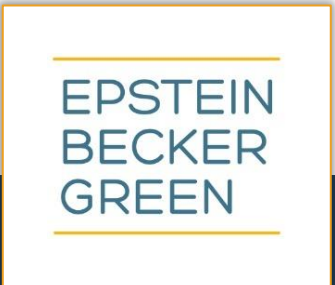


# Embracing AI in Recruitment: Navigating the Legal Landscape



**Nathaniel M. Glasser**



October 22, 2024

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Attorney Advertising

# Nathaniel M. Glasser

## Member of the Firm

As the workforce rapidly changes, companies seeking to resolve employee concerns while also complying with employment laws turn to Nathaniel Glasser, an astute workforce compliance counselor with a litigator's mind and experience. A co-leader of Epstein Becker Green's AI practice group, Nathaniel advises clients on how to maximize the benefits of workplace AI while minimizing potential risks. Nathaniel's relatable and practical approach has made him a highly sought-after advisor to businesses adjusting to today's greatest challenges, as he's equally adept at managing day-to-day workplace compliance issues as he is responding to employment-related litigation.

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# Survey Time - AI in Recruiting/Hiring

- Do you currently use AI in your recruiting or hiring?
- Which of the following do you use:
  - Scheduling chatbots?
  - Resume screeners?
  - Cognitive assessments?
  - Text messaging interviews?
  - Video interviews?
- Do you use generative AI to assist in your recruiting activities?

# Five Principles

1. Safe and Effective Systems;
2. Algorithmic Discrimination Protections;
3. Data Privacy;
4. Notice and Explanation; and
5. Human Alternatives, Consideration, and Fallback



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AI BILL OF  
RIGHTS**

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SYSTEMS WORK FOR  
THE AMERICAN PEOPLE**

**OCTOBER 2022**



**THE WHITE HOUSE  
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1. “Artificial Intelligence and Algorithmic Fairness Initiative” (October 2021)
2. “The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees” (May 2022)
3. “Navigating Employment Discrimination in AI and Automated Systems: A New Civil Rights Frontier” (January 2023)
4. “Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems” (April 2023)
5. “Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964” (May 2023)

# EEOC & DOJ Guidance: Intersection of AI and ADA



•An employer’s use of an algorithmic decision-making tool could violate the ADA if:

- Candidates are not provided with a “reasonable accommodation” that is necessary for the candidate to be rated fairly and accurately by the algorithm
- The algorithmic decision-making tool “screens out” individuals with disabilities who are otherwise able to do the job with a reasonable accommodation
- The algorithmic decision-making tool violates the ADA’s restrictions on disability-related inquiries and medical examinations



•Employers may violate the ADA even if software or tools are used by a third party where the employer administers the tool or where the third party is acting as the employer’s agent



## OFCCP Supply and Service Scheduling Letter and Itemized Listing

### Support Data

21. Identify and provide information and documentation of policies, practices, or systems used to recruit, screen, and hire, including the use of *artificial intelligence, algorithms, automated systems or other technology-based selection procedures.*



# Illinois Artificial Intelligence Video Interview Act

## Requirements:

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- **Notify** each applicant before the interview that AI may be used to analyze the applicant's video interview and consider the applicant's fitness for the position,
- Provide each applicant with information before the interview **explaining** how the AI works and what general types of characteristics it uses to evaluate applicants, and
- Obtain **prior consent** from the applicant to be evaluated by the AI program.



# Illinois HB 3773 Amendments to Human Rights Act

## Key provisions:

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- Prohibits employers from using AI in employment decisions where the AI has the effect of discriminating against employees on the basis of protected class,
- Bars employers from using zip codes as a proxy for protected classes, and
- Requires employers using AI in a manner regulated by the amendments to notify employees that they are using AI for one or more of these purposes.



# New York City Local Law 144 (“Automated Employment Decision Tools”)

## AEDT definition:

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- Computational processes
- Simplified output (score, classification, recommendation)
- Assist or replace discretionary employment decision-making

## Employer requirements:

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- “Bias audit”
  - Impartial evaluation
  - Disparate impact analysis
- 10-day notice “before such use”
- Data retention



# Colorado SB 24-205

## Key Definitions:

- “Algorithmic Discrimination” means any condition in which use of AI system results in unlawful differential treatment or impact based on their protected status under state or federal law
- “High-Risk Artificial Intelligence Systems” means AI systems that make or are a substantial factor in making “consequential decisions” including impacting “employment or an employment opportunity”
- Developers (creators) vs deployers (users) of high-risk AI

## Developer requirements:

- Implement risk management policy and program
- Regular and systematic review
- Third party annual impact assessment
- Notification
- Website statement
- *NOTE:* Several broad exceptions



# Other State/Local Workplace AI Laws & Regs

- Maryland Facial Recognition Law
- California Civil Rights Council Draft Regulations (2024) and Assembly Bill 331 (2023-2024)
- Connecticut S.B. No. 2 (Session Year 2024)
- New York State S7623 and A9315
- New Jersey Bill A3854 (Session 2024-2025)
- Washington, DC Stop Discrimination by Algorithm Act (Reintroduced 2023)



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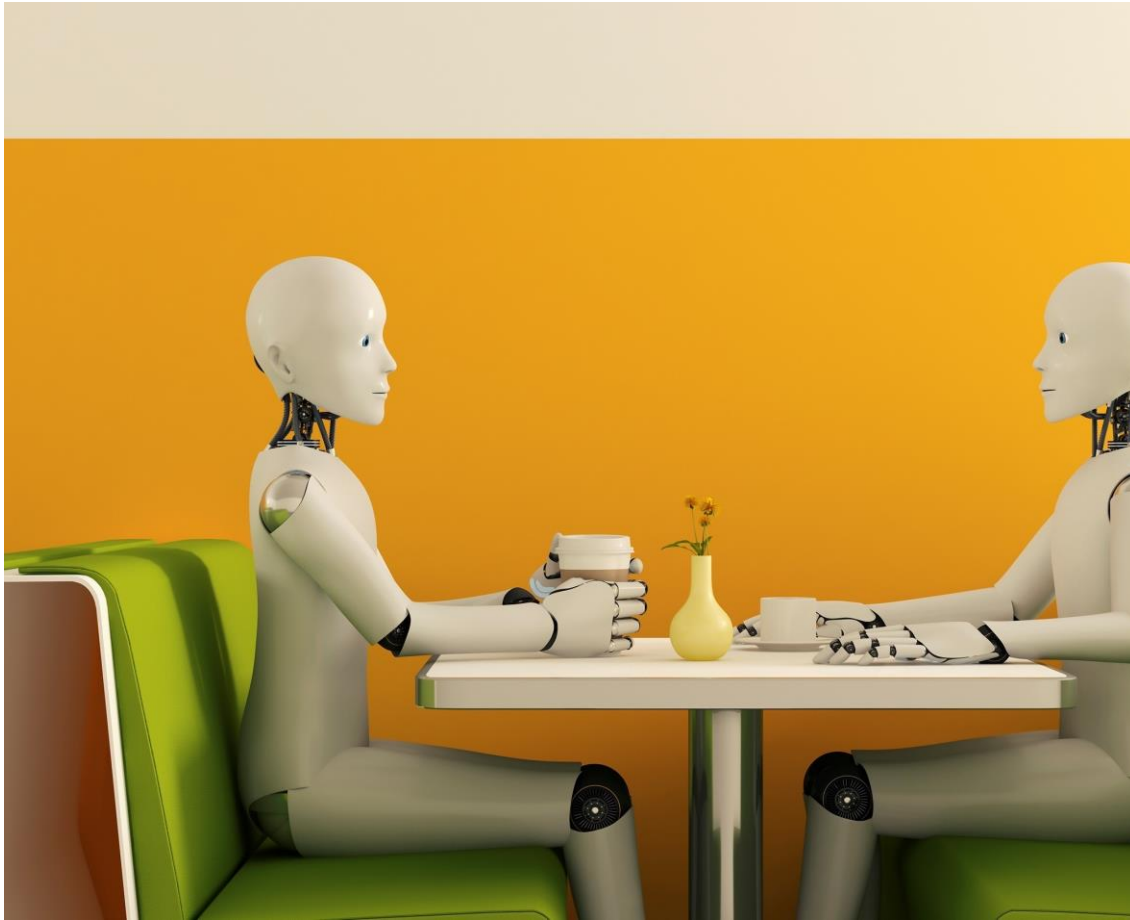
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# Thank you!



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