Comprehensive Review of AI Workplace Law and Litigation as We Enter 2025

Insights

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It's been a whirlwind few years when it comes to government and court activity related to the use of artificial intelligence in the workplace – but we've boiled it down to one place. This Insight reviews all of the laws, regulations, guidance documents, and court action that impact employers and their use of AI.

COMPREHENSIVE REVIEW OF AI WORKPLACE LAW AND LITIGATION AS WE ENTER 2025

State and Local Workplace Laws

First three jurisdictions with AI-specific workplace laws

COLORADO
ILLINOIS
NEW YORK CITY

Expected to catch up in 2025

CALIFORNIA
NEW YORK

Federal Laws

No federal AI-specific workplace law

But existing federal discrimination laws apply to AI use

Congressional Recommendations

Both the Senate and the House have released recommendations on how they believe AI should be regulated

House Report
Senate Roadmap

Global Developments

Groundbreaking E.U. AI Act remains world's most advanced regulation of workplace AI

E.U.
CHINA
China taking a hands-off approach to AI regulation, similar to US

Executive Actions

Biden White House was active in laying out steps towards AI regulation in the workplace

AI Executive Order
Blueprint for AI Bill of Rights
AI Fact Sheet for Employers

⟫⟫ Trump White House and AI Czar David Sacks expected to ease off federal regulation

Federal Agencies

Several agencies – including Dept of Labor and EEOC – have issued AI-related workplace guidance

AI

Court Actions and Discrimination Allegations

Key matters are pending in California court, EEOC, and FTC that will set a pathway for AI workplace discrimination allegations in 2025 and beyond

EEOC settled first-ever AI workplace lawsuit for $365K

Fisher Phillips

State and Local Workplace Laws

We're starting to see a patchwork of various state and local laws regulating the use of AI in the workplace.

- **Colorado** became the first state to enact a law prohibiting employers from using AI to discriminate against their workers and requiring companies to take extensive measures to avoid such algorithmic discrimination. The landmark AI law also imposes broad rules on developers of high-risk AI systems and the businesses that use them. (May 2024)

- **Illinois** became the second state to pass AI workplace legislation that will require employers to provide notice to applicants and workers if they use AI for hiring, discipline, discharge, or other workplace-related purposes. The law will also prohibit employers from using AI in ways that result in workplace discrimination. (Sept. 2024)

- **New York City's Local Law 144** was the nation's first law to create obligations for employers when AI is used for employment purposes – including obligatory bias audits – but is only triggered when automated tools play a predominant role in decisions. This law is considered fairly toothless, however, because employers can claim they are not covered if they ensure human managers play a predominant role in the decision-making process. (July 2023)

- **What's Next?** Over 30 states have formed AI committees or taskforces that have begun issuing reports and recommendations, many of which will turn into proposed legislation. We expect to see California and New York to be among the states on the forefront in 2025. California lawmakers knocked back a chance to pass a groundbreaking AI discrimination bill in 2024 that would have required employers to provide notification – and perhaps an accommodation – to workers when AI is used in certain critical ways during hiring or employment, but lawmakers could not agree on a final version before a key deadline. California also came tantalizingly close to passing a law that would have required developers of high-risk AI models to conduct safety tests and implement shutdown mechanisms to prevent critical harms, but Governor Newsom vetoed it in September. Meanwhile, New York lawmakers tried but failed to pass a statewide law in 2024 that would have addressed some of the NYC law's perceived shortcomings.

Federal Laws

What have lawmakers in D.C. been up to when it comes to the use of AI in the workplace?

- **No Federal AI Workplace Law** – There remains no federal law specifically regulating the use of AI in the workplace. However, as early as 2022, the Equal Employment Opportunity Commission (EEOC) issued a reminder to employers that the use of AI for assessing job applicants and employees may violate the Americans with Disabilities Act (ADA). It followed up in 2023 with a technical assistance document saying it will apply long-standing legal principles in an effort to find possible Title VII violations when employers use AI to assist with hiring or employment-related actions.

- **Failed Privacy Law** – An early version of the proposed American Privacy Rights Act would have required employers to notify applicants and workers when AI is used for workplace decisions

and given workers the right to opt out of its use for consequential employment decisions. The proposal was amended to remove these provisions, however, before ultimately failing in Congress. We don't expect a similar proposal to gain traction in the near future given the change in Congressional control.

- **Other Failed Federal Proposals** – Last year also saw <u>several other proposals in Congress</u> related to the regulation of AI in the workplace, from the "No Robot Bosses Act" to the "Algorithmic Accountability Act." None advanced far, and we don't expect similar proposals to get close to passage in 2025.

- **What's Next?** As noted, we don't expect the Republican-controlled Congress to enact any workplace-related AI laws in 2025 or 2026. This issue will instead remain active at the state and local level.

Congressional Recommendations

Even though Congress did not pass any AI-related workplace laws, leadership has issued non-binding reports that include recommendations for future action.

- <u>**U.S. House Bipartisan AI Task Force Report**</u> – This groundbreaking report outlines key challenges and opportunities for AI adoption across all sectors and provides recommendations for employers to stay one step ahead of anticipated guardrails. (Dec. 2024)

- <u>**Senate's AI Roadmap**</u> – A bipartisan group of Senate leaders unveiled an AI roadmap that lays out their hopes for potential legislation that would govern the use of AI across the country and ensure the U.S. stays on the frontline of AI innovation. (May 2024)

- **What's Next?** We'll continue to see special taskforces, committees, and caucuses issue recommendations to a full Congress – but we expect private tech leadership will play a greater role in shaping the proposals.

Executive Actions

The White House has been active over the past few years when it comes to AI.

- <u>**Biden Executive Order on AI**</u> – President Biden's 2023 executive order is the federal government's most ambitious attempt to date to corral AI. While it didn't create any new law impacting the private sector, it pushed federal agencies to shape a regulatory approach toward AI. (Oct. 2023)

- <u>**White House's Blueprint for an AI Bill of Rights**</u> – But the executive order wasn't the first action taken by President Biden when it comes to AI and the workplace. The year prior, the White House issued a non-binding whitepaper intended to support the development of policies and practices that protect civil rights in the building, deployment, and governance of automated systems. (Dec. 2022)

- **White House's AI Fact Sheet for Employers** – The Biden administration also provided employers with a series of best practices when using AI for workplace purposes. It doesn't carry the weight of law but could be relied on by courts and others in these early days of AI risk management and workplace litigation. (May 2024)

- **What's Next?** Donald Trump appointed <u>David Sacks to be the nation's first AI Czar</u>, a move that signals an emphasis of innovation and hands-off regulation – and an almost-certain clue that the Biden AI executive order will be repealed. We might also see <u>the new DOGE initiative</u> deploy AI in an effort to streamline government spending.

Federal Agency Publications

Various federal agencies have issued guidance and technical assistance documents to clarify how AI will be treated by regulators.

- **<u>Joint Statement from Agencies</u>** – The EEOC, DOJ, CFPB, and FTC all teamed up to release a joint statement making clear that existing civil rights laws already govern how AI is used, including in the workplace. Bottom line: "There is no AI exemption to the laws on the books." (April 2023)

- **<u>Labor Department's Roadmap to Avoid AI Discrimination During Hiring</u>** – Federal workplace officials unveiled a website guiding employers on best practices to avoid AI discrimination during the hiring process. Employers that follow the 10 steps outlined in the guidance will be able to raise a solid defense if they ever face a claim. (Sept. 2024)

- **<u>CFPB Reminder About FCRA Obligations When Using AI</u>** – The Consumer Financial Protection Bureau (CFPB) reminded employers that their obligations under the Fair Credit Reporting Act (FCRA) may extend to employee monitoring, assessment, and AI tools. (Oct. 2024)

- **EEOC Technical Guidance** – As noted above, the EEOC has released <u>guidance applying existing ADA law to AI use</u>, and reminding employers that <u>Title VII also applies to AI actions</u>. It also issued a specific guidance to employers about their responsibilities when <u>using AI with applicants or workers with vision impairments</u>.

- **What's Next?** With new leadership expected at various federal agencies – from the <u>Department of Labor</u> to the <u>Federal Trade Commission</u> – we expect to see a lighter touch when it comes to regulatory pronouncements about AI regulation.

Court Actions and Discrimination Allegations

Workers and labor advocates have begun to take action against employers for perceived AI-related wrongs.

- **<u>Lawsuit Against AI Workplace Screener</u>** – A California federal court allowed a frustrated job applicant to proceed with an employment discrimination lawsuit against an AI-based vendor after more than 100 employers that use the vendor's screening tools rejected him. The judge's

decision allows the class action against Workday to continue based on employment decisions made by its customers on the theory that Workday served as an "agent" for all of the employers that rejected him and that its algorithmic screening tools were biased against his race, age, and disability status. (July 2024)

- **FTC Investigating AI Hiring Tools** – The ACLU fired a warning shot to employers by asking the Federal Trade Commission to investigate AON's personality assessment test, a video interview tool, and a cognitive ability assessment screening device – all powered by AI – because of alleged discrimination. The agency has not yet issued a decision in this matter. (May 2024)

- **EEOC Investigating Alleged AI Discrimination** – Besides filing a claim with the FTC as noted above, the ACLU also filed a charge with the EEOC over AON's AI-powered hiring tools, alleging they unfairly screen out applicants with disabilities and unfairly target those with certain racial backgrounds. The agency has not yet issued a decision in this matter. (2024)

- **EEOC's First-Ever AI Lawsuit Settlement (Sort Of)** – The EEOC settled a claim against a tutoring company alleging that its AI-powered hiring selection tool automatically rejected women applicants over 55 and men over 60. The company agreed to pay $365,000 to resolve the charges. However, a closer examination shows that the tool used by the employer was fairly rudimentary and not necessarily any sort of cutting-edge AI system. (Aug. 2023)

- **What's Next?** We expect 2025 to be the year that the floodgates open and we see a swell of lawsuits and agency actions filed against employers related to their use of AI in the hiring process and in the workplace in general.

Global

The U.S. isn't the only country facing the challenge of addressing AI.

- **EU AI Act** – This landmark law was the world's first comprehensive law regulating the use of AI when it passed in late 2023. The EU AI Act will soon regulate the use of AI systems based on their risk level, with stricter requirements for high-risk AI systems – such as those used in hiring, promotions, and employee monitoring. Employers must ensure compliance by conducting risk assessments, implementing transparency measures, and adhering to data protection laws to avoid fines and liability.

- **China** – China is taking an approach closer to the U.S. than the EU when it comes to AI regulation. A recent act created an AI safety governance framework, but it's non-binding. Instead, it simply creates a common set of standards that AI developers should follow when developing systems.

- **What's Next?** We'll continue to see countries line up on one side or the other – with either a stricter regulatory framework like the EU or a looser set of recommended principles like the U.S. and China. We'll also keep our eye on Brazil in 2025. Lawmakers there recently passed a strict AI safety law that would establish a never-before-seen series of protections for copyrighted

material that is used to train GenAI systems. If that proposal is finalized, it could serve as a model for other countries that want to clamp down on AI use.

Conclusion

We will continue to provide the most up-to-date information on AI-related developments, so make sure you are subscribed to Fisher Phillips' Insight System. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our AI, Data, and Analytics Practice Group or Government Relations Practice Group.

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