



Tuesday, October 1, 2024

2024 Employment Law Landscape:

Strategies for Noncompete Agreements, Employee Activism, and AI

PIERCE ATWOOD 

Noncompete Agreements

Katy Rand

PIERCE ATWOOD

This slide features a dark teal header with the text "Noncompete Agreements". Below the header, there is a teal bar on the left containing the name "Katy Rand" and a grey bar on the right containing the "PIERCE ATWOOD" logo. The background is white with a grey vertical bar on the right side.

2

Identify the Interests / Assets Requiring Protection

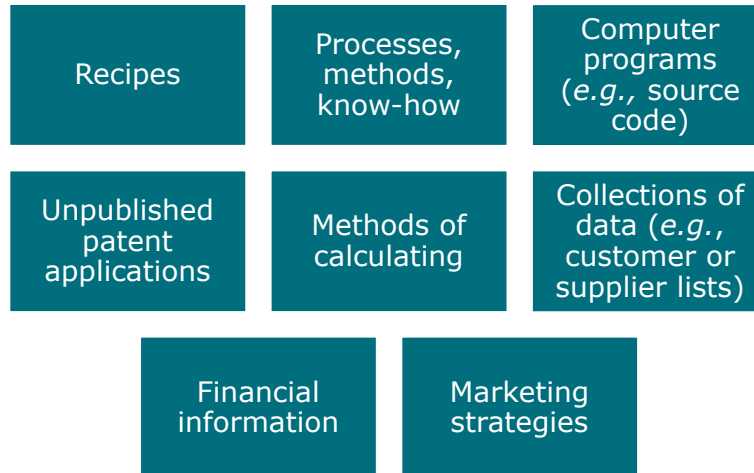
- Information
- Physical assets
- Customer / client relationships ("good will")
- Vendor / supplier relationships
- Employees

©Pierce Atwood LLP. All rights reserved. PIERCE ATWOOD

This slide has a white background with a dark teal header bar. The title "Identify the Interests / Assets Requiring Protection" is centered in bold teal text. Below the title are five teal boxes arranged in two rows: "Information", "Physical assets", and "Customer / client relationships ('good will')" in the top row; "Vendor / supplier relationships" and "Employees" in the bottom row. At the bottom, there is a grey footer bar with the copyright notice "©Pierce Atwood LLP. All rights reserved." on the left and the "PIERCE ATWOOD" logo on the right.

3

Valuable Information



©Pierce Atwood LLP. All rights reserved.

PIERCE ATWOOD

4

Sources of Protection

- Common law duty of loyalty – likely limited, but potentially relevant
- Defend Trade Secrets Act (and similar state laws)
- Contracts – use of which increasingly regulated / limited by federal and state laws

©Pierce Atwood LLP. All rights reserved.

PIERCE ATWOOD

5

Duty of Loyalty

- Common law duty to act in the best interests of the employer
 - › Not stealing or converting corporate opportunities
 - › Not using company assets or resources to compete or otherwise harm employer
- Generally attaches only to directors or others occupying positions of trust and confidence
- Generally will not prohibit an employee from preparing to leave and compete while employed

©Pierce Atwood LLP. All rights reserved.

PIERCE ATWOOD

6

Statutory Trade Secret Protections

Katy Rand

PIERCE ATWOOD

7

Trade Secret Statutes

- Federal and state statutes prohibit “misappropriation” of “trade secrets”
- Aggrieved company / individual can file suit, seeking injunctive relief, damages, and attorneys’ fees
 - › State law – Uniform Trade Secrets Act in effect in Maine, New Hampshire, Rhode Island, and (with some tweaks) Massachusetts.
 - › Federal law – Defend Trade Secrets Act

DTSA

“An **owner** of a **trade secret** that is **misappropriated** may bring a civil action . . . if the trade secret is related to a product or serviced used in, or intended for use in, interstate or foreign commerce.”

What is a “trade secret”?

Anything!

- “all forms and types of ... business ... information” regardless of how stored

So long as:

- “Owner” has taken “reasonable measures” to keep information secret

And

- Info “derives independent economic value” from its secrecy

What is “misappropriation”?

“Acquisition”

- Acquisition if acquirer “knows or has reason to know” trade secret was obtained by “improper means”

“Disclosure” or “Use”

- Disclosure by one who acquires by improper means
- Disclosure by subsequent parties with knowledge
- Use, if with knowledge that trade secret was obtained by accident

“Threatened misappropriation” v. “Inevitable disclosure”

What are “improper means”?

- “theft, bribery, misrepresentation, **breach or inducement of a breach of duty to maintain secrecy**, or espionage”
- but not “reverse engineering, independent derivation, or any other means of lawful acquisition”

What are “reasonable measures”?

- Measures that are not applied equally to all information
- Confidentiality agreement / NDA probably necessary, but standing alone may be insufficient
- Specific measures:
 - › Promptly cutting off departing employee’s access and wiping their devices
 - › Marking / designating as confidential so employee is on notice
 - › Using technological protections (passwords, encryption) to limit access
 - › Employing physical protects (locked cabinets, file rooms, etc.)

Reasonable Measures Include Policies

Confidentiality Policy

- Define trade secrets
- Specify obligation to maintain secrecy of trade secrets during and following employment
- Identify consequences for improper use or disclosure
- Prohibit use of third-party (e.g., former employer) trade secrets
- Include whistleblower immunity language

Electronic Communications Policy

- Require strict adherence to all technological controls
- Address personal devices
- Address (prohibit?) use of personal email for work purposes
- Address (prohibit?) personal cloud storage for work purposes
- Prohibit sharing passwords

Return of Employer Property

- Include all forms of property, including electronic
- Insist on return no later than last day of employment
- For employer-provided portable devices, state that device will be remotely wiped

14

DTSA - Injunctions

- Court may grant an injunction to prevent actual or threatened misappropriation
- Cannot prevent a person from entering into an employment relationship **and** conditions placed on employment must be based on evidence of threatened misappropriation
- Cannot otherwise conflict with State laws prohibiting restraints on practice of lawful profession, trade, or business

15

DTSA - Damages

- Actual damages – lost profits
- Unjust enrichment separate from actual damages
- OR a reasonable royalty
- Treble damages and attorney’s fees available for willful and malicious misappropriation
- Attorney’s fees also available for misappropriation claims brought in bad faith (which can be proven circumstantially) or motion to terminate injunction brought or opposed in bad faith

16

DTSA - Whistleblower Immunity

- Immunity from civil and criminal liability for employee’s disclosing trade secret to government or an attorney solely for the purpose of reporting a suspected violation of law
- Employers are required to provide notice of immunity in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.
 - › Employee includes contractors and consultants
 - › Consequence of noncompliance is inability to recover treble damages or attorney’s fees

17

Contractual Restrictive Covenants

Katy Rand

PIERCE ATWOOD 

18

What Does Your Company Need?

- If an employee were to leave your company today and begin working for a competitor, how could they harm your business?
 - › Put to the side general competition (*i.e.* harm to the company when anyone, not previously employed by the company, competes).
 - › Question is how this individual's status as a former employee gives them an **unfair** advantage or uniquely position them to harm the company.

19

Menu of Restrictive Covenants

Non-Competition

- Prevents employee from working in industry

Non-Solicitation / Anti-Raiding

- Prevents employee from soliciting customers, clients, or employees

Non-Acceptance

- Prevents employee from accepting business from customers / clients or from hiring employees (even if approached by the customer or employee)

Confidentiality / Non-Disclosure

- Prevents employee from disclosing or using trade secrets or confidential information

©Pierce Atwood LLP. All rights reserved.

PIERCE ATWOOD

20

Non-Disclosure Agreements

- Handbook policy likely inoperative post-termination
- If employee has access to information that, if disclosed or used, would harm the employer, they should be required to sign an NDA as a condition of employment
- Identify requirement in offer letter

©Pierce Atwood LLP. All rights reserved.

PIERCE ATWOOD

21

NDA – Drafting Tips

- Agreement should
 - › Define “confidential information” and “trade secret” – specificity will help avoid disputes
 - › Clearly state what isn’t covered (*i.e.* information in the public domain)
 - › Prohibit disclosure or use during and after employment
 - › Include required notice of whistleblower immunity

22

Legal Limitations on NDAs - NLRB

- NLRB’s position:
 - › NDAs / non-disparagement provisions may interfere with or restrain Section 7 rights
 - › Even proffering certain NDAs / non-disparagement agreements is an unfair labor practice
- Theory is that even former employees have the right to protest the employer’s use or terms of severance agreement and/or to disparage employer in context of aiding current employees’ quest to change terms and conditions of employment

23

NLRB GC Memo

- Clauses cannot prohibit employees from communicating with NLRB, union, media, or other third parties about terms and conditions of employment (including existence of agreement)
- Probably can prohibit disclosure of financial terms
- NLRB will generally seek to void only unlawful provisions, not entire agreement
- Disclaimer language helpful if includes a statement of rights (not just a broad reference to Section 7)
- NLRB's position extends to other restrictive covenants

24

Federal "Speak Out Act"

- Effective 12/7/22, prohibits enforcement of pre-dispute NDAs / non-disparagement provisions related to allegations of sexual assault or harassment
- "Pre-dispute" means before the allegation has been made
- Law therefore doesn't prohibit such clauses in the context of settlement of a sexual abuse or harassment claim

25

Maine Statutory Limit - NDAs

- 26 M.R.S. § 599-C
 - › Employer cannot enter into a separation / severance / settlement agreement that prevents disclosure of “factual information relating to a claim of unlawful employment discrimination” unless
 - Separate monetary consideration
 - Mutuality
 - Statement that employee can report, testify, provide info to MHRC / EEOC or in court
 - Employer retains copy of the agreement for 6 years

26

Now Enjoined FTC Non-Compete Rule

- Would have been effective September 4
- Would have rendered **non-competition agreements** unenforceable except as to agreements **entered into before effective date of the rule** with **senior executives**
- **Senior executives** defined - a worker who
 - › (1) was in a policy-making position; and
 - › (2) received total annual compensation of at least \$151,164 in the preceding year

27

Scope of Enjoined FTC Non-Compete Rule

- **Non-Competition Agreement** broadly defined to include any agreement that has a practical effect of precluding employee from working in their field
 - › Non-Disclosure Agreements banned “where they span such a large scope of information that they function to prevent workers from seeking or accepting other work or starting a business after they leave their job.”
 - › Non-Solicitation Agreements banned “where they function to prevent a worker from seeking or accepting other work or starting a business after their employment ends.”

28

Enjoined FTC Non-Compete Rule Non-Preemption of State Law

- Rule would apply to non-competes in states and circumstances where presently permitted (*i.e.* will render non-competes presently enforceable under state law unenforceable)
- But Rule would not preempt more restrictive state laws

29

Enjoined FTC Non-Compete Rule Sale of Business Exception

- Rule would not prohibit non-compete agreements entered into “by a person pursuant to a bona fide sale of a business entity, of a person’s ownership interest in a business entity, or of all or substantially all of a business entity’s operating assets.”
- Open question: extent to which exception would apply in context of stock grants to employees

30

Enjoined FTC Non-Compete Rule Non-Profits

- In most cases, charitable and other 501(c)(3) organizations, including tax-exempt hospitals, would have been exempt from the Rule
- But FTC has taken the position that a nonprofit corporation will be subject to the FTC’s jurisdiction if it is a “corporation,” defined, in part, under the Rule as an entity that is “organized to carry on business for its own profit or that of its members.”

31

Enjoined FTC Non-Compete Rule Notice Requirement

- Employers required to provide clear and conspicuous notice to workers subject to a prohibited non-compete
 - › In an individualized communication
 - › Stating worker's non-compete clause will not be, and cannot legally be, enforced against the worker
- Employer must provide notice by hand-delivery, by mail at the worker's last known street address, by email, or by text message

32

State Law Common Denominators

- All require adequate consideration, and some (MA) require consideration beyond employment / continued employment
- All require legitimate business interest
 - › Trade secrets
 - › Confidential information
 - › Good will
- All require restriction to be as narrow as necessary to protect interest
 - › Temporally
 - › Geographically

33

NH Law – Non-Competes

- After 9/8/19, non-competes prohibited with low wage earners (defined as equal to or less than 2x federal MW)
- Employers required to provide a copy of any required non-compete or non-solicitation agreement
 - › Prior to / at the time of offer
 - › At the time of any change in job classification
- Failure to provide required notice renders agreement unenforceable

34

RI Law – Non-Competes

- Unenforceable against
 - › Low wage earners (those earning 250% of federal poverty level or less)
 - › Non-Exempt workers
 - › Undergraduate or graduation students working while enrolled in school
 - › Those under age 18
- Statute doesn't apply outside employment context (including independent contractor context)

35

Maine Law – Non-Competes

- Relatively recent statute (26 M.R.S. sec. 599-A) restricts use
- Applies to non-competes entered into on / after 9/18/19
- Bans non-competes for low wage earners (person earning at or below 400% of federal poverty level) and veterinarians that do not own business

36

Maine Law – Notice Requirement

- Employer must disclose that non-compete will be required, prior to extending offer
- Employer must provide a copy of the non-compete 3 or more days before it must be signed
- Except in the case of certain physicians, non-compete agreements are not enforceable until employee's one-year anniversary or 6 months after signed, whichever is later.

37

MA Law – Non-Competes

- Agreement provided to employee before offer or 10 days prior to start date (whichever is earlier) and/or 10 days before agreement must be signed
- Not enforceable against:
 - › Physicians, nurses, psychologist, social workers, broadcasting industry, lawyers
 - › Non-exempt workers
 - › Undergraduate or graduation students in an internship or short-term employment relationship
 - › Employees terminated without cause or laid off;
 - › Employees under 18

38

MA Law – Non-Competes Cont.

- Consideration beyond continued employment required and must be specified
 - › Garden leave (50% of employee's highest salary within last 2 years of employment, for restricted period; relieved if employee breaches)
 - › Other mutually agreed upon consideration
- Restricted period cannot exceed 12 months unless employee has breached fiduciary duty or stolen property, in which case, max of 2 years

39

MA Law Presumptions re Reasonableness

- Geographic reach presumptively reasonable if limited to area where employee provided services or had material presence or influence in prior 2 years
- Restriction on only the specific types of activities provided by employee during last 2 years of employment is presumptively reasonable

40

For New Hires, The Agreement Should / Must Be:

In writing

Signed by both employer and employee

Provided earlier of formal offer or 10 business days before commencement of employment

Include express statement that employee has the right to consult with counsel prior to signing

41

For Current Employees, Agreement Should / Must Be:

In writing

Signed by both employer and employee

Provided at least 10 business days before effective date of agreement

Include express statement that employee has the right to consult with counsel prior to signing

Supported by fair and reasonable consideration independent from the continuation of employment

42

Takeaways

- Courts will not protect information that the employer doesn't take reasonable steps to protect
- When it comes to contracts, one size doesn't fit all
- Employer should utilize the least restrictive covenant(s) necessary to protect its interests
- Legal landscape is changing rapidly, and compliance is particularly challenging for multi-state employers
 - › Don't rely on templates or internet forms
 - › Regular review with counsel

43

Employee Activism and the Workplace

Katie Porter

PIERCE ATWOOD 

44

Employee Activism: How We Got Here

- Employees are spending more time online and on social media
- With increased work-from-home arrangements, there has been a blurring of lines between personal life and work life
- Workers are becoming more outspoken and demanding about employers taking positions on political, social and cultural issues
- Recruitment and retention is impacted

45

Competing Interests of Employees and Employers

Employees	Employers
Right to privacy in social media activity	Right (and duty) to maintain a professional, civil and non-discriminatory workplace
Right to hold religious beliefs and engage in religious practices	Right (and duty) to make accommodations but also enforce non-discrimination laws and policies
Right to engage in political and social activism in off-duty time	Right to insist that employees perform to certain standards and not engage in off-duty conduct that violates company policies or applicable law
Right to speak out about policies, programs and workplace conditions (NLRA rights for non-supervisory employees)	Right to discipline employees for insubordination and violation of employer policies

46

The First Amendment in Private Workplaces

- The First Amendment restricts state actors (i.e., public employers) but does *not* prevent a private employer from imposing restrictions on employee speech or conduct *that is not otherwise protected*
- *Boundaries for employers to keep in mind:*
 - › Section 7 rights under the NLRA (non-supervisory employees in any workplace)
 - › Disclosure of social media usernames or passwords
 - › Off-duty political conduct (not many jurisdictions have such protections, but it may be worth treating conduct as protected activity)
 - › Anti-discrimination and anti-retaliation/whistleblower laws

47

Hypotheticals: what can (and should) an employer prohibit in the workplace?

Hypo 1: The company allows an assistant, Mark, to have a “Black Lives Matter” sign pinned at his desk area, which is in an open area visible to all employees who walk by, but prohibits his colleague, Adam, who sits next to Mark to have an “All Lives Matter” sign.

48

Hypotheticals: what can (and should) an employer prohibit in the workplace?

Hypo 2: Two managers at the company, Betty and Donna, love to engage with each other about controversial topics. They don't see eye to eye politically and sometimes have intense exchanges about issues, but each of them welcomes debating in this manner and neither is one to be offended by anything the other says. These discussions typically occur in one of their offices, with the door open; but sometimes one will suck the other into a heated discussion near the coffee machine. Today, they are discussing their competing views about the Israel – Hamas / Gaza conflict, and their conversation is heated and getting a bit loud at the coffee machine.

As usual, Betty and Donna don't take their debates personally and are happy to spar with each other and walk away friends and colleagues; but two junior employees in nearby offices, Ben and Lana, overhear. Ben is Jewish and he is disturbed by Betty's perspective. Lana's father is Palestinian and Muslim, and she is disturbed by Donna's perspective.

49

Hypotheticals: what can (and should) an employer prohibit in the workplace?

Hypo 3: Steve, who works in Maine, is a vocal Donald Trump supporter for President in the upcoming 2024 Presidential election. On Steve's Facebook page, he posts publicly about his passion for former President Trump and recently said, "Let's be honest, a woman is not fit for this job. It's going to take a tough man who isn't scared of conflict to get us back on track. #sorryladies #MAGAMAN!" One of Steve's direct reports, Sadie, is friends with Steve on Facebook and is horrified by his post. She is concerned that Steve's sentiment in his post is going to have an impact on her career trajectory at the company.

A week before the election, Steve starts flying a MAGA flag and Confederate Flag from the back of his car, which he parks in the company parking lot.

50

Responding to Off-Duty Conduct

- Consider boundaries discussed on prior slide to a private employer's right to regulate employee speech in the workplace
- Consider past practice
- Try to step back and examine the speech at issue and whether it arguably implicates any protected characteristic

51

Generative Artificial Intelligence (GAI)

Suzanne King

PIERCE ATWOOD

The slide features a dark teal header with the title 'Generative Artificial Intelligence (GAI)' in white. Below the header, the presenter's name 'Suzanne King' is on the left and the firm's name 'PIERCE ATWOOD' with a logo is on the right. The background is white with a grey vertical bar on the right side.

52

GAI is useful in most (all?) workplaces!

- Increase efficiency and productivity
- Use for:
 - › summarizing information
 - › answering questions (but check accuracy)
 - › generating images
 - › generating speech
 - › transcription
 - › generating first drafts . . .
- Can be helpful when using tools specifically designed / programmed for your task

©Pierce Atwood LLP. All rights reserved. PIERCE ATWOOD 53

The slide has a white background with a dark teal header. The title 'GAI is useful in most (all?) workplaces!' is in bold teal. The content is a bulleted list. The footer contains the copyright notice, the firm's name 'PIERCE ATWOOD' with a logo, and the page number '53'.

53

Generative AI: Compliance Issues

- ABA Ethics Opinion
- Judicial Standing Orders
- EEOC Guidance
- Best Practices in the Workplace

54

Formal Opinion 512 – Generative Artificial Intelligence Tools (ABA, July 29, 2024)

To ensure clients are protected, **lawyers using generative artificial intelligence tools** must fully consider their applicable ethical obligations, including their duties to

- provide competent legal representation,
- protect client information
- communicate with clients
- supervise their employees and agents
- advance only meritorious claims and contentions
- ensure candor toward the tribunal, and to charge reasonable fees

55

Formal Opinion 512 – Generative Artificial Intelligence Tools (cont’d)

- **Technological Competence**
 - › “To competently use a GAI tool in a client representation, lawyers need not become GAI experts. Rather, lawyers must have a reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer might use.”
- **Confidentiality of Information**
 - › “For the consent to be informed, the client must have the lawyer’s best judgment about why the GAI tool is being used, the extent of and specific information about the risk, including particulars about the kinds of client information that will be disclosed, the ways in which others might use the information against the client’s interests, and a clear explanation of the GAI tool’s benefits to the representation.”

56

Formal Opinion 512 – Generative Artificial Intelligence Tools (cont’d)

- **Communications**
 - › “The facts of each case will determine whether Model Rule 1.4 requires lawyers to disclose their GAI practices to clients or obtain their informed consent to use a particular GAI tool. Depending on the circumstances, client disclosure may be unnecessary... Potentially relevant considerations include the GAI tool’s importance to a particular task, the significance of that task to the overall representation, **how the GAI tool will process the client’s information**, and the extent to which knowledge of the lawyer’s use of the GAI tool would affect the client’s evaluation of or confidence in the lawyer’s work.”
- **Meritorious Claims and Candor**
 - › “In judicial proceedings, duties to the tribunal likewise require lawyers, before submitting materials to a court, to review these outputs, including analysis and citations to authority, and to correct errors, including misstatements of law and fact, a failure to include controlling legal authority, and misleading arguments.”

57

Formal Opinion 512 – Generative Artificial Intelligence Tools (cont’d)

- **Supervisory Responsibility**
 - › Pursuant to Model Rules 5.1 and 5.3, managerial and supervisory lawyers must ensure that all members of their law firm comply with professional conduct rules when using any technology tools, e.g., through clear policies, training, and monitoring compliance.
 - › Lawyers must ensure any third-party provider outsourced adhere to confidentiality and professional responsibility standards.
- **Fees**
 - › “If a lawyer uses a GAI tool to draft a pleading and expends 15 minutes to input the relevant information into the GAI program, the lawyer may charge for the 15 minutes as well as for the time the lawyer expends to review the resulting draft for accuracy and completeness.”
 - › “Lawyers must remember that they may not charge clients for time necessitated by their own inexperience.”

58

Judicial Standing Orders on AI

Courts are increasingly issuing **judicial standing orders** requiring attorneys who use GAI tools in the preparation of any document to be filed with the court to include a certificate of use of GAI disclosing and certifying:

- the AI tool that was used;
- the portions of the filing prepared by AI; and
- that the attorney has personally verified the accuracy of any proportion generated by AI, including citations and legal authorities.

U.S. District Court, Middle District of Pennsylvania (Judge Mehalchick, Aug. 19, 2024); U.S. District Court, Northern District of California (Judge Lee, Aug. 16, 2024; Judge Lin, May 17, 2024); U.S. District Court for the District of Colorado (Judge Crews, Feb 2, 2024)

59

Judicial Standing Orders on AI

Some courts prohibit or impose restrictions on the use of certain GAI. For example:

- U.S. District Court for the Northern District of Ohio (Judge Boyko, Dec. 19, 2023) and Southern District of Ohio (Judge Newman, Dec. 14, 2023), prohibiting use of AI in preparation of any filing submitted to the court; duty to inform the court if a party discovers the use of AI in any document filed in their case; and sanctions for violation
- U.S. District Court, Northern District of Illinois (Judge Coleman, Mar. 21, 2024), prohibiting use of AI when drafting memoranda or as authority supporting motions

60

Judicial Standing Orders on AI

- U.S. District Court, Western District of North Carolina (Jun. 18, 2024), requiring attorneys to file a certification stating no AI was used in the research for the preparation of the document except for AI embedded in the standard online legal resources such as Westlaw, Lexis, FastCase, and Bloomberg
- U.S. District Court, Southern District of Texas (Judge Olvera, Feb. 8, 2024), requiring a certificate attesting that: no filings will be drafted by GAI; or any language created with GAI will be checked for accuracy by a person using print reporters or traditional legal database

61

EEOC Guidance

“While AI and other technology may offer benefits, there is potential to violate the laws against discrimination when used in employment decisions.”

- Recruiting, screening, and hiring job applicants
- Monitoring employees’ activities, performance and/or location
- Assessing employee productivity or setting wages
- Deciding whom to promote or fire

EEOC Resources:

- The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees
- Visual Disabilities in the Workplace and the Americans with Disabilities Act (Questions 16 and 17)
- Select Issues: Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964
- Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems

62

Recent Examples

- Manager reported to HR: “This was the best review cycle ever. I asked ChatGPT to do all of my reviews. It was awesome!”
- CFO: “I’m a numbers guy. I hate to write, so I have ChatGPT do all of my emails.”
- Financial services company with call center: “We are piloting a GAI tool that monitors all call center calls and rates the performance of our call center employees. We plan to use those ratings in making comp decisions.”
- Many tools currently in use for hiring rely on AI to screen applicants.
- Increasing use of AI to record meetings and generate a to-do list

63

When using consider...

- Input to the tool
 - › Certain platforms, like ChatGPT, store inputs and use them for training
 - Avoid private information, confidential information, etc.
 - › Industry jargon – inputs are called “prompts”
- Training / Configuration information
 - › Generic or specific
 - › Training data
 - › When was knowledge updated

64

Check Output for...

- Accuracy
 - › Fake, made-up information given its generative nature
 - › Industry jargon - Model hallucinations
- Bias
 - › Model may learn biases which appear in the output
 - › Example biases: gender roles, race, ethnicity, stereotypes, age-based roles, etc.
- Toxicity
 - › Industry term for certain types of inappropriate content and language

65

Policy?

GAI use is increasing exponentially in many workplaces!

- If you don't have a policy, it is time to consider one
- Be specific about when GAI can be used and when it cannot be used
- Monitor and enforce the policy
- Especially when using GAI for employment-related actions, carefully consider input, training, output



Presenters

Suzanne King

sking@pierceatwood.com

100 Summer Street
22nd Floor
Boston, MA 02110

One New Hampshire Avenue
Suite 350
Portsmouth, NH 03801

PH / 617.488.8159

Katharine I. Rand

krand@pierceatwood.com

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

PH / 207.791.1267

Katherine L. Porter

kporter@pierceatwood.com

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

PH / 207.791.1212