

Legal and Practical Considerations of Using AI in Employment Decisions

The Compliance Collective

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The Compliance Collective

This webinar is a part of our monthly webinar series, “The Compliance Collective.”

The webinar series is hosted by a team of cross-disciplinary Ashurst Perkins Coie lawyers who provide a monthly overview and discussion forum on a critical hot topic in ethics and compliance. Each topic provides a look at emerging issues and offers creative solutions to potential compliance problems.

The webinar is hosted every third Thursday at the same time each month: 10:00 a.m. PT/12:00 p.m. CT/1:00 p.m. ET.

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Agenda

- Overview of commonly-used tools
- Regulatory landscape and common compliance themes
- Case studies
- Best practices for employers
- Questions



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Introduction & Overview

Employers increasingly rely on AI-powered tools for a wide range of personnel-related decision-making, raising critical questions at the crossroads of privacy law and employment law.



How are AI Tools Used in Hiring?

- Performance monitoring and scoring
- Chatbot-based candidate screening
- Algorithmic ranking and scoring systems
- Facial and vocal analysis in video interviews
- Predictive analytics for candidate success

Key Distinction

Fully Automated

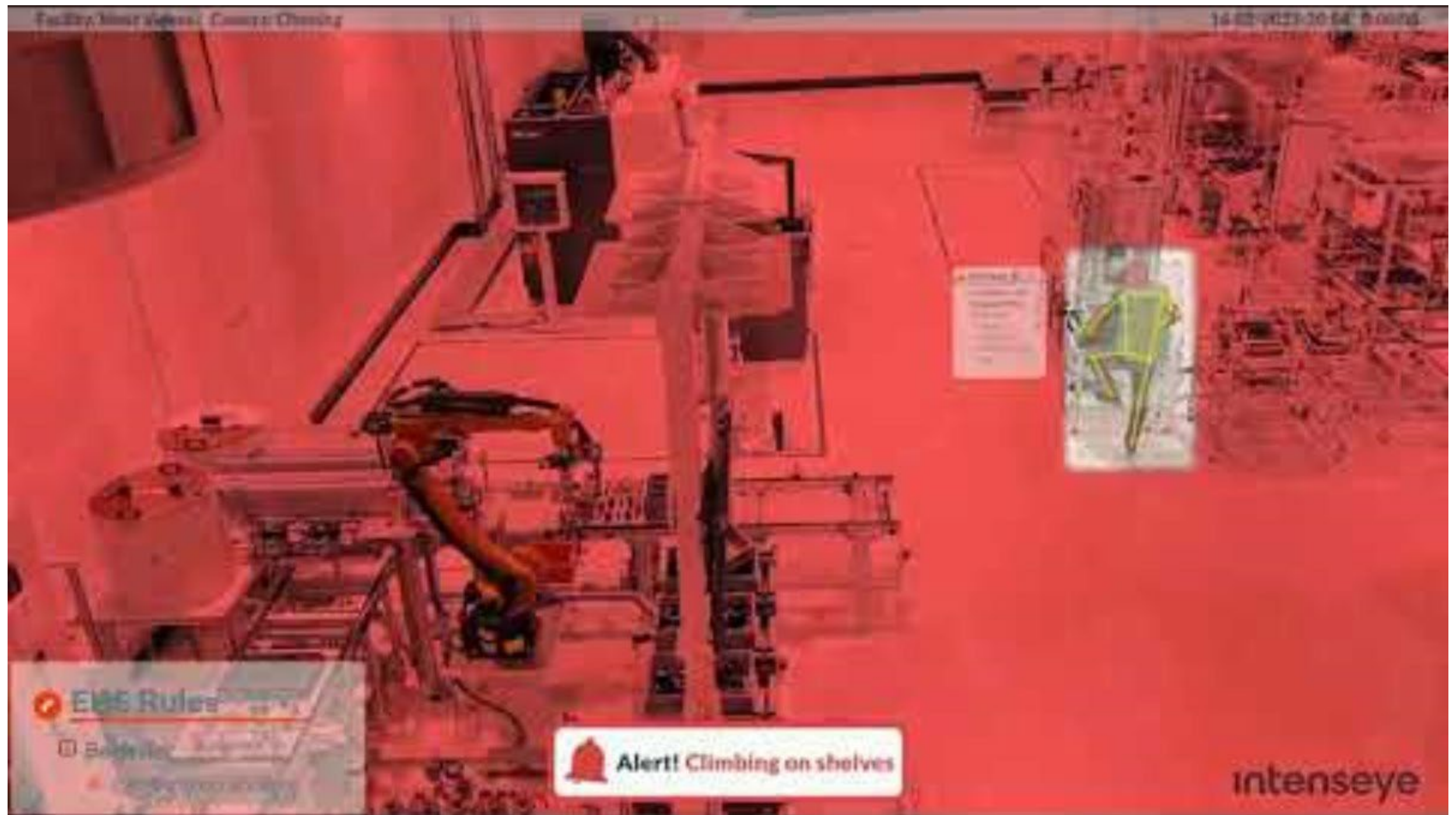
System makes decisions without human intervention – triggers stricter regulatory requirements.

Human-in-the-loop

Human reviews and can override AI output – may reduce classifications as ADMT under some laws.

Other Personnel Related Actions

- Who comes to work?: Shift Allocation and Scheduling Tools
- How long they “work”?: Off the clock monitoring tools
- What are they doing at work?: Performance management and scoring
- Are they being safe at work?: Safety monitoring tools



Regulatory Landscape

An Overview

- No single comprehensive federal statute governs AI in hiring
- Regulation emerges from a patchwork of sources:
 - State consumer privacy statutes (e.g., CCPA)
 - Targeted local ordinances (e.g., NYC LL 144)
 - State-level AI-specific legislation (e.g., CO ADMT Act, CT AI Act, IL AI Act)
 - Federal guidance and proposed legislation?
- Employers must navigate multiple overlapping frameworks simultaneously

NYC Local Law 144

Automated Employment Decision Tools

- Statutory definition of “automated employment decision tool” (AEDT)
- Requirement for independent bias audits before deployment
- Mandate for candidate notice that an AEDT is being used
- Publication requirements for bias audit results
 - Dozens of reports initially published
- Enforcement framework and penalties for noncompliance



California Consumer Privacy Act (CCPA)

- Definition of “automated decision-making technology” (ADMT) under CCPA regulations
- Right of job applicants to opt out of automated decision-making
- Notice and transparency requirements for PI collection and processing
- Obligation to conduct risk assessments for high-risk processing
- Scope of “sensitive personal information” as it relates to employment data
- Human-in-the-loop carve-out: involvement may remove a tool from ADMT classification

Connecticut AI Act

- Definition of “automated employment-related decision technology”
- Applies to tools that “meaningfully” alter the outcome of an employment decision
- Notice and transparency requirements; but no requirements for risk assessments or bias audits



Colorado ADMT Act

- Obligations on both developers and deployers of ADMT in Consequential Decisions
- Transparency and disclosure obligations to affected individuals
- Establishes consumer rights to data correction and meaningful human review
- Enforcement is exclusively by the AG with a 60-day cure period
- New liability framework

Illinois AI Video Interview Act

- Employer must notify applicants when AI analyzes video interviews
- Consent required before Analysis may be performed
- Restrictions on sharing AI-analyzed video content
- Data destruction obligations imposed on employers
- Relationship to BIPA(biometric privacy) and Illinois Human Rights Act
 - *Deyerler v. HireVue Inc.* (Cook County Circuit Ct.1/27/22)



Key Definitions Across Jurisdictions

Term	Jurisdiction	Key Element
Automated Employment Decision Tool (AEDT)	NYC LL 144	Computational process that substantially assists/replaces discretionary decisions
Automated Employment-Related Decision Technology	CT AI Act	Technology processing PI that is a substantial factor used to make or materially influence decisions
Automated Decision-Making Technology (ADMT)	Multiple statutes (e.g., CA, CO)	Technology processing PI to make decisions; making or substantially assisting in consequential decisions; human-in-the-loop carve-out (CA-only);
Artificial Intelligence	IL AI Video Interview Act	AI analyzing video interviews; covers facial/vocal analysis
Consequential Decision	Multiple statutes (e.g., CO)	Decision with material legal or similarly significant effect on an individual
Developer vs. Deployer	CO ADMT Act	Developer creates the system; deployer uses it for decisions on consumers

Common Compliance Themes

Reoccurring obligations across jurisdictions

1

Notice and Transparency

- Inform applications about AI use in hiring

2

Consent Requirements

- Opt-in or opt-out mechanisms for automated processing

3

Bias Audits and Impact Assessments

- Independent testing for disparate impact before and during deployment

4

Data Minimization

- Collect only necessary data; purpose limitation principles

5

Record-Keeping

- Documentation of AI systems, audits and compliance measures

6

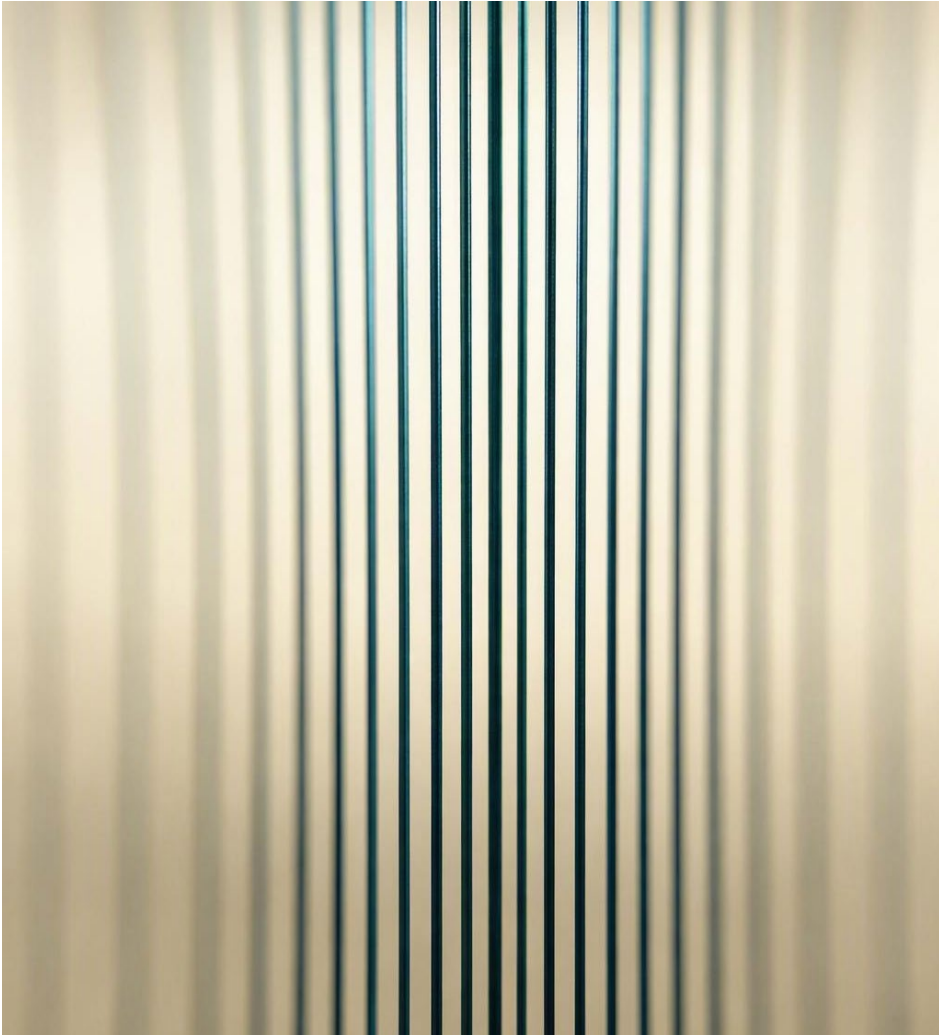
Human Oversight

- Appeals mechanisms and human review of consequential decisions

Additional and Emerging Legislation

- Maryland HB 1202 — Ban on facial recognition in hiring
- Federal Algorithmic Accountability Act (proposed)
- EU AI Act — Employment-related AI classified as high-risk
- Texas CUBI — Capture or Use of Biometric Identifier Act
- Connecticut SB 5 – Notice related to any AEDT use

Civil Rights Laws at Issue



Civil Rights Act of 1964 (Title VII)

Age Discrimination in
Employment Act of 1967 (ADEA)

Americans with Disabilities Act
of 1990

Fair Credit Reporting Act

Mobley v. Workday, Inc. (U.S.D.C. ND. Cal. 2/21/23)

- Class action allegations against Workday
- Representative Plaintiff is African American male who is over 40
- Applied for 80-100 positions and alleges that Workday screened him out
- Allegations that screening was race and age discrimination
- Motion to dismiss denied with judge stating, “[d]rawing an artificial distinction between software decisionmakers and human decisionmakers would potentially gut anti-discrimination laws in the modern era.”
- Preliminary certification under ADEA granted with judge holding Mobley had sufficiently “alleged the existence of a unified policy: the use of Workday’s AI recommendation system to score, sort, rank, or screen applicants.”

Hearing on Motion to Dismiss Second Amended Complaint: February 24, 2026;

Class Certification Motion deadline: July 16, 2026

Case Study 1: Company A

Large-Scale Retail Hiring, High Volume Applicant Pools, Automated Screening at Scale

- Nature of AI/ADMT tools used in recruiting process
- Privacy and employment law issues raised
- Regulatory scrutiny, litigation, or public reporting considerations
- Lessons for compliance



Case Study 2: Company B

AI in Hiring and Talent Management

- Specific AI applications in hiring and talent management
- Intersection with privacy and employment law obligations
- Public controversy, advocacy group scrutiny, and regulatory attention
- Employer brand risk and reputational exposure
- Legal compliance considerations and lessons learned



Lessons from Use Cases

Common Pitfalls:

- Inadequate notice to applicants about AI use
- Lack of bias auditing prior to deployment
- Overreliance on vendor assurances without independent verification

Critical Success factors:

- Cross-functional collaboration between Legal, HR, and Technology teams
- Ongoing monitoring — not just one-time compliance at deployment
- Proactive engagement with evolving regulatory requirements

Best Practices for Employers

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|---|---------------------------------------|---|
| 1 | Vendor Due Diligence | Thoroughly vet AI vendors; don't rely solely on vendor compliance representations |
| 2 | Pre-Deployment Bias Audits | Implement independent bias audits and schedule recurring assessments |
| 3 | Notice & Consent Workflows | Develop clear applicant-facing notices and consent mechanisms |
| 4 | Internal Governance | Establish governance frameworks for AI procurement and use |
| 5 | Monitor Evolving Law | Track the legal landscape across all relevant jurisdictions |
| 6 | Human Oversight | Maintain human review over consequential employment decisions |

CLE Code Word: Risk

Questions?