



AI @ Work: Legal Issues Concerning Use of AI in HR

Protecting Your Employee Assets: The Life Cycle of the
Employment Relationship

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Meet the Faculty

Panelists

[Max Barack](#) – Garfinkel Group, LLC

[Helen Bloch](#) – Law Offices of Helen Bloch, P.C

Moderator

[Charles Krugel](#) – Law Offices of Charles Krugel

About This Webinar

AI @ Work: Legal Issues Concerning Use of AI in HR

The rise of artificial intelligence and biometric technology is transforming HR management, sparking both excitement and legal challenges. While these tools offer opportunities to improve efficiency and decision-making, their use also raises complex issues related to privacy, ethics, and compliance.

This webinar explores how employers can responsibly and effectively integrate these technologies into HR practices. It delves into evolving laws surrounding the collection, use, and storage of biometric and AI-driven data, the ethical implications of these innovations, and actionable strategies for navigating the rapidly changing compliance landscape.

About This Series

Protecting Your Employee Assets: The Life Cycle of the Employment Relationship

- This webinar is part of a series titled “Protecting Your Employee Assets - The Life Cycle Of The Employment Relationship 2025.”
- Many companies' most important assets go home every night. This webinar series covers the legal aspects of the employer-employee relationship from the employer's perspective, from beginning to end.
- No employer, regardless of size, is immune from the reach of federal, state, and local employment laws and regulations. Employers must take a proactive approach to monitoring and auditing their employment practices and policies to ensure that they can better respond to issues before they escalate to third parties like government agencies or plaintiffs' attorneys.
- This webinar series approaches the employer-employee relationship from beginning to end, with programs covering the most important steps along the way, including artificial intelligence, biometric information, hiring and onboarding, policy and procedure development and training, wage and hour compliance, accommodating disabled employees, conducting investigations and considerations associated with ending the employment relationship.

Episodes In This Series

#1: Welcome to the Team! Recruiting & Hiring, Including Restrictive Covenants

Premiere date: 1/23/2025

#2: An Ounce of Prevention: Policies, Procedures and Proactivity

Premiere date: 2/27/2025

#3: Show Them the Money: Wage & Hour Compliance

Premiere date: 3/27/2025

#4: Leaves of Absence & Medical Issues

Premiere date: 5/7/2025

#5: I Know What You Did Last Summer: Workplace Investigations

Premiere date: 6/5/2025

#6: It's So Hard To Say Goodbye: Minimizing Risk When Terminating Employees

Premiere date: 7/20/2025

#7: AI @ Work: Legal Issues Concerning Use of AI in HR

Premiere date: 8/7/2025

Episode #7:

AI @ Work: Legal Issues Concerning Use of AI in HR

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Introduction

- Technology may change rapidly, but the fundamentals of proper communication (etiquette), data storage, privacy and civil rights largely remain the same.
- This applies equally to labor and employment law and HR management.
- AI may be the 2020s shiny new toy, but that doesn't mean it should be blindly adopted by companies.

There's Different Types Of Artificial Intelligence (AI).

A few are:

- **General AI:** Also known as artificial general intelligence (AGI) or strong AI, this type of AI can think and function like humans. It's considered AI's future.
- **Generative AI:** This type of AI can create new content based on training data, such as images, text, or audio. The content can even be designed to mimic a specific person or group's style.
- **Machine learning:** uses algorithms to receive inputted data and use statistics to predict an output. The algorithms can evolve and adapt as new data becomes available.
- **Deep learning:** uses networks of interconnected data to extract patterns to solve complex problems. E.g., astronomical, geological.

AI in recruiting and hiring

- A SHRM February 2022 survey of 1,688 professionals found that 79% used AI and automation for recruiting and hiring.
- The EEOC reported in January 2023 that around 83% of employers and approximately 99% of Fortune 500 companies used some form of AI to screen or rank job candidates.
- Some of the uses of AI is to analyze candidates facial expressions, eye contact and word choice/syntax.

AI in the workplace

- In the workplace itself, AI is also used to monitor safety and productivity. Examples include speed and rate detection, temperature and atmosphere checks and regulation and manpower needs
- We're also starting to see AI-generated training videos or AI tools that personalize training according to that employee's learning style (visual or auditory). We're also starting to see AI deep fakes of candidates, employers and recruiters.

What's the benefit of all of this?

- Minimize or eliminate human bias and error
- More successful hires
- Less turnover
- More profit

There are risks too

- Practically all AI relies on human and other AI digitally created algorithms.
- Consequently, the same disparate impact or treatment claims that can arise with any HR related tool can arise with AI.
 - E.g., screening out people with accommodable disabilities or of a certain socio-economic status.
- AI models learn by analyzing data. If this data is the product of existing prejudices, imbalances, or societal inequities, the AI model may unintentionally perpetuate or amplify these biases, thus employment discrimination.
 - For instance, if an AI hiring system is trained predominantly on data from successful applicants who are predominantly of a certain gender or ethnicity, it may unfairly favor applicants of that group.

Biometric Data

- Increasing scrutiny is focused on how biometric data is used and stored. If you're going to use this data, exercise full disclosure and obtain express prior consent from candidates and employees.
- Case: *Rogers v. BNSF Ry. Co.*, No. 19 C 3083, 2023 WL 4297654 (N.D. Ill. June 30, 2023).
 - BNSF Railway Co. agreed to pay \$75 million to settle an Illinois biometrics privacy case after a jury found the company violated the privacy rights of thousands of employees.
 - However, this was a decrease from an initial award of \$228 million.

AI related cases

- *EEOC v. iTutorGroup, Inc., et al.*, Civil Action No. 1:22-cv-02565.
 - EEOC sued three companies that provided tutoring services for age discrimination.
 - The AI program automatically rejected female applicants over 55 and male applicants over 60.
 - Resolved via consent decree to pay \$365,000 and other considerations like monitoring and training.

AI related cases (cont'd)

- *MOBLEY V. WORKDAY, INC.*, NO. 3:23-CV-00770 (N.D. CAL. 2023).
 - Class action lawsuit filed in the U.S. District Court, Northern District, California, alleging that Workday's algorithm-based applicant screening tools discriminated against job applicants based on race, age and disability.
 - The Court granted Workday's motion to dismiss, but allows plaintiff to amend his complaint.
 - Mobley alleged that applications for 80-100 jobs, with employers who use Workday's screening tool, were rejected and that these tools allowed Workday's customers to discriminate against protected individuals.
 - The Court ruled that Mobley's Complaint didn't allege sufficient facts that Workday qualified as an "employment agency" under the anti-discrimination laws.

AI use in other states

- States like Maryland, New York and Illinois have already enacted laws regulating the use of AI at work.
- Suggested best practices and common threads among these states:
 - Transparency
 - ✓ Employers should disclose use of AI to applicants and employees. Should disclose what and why data is being gathered and how it's being gathered.
 - ✓ Provide notice that AI is being used to analyze interview videos
 - ✓ Provide an explanation of how AI is being used

AI use in other states (*cont'd*)

- Obtain express consent
- Maintain confidentiality
- Securely store data
 - ✓ Maintain data/records for seven years (10 years if in Illinois).
 - ✓ Maintain data/records concerning protected class demographics.
 - ✓ Some jurisdictions are requiring reporting of that data.

Joint liability with contractors

- Increasingly, the DOL, EEOC, NLRB and courts find that 3rd party agencies like recruiters, assessment experts and hiring/employment companies are jointly liable for discrimination.
- Before entering into agreements with 3rd parties, understand your responsibilities and legal liability.

Best practice suggestion

- Do your due diligence when engaging 3rd parties.
- You may not need to statistically validate an assessment instrument on your own or via another 3rd party, but you may be responsible for at least knowing how valid the instrument is.
- Understand how bias is either minimized or eliminated.

AI regulation is occurring on an international scale.

- E.g., the European Union's main legislative branch passed a draft law, the "A.I. Act," which assigns applications of AI to three risk categories:
 - a. banned practices
 - b. high risk systems
 - c. other AI systems

AI and the NLRA

- NLRB General Counsel Memo from October, 2022, NLRB GCM 26, examined the NLRB's first perspective of AI.
- It “presumptively” finds guilt if the employer's practices tend to or could possibly restrict an employee's rights.
- Employers may violate Section 8 if they discipline employees for exercising their collective rights to protest AI that affects wages, hours and conditions of employment or an established collective bargaining agreement.
 - E.g., if in the screening process, employers use AI that makes decisions based on the employees' protected activity or discriminatorily applies quotas or standards to eliminate union supporters.

Questions or Comments?

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About the Faculty

Charles Krugel – cak1@charlesakrugel.com



Charles Krugel is owner of *Charles A. Krugel, Labor & Employment Law on Behalf of Businesses* (www.charlesakrugel.com), and has 25 years of experience in the field. He has been running his own practice for 20 years. His clients are small to medium sized companies in a variety of industries, and he has been lead negotiator for hundreds of labor & employment agreements & contracts.

Additionally, he's litigated dozens of court cases, administrative proceedings & arbitrations. In addition to providing traditional labor & employment law services, he represents companies desiring to institute preventive & proactive HR functions. These functions include policies & procedures, which help to efficiently & discreetly resolve issues in-house & prevent lawsuits & complaints; they also help to reduce costs & act as catalysts for increasing productivity & profits. Moreover, he's frequently the subject labor & employment law related TV, radio & print interviews. [Read More](#)

Max Barack – max@garfinkelgroup.com



Max leads the Garfinkel Group, LLC's employment law practices groups and is a plaintiff-side employment law attorney. He has been practicing law since 2013 and has spent the majority of that time handling plaintiff-side employment matters. He concentrates his practice primarily on representing plaintiffs in their claims of discrimination, as well as wage & hour violations, whistleblower actions, & severance negotiations.

He has extensive litigation experience, with a focus on electronic discovery (ESI). He has represented & assisted employers in defending discrimination & wage & hour disputes, including in department of labor investigations. He is a member of the Board of Directors of the National Employment Lawyers Association of Illinois & co-chair of its Legislative Committee. He is a regular contributor to the Chicago Bar Association's @theBar blog, & is fluent in Spanish. [Read More](#)

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Helen Bloch is the principal and founder of the Law Offices of Helen Bloch, P.C., a general practice firm that is a Certified Female Business Enterprise. In the employment & business context, Helen represents clients on all sides of the employment relationship – individual employees, managers, or employers.

Routinely Helen negotiates and counsels clients on employment agreements, including non-competition, confidentiality, and severance agreements. Also, she drafts employment handbooks and various policies and procedures. Helen will advise businesses on best practices, including providing sexual harassment training. Helen has lectured on topics such as gender role in the law, legal issues affecting small businesses, and legal rights and obligations from multiple sides of the employer-employee relationship.

Helen has been selected for inclusion in Super Lawyers in the area of employment law every year since 2019. Helen belongs to several civic and professional organizations. She is a past President of the Decalogue Society of Lawyers, which awarded her the Presidential Citation in 2015 and the Intra Society Award of Merit in 2001. She serves on the Alliance of Bar Associations, where she assists in screening judicial candidates. Her other bar association memberships include the Illinois chapter of the National Employment Lawyers Association, Women's Bar Association of Illinois and the Illinois State Bar Association. An active National Association of Women Business Owner's (NAWBO) member, Helen leads NAWBO's Lincoln Park Business Exchange Group. [Read More](#)

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