# AI's New Laws + Traditional Issues

By Eric J. Felsberg & Joseph J. Lazzarotti

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"It's like an AI chicken or the egg conundrum. Who should own the liability there? Should it be the developers of these technologies or should it be the users? If you're trying to make that determination, where does that line fall? This uncertainty has worked its way into different legislation across the country. It really reflects how these lawmakers are grappling with some of these issues that, frankly, don't have an easy answer."

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**Eric J. Felsberg**
*Principal, Long Island*

Hello, everyone, and welcome to our latest episode of We Get AI at Work. My name is Eric Felsberg. As always, I'm here with my colleague and partner, Joe Lazzarotti. Joe, it's hard to believe that 2024 has come to a close. Yet here we are with 2025 upon us. This seems like a good opportunity to look back at 2024 workplace AI highlights and offer our thoughts as to what we're likely to see during 2025. What do you think?

**Joseph J. Lazzarotti**
*Principal, Tampa*

Absolutely. It's been quite a year. A good place to start, Eric, is you can give your thoughts on some of the developments in AI in the workplace that we've seen emerge during that time.

**Felsberg**

AI was top of mind for many lawmakers during 2024, but it even started before that. We saw a lot of legislators taking notice of this AI thing and trying to legislate around it. We started to see some of that in 2023.

On the federal level, we saw President Biden and his administration issue a very broad executive order. He titled it the Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence. It is pretty far reaching. It gave a lot of directives to other federal agencies. His administration also issued an AI Bill of Rights. We've also seen agencies like the EEOC and the Department of Labor issue guidance around the issue of AI. But a lot of the action was not on the federal level, it was on the state level. We've seen states like California, Colorado and Maryland, just to name a few, enact AI related laws and, of course, New York City's law.

This is a law that came around in 2023. It's New York City's Automated Employment Decision Tool law. You'll hear people refer to it as the AEDT. That law really came into its own during 2024. Essentially, what this law did is it prohibited employers and employment agencies, for that matter, from using an AEDT unless that tool being used was subjected to a bias audit, which is similar to a disparate impact analysis. There were also some postings and notices that have to be given to job seekers and employees that may be interested in a position. Also, for employers that were subject to this law they published the results or a summary of their bias audit for all the world to see. So, that law really came into its own in 2024. I know a lot of employers have really gotten very deep into that law to figure out exactly how to comply while at the same time, trying to manage and take advantage of, I really should say, some of these automated selection tools provide. So, a lot is going on both at the federal, state, and, for New York City, local level.

**Lazzarotti**

That's right, Eric. You said coming into their own. That happened a lot in 2024. I Lawmakers were also reacting to that coming into their own, as there's been a huge uptick in adoption and utilization by users. I know a lot of our clients are reacting to a lot of that, even though there's no mandate for a policy or governance necessarily, certainly not one that's widespread at this point in the US. There's been a lot of organizations talking to us and asking internally how do we manage this. How do we deal with governance? What policies do we need? What should they cover? Who should they apply to? A whole range of issues like that. That's been a pretty big uptick in the trends that I think will continue going forward.

We've also seen organizations purchase these services and try to figure out what type of applications are best for us. How do we look at that? What type of devices have AI? Do we even know if they have AI because that technology is embedded in it, and so they may not realize it? One of the examples there I think was these AI note-taker tools which seemed to be really popular in 2024. A lot of people jump in without necessarily realizing a lot of the issues that come with it.

Then one thing I thought was really interesting, especially during the election, there was a lot of concern around deep-fakes and people using those to create a whole range of problems. Of course, it wasn't just the election. There was one case

when a principal in Baltimore had come under fire because of a deepfake audio recording from what later they learned to be the athletic director because of some dispute going on at the school. It caused this whole firestorm in the town. Then there was the guy in Hong Kong that sent a $25 million payment because of a deepfake video of a CEO. So, these are just stories that we all talk about, but the reality is this is going to continue, and the technology is getting pretty wild.

That's certainly a lot of the stuff that we saw in 2024. But let me ask you, since you went through some of the laws when you look at these statutes, regulations and some that might be coming down the pike, what are some common themes that you were seeing?

**Felsberg**

Insofar as the laws that we've spoken about already, there's really one word that summarizes all these laws, and that is transparency. From informing job seekers of the use of AI in the selection process to publishing the results of the impact of these tools, transparency was clearly the focus of most of these laws.

Now, another interesting observation is where these legislatures decide to focus their enforcement efforts. Should they, for example, focus their enforcement efforts on developers---the folks that are creating these tools and bringing them to market. Should that be the focus of the different legislators' efforts, or should it really be focused on the end users--- the people that are going out and purchasing some of these tools. Where should we focus? That's what a lot of legislatures were thinking about. It's like an AI chicken or the egg conundrum. Who should own the liability there? Should it be, again, the developers of these technologies, or should it be the users? If you're trying to make that determination, where does that line fall? This uncertainty has worked its way into different legislation across the country. It really reflects how these lawmakers are grappling with some of these issues that, frankly, don't have an easy answer. It ends up in the legislation that employers now are subject to and are in the position of trying to figure out how it is that we're supposed to comply with these particular laws? I think it's challenging on both sides of that issue.

**Lazzarotti**

Definitely see that as well, Eric. The tension certainly is building. When you see some of these statutes beginning to tinker in contractual relationships, reporting obligations and transparency, in some cases, the law is looking to achieve, not just with the end user. When I say the end user here, I mean the employees, or the customer as opposed to the employer or company that is buying the technology. The approaches like in the Colorado statute have new categories, developers and deployers. Each of them have certain duties that run into one another, such as information on what type of data they are using and how they are updating that. How are they building their tool? What are some of the risks that they're seeing? Also, having to disclose some of that which is going to be interesting to see how that really plays out in reality.

You layer on top of that some of the other laws that are affecting these automated decision-making tools like the CCPA regulations that are currently being

considered for AI. That's on top of an existing set of rules regarding how you deal with service providers and whatnot. How this all comes together is going to be pretty interesting because it might not always be the same way that companies are used to interacting with their third-party service providers. There's some more active engagement that's going to have to happen, not just at the beginning of the contract or at the end of the three-year term. There's going to be a lot of things going on in between there relating to AI. Clearly settling on contract terms is going to be increasingly challenging for organizations.

Let's look at 2025, What's shaping up? What are we looking at?

**Felsberg**

That's a big question. We'll do our best to predict what we think we're going to see here. To start we're going to see more AI-related laws that focus on these "traditional issues." Now, I know it's a little funny, right, to talk about anything traditional when you're talking about AI, but I use the word traditional to really get at these issues of transparency, bias and disparate impact that we've seen show up time and time again in most of these different laws. You're going to see more laws emerge that focus on those particular issues because there is a lot of concern, both from an EEO employment perspective and just keeping people up to date on the types of technologies that are being used. That would be one that I think is something we're going to see.

The other thing is I think there's going to be some new legislation about some of these new developing AI technologies. It's always hard to predict what type of technologies are going to come out but a pretty sure bet is it's always going to evolve and we're going to have new technologies. As that happens, you're going to have new laws. It's just the way it works. Some of these leading-edge generative AI platforms, Joe, you mentioned earlier about the AI note takers. I completely agree. Interviewers and others, they're all likely to draw attention. As these emerge, you're going to see some laws following up right behind them.

The one thing that I'm interested to see if it comes to fruition, but I think it will, is enforcement. Up until now, we really haven't seen a large push towards enforcement. There's been a heavy emphasis, as you may imagine, and we've spoken about it, on the development and enactment of these laws. I alluded to it a moment ago, it's very challenging for lawmakers to keep pace with developers and how quickly these technologies are coming to the market. Now that the ink has dried over the last two years on some of these laws, employers should anticipate increased enforcement in furtherance of these laws. Like I said, we haven't seen a ton of that, but we're likely to see some more of that during 2025.

All of this combined is going to continue to fuel the need for things like AI policies that you mentioned, bias audits, disparate impact analyses and issues of validation within the meaning of the uniform guidelines on employee selection procedures, for starters. That's what I see more on the immediate horizon in 2025, but time will tell, and we'll have to see how this continues to evolve as we move through the year.

**Lazzarotti**

That all makes sense to me. One thing you said made me think of something, and I want to add just one other thing.

The first is as companies go through this, one thing that they're to have to think about, and maybe this is something we cover in the future, that's record retention. It's something that I'm seeing in some of the statutes---some of the periods of record retention being expanded. Maybe that's in anticipation of what you're talking about with regard to enforcement. Legislatures and agencies are saying, hey, in order for us to enforce this, we're going to need a lot of data. We talk a lot about data. They're going to need that data to be able to assess how the tool worked and what steps you were taking. Organizations probably want to think about that---how do we go about doing that? Is it up to the vendor? Is it us?

The other thing also is things are going to keep moving faster and faster. I don't think that's a surprise. One thing that makes me think about that is the EEOC announced some guidance on wearables, something that we've talked about. If you remember the social distancing bracelets, back from COVID. Who wants to remember that?

**Felsberg**

Exactly.

**Lazzarotti**

It was a form of wearable. Now when you start thinking about it and say, wow, look how far we've come since then with AI and technology and whatnot, these wearables are going to be probably so much more powerful and capture so much more data. The point is, because of where we are with technology and the speed at which it's moving, it just raises a whole range of issues that we have to consider more quickly going forward. I think that's certainly in order for 2025.

**Felsberg**

It seems like once we feel we're on top of one issue, something else pops up. At least we'll have enough content for our podcast through 2025 as we talk about some of these issues and move forward. There is certainly a lot to think about and it is best to think about these issues sooner rather than later.

For our part, Joe, and I, we're going to do our best to keep our listeners up to date on these issues through upcoming episodes of the podcast. But in the interim, we hope you find this discussion helpful. If you have any questions, would like to have us cover a certain AI topic or if you want to be a part of the podcast, let us know, reach out to us. You could do that at ai@JacksonLewis.com. We always like to hear from our listeners. But until then, Joe, always a pleasure. We'll speak with all of you soon.

**OUTRO**

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