



AI Era Leads to New ADA Advice: 7 Things Employers Need to Know About New EEOC Guidance on Vision Impairments

Insights

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Federal workplace officials recently clarified the responsibilities that employers using artificial intelligence have when it comes to applicants and workers with vision impairments, further adjusting existing legal guidelines to this new era of AI technology. The Equal Employment Opportunity Commission (EEOC) issued a new technical assistance document on July 26 laying out the reasonable accommodation obligations employers have when using AI to screen candidates or assess worker performance to ensure they don't run afoul of the Americans with Disabilities Act (ADA). What are the seven things you need to know about this most recent release? *[To learn more about this issue, [register today for the AI Strategies @ Work Conference](#) where we'll discuss this and many other issues impacting the modern business environment.]*

Understanding the Basics

Before we dive in, you should make sure you understand the basics of the ADA so you can put the new guidance document into context. The ADA not only prohibits employers from discriminating against applicants and workers with disabilities, but it also mandates that employers offer reasonable accommodations to ensure applicants have equal opportunity during the hiring process and to ensure qualified employees can perform the essential functions of their position. The EEOC's most recent guidance focuses on the obligations arising when applicants or employees have vision impairments that require accommodation.

There is a wide range of possible changes to the application process or to the day-to-day workplace that may aid those with vision impairments. For example, assistive technology such as text-to-speech software or accessible materials such as braille or large print could serve to satisfy the law's requirements. The EEOC provides [a detailed list of possible accommodations](#) that can be considered in such situations that employers can review as needed.

The 7 Things You Need to Know

We've reviewed [the entire technical assistance document](#) and identified the key points that all employers need to know. Here are the seven most significant items you'll want to digest:

1. **You may need to make a new kind of reasonable accommodation.**

The new technical assistance document emphasizes the fact that employers may have an obligation to make reasonable accommodations for applicants and employees with visual disabilities when you use decision-making tools involving AI or algorithms. While this might seem like an obvious point to employers well-versed on their legal compliance obligations, it is an increasingly common issue given the rise of AI tech being deployed by employers – and thus one that the EEOC considered worthy of a special and particular mention.

2. Your AI tool might be unintentionally creating problems.

The EEOC stressed that AI decision-making tools might unintentionally screen out qualified individuals with disabilities in the application process and could negatively impact qualified employees on the job – which could be ADA violations. For example, an applicant or employee may have a visual disability that reduces the accuracy of an AI assessment used to evaluate them.

3. There are options available to employers.

If you determine that your AI product could be causing such problems and you need to make accommodations, the EEOC identified alternative testing formats as a potential solution given that it could provide a more accurate assessment of the applicant's or employee's ability to perform the position (unless, of course, the alternative creates an undue hardship).

4. The EEOC has provided a helpful example to explain how employers' obligations may arise.

The agency's guidance provided the following illustrative example to explain how these situations may arise. An employer begins using an AI-fueled algorithm that takes into account the employee's average number of keystrokes per minute to evaluate productivity. An employee with a vision impairment who uses voice recognition software instead of a keyboard may be rated poorly by the algorithm and thus lose out on a promotion or other job opportunity as a result. And this, according to the EEOC, could be an ADA violation.

5. You should take proactive measures to reduce your chances of committing an ADA violation.

The EEOC recommends employers take the "promising practice" of providing information about how the AI tool evaluates applicants or employees on a proactive basis. This would then alert those with visual disabilities that the technology might not accurately assess their qualifications. In combination with such disclosure, the agency recommends that employers provide instructions on how the applicant or employee could seek a reasonable accommodation if one is needed.

Using the illustrative example above, imagine if the employer had informed its employees ahead of time that they would be assessed partly on the basis of keyboard usage. The employee with a vision impairment would have known to request an alternative means of measuring productivity as a reasonable accommodation. Perhaps, for example, the company could have deployed an alternative method that took voice recognition software into account when assessing productivity rather than just keystrokes.

6. **While not carrying the force of law, the new EEOC release is a key signal to how the agency will act.**

Technical assistance documents like the one recently released do not carry the force of the law. They aren't statutes or fully formalized regulations that have undergone the rigorous review-and-comment process. However, they can – and will – be cited by agency investigators and lawyers in administrative and civil actions, and no doubt will also be weaponized by plaintiffs' attorneys who believe their clients have been wronged. And while courts are not obligated to follow the guidance as if it were ironclad law, you can be sure that judges will carefully consider the information contained in this document when weighing decisions before them.

7. **This guidance is part of a bigger trend.**

Finally, employers should realize that this guidance does not exist in a vacuum. It was not the first time that the EEOC has provided guidance about the ways that employers need to adjust existing workplace policies in the age of AI – and won't be the last. Earlier this summer, the agency warned employers deploying AI to assist with hiring or employment-related actions that it will apply long-standing legal principles to today's evolving environment in an effort to find possible Title VII violations.

This followed EEOC Chair Burrows teaming up with leaders from the Department of Justice, the Federal Trade Commission and the Consumer Financial Protection Bureau to announce that they would be scrutinizing potential employment-related biases that can arise from using AI and algorithms in the workplace. And within the past year, the EEOC teamed up with the DOJ to release a pair of guidance documents warning that relying on AI to make staffing decisions might unintentionally lead to discriminatory employment practices, including disability bias, followed by the White House releasing its "Blueprint for an AI Bill of Rights" that aims to protect civil rights in the building, deployment, and governance of automated systems.

In other words, you'll want to stay up to speed on the way that the EEOC wants to apply existing legal principles to AI-related actions, as there will no doubt be further guidance issued in the coming months and years.

Join Us in Person!

Register today for the AI Strategies @ Work Conference taking place this September 27-28 in Washington, D.C., where we'll discuss the intersection of artificial intelligence and the modern business environment. We'll meet just steps from where lawmakers and regulators are debating AI to discuss how impending regulation will impact businesses and human capital management. We'll also explore AI's transformative impact across various industries by providing practical use case scenarios, highlighting how to seize competitive advantages, and showing how you can position yourself as a leader in the era of AI.

Conclusion

We recommend you subscribe to [Fisher Phillips' Insight System](#) to gather the most up-to-date information on AI, as we will continue to monitor further developments and provide updates on this and other workplace law issues. If you have questions, contact your Fisher Phillips attorney, the author(s) of this Insight, or any attorney on our [Artificial Intelligence Practice Group](#).

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