

## Help Wanted:

How Artificial Intelligence and  
Technology Are Changing Talent  
Acquisition Compliance

**Littler**<sup>®</sup>

# Presented by



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# Agenda



- What is artificial intelligence?
- Artificial intelligence and talent acquisition
  - Big data
  - Video interviews
  - Blind recruitment systems
  - Social media
- Potential legal risks and recommendations

# HR is Buzzing about AI

7 Ways Artificial Intelligence is Reinventing Human Resources

3 Ways That A.I. Is Transforming HR and Recruiting

5 ways to use artificial intelligence (AI) in HR

The Rise of AI in Recruitment | AI for Recruitment is Here



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# What is Artificial Intelligence?


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## Dictionary

Enter a word, e.g. "pie"



# ar·ti·fi·cial in·tel·li·gence

/,ärdə'fɪʃəl in'teləjəns/ 

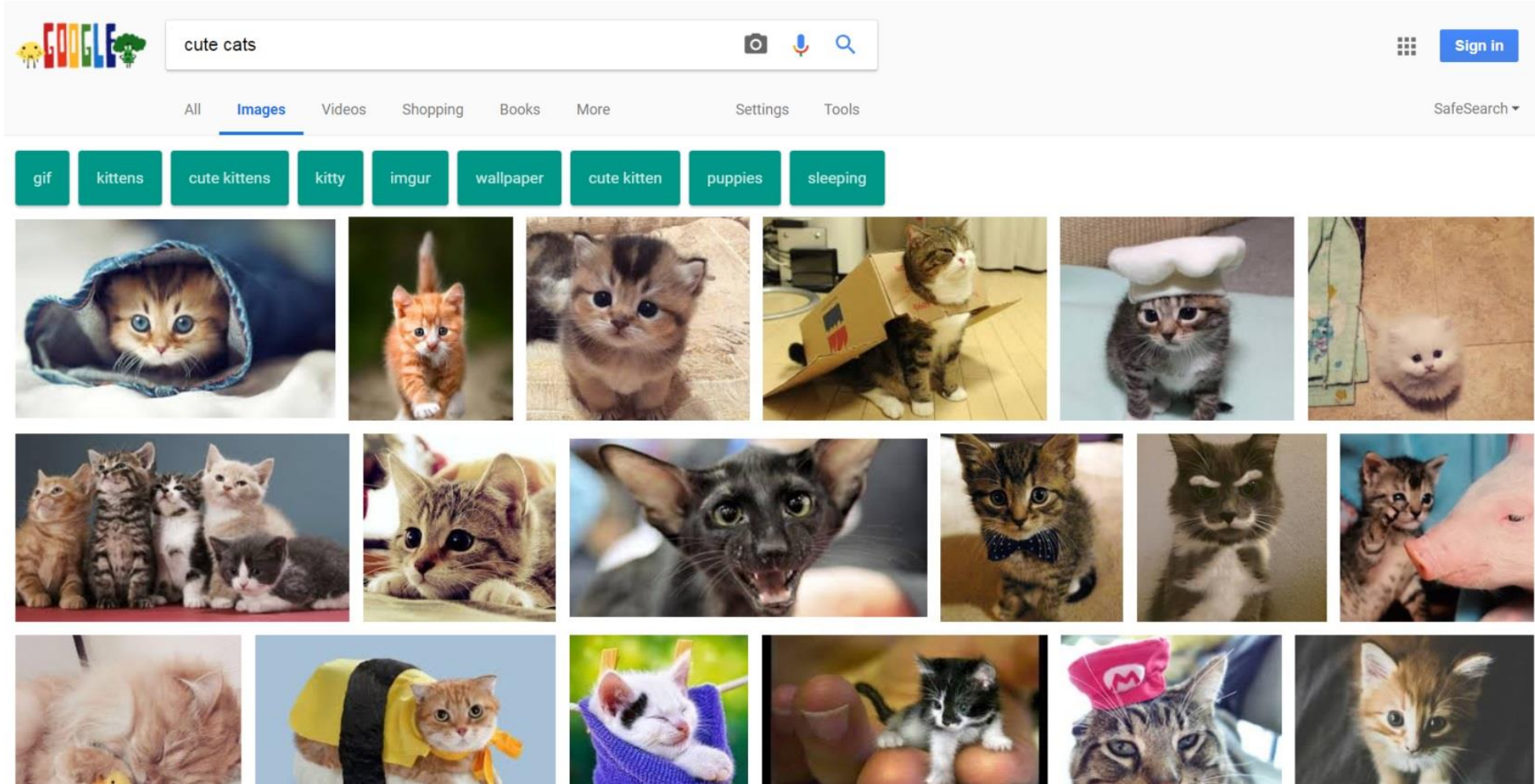
*noun*

the theory and development of computer systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.



Translations, word origin, and more definitions

# AI Finds Cute Cats



# AI Recommends Movies and TV

## prime Recommended Drama TV



## prime Top Movies for Kids & Family

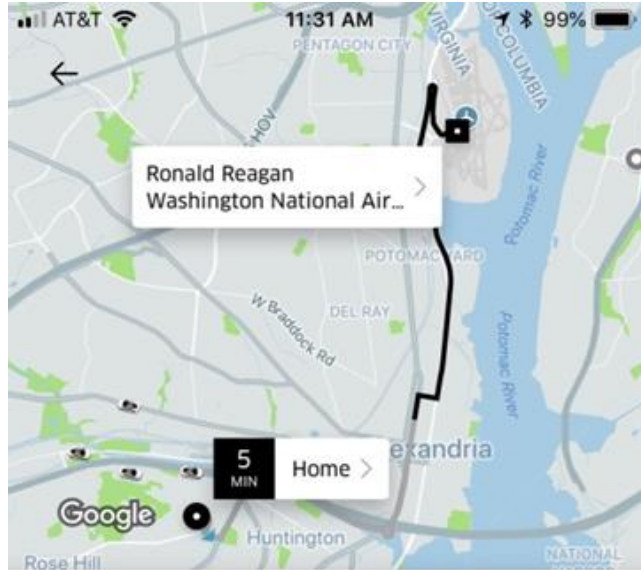


# amazon echo

Always ready, connected, and fast. **Just ask.**



## AI Orders Pizza



**Economy** Mor  
Affordable, everyday rides

Service	Price	Time
Express POOL	\$12.41	12:04pm
POOL	\$14.60	12:04pm
uberX	\$19.80	11:54am

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**CONFIRM UBERX**

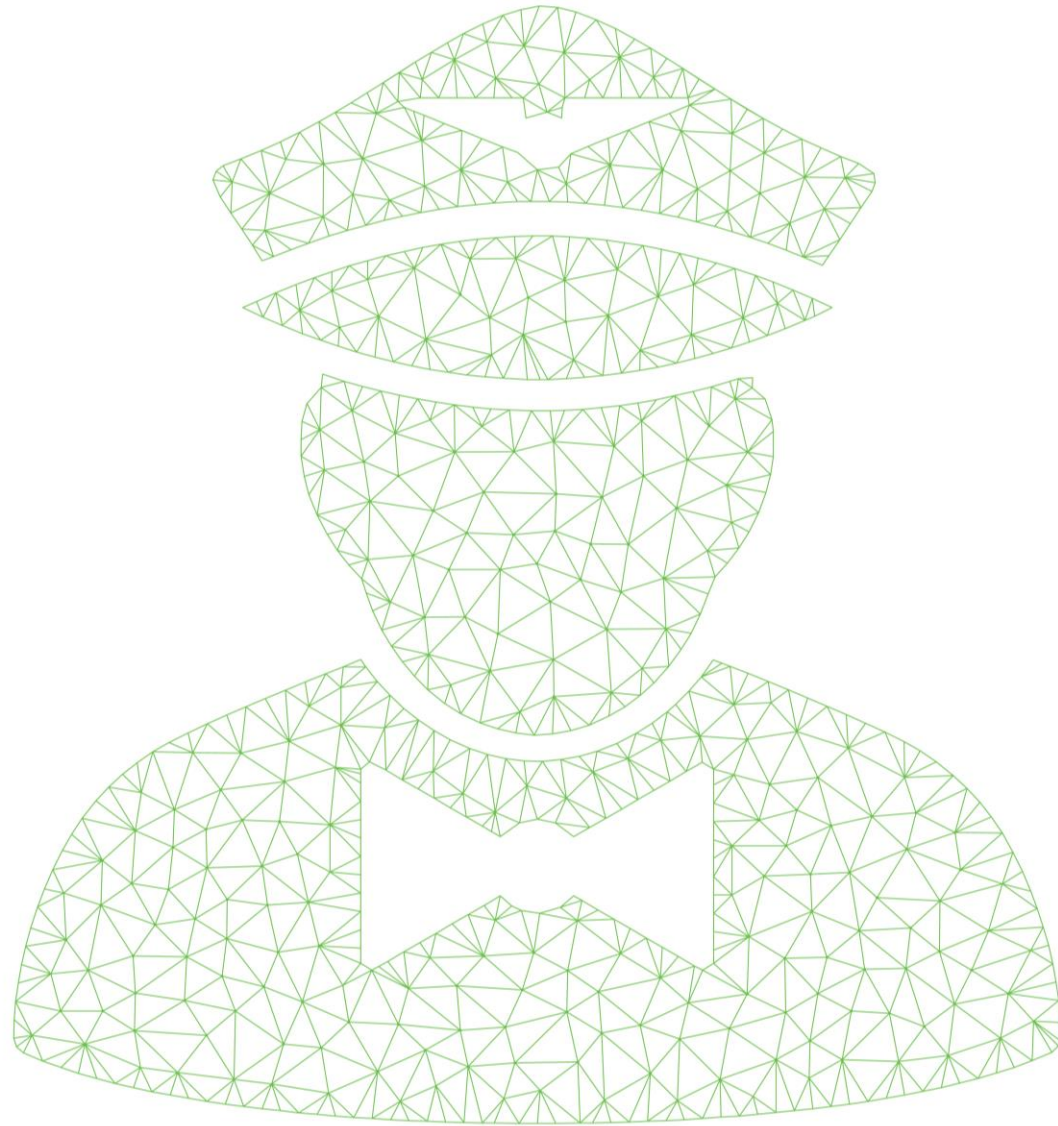
# AI Orders Cars



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## AI Identifies Handsome Lawyer

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# Artificial Intelligence and Talent Acquisition

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# Balancing Recruitment and Compliance Needs

## Recruitment

- The “war on talent” is real and here to stay
- Emerging technologies promise to find the “best” talent
- Better, faster, and more efficient

## Compliance

- Government oversight is real, refuses to leave
- Emerging technologies may leave behind “qualified” job seekers who we considered
- Risk of unintentional discrimination, bad PR

# Balancing Recruitment and Compliance Needs

- Both sides need to understand that new technologies are:
  - Encouraging
  - Worthy of consideration
- But both sides should also be able to make an informed decision regarding benefits and risks involved:
  - Disparate treatment or disparate impact under Title VII
  - Validation under UGESP
  - Compliance with OFCCP's Internet Applicant Rule



# Balancing Recruitment and Compliance Needs

- With key compliance challenges now identified, let's evaluate them in the context of the following technologies:
  - Tools powered by big data and artificial intelligence
  - Video interview and blind recruitment systems
  - Social media recruitment platforms



# Big Data and Artificial Intelligence

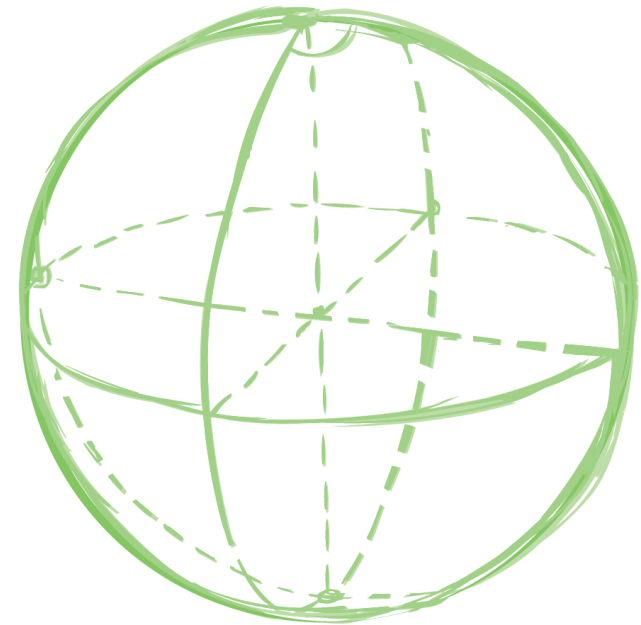
- “Big data” refers to extremely large data sets that can be used to learn about and predict behaviors and preferences using advanced data analytics methods and involves:
  - Huge number of data points that cannot be analyzed using traditional methods
  - Large number of unstructured (or at least differently structured) data sources
    - Social media sites such as LinkedIn or Facebook
    - Online job sites such as Monster, Indeed, etc.
    - Applicant tracking system, candidate relationship management system
    - Web browsing history





# Big Data and Artificial Intelligence

- “Artificial intelligence” (or “AI”) generally refers to computers, systems, or technologies that attempt to simulate human intellect
  - **The goal is for systems to think, learn, and in particular, adapt**
    - Includes machine learning:
      - System learns and changes programming based on new data inputs
      - Not reliant on human intervention to explicitly change programming



# Big Data and Artificial Intelligence

- You could say that in many cases, big data and AI are “joined at the hip”
  - The algorithms used to analyze big data are a form of AI
  - Big data provides AI with the “fuel” needed to make those algorithms “smarter”
    - Meaning the AI can change the algorithms
- But to what end?
  - Recruit? Screen? Interview? Possibly even hire?



# Sourcing with Big Data and AI

- External sourcing: search the web for “passive” candidates
  - Some companies advertise that you can base searches on race, ethnicity, sex, other protected characteristics
  - Other technologies claim to be able to determine when a candidate is “ready” to leave current employer
  - Targeted job advertisements based on phone/tablet apps, online communities, and social media sites
  - Chatbots that engage potential candidates on social media sites
- Internal sourcing: search existing ATS to identify prior applicants for new roles



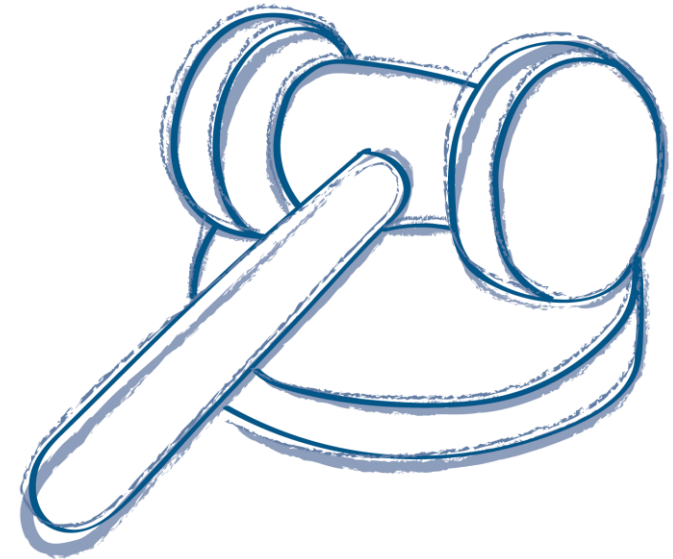
# Screening with Big Data and AI

- Evaluating candidates and assigning “fit” scores based on:
  - Likelihood of successful performance
  - Company’s mission and values
- Chatbots will prescreen candidates and guide them through the process
- Video interviewing
  - More on this in a bit . . .



# Big Data and AI Compliance Implications

- Title VII of the Civil Rights Act
  - Big data analytics certainly have the potential to produce disparate impact
- UGESP
  - If big data to used as “cutoffs” to advance individuals, UGESP arguably triggered
    - But: if AI is writing (and changing) the algorithms used, how can they ever be validated?



# Big Data and AI Compliance Implications

- Internet Applicant Rule
  - OFCCP requires contractors
    - To record the searches of both internal and external resume databases
    - To retain the resumes of all individuals who were considered for a job, regardless of whether they are an internet applicant
      - Are tools being used to “consider” job seekers?



# Video Interview Systems

- Video interviewing typically consists of an applicant sitting through an automated video job interview, which is recorded either with video (or sometimes just audio), which can then be evaluated by:
  - Recruiters and hiring managers, or even
  - The system itself, which analyzes the video by incorporating AI, ruling out or advancing candidates based on a preprogrammed assessment model
    - Some systems claim to assess emotional intelligence and truthfulness



# Video Interview Compliance Implications

- Title VII of the Civil Rights Act
  - Concerns include disparate treatment AND disparate impact
  - How are these videos being used? By whom?
  - Where are all these records being stored?
  - Recruiters when interviewed have stated that they worry the videos do impact their decision
    - Many of stated their concern that even the audio only might impact their decision





# Video Interview Compliance Implications

- UGESP
  - If system is being used to automatically advance individuals, UGESP arguably triggered
- Internet Applicant Rule
  - Is system being used to “consider” job seekers?



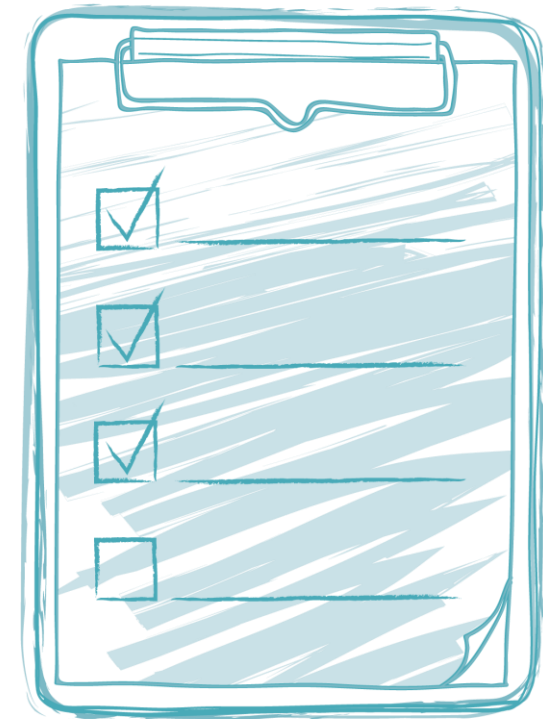
# Blind Recruitment Systems

- In contrast to video interviews, “blind” recruitment and screening practices involve removing personally identifiable information from applicant profiles, such as:
  - name, gender, age, education, maybe even experience
- Some companies go so far as to utilize “blind hiring,” meaning you may not personally see or speak to an applicant before hiring them



# Blind Recruitment Compliance Implications

- The goal is to eliminate, or at least reduce, the potential for unconscious bias, and promote diversity
- Challenges include:
  - Documenting the process
  - Customizing the process
    - How “blind” should we go?
  - Is there a “back door”?



# Social Media Platforms

- Social media has significantly changed the way companies are hiring
  - Recent surveys indicate that 93% of recruiters are using social media in their recruiting efforts
  - 45% of the Fortune 500 firms include links to social media on their career page sections



# Social Media Platforms

- Effective way to find (or assess?) talent
  - Allows recruiting teams to take advantage of the candidate information being shared online
  - To engage candidates
  - Monitor their professional activities
  - Research their expertise
  - See what events they have attended



# Social Media Compliance Implications

- Internet Applicant Rule
  - Are you creating Applicant pools?
    - Is system being used to “consider” job seekers?
  - Are you interviewing individuals before they apply in your ATS?
  - How are you tracking all this information & consideration?
  - Are you searching social media?
    - If you are there are other recordkeeping requirements...



# Searches and Recordkeeping Obligations

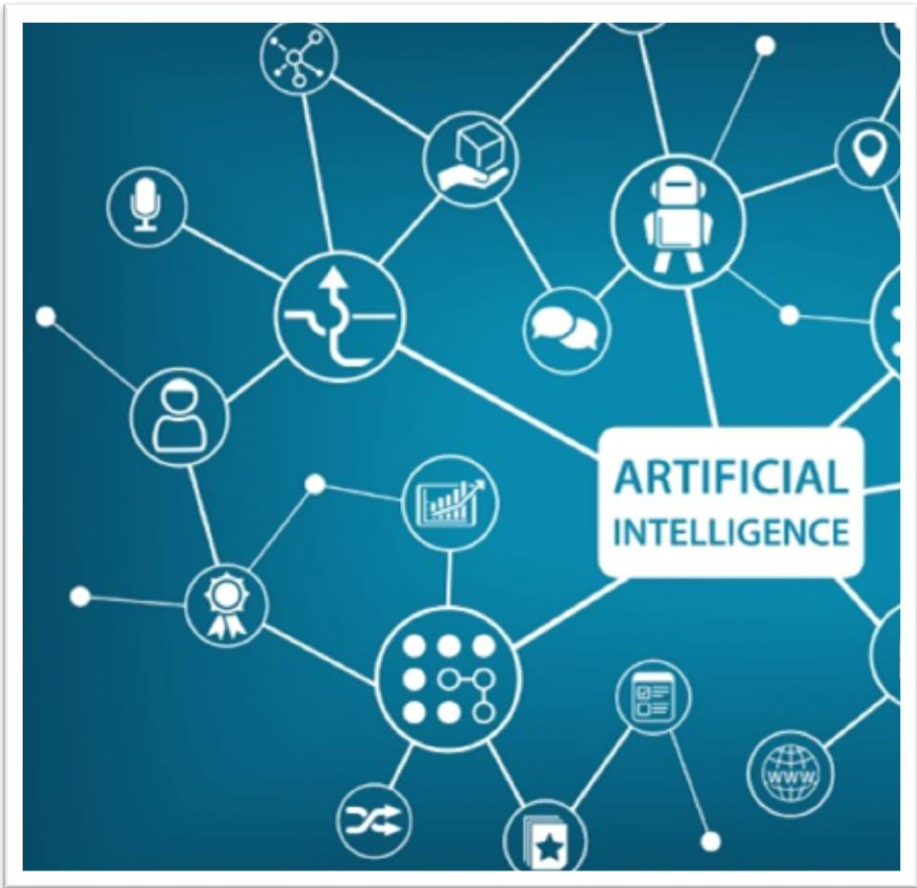
## External Searches

- Position (req #) searched for
- Search Criteria – Keyword Strings
- Date of search
- Resumes or profiles returned from search that meet basic qualifications and are considered

## Internal Searches

- Resumes added to database (ATS) and date added
- Position (req #) searched for
- Search Criteria – Keyword Strings
- Date of the search

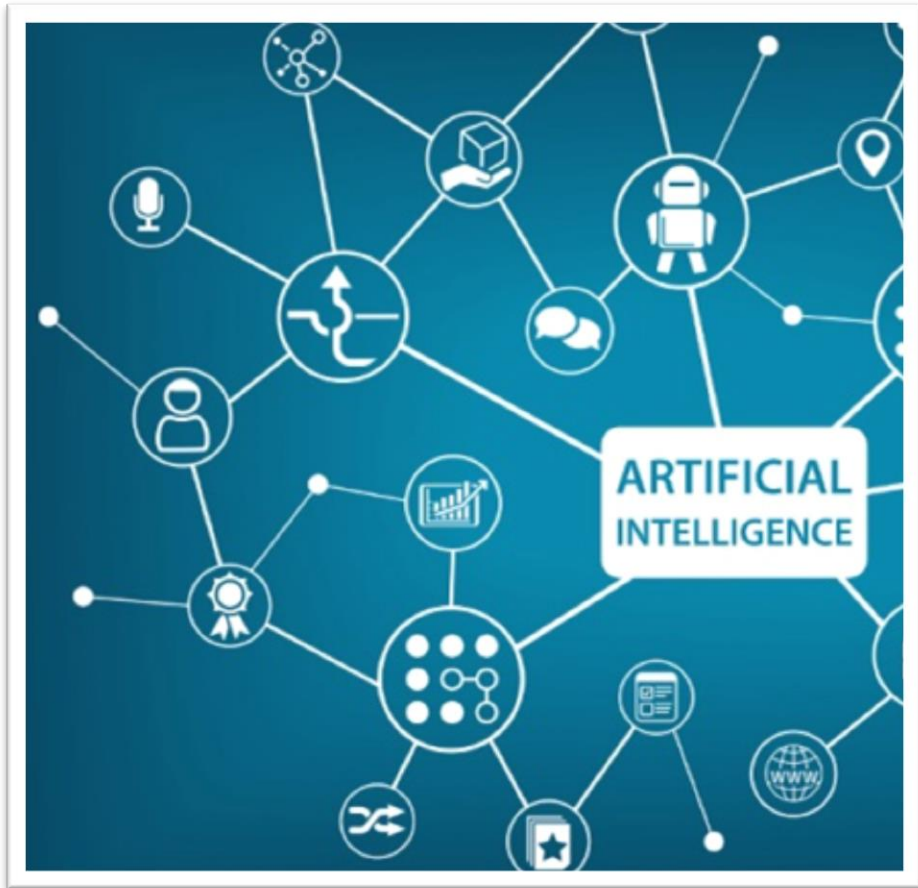
# More Recommendations



- Be informed consumers – research the possible and impossible
- Vendor due diligence is a must – assign Legal and HR professionals to vet applications
- Avoid replacing discretion with algorithms wholesale – subject matter expertise is the critical element of data scientific success
- Test, test and re-test!



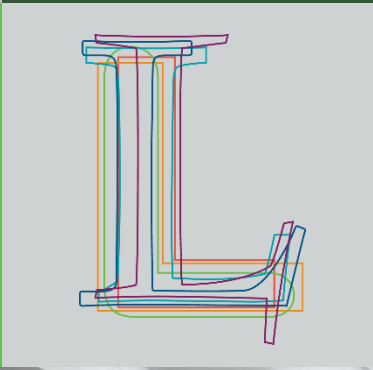
# More Recommendations



- Legal risk is VERY costly, and often personally costly – reduce the risk by evaluating at 3 process points:
  - Feature identification/model building
  - Report generation - don't create “smoking gun” documents
  - Taking action on output
- **Remember:** Data is NEVER protected by attorney-client privilege



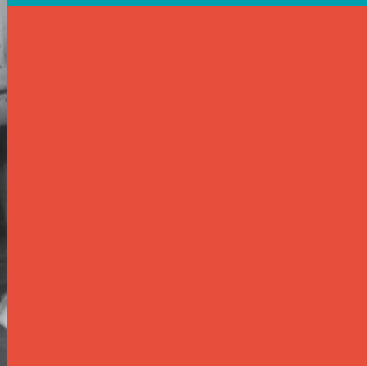
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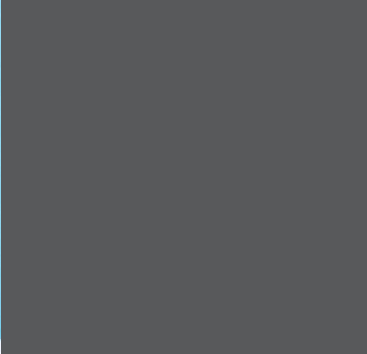


# Questions?

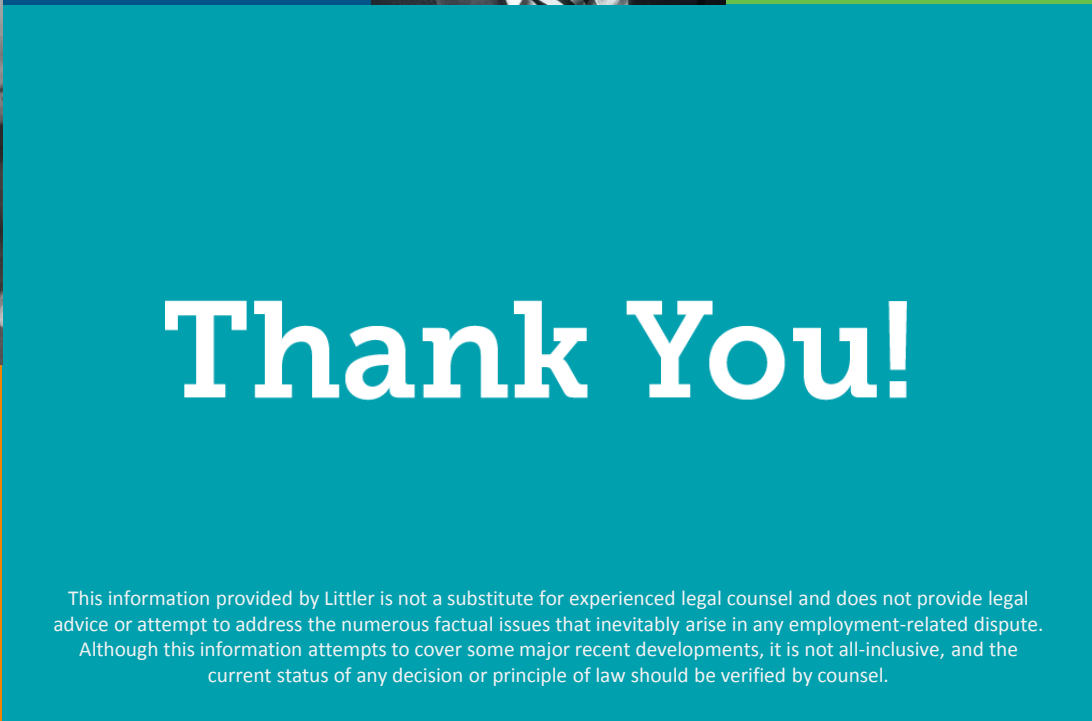


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