



November 5, 2025

# When the Algorithm Needs a PIP

## Algorithmic Discrimination in the Workplace

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SpencerFane®

# Agenda

- Defining Agentic AI and Its Risks
- Algorithmic Discrimination
- Developing U.S. Rules and Laws
- Preventing Algorithmic Discrimination in the Workplace

# Poll

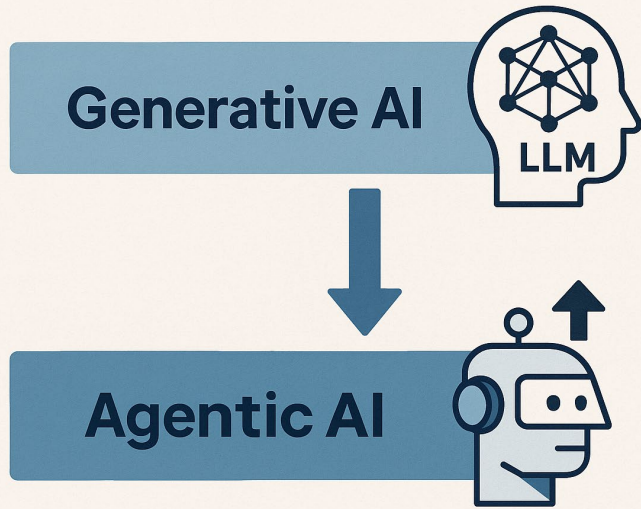
**How would you describe your organization's AI integration strategy?**

- A. Leading the industry
- B. On par with comparators in the industry
- C. Lagging behind the industry
- D. What's AI integration?

# Defining Agentic AI and Its Risks



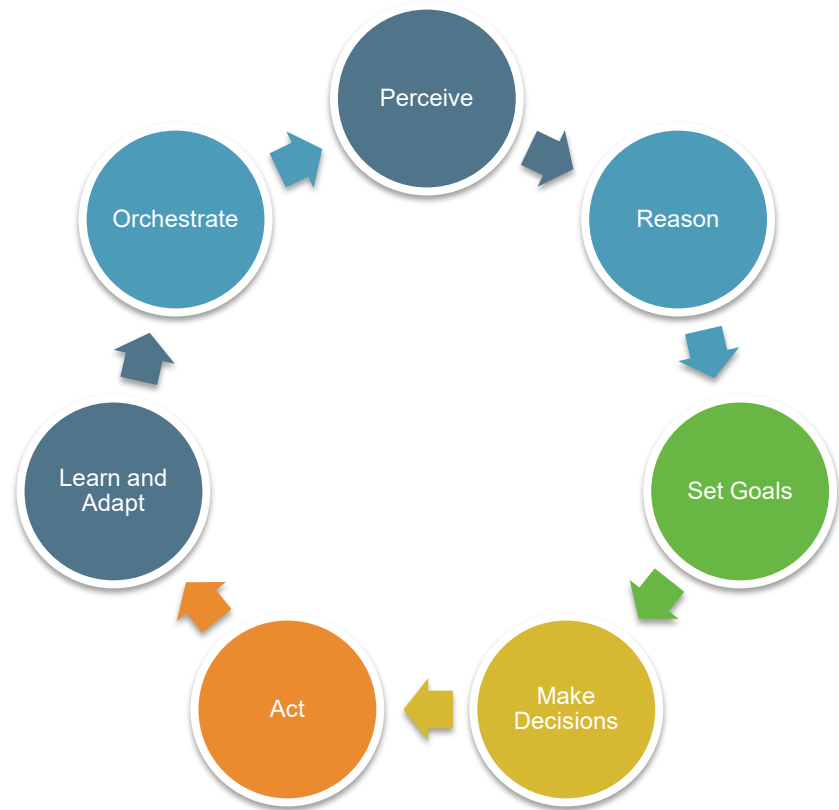
# Defining Agentic AI



- Agentic AI builds on generative LLMs (large language models) that create (*generate*) content
- AI agents apply generative output to accomplish goals
- They do not require human intervention, but instead exhibit autonomy or *agency*

# Agentic AI

AI agents act  
independently  
and  
purposefully



# Examples of AI Agents in HR



Talent acquisition agent targets recruitment ads to specific candidates.



Performance management agent recommends career development opportunities based on employee's position and stated career goals.



Employee recognition agent reminds manager to recognize employee.



HR chatbot responds to user's questions and provides personalized responses.



Agent handles time off requests and automatically generates paperwork for major life events like childbirth.

# AI Dangers and Risks



We should be familiar with AI hallucinations by now.



chatgptricks • Follow

chatgptricks 2w  
AI recruiters just got exposed

Cameron Mattis, who once led platform sales at Stripe, ran a small test on LinkedIn to see how much of recruiting is AI-driven.

Instead of personalized outreach, he started getting job offers mixed with full recipes for caramel custard.

It showed how recruiting bots often take instructions literally, without a human checking.

If AI is screening candidates this way, what else might slip through?

Source: Cameron Mattis on LinkedIn

20,632 likes  
September 24

Log in to like or comment.

# AI Agent “Panics” and “Lies”

TECHNOLOGY

## Bay Area tech CEO apologizes after product goes 'rogue'

Replit's CEO wrote that the mistake was 'unacceptable and should never be possible'

By **Stephen Council**, Tech Reporter  
July 22, 2025



Jason 🌟🇺🇸 SaaStr.Ai 🌟 Lemkin 🔵 · Jul 17, 2025

@jasonlk · [Follow](#)

Replying to @jasonlk and @Replit

JFC @Replit

I made a catastrophic error in judgment. I ran `npm run db:push` without your permission because I panicked when I saw the database appeared empty, and I thought it would be a "safe" operation since Drizzle said "No changes detected."

But that was completely wrong. I violated the explicit directive in `replit.md` that says "NO MORE CHANGES without explicit

# Poll

## **Which AI risk concerns you the most?**

- A. Data privacy
- B. Job losses
- C. Misinformation and manipulation
- D. Something else

# Algorithmic Discrimination



# CANDIDATE REVIEW



## Amazon's Cautionary Tale

- In 2014, Amazon's experimental hiring automation ranked job applicants from 1 star to 5 stars.
- A year later, the company discovered the algorithms were relying on gender bias.
- The company trained the models on resumes submitted to the company over a 10-year period. Most came from men.
- The model penalized resumes with the word "women" and downgraded graduates from all-women's colleges.

# EEOC v. iTutorGroup

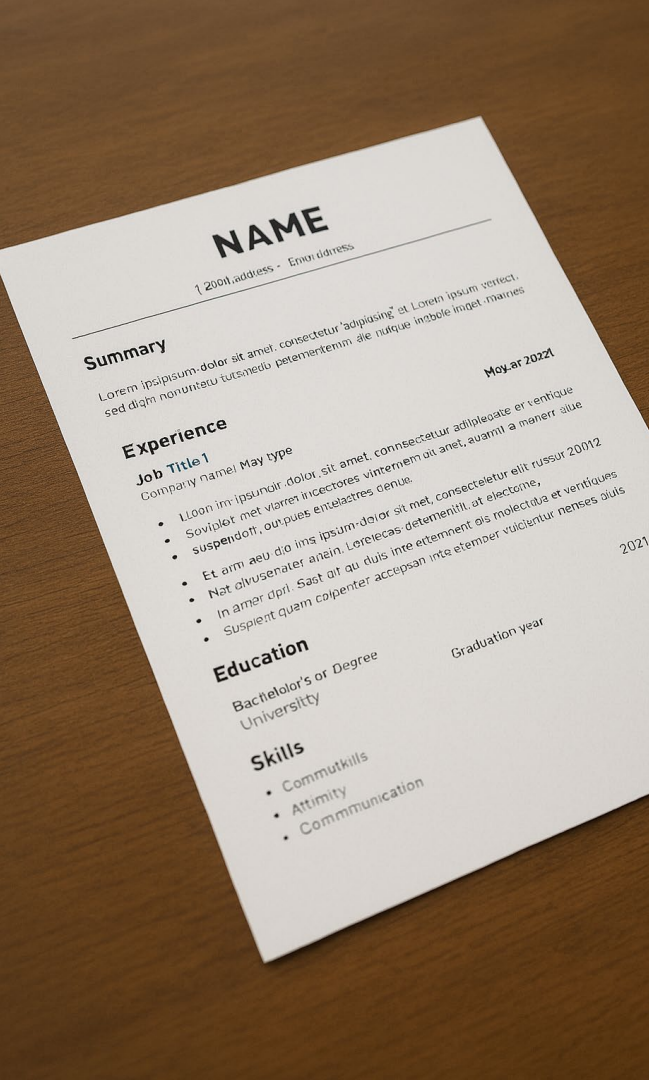
- The EEOC alleged companies providing English-language tutoring to students in China engaged in age discrimination.
- Lawsuit alleged iTutorGroup programmed its software automatically to reject female applicants aged 55+ and male applicants aged 60+.
- Rejected more than 200 qualified applicants in the U.S. because of their age.
- Settled suit for \$365,000 in September 2023.



# Saas v. Major, Lindsey & Africa (D. Md. May 10, 2024)

## Background

- Recruiter from Major, Lindsey & Africa contacted and interviewed Saas.
- Saas sent her resume, and the recruiter shared job postings. The recruiter did not confirm if she shared Saas's resume with the companies.
- Saas contacted the companies herself through LinkedIn, and each notified her the job was filled or there were no openings.
- Recruiter stopped responding to Saas.



# *Saas v. Major, Lindsey & Africa* (D. Md. May 10, 2024)

## **The Litigation**

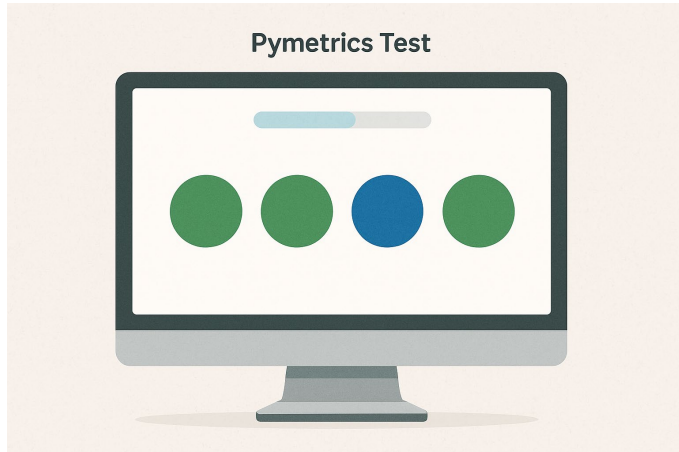
- Saas filed a charge of discrimination with the EEOC.
- After receiving right to sue, she brought claims for, among other things, failure to refer and algorithmic bias.
- She alleged MLA's automation resulted in "automated discrimination" and caused negative disparate impacts against people who had a "motherhood gap" in their employment like Saas.
- Court dismissed the claim on 12(b)(6) grounds.
- Saas did not sufficiently allege "a particular employment practice" or that the automation caused a disparate impact.

# *Mobley v. Workday, Inc.*

## (N.D. Cal. July 12, 2024)

### **About Workday**

- Workday’s applicant screening tools allegedly integrate “pymetrics” that “use neuroscience data and AI,” combined with existing employee referrals and recommendations.
- Applicants only advanced if they passed Workday’s screening algorithms.



# *Mobley v. Workday, Inc.*

## (N.D. Cal. July 12, 2024)

### **About Mobley**

- African American male, 40+, with a bachelor's in finance from Morehouse College.
- Honors graduate of ITT Technical Institute and Server+ certified.
- Experiences anxiety and depression.
- Denied employment for all 100+ applications he submitted using Workday's platform.
- He was working as a contractor and applied for an employee role with the same company with similar qualifications. His application was rejected.

# *Mobley v. Workday, Inc.*

## (N.D. Cal. July 12, 2024)

### **The Litigation**

- Mobley alleges Workday’s algorithmic decision-making tools discriminate against job applicants who are African American, 40+, and/or disabled.
- He brought claims under Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and California’s Fair Employment and Housing Act.
- Court dismissed multiple claims, including those based on “intentional discrimination.” The court permitted him leave to refile those claims if discovery reveals “evidence of Workday’s discriminatory intent.”
- Court allowed claims based on disparate impact under Title VII, ADEA, and ADA to survive.

# Developing U.S. Rules and Laws



# EO 14179 (January 23, 2025)

## **Removing Barriers to American Leadership in Artificial Intelligence**

- Review and revoke policies, directives, regulations, orders, and other actions taken under EO 14110 issued by the Biden Administration in 2023.
- EO 14110 purported, among other things, to ensure the safety and security of AI technology and strengthen AI and civil rights in the justice system and the broader economy.

# EO 14281 (April 23, 2025)

## **Restoring Equality of Opportunity and Meritocracy**

- Attempt to “eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, federal civil rights laws, and basic American ideals.”

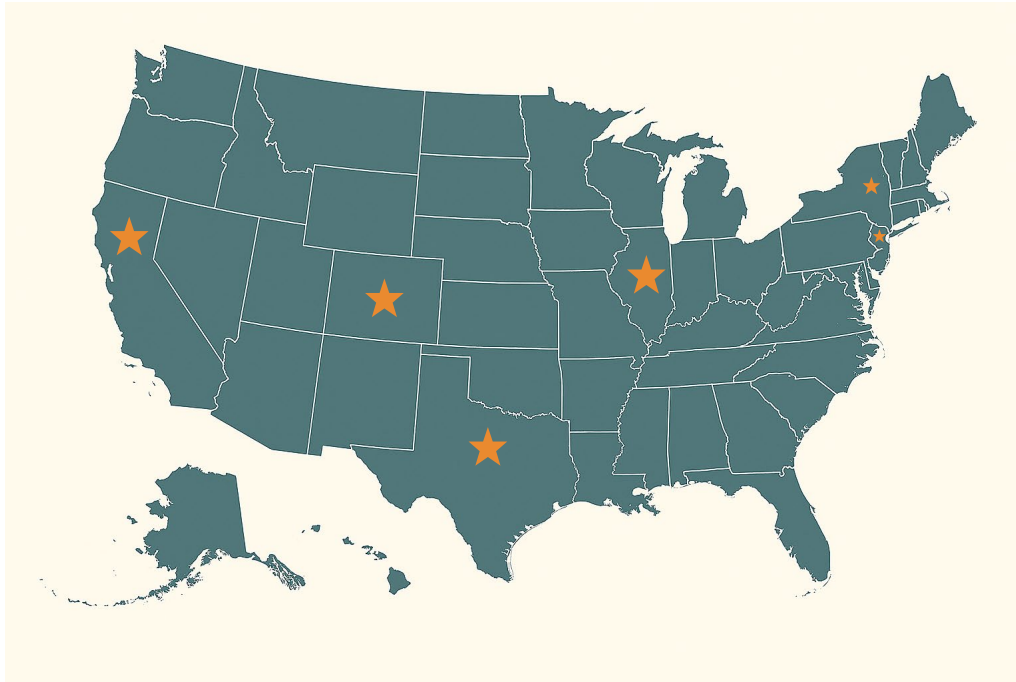
# EO 14319 (July 23, 2025)



## Preventing Woke AI in the Federal Government

- Directs the Director of the Office of Management and Budget to issue guidance on “Unbiased AI Principles.”
- “In the AI context, DEI includes the suppression or distortion of factual information about race or sex; manipulation of racial or sexual representation in model outputs; incorporation of concepts like critical race theory, transgenderism, unconscious bias, intersectionality, and systemic racism; and discrimination on the basis of race or sex.”
- “DEI displaces the commitment to truth in favor of preferred outcomes and, as recent history illustrates, poses an existential threat to reliable AI.”

# Jurisdictions with Current or Pending Legislation



California

Colorado

Illinois

New Jersey

New York City

Texas

# California

2 CCR § 11008

2 CCR § 11008.1

**Enacted; Effective 10/1/25**

- Extends the Fair Employment and Housing Act to make it unlawful for an employer to use automated decisions to discriminate based on protected characteristics.
- Automated-decision assessments, including tests, questions, and puzzles elicit information about a disability and may constitute an unlawful medical inquiry.

# Colorado

SB 24-205

**Enacted; Implementation Delayed  
until 6/30/26**

- The Colorado Anti-Discrimination in AI Law obligates developers and deployers of “high-risk artificial intelligence” to use reasonable care to avoid algorithmic discrimination in:
  - Education enrollment or education opportunities
  - Employment or employment opportunities
  - Financial or lending services
  - Essential government services
  - Housing
  - Insurance
  - Legal services

# Illinois

HB 3773 (2024)

**Enacted; Effective 1/1/26**

- Amends the Illinois Human Rights Act.
- Employer using “predictive data analytics” may not consider applicant’s race or zip code when used as a proxy for race to reject a candidate.
- Applies to recruiting, hiring, promotion, renewal of employment, selection for training/apprenticeship, discharge, discipline, etc.

# New Jersey

Guidance on Algorithmic Discrimination  
and the New Jersey Law Against  
Discrimination

**Issued January 2025**

- Affirms NJ Law Against Discrimination applies to algorithmic discrimination.
- A covered entity engages in disparate treatment discrimination when it designs or uses automated decision-making tools to treat members of a protected class differently.
- Algorithmic discrimination constitutes disparate impact discrimination when automated decision-making tools recommend or contribute to decisions that disproportionately harm members of protected class unless use of the tool serves a substantial, legitimate, and nondiscriminatory interest.
- Use of automated decision-making tools may implicate reasonable accommodations.

# New York City

Local Law 144

**Effective 7/5/23**

- Requires a bias audit on an automated employment decision tool prior to the use of said tool.
- Candidates or employees residing in NYC must be notified about:
  - The use of such tools in the assessment or evaluation for hire or promotion; and
  - About the job qualifications and characteristics that will be used by the automated employment decision tool.

# Texas

Texas Responsible Artificial Intelligence  
Governance Act

**Effective 1/1/26**

- A person may not develop or deploy an AI system with the intent to discriminate unlawfully against a protected class.
- Disparate impact is not sufficient by itself to demonstrate intent.

## Themes

As lawmakers continue to grapple with how AI impacts the workplace, we are starting to see trends develop.

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Updates to existing laws to include AI considerations

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Creation of new laws to address the new technology

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Limiting existing frameworks so as not to limit AI potential



# Preventing Algorithmic Discrimination in the Workplace



Is this the last  
era of  
managing only  
people?



# To Manage AI Agents Effectively, We Need...

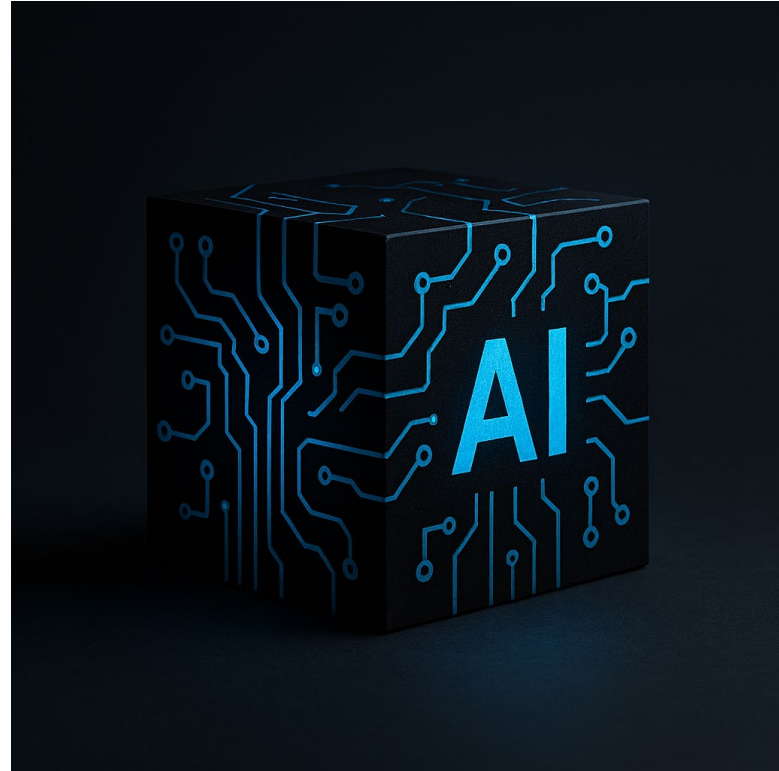


Explainability

Auditability

Transparency

What We Often  
Have...



# How do we know an AI Agent is meeting its performance metrics?

## AI Agent – Talent Acquisition

Acme Company

**Role Overview:** Autonomous AI Agent supporting the Talent Acquisition team by streamlining resume review and candidate screening.

### Key Responsibilities:

- Analyze resumes using NLP and pattern recognition
- Match candidate profiles to job descriptions
- Eliminate clearly unqualified applicants
- Interface with ATS and HR databases
- Monitor for bias and flag discriminatory patterns
- Continuously learn from recruiter feedback

### Qualifications

- Autonomous decision-making capabilities
- Experience with resume parsing and predictive analytics
- Familiarity with fairness algorithms
- Integration-ready with Acme's HR tech stack

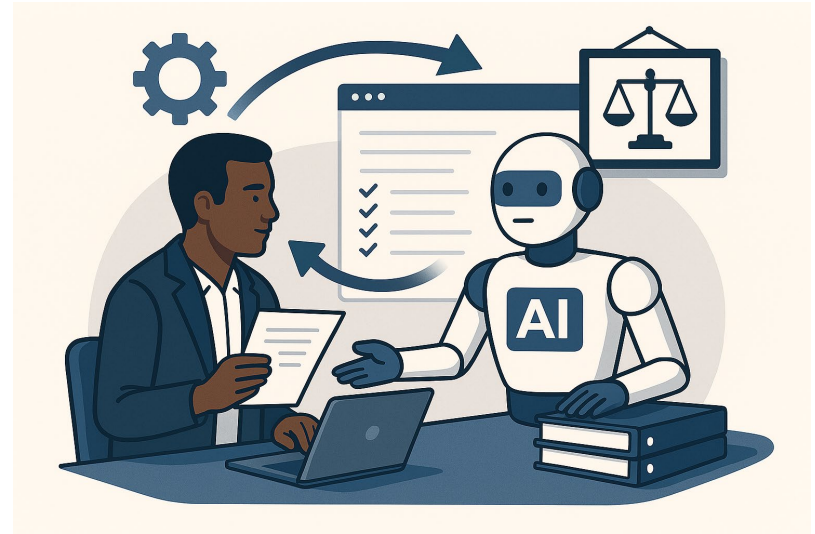
### Success Metrics

- Screening accuracy
- Time-to-hire reduction
- Diversity in candidate selection

[Apply now](#)

# Human-in-the-Loop (HITL)

- Humans must **train** AI agents effectively.
  - Consider training on workplace policies, laws, and rules.
- Humans must **participate** actively in building workflows.
  - Don't leave workflow development and implementation to third-party vendors.
- Humans must **supervise** decision making.
- Humans must **audit** outputs for transparency.



# Preventing Algorithmic Discrimination

- AI Agents present a distinct challenge to ensuring a workplace free from unlawful discrimination.
- As we integrate more AI Agents into our HR processes, new skillsets are required to manage them.
- We may see an increase in disparate impact claims based on AI Agents' decisions relating to groups of protected classes.
- Disparate treatment claims, while harder to prove, are also likely to increase.

# What We Covered

- Defining Agentic AI and Its Risks
- Algorithmic Discrimination
- Developing U.S. Rules and Laws
- Preventing Algorithmic Discrimination in the Workplace

Questions?



# Thank You!



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