REGULATORY OUTLOOK FOR 2024 AND BEYOND

STATE AND LOCAL REGULATION

In the absence of comprehensive federal regulation of AI, state and local jurisdictions are moving forward in enacting legislation of their own. Current enacted legislation includes the following:

California – is currently considering several legislative proposals that will apply to employment-related uses of AI. In addition to legislative proposals, two regulatory agencies – the California Civil Rights Department (CRD) and the California Privacy Protection Agency (CPPA) have recently passed significant regulatory requirements related to the use of AI and ADMT.

New York City Local Law 144 – this local ordinance, which began to be enforced on July 5, 2023, requires specified users of AI to conduct bias audits (with specific data requirements), publish the results of those findings, and provide notice to employees and candidates regarding the use of AI. It specifically applies to Automated Employment Decision Tools and requires an independent bias audit, annual audits, public reporting, and candidate notification if your organization meets specified requirements.

Illinois AI Interview Act – requires employers who record video interviews to be analyzed with AI to, before the interview, (1) notify each applicant in writing that AI may be used to analyze their facial expressions and consider the applicant's fitness for the position, and (2) provide an information sheet explaining how AI works and what general characteristics it uses to evaluate candidates.

Illinois HB 3773 – requires employers to provide notice to applicants and employees that the employer is using AI for various employment decisions, prohibits the use of zip codes, and contains an explicit statement that employers may not use AI in a way that subjects employees to discrimination.

In August 2023, the EEOC settled its first AI discrimination-related lawsuit where an AI-powered hiring selection tool automatically rejected women applicants over 55 and men over 60.

Colorado SB 205 – this legislation (which fully takes effect on Jan. 1, 2026) is a landmark AI bill that prohibits employers from using AI to discriminate against their employees and also imposes broad rules on developers of high-risk AI systems and the businesses that use them. Among other things, this requires employers to implement a risk management policy and program, complete impact assessments that test for bias, and notify employees and applicants when a high-risk AI system will be used to make a consequential decision.

Connecticut SB 1295 – is effective July 1, 2026 and covered by the Privacy & Automated Decision-Systems Protections law which states there is a mandatory notification to consumers when their sensitive personal data is being used to train LLM.

Maryland HB 1202 - went into effect in October 2020 and prohibits employers from using facial recognition technology during pre-employment job interviews without the applicant's consent.

Texas HB 149 – Texas Responsible Artificial Intelligence Governance Act will go into effect Jan. 1, 2026, and applies mostly to government entities but does have limited obligations to private employers. It prohibits the use of AI with the intent to unlawfully discriminate against a protected class.

More states and local jurisdictions are likely to follow suit. In recent years, more than 200 state proposals regulating AI have been introduced in state legislatures.

FEDERAL EEOC GUIDANCE AND ACTIVITY

As early as 2022, the Equal Employment Opportunity Commission (EEOC) ramped up its enforcement of federal antidiscrimination laws by targeting staffing firms for alleged workplace bias, filing no fewer than 10 lawsuits against staffing agencies alleging hiring discrimination in FY2022. This followed the agency's warning about using AI technology to make staffing decisions that unintentionally led to discriminatory practices.

The EEOC stepped up its efforts in 2023, launching a broad initiative to ensure AI workplace tools comply with antidiscrimination laws and releasing technical assistance warning those employers that deploy AI that it will apply long-standing legal principles to the evolving environment in an effort to find possible Title VII violations.

In August 2023, the EEOC settled its first AI discrimination-related lawsuit where an AI-powered hiring selection tool automatically rejected women applicants over 55 and men over 60. It is expected that this will not be an outlier but that we can expect a significant increase in legal actions from the EEOC and plaintiffs' attorneys alike because of AI in the workplace.

When President Trump took office in January 2025, he rescinded a prior executive order issued by the Biden administration and issued a new executive order of his own. In addition, the EEOC under President Trump has removed from its website several prior guidance documents related to the use of AI – signaling that the EEOC is likely to deprioritize enforcement actions in this space. President Trump also issued an executive order directing federal agencies to not utilize "disparate treatment" theories of liability, which may impact the EEOC's ability to take enforcement actions in this space. However, existing underlying federal and state employment discrimination laws continue to present a liability risk (including from private plaintiffs), even if the EEOC and other federal agencies move away from enforcement under the current administration.

Moreover, in July 2025, the Trump administration issued America's AI Action Plan. The focus of the plan is to enable innovation and adoption, export AI, promote a rapid build-out of data centers, and uphold free speech in frontier models to ensure systems are free from "top-down ideological bias." The plan also contains elements designed to withhold federal funding from states that enact aggressive AI regulation. In addition, the 2025 debate over President Trump's One Big Beautiful Bill Act saw an (ultimately unsuccessful) effort to enact a moratorium on state AI regulation.

While the debate over federal preemption of AI regulation is likely to continue, it is unlikely that states will shy away from attempts to regulate in this space. It is therefore likely that the patchwork of state regulation will continue.

OUTLOOK FOR 2025 AND BEYOND

With the change in focus of the current administration and strong signaling of efforts to "deregulate" AI, it seems unlikely that there will be comprehensive federal regulation in this space. In the absence of federal action, legislative and regulatory effort will likely continue to shift to states (as we saw with consumer data privacy and a patchwork of state legislation making national compliance a challenge). As discussed above, states and local jurisdictions have already entered the fray. Keep an eye on California to see if it enacts AI legislation later in 2025. Beyond 2025, you can expect other states to follow suit in enacting AI-specific legislation.

AI IN STAFFING

LOOKING FOR MORE RESOURCES TO HELP?

Tap into a wealth of resources, connections, and advocacy that can help you increase sales, make better business decisions, and grow your firm. Join the American Staffing Association today. We work tirelessly at the national and local levels to advance the industry and protect your ability to do business.

CONNECT WITH ROB

Schedule a call with Rob Lebair, assistant director of business development, who can tell you more about the full range of ASA member benefits, and sector-specific resources for your firm.

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