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AI in Hiring: The Impact of Illinois' New Law on Employment Decisions and What Businesses Need to Know

On August 9, 2024, Illinois Governor J.B. Pritzker signed HB 3773 into law, marking a significant step in regulating the use of artificial intelligence (AI) in employment practices. Effective January 1, 2026, this amendment to the Illinois Human Rights Act introduces strict guidelines for employers using AI in hiring, recruitment, and other employment decisions.

Key Provisions of the Law

The Illinois Human Rights Act currently prohibits employers, employment agencies, and labor organizations from engaging in discriminatory practices based on protected characteristics such as race, sex, age, and more. Notably, HB 3773 expands these protections to make it unlawful for employers to utilize AI in a way that results in discrimination. This includes using AI tools that might influence decisions on hiring, promotion, or other employment-related matters.

A crucial aspect of the new law is the requirement for employers to notify employees if AI is being used in these processes. Although the bill doesn't explicitly mention job applicants, the references to "recruitment" and "hiring" suggest that AI-related protections will likely extend to them as well.

Understanding AI in the Context of the Law

Under Illinois law, "artificial intelligence" is defined similar to the Colorado AI Act's definition of "artificial intelligence system," describing it as a machine-based system that interprets inputs to generate outputs, such as predictions or decisions, that can impact physical or virtual environments. The law also separately defines "generative

artificial intelligence."

Enforcement and Compliance

The Illinois Department of Human Rights and the Illinois Human Rights Commission will enforce the law. Remedies for violations may include back pay, lost benefits, reinstatement, and attorneys' fees, among other compensations.

Unlike the Colorado AI Act, Illinois does not mandate a risk management policy or AI impact assessments. However, companies are advised to adopt these practices voluntarily to mitigate the risk of discrimination when deploying AI in employment settings.

Practical Steps for Compliance

Businesses that currently use AI in their employment practices or are considering its use should implement the following best practices:

- Review and Assess Current AI Tools: Conduct a thorough review of all AI systems currently in use for hiring, promotion, or other employment-related decisions. Evaluate whether these tools could lead to biased outcomes or unlawful discrimination.
- Ensure Notice Compliance: Develop clear policies to inform employees and applicants when AI is being used in the recruitment or employment process. This includes providing detailed notices in handbooks or postings as may be required by the law.
- Conduct Regular Audits: Periodically audit AI systems to detect and correct any biases. This can involve testing the AI outputs against diverse demographic groups to ensure fairness and compliance with anti-discrimination laws.
- Training and Education: Train HR personnel and others involved in the hiring process on the new legal requirements and the ethical use of AI. Ensure they understand how AI tools work and the importance of maintaining compliance.
- Document Everything: Keep detailed records of how AI tools are used, including decision-making processes, notices provided to employees, and any steps taken to ensure compliance. This documentation will be crucial if any legal challenges arise.

- Review Contracts: Prior to implementing and/or renewing your contracts with service providers who may be providing AI-backed services, ensure that you review the contract carefully with reputable technology counsel to ensure that there are reasonable safeguards for your company, including but not limiting that the vendor must comply with applicable laws, and that you understand all of the legal risks.
- Don't Over-Rely on AI: AI-backed software remains unreliable and unpredictable, and in some cases, fabricates outcomes. AI should be used as a tool but should not be overly relied upon; otherwise, it presents additional risks for businesses. Increased litigation is anticipated based on companies' overreliance on AI-backed services that may lead to discriminatory results for job applicants.
- Review Insurance Policies: Review the insurance coverage that your company has for employment-based claims, including what exclusions may apply.

Conclusion

As AI continues to evolve, so does the regulatory landscape. Employers in Illinois need to prepare for these changes by reviewing their AI tools and ensuring compliance with the new law to avoid potential legal pitfalls. Although Colorado was the first state to pass legislation addressing AI-based discrimination, it is clear that many other states will follow this trend.

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