

Mid-Year 2024: Artificial Intelligence

July 24, 2024

Workplace AI continues its rapid evolution, making adoption a business imperative. But recent guidance from various agencies and legislatures indicates the real issue will be careful implementation and compliance. The following highlights can help employers balance AI's efficiencies with the oversight needed to prevent potential biases and legal pitfalls.

Regulations + guidance

The following federal guidance and state-specific regulations are intended to provide frameworks for ensuring that AI tools are used responsibly and do not inadvertently violate labor laws or employee rights.



Colorado AI Legislation

Enacted 05.17.24 | Effective 02.01.26

Under this new Colorado law, one of the first comprehensive regulations of AI at the state level in the United States, employers will be obligated to:

- Implement a risk management policy and program for high-risk AI systems.
- Complete an impact assessment of high-risk AI systems.
- Notify consumers of specified items if the high-risk systems make decisions about a consumer.
- Make a publicly available statement summarizing the types of high-risk systems currently deployed.
- Disclose to the attorney general the discovery of algorithmic discrimination within 90 days of discovery.



DOL Field Assistance Bulletin (FAB)

Issued 04.29.24

Written by Wage and Hour Administrator Jessica Looman, the FAB emphasizes “responsible human oversight” when using AI and other automated systems to:

- Track employees’ working time, determine wage rates and calculate wages owed.
- Administer FMLA leave, including processing leave requests, certifications, and issues around interference and retaliation.



OFCCP Guidance

Released 04.30.24

According to a list of “promising practices” under the Artificial Intelligence and Equal Employment Opportunity for Federal Contractors link on the OFCCP’s new AI landing page, federal contractors must:

- Maintain records and ensure confidentiality of records consistent with OFCCP enforced regulatory requirements.
- Cooperate with OFCCP by providing necessary, requested information on their AI systems.
- Make reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability as defined in the OFCCP regulations.

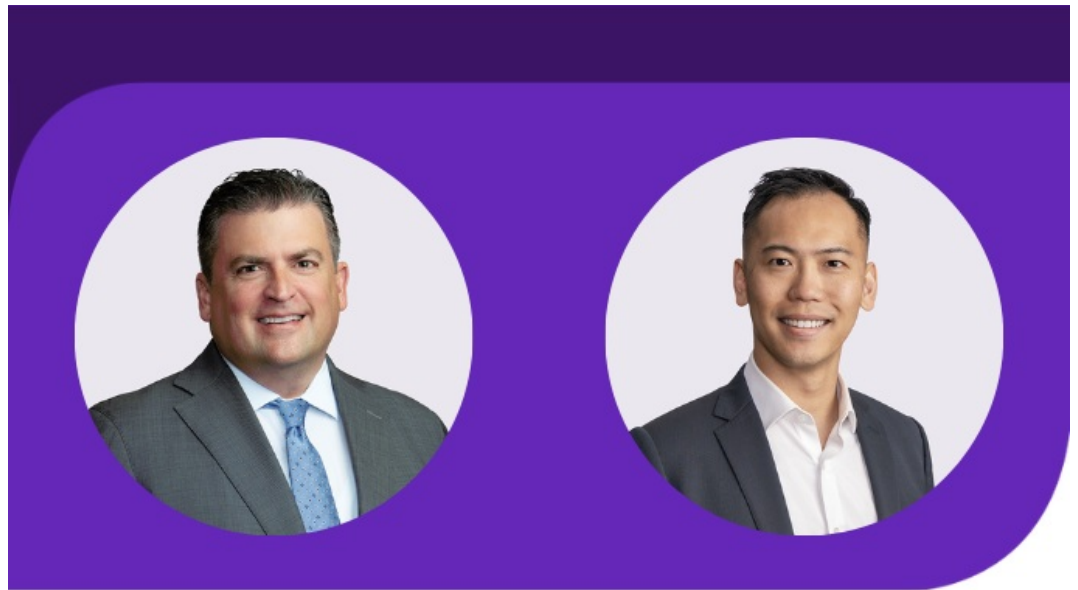


White House Executive Order on AI

Issued 10.30.23

Using the definition of AI found in 15 U.S.C. 9401(3), this EO applies to technologies like ChatGPT, as well as to machine-based systems that make predictions, recommendations and decisions, and addresses:

- AI safety and security standards.
- Advancing technology and authentication.
- Attracting and retaining talent.
- Addressing worker displacement.
- Bias and discrimination mitigation.



Hosts: **Eric J. Felsberg**, Principal, AI Services Group Co-Leader, and Data Analytics National Director, and **Robert Yang**, Associate, CIPP/US

MYR 2024: Regulating Workplace AI

Podcast

“The decision to leverage AI in the workplace should not be taken lightly. Employers are challenged at this point because they must navigate this patchwork of rapidly developing AI regulations. And while you may be tempted, we don’t think it’s as easy as just simply saying to your workforce and your workplace, ‘no AI allowed.’”

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Key employer takeaways

Transparency and fairness

- Prioritize transparency when implementing AI systems by providing clear communication with employees about how AI is used, what data it processes and how decisions are made.
- Ensure that AI algorithms are designed to be fair and unbiased, avoiding discriminatory outcomes.

Ethical use and human oversight

- Consider the ethical implications of AI by regularly assessing AI systems for potential biases and unintended consequences.
- Establish accountability mechanisms and human oversight to address any issues that arise; responsible AI practices involve ongoing monitoring and adjustments.

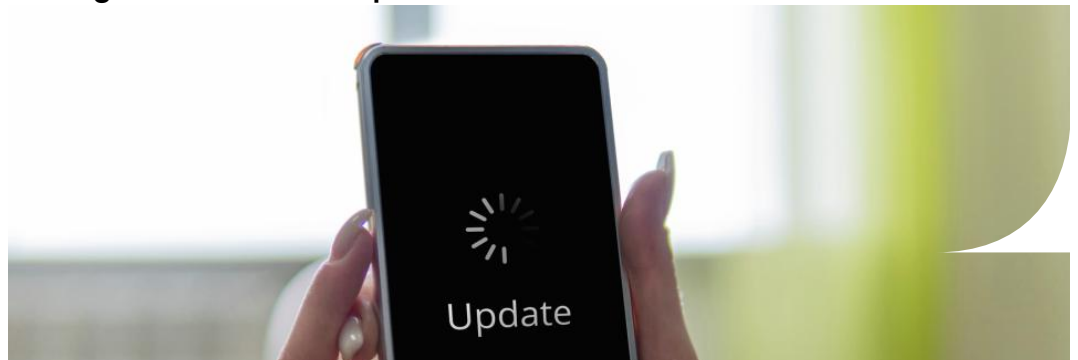
Employee training and support

- Invest in employee training to help them understand AI tools and their impact.
- Provide resources and support to address concerns or questions related to AI; employees should feel empowered and informed about AI's role in their work environment.

Related readings



DOL Issues Guidance to Agency Staff on Employers' Use of Artificial Intelligence in the Workplace



The Risks of an Operating System Integrated with Artificial Intelligence



Colorado Enacts Artificial Intelligence Legislation Affecting AI Systems Developers, Deployers



OFCCP Releases New Artificial Intelligence Guidance



Ten Days Until the Texas Data Privacy and Security Act Goes Live & AG's Office Signals "Aggressive Enforcement"



EEOC VC Samuels' Keynote at Workplace Horizons Addresses PWFA, AI, Muldrow & More



President Biden Issues Executive Order Regarding the Development and Use of AI




FACT SHEET: Executive Order on Safe, Secure, and Trustworthy AI



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