

## HYBRID WORK AND ARTIFICIAL INTELLIGENCE: CURRENT STATE AND FUTURE STATE FOR EMPLOYERS

Presented by:

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# The Current and Future State of Remote Work



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## STATE OF THE CURRENT STATE (POST COVID-19):

1. Generally, remote employees are more productive
2. Generally, remote workers have better work-life balance
3. Vast majority of current remote work job postings are for experienced personnel, not entry level
4. Some professions are better suited for remote work, *i.e.*, skilled and outcome-oriented work
5. There can be challenges for organizations, *i.e.*, how do lower skilled and new employees receive monitoring, mentoring and experience?
6. There is no single, one-size-fits-all solution

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## NEGATIVES:

### • Remote Work:

- Less collaboration
- Accountability issues
- Distractions at the remote worksite
- Inconsistent hours with main office or peers
- Wellness issues (lack of motivation or failure to end the day)
- Poor morale

### • In-Office Work:

- Lost work time while commuting
- Less flexibility for personal and family matters
- Loss of workers with skill and ability to another employer
- Management viewed as out of touch with workers' needs
- Poor morale of those who remain on-site

## POSITIVES:

### • Remote Work:

- Flexibility
- Greater job satisfaction
- Ability to balance work and life
- Loyalty for the flexibility (pay is not always the determining factor)

### • In-Office Work:

- Better collaboration, particularly with respect to mentoring (but it takes two)
- More accountability? Maybe, or maybe not
- Easier to have the tough conversations
- Opportunity to check in on peers and subordinates

## **FUTURE STATE:**

1. Studies show that when companies modify or end their remote/hybrid work models, recruiters step up activities to solicit workers away
2. Hybrid and remote work is not going away, but it should be managed in a smart way and respond to changing needs
3. Don't get trapped in the name game - It is "Return to Office," not "Return to Work"
4. How will AI impact remote/hybrid work?
5. Cannot fix it and forget it; need to review at least annually (with deliberate intent to assess, modify and discontinue if/where necessary)

## **HR ISSUES WITH REMOTE WORK**

1. Monitoring compliance with work rules/policies
2. Addressing workplace rule/policy violations
3. Monitoring work production and performance
4. Maintaining a safe remote work environment
5. Confidentiality and security of work-related data
6. Employee engagement

## LEGAL ISSUES



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1. Wage and hour and overtime issues
2. Classification issues (exempt/nonexempt)
3. Breaks and lunch periods
4. Unknown health and leave needs/situations
5. Potential for discrimination claims (unequal treatment of employees)
6. Reasonable accommodation requests

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## REMOTE / HYBRID AGREEMENT

- Eligibility
- Performance and productivity
- Availability
- Security
- Interruptions and/or disruptions
- Remote site access/visits
- Condition of remote worksite
- Dependent Care
- Incidental costs
- Workers' compensation
- Suspension/termination of remote work

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## RECOMMENDATIONS:



- Strike a balance that works best for all stakeholders
- Review all HR policies and procedures and update as needed, including for legal compliance (at least annually)
- Identify monitoring software and other technology and/or equipment and notify employees of its use
- Train supervisors and managers on hybrid leadership
- Revisit performance goals and measurements
- Communicate expectations in advance and then measure performance consistently
- Get feedback from employees on what is working and what is not working, and refine policies and practices as needed

## ADDITIONAL CONSIDERATIONS:

### Can you have different policies for different employees?

- Consider an employee's "essential job functions" at all times
- Need to be consistent across classifications
- Need to consider EEO, ADA and FMLA matters in your decisions

### What laws apply?

- Where the employer sits
- Where the employee sits/works
- Multi-jurisdictional laws, i.e., job postings (salaries for example) can apply to all employees and offices, if remote workers make the employer "subject" to the law
- Be careful not to switch to independent contractors as an alternative



# Artificial Intelligence in Employment and Human Resources

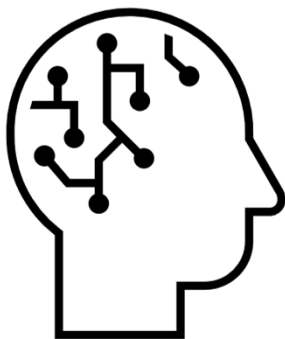


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## WHAT IS ARTIFICIAL INTELLIGENCE?



**Artificial Intelligence (AI)** is “technology that enables computers and machines to simulate human learning, comprehension, problem solving, decision making, creativity and autonomy.” – IBM

- **Machine learning** – implementation of “learning algorithms”
- **Deep learning** – uses artificial neural networks to simulate learning processes inspired by the human brain.
- **Large language models** – deep learning models trained on immense amounts of data which allows them to perform a wide range of tasks. (AKA Generative AI)
  - ChatGPT, Claude, Google Gemini, etc.

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## AI IN HUMAN RESOURCES - HIRING

AI is being used as part of the hiring process to analyze candidates and fill job openings:

- Screening candidates
- Analyze video interviews or assessments
- Analyze background check information

*What are the risks?*

## HIRING - WHAT HAS CHANGED?

### 2016 Resume Whitening Study

***Whitened Resumes: Race and Self-Presentation in the Labor Market***, Sonia K. Kang, András Tilcsik (January 22, 2016)

- Non-AI – Companies are 2x more likely to call minority applicants for interview if they submit a “whitened” resume.

### 2024 AI Hiring Study

***Gender, Race, and Intersectional Bias in Resume Screening via Language Model Retrieval***, Kyra Wilson, Aylin Caliskan (2024)

- AI - White-associated names were selected 85% of the time for the next hiring step, while resumes with Black-associated names were only preferred 9% of the time.

## REGULATION OF AI IN EMPLOYMENT DECISION-MAKING

**Colorado, Colorado AI Act (SB 24-205)** (goes into effect June 30, 2026)

- Evaluation of high-risk AI tools (makes/ influences employment decisions)
- Requires transparency notices
- Reasonable care standard to combat discrimination

### **California, Final Regulations Regarding Automated Decision Systems**

- Regulations under Fair Employment and Housing Act (FEHA)
- Anti-discrimination measures
- Bias Testing
- Transparency Notice (must inform applicants & employees before using)

## REGULATION OF AI IN EMPLOYMENT DECISION-MAKING

**Illinois, Amendment to Illinois Human Rights Act (HB 3773)**

- Prohibit use of AI that has the effect of subjecting employees to discrimination
- Notify applicants and employees of use of AI in employment decisions

### **New Jersey, NJAC 13:16**

- Automated employment decision tools (AEDT)
- Evaluation for potential disparate impact

### **New York, Local Law 144 of 2021**

- AEDT tools must be audited within one year of use
- Info on bias audit is publicly available
- Notices must be provided to applicants/employees

## TAKEAWAYS FROM CURRENT AI REGULATIONS IN EMPLOYMENT DECISION-MAKING

- Understanding your AI tools
- AUDITS !!!!
- Transparency considerations
- Understanding liability and vendor relationships

## RISKS OF USING AI IN HUMAN RESOURCES

### ***EEOC v. iTutorgroup* (U.S.D.C. ND N.Y. May 5, 2022)**

- On March 29, 2020, the applicant applied using her own birthdate (over 55) and was rejected
- The following day, the applicant used a more recent birthdate and was offered an interview
- Claim under the Age Discrimination in Employment Act
- Employer paid \$365,000 to settle

## RISKS OF USING AI IN HUMAN RESOURCES

### ***Mobley v. Workday, Inc. (U.S.D.C. ND. Cal. February 21, 2023)***

- Class action allegations against Workday
- Representative Plaintiff is disabled, African American male who is over 40, and applied to 80-100 positions and alleges that Workday screened him out based on race and age
- Motion to dismiss denied, and Plaintiffs' allowed to proceed on an "agency" theory of liability, which will address a potential gap in enforcement of anti-discrimination law.

## RISKS OF USING AI IN HUMAN RESOURCES

### ***Kistler et al. v. Eightfold AI Inc. (Contra Costa Cnty., Cal. Jan 21, 2026)***

- Eightfold AI's hiring and screening platform collects extensive applicant data on a candidate from online
- Creates a likelihood of success score
- Plaintiffs claims that this process occurs without the disclosures, authorizations, or adverse action notices in violation of the Fair Credit in Reporting Act

## TAKEAWAYS FROM CURRENT AI HUMAN RESOURCES LITIGATION



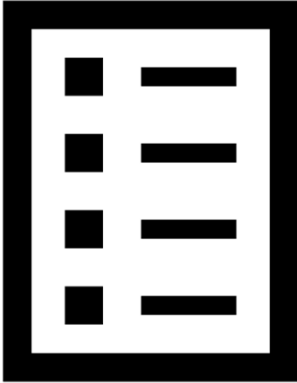
- Importance of understanding how AI works:
  - Training of the tool
  - Training of the user
  - How are candidates chosen, rejected or ranked?
- Perform bias audits of AI tools
- Maintain human oversight

## AI IN HUMAN RESOURCES – JOB PERFORMANCE AND COMPANY GOALS

AI is also being used to monitor performance and evaluate bottom-line goals:

- Perform Administrative Tasks
- Monitor productivity and performance metrics
- Evaluate customer interactions
- Generate schedules or workforce allocation
- Flag policy or compliance risks
- Predict retention or performance outcomes

## CONSIDERATIONS WHEN DEVELOPING INTERNAL AI USE POLICY



- What are the goals of the policy?
- What are the data privacy considerations?
- How will the policy be conveyed to employees?
- What type of human oversight will be in place?
- What are the ramifications for violating the policy?

## HYPOTHETICAL

*For efficiency purposes, your organization wants to adopt an AI notetaking application to be used in ALL meetings.*

*As an HR representative, what do you want to know?*

## AI VENDOR CONTRACT REVIEW CONSIDERATION

- Business Goals
- Privacy Considerations, and Attorney-Client Privilege
- Platform Updates/ Training
- System Audits
- Data Retention
- Assumption of Liability



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## Questions?



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