

AI Issues Every Human Resources Team Should Be Thinking About Right Now

Artificial intelligence is rapidly becoming part of everyday Human Resources and People operations—from recruiting and onboarding to performance management and employee relations. But as AI becomes more integrated into these functions, it also creates significant legal and compliance risks. Improper use of AI can expose employers to discrimination claims, compromise confidential and proprietary information, create data privacy concerns, and increase litigation risk. Many organizations are adopting AI tools faster than they are updating the policies, agreements, and governance needed to manage these exposures. Below are several key areas HR and People teams should be evaluating now.

AI Use Policies for HR

Many HR teams are already using AI tools, often without clear internal guidance on what is and is not permitted. Without a written policy, organizations face discrimination, equity, data security, and other employment compliance risks.

Key topics for an AI Use Policy include:

- Which AI platforms are approved for HR use and under what circumstances?
- May AI be used to assist with hiring, promotion, discipline, or termination decisions, and if so, what level of human review is required?
- What types of employee data may or may not be entered into AI tools?
- How should AI-generated outputs be documented and retained?

Privilege and Litigation Risks

One of the most significant, and often overlooked, risks of AI use in HR is that conversations with AI tools may not be protected by attorney-client privilege. When HR personnel use AI to answer legal questions or evaluate employee complaints, those prompts and responses may be discoverable in litigation. If an AI tool flagged a potential legal violation and the company proceeded with a contrary course of action, that record could become powerful evidence for the opposing party. Organizations should think carefully about where legal questions are being routed and whether AI-generated records are being preserved in accordance with litigation hold obligations.

Employment Agreements and Internal Policies

Many employers' confidentiality agreements, proprietary information and inventions assignment agreements (PIIAAs), independent contractor agreements, and employee handbooks were drafted before the widespread adoption of generative AI. These documents may not address whether employees can use AI tools to perform their work, who owns AI-generated work product, or what happens when confidential information is entered into a third-party AI platform. Employers operating with pre-AI-era agreements may have gaps in their protections that are worth examining.

AI in Hiring and Employment Decisions

The use of AI in hiring and employment decisions is one of the most heavily regulated and scrutinized areas of AI in the workplace. Organizations using AI at any stage of the hiring process (e.g. resume screening, candidate ranking, skills assessments, or interview evaluation) face potential exposure under federal anti-discrimination law and a growing patchwork of state and local AI regulations.

Key concerns include the risk that AI tools may perpetuate historical patterns of discrimination, resulting in disparate impact claims. Several jurisdictions (including California, Connecticut, New York City, Illinois, Maryland, and Colorado) have enacted or proposed laws requiring disclosure, bias audits, or other compliance steps when AI is used in employment decisions. These requirements are

expanding rapidly, and employers using AI-powered tools to make important employment decisions should be aware of their obligations in each jurisdiction where they operate.

Beyond hiring, similar concerns arise when AI tools are used in performance management or termination decisions. If an algorithm recommends adverse action and a discrimination claim follows, the employer may need to explain and defend the AI tool's methodology, raising questions about transparency, documentation, and the role of human oversight.

Recent litigation over alleged AI-assisted layoff selection underscores that these risks are not limited to hiring and remain largely uncharted territory. Employers using AI or algorithmic inputs in reductions in force, performance rankings, or other selection decisions should expect increased scrutiny of disparate impact, disability and leave-related bias, and the adequacy of human oversight.

Data Privacy and Cross-Border Considerations

AI use by HR frequently involves processing data reflecting employee and applicant personal information. Employers subject to the California Privacy Rights Act (CPRA), other state privacy laws, or international data protection frameworks should review their employee and applicant privacy notices to ensure they accurately describe how personal information is collected, used, disclosed, retained, and, where applicable, processed using AI tools. Employers should also confirm that their use of AI complies with applicable privacy requirements, including obligations relating to data minimization, purpose limitation, and vendor management.

Emerging Issues to Watch

As organizations incorporate AI into broader HR functions, several additional areas are drawing legal and regulatory attention:

- **Pay Equity:** AI tools used to set compensation or determine pay bands may inadvertently perpetuate pay disparities, raising concerns under federal and state equal pay laws.
- **Workplace Monitoring:** AI-powered productivity tracking and surveillance tools face increasing regulatory scrutiny, with several states considering or enacting legislation requiring notice and consent.
- **Accommodations and Leave:** AI tools used to evaluate disability accommodation requests or manage leave entitlements must account for the individualized assessment requirements of the ADA, FMLA, and analogous state laws.
- **Religious Accommodations:** Employees may raise religious objections to mandatory AI tools, potentially triggering accommodation obligations that employers will need to navigate.
- **Vendor Contracts:** Organizations purchasing AI tools from third-party vendors should consider whether their contractual arrangements appropriately account for the legal, operational, and business risks associated with the use of those tools.

The Bottom Line

The legal landscape around AI in the workplace is evolving quickly, and the compliance obligations are only becoming more complex. Organizations that have not yet assessed how AI intersects with their HR practices may find themselves exposed to risks they haven't fully considered. The issues above are not exhaustive, but they represent the areas where we are seeing the most activity and where early attention can make a meaningful difference.

If you have questions about how these developments may affect your workplace policies, please contact any member of the Coblentz [Employment Group](#).

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