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The Double-Edged Sword of AI: How Employers Can Harness Big Data Responsibly

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Imagine this scenario: a hiring manager has been grappling with the challenge of finding a more effective way to screen candidates for open positions within their company. They've spent endless hours poring over resumes, striving to ensure both fairness and efficiency, yet the process remains laborious and time-consuming. Enter an AI-driven hiring platform that promises to revolutionize candidate selection. This sophisticated software uses advanced algorithms to analyze resumes, assess skills, and even conduct initial screenings – all tailored to the specific requirements of any job posting. Thrilled by the potential to save time and cut costs, the manager is captivated but also aware of the legal and ethical implications that come with integrating AI into hiring practices.

AI tools offer remarkable advantages. Recruiters can automate monotonous tasks, enhance job descriptions, source diverse candidates, efficiently screen resumes, and conduct preliminary interviews. AI also aids in running background checks and administering skills assessments, streamlining the hiring process, and adding a layer of objectivity. But the deployment of these powerful tools is not without its challenges. AI-driven systems can collect sensitive data on candidates, including linguistic and behavioral analysis, which, if improperly managed, may introduce biases. Without rigorous oversight, AI's data-centric nature can inadvertently perpetuate existing conscious or unconscious biases, potentially undermining efforts to create an inclusive work environment.

Baker Donelson's privacy and employment attorneys previously summarized the critical issues of using AI at work in their 2023 client alert (link available [here](#)). Reflecting on the developments in 2024, it is evident that AI-based employment assessment tools are facing heightened scrutiny. Here is a brief overview of notable laws, legislation, and lawsuits in the United States and globally:

- In May, the Equal Employment Opportunity Commission (EEOC) issued a technical assistance document focused on preventing discrimination against job seekers and workers when using AI under Title VII of the Civil Rights Act of 1964. The guidance underscores the need to avert adverse impacts on protected groups, drawing attention to recent cases such as the EEOC's settlement with iTutorGroup, where discriminatory practices were found in its AI system. This settlement highlights the critical importance of ensuring that AI applications comply with federal antidiscrimination laws, and it's clear that the EEOC is closely monitoring the use of these technologies in hiring. For Baker Donelson Shareholder Jenni McCarty's detailed analysis on the settlement and key takeaways, please see our previous client alert [here](#).
- In Massachusetts, a recent lawsuit against CVS Health Corp., and CVS Pharmacy, settled in July 2024, alleged violations of state law regarding the use of AI-based lie detector HireVue (Court Docket available [here](#)). The plaintiff claimed that the drugstore chain's use of certain HireVue Inc., tools in online job interviews without a disclaimer was illegal under a Massachusetts law that prohibits the use of lie detector tests in hiring and employment.

- In 2024, New York City began enforcing a law that imposes strict requirements on employers using automated employment decision tools for hiring or promotion decisions. This law mandates bias audits and transparency reports to ensure these tools do not perpetuate discrimination. Detailed information about New York City's Automated Employment Decision Tools Law is available [here](#).
- Illinois passed a law in 2024 making it unlawful for organizations to use HR AI tools that could discriminate based on protected classes. This law requires companies to notify applicants and employees when AI is used in HR functions and to ensure these tools do not result in biased outcomes. The official text of the Illinois Algorithmic Discrimination Law is available on the Illinois General Assembly's [website](#).
- Internationally, the EU AI Act, which went into effect in August 2024, categorizes AI systems by risk levels and imposes stringent compliance requirements on high-risk systems, including those used in recruitment and performance evaluation. This act aims to prevent discriminatory practices and ensure transparency and accountability in AI usage. The full text of the EU AI Act is available [here](#).

As we look to the future, the integration of AI in recruitment is poised to expand, driven by the ever-evolving demands of the job market. However, companies must carefully navigate a complex web of federal and state regulations to implement AI effectively and ethically in their hiring processes. There is a real risk of unintentional discrimination if AI tools rely on algorithms that may overlook or misinterpret protected traits. Achieving a balance between regulatory compliance and managing potential biases, both human and AI, is indeed a challenging endeavor. Organizations should define clear objectives for their hiring processes and meticulously evaluate the AI technologies they adopt. With careful planning and execution, AI can be integrated responsibly, ensuring that recruitment strategies not only comply with legal requirements but also uphold a commitment to creating a fair and inclusive workplace.