

Regulating the Use of AI in the Hiring Process

By Kenneth A. Rosenberg & Brian J. Frederick | The use of Artificial Intelligence (AI) and Automated Employment Decision Tools (AEDTs) has become increasingly prevalent in the hiring process. Human resources professionals and hiring managers are using such tools to assist in the screening and review of resumes and applicants. However, the increased use has caused some concern regarding the extent the tools may be disproportionately screening out applicants belonging to protected classes.

Federal and state laws prohibit discrimination in the hiring process, and employers will not be permitted to blindly rely on AEDTs to screen applicants where the use of such tools has a disparate impact on protected groups. In 2025, the New Jersey Office of the Attorney General and the Division on Civil Rights issued guidance clarifying that the New Jersey Law Against Discrimination (LAD) applies to algorithmic discrimination resulting from the use of new data-driven technologies, such as AI.

In February 2024, the New Jersey Legislature introduced a pair of bills in the Assembly to address the potential discriminatory impact the use of AEDTs may have on prospective job applicants. Assembly Bill 3854 seeks to regulate the use and sale of AEDTs by requiring, in part, bias audits of the technology by independent auditors and candidate notification as to the use of such tools in connection with their application. Assembly Bill 3911 aims to regulate the use of AI analysis of job applicants' recorded video interviews that are submitted to employers, and mandates disclosure, consent, and demographic data reporting requirements.

With New Jersey likely to join other jurisdictions in enacting legisla-

tion regulating AI in the employment decision-making process, and a host of other states that have similarly proposed legislation, there are steps employers can take to be prepared.


Employers currently using or considering the use of AEDTs in their hiring process should closely monitor the legislation's progress and begin planning for compliance. This includes proactively

evaluating current hiring practices to identify where AEDTs are in use.

Employers with operations across multiple states should take steps to align their compliance strategies with emerging regulatory trends.

To mitigate legal risk, employers should: (1) implement clear policies and oversight mechanisms for the use of AEDTs to help prevent unintended discriminatory outcomes; (2) provide comprehensive training to hiring managers and HR teams on the appropriate and lawful use of such technologies; (3) ensure meaningful human oversight remains a part of the decision-making process; and (4) maintain thorough documentation.

Employers are also encouraged to consult legal professionals to assess AEDTs for potential bias and to conduct annual disparate impact analysis to take advantage of the attorney-client privilege.

Organizations that prioritize ethical and responsible AI use today will be better equipped to navigate forthcoming regulatory changes. 



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