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CALIFORNIA INTRODUCES ANOTHER AI ANTI-DISCRIMINATION BILL: WHAT EMPLOYERS NEED TO KNOW

Insights
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A newly proposed California bill seeks to regulate artificial intelligence decision-making tools in employment and other key areas – but will this proposal suffer the same fate as last year's doomed legislative efforts? Introduced on February 20 by Assemblymember Rebecca Bauer-Kahan, Assembly Bill 1018 would impose strict oversight on automated decision systems (ADS) in an attempt to prevent discrimination in the workplace and elsewhere. It establishes broad obligations for AI developers and deployers, including performance evaluations, third-party audits, data retention requirements, and transparency mandates for AI-driven decisions affecting employment, healthcare, housing, and other critical sectors. If passed, AB 1018 would mark California's most comprehensive attempt yet to regulate AI bias, imposing significant compliance burdens on employers using AI-driven hiring and workforce management tools. What do you need to know about the bill and what should you look for in the coming months?

Key Aspects of the Proposed Bill

AB 1018 introduces a robust framework governing AI-powered decision-making tools. Here are the most critical components for employers:

1. Opt-Out Rights and Human Review Requirements:
Employers must give employees and job applicants the opportunity to opt out of ADS-driven decisions in certain cases, and employers must disclose whether human review occurs before finalizing an AI-driven decision. The bill broadly defines "ADS" as any machine-learning-based

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system that assists or replaces human decision-making and significantly impacts individuals, including employment-related decisions.

2. Transparency and Appeal Rights: Employers must provide candidates and employees with disclosures about AI-driven decisions, allow them to opt out in certain cases, and provide an appeals process for adverse outcomes.

3. Expanded Definition of 'Consequential Decisions': The bill covers not only hiring and termination but also wages, benefits, scheduling, promotions, performance evaluations, access to training, and workplace safety decisions, broadening compliance obligations for HR functions using AI.

4. Obligations for Employers Who Modify AI Systems: Employers who fine-tune an AI tool outside its original scope may assume legal responsibilities typically assigned to AI developers, increasing compliance risks for companies customizing AI tools.

5. Mandatory Performance Evaluations: AI developers must conduct annual audits and disclose potential disparate impacts of their systems.

6. Third-Party Audits for Employers: Companies using AI tools in hiring, promotions, and terminations must undergo independent audits if their AI systems affect 6,000 or more individuals over three years.

7. Strict Data Management and Retention Rules: Employers must retain unredacted AI-related documentation for 10 years, including audit results, performance evaluations, and employee appeals, with non-compliance leading to potential penalties.

8. Compliance Officers and Internal Review Obligations: Companies deploying AI decision-making tools must designate at least one compliance officer responsible for overseeing adherence to the law and investigating AI-related complaints.

9. Attorney General Oversight and Reporting Mandates: Employers may be required to submit unredacted performance evaluations to the California Attorney General upon request, with these records exempt from public records requests to protect business-sensitive data.

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10. California Consumer Privacy Act (CCPA) Compliance Considerations: Businesses subject to the CCPA must comply with AI-related privacy regulations, with future rulemaking likely to expand employer obligations on AI and employee data.

11. Enforcement and Penalties: The state Attorney General, Civil Rights Department, and Labor Commissioner can impose penalties of up to $25,000 per violation.

How Does It Compare to Other AI Regulations?

AB 1018 follows in the footsteps of [Colorado's groundbreaking AI law](#), which imposes anti-bias requirements on AI developers and users. However, unlike Colorado's law, which focuses primarily on AI developers, California's bill places significant responsibilities on businesses using AI in employment decisions.

Other jurisdictions have taken different approaches:

- [Illinois's AI Video Interview Act](#) regulates AI-driven hiring assessments but is much narrower in scope.

- The [EU AI Act](#) classifies AI systems by risk level and imposes stringent obligations on high-risk applications, such as employment-related AI.

- [Virginia's AI Bill (awaiting action by the governor)](#) would focus more on consumer protections and transparency, without the broad employment-related mandates of AB 1018.

If passed, California's law would stand as one of the most expansive AI regulatory frameworks in the country, shaping future legislative efforts nationwide.

What's Next? Understanding the California Legislative Process

AB 1018 has only just been introduced, meaning it must navigate California's lengthy legislative process. The bill will first move through policy and fiscal committees, including the Assembly Privacy Committee, where amendments are likely. If it advances, it will proceed to the full Assembly, the State Senate, and ultimately the Governor's desk. AB 1018 could reach Governor Gavin Newsom by mid-September, assuming it gains sufficient support. He would have until October 12 to sign or veto the legislation.

Will This Bill Gain Traction?

Previous attempts to regulate AI bias in California failed due to business opposition and concerns over compliance costs. In fact, similar legislation was attempted last year but stalled out before reaching a final vote.

However, AB 1018 has been drafted with input from labor and consumer advocacy groups, potentially giving it stronger momentum. Business groups, particularly those in Silicon Valley, are expected to push for exemptions or modifications, making its final form uncertain.

Governor Newsom's stance on AI regulation has been mixed. While he supports consumer privacy and tech oversight, he has also advocated for innovation-friendly policies, leading him to veto other AI legislation last year. Whether he ultimately signs AB 1018 will depend on how much the final version balances regulation with business concerns.

What Should Employers Do Now?

Even if AB 1018 does not pass this session, its core principles are likely to influence future AI regulations. Employers should proactively:

- **Assess AI Tools in Hiring and HR Decisions:** Conduct internal audits to understand how AI systems impact hiring, promotions, and terminations.

- **Implement AI Governance Policies:** Establish clear AI governance frameworks, including bias mitigation protocols and transparency measures. Follow our 10-step guide to setting up your own AI governance system.

- **Prepare for Potential Compliance Obligations:** Work with legal and compliance teams to align existing AI usage with anticipated regulatory requirements.

- **Monitor Legislative Developments:** Stay informed about AB 1018's progress and be prepared for future compliance shifts – which you can do by subscribing to Fisher Phillips' Insight System.

Conclusion

We will continue to monitor developments and provide updates as warranted, so make sure you subscribe to Fisher Phillips' Insight System to gather the most up-to-date

information on AI and the workplace. Should you have any questions on the implications of these developments and how they may impact your operations, contact your Fisher Phillips attorney, the author of this Insight, any attorney in [any of our California offices](#), or any attorney in our [AI, Data, and Analytics Practice Group](#).