



The State of AI Legislation

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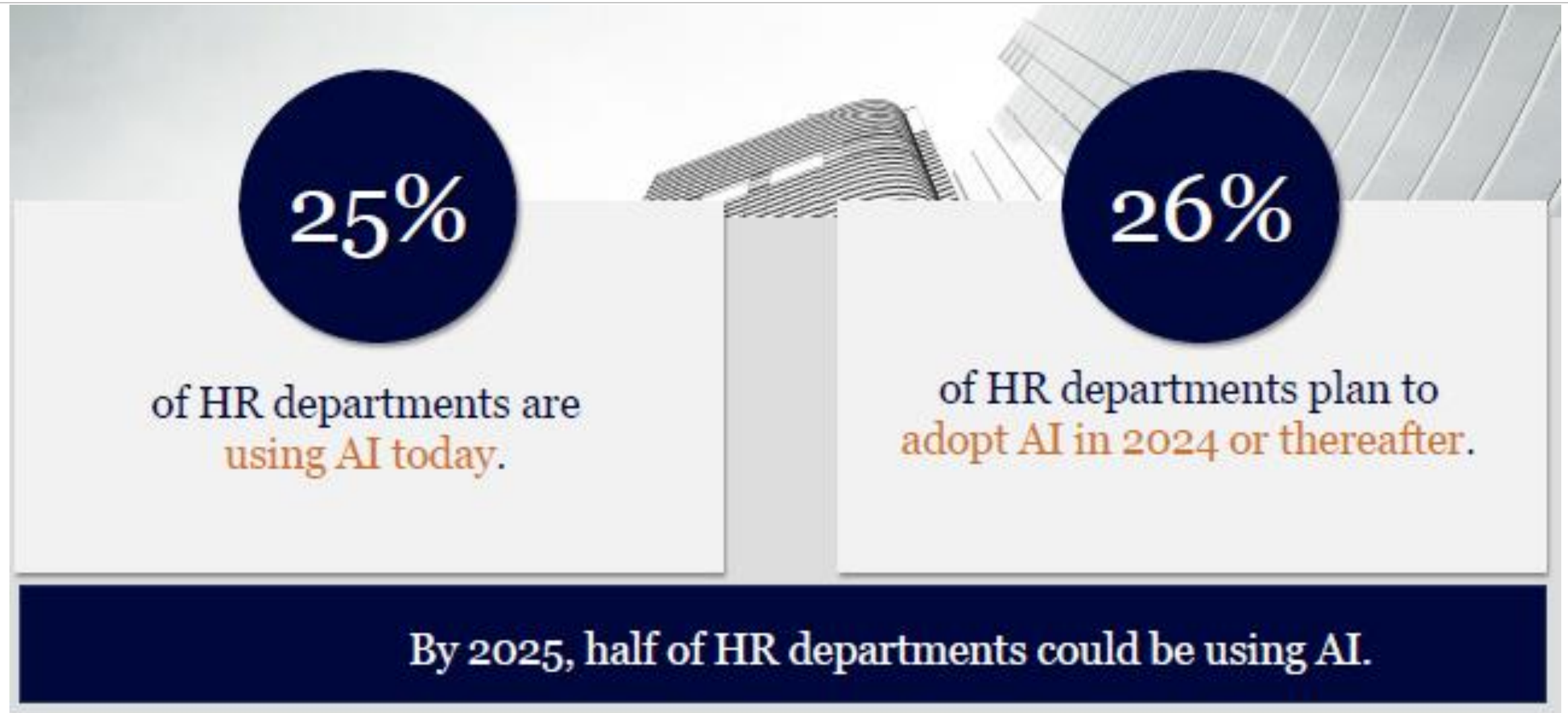
Our Agenda Today

1. What's Driving AI Regulation and Predictions About the AI Priorities of the Trump Administration
2. Summary of State Enacted Legislation (Colorado, Illinois, NYC) or Almost Enacted (Connecticut, California)
3. Common Substantive Themes in State Legislation
4. Looking Over the Horizon: Important Themes Coming Up in 2025 and Beyond
5. Key Focus Areas for Employers



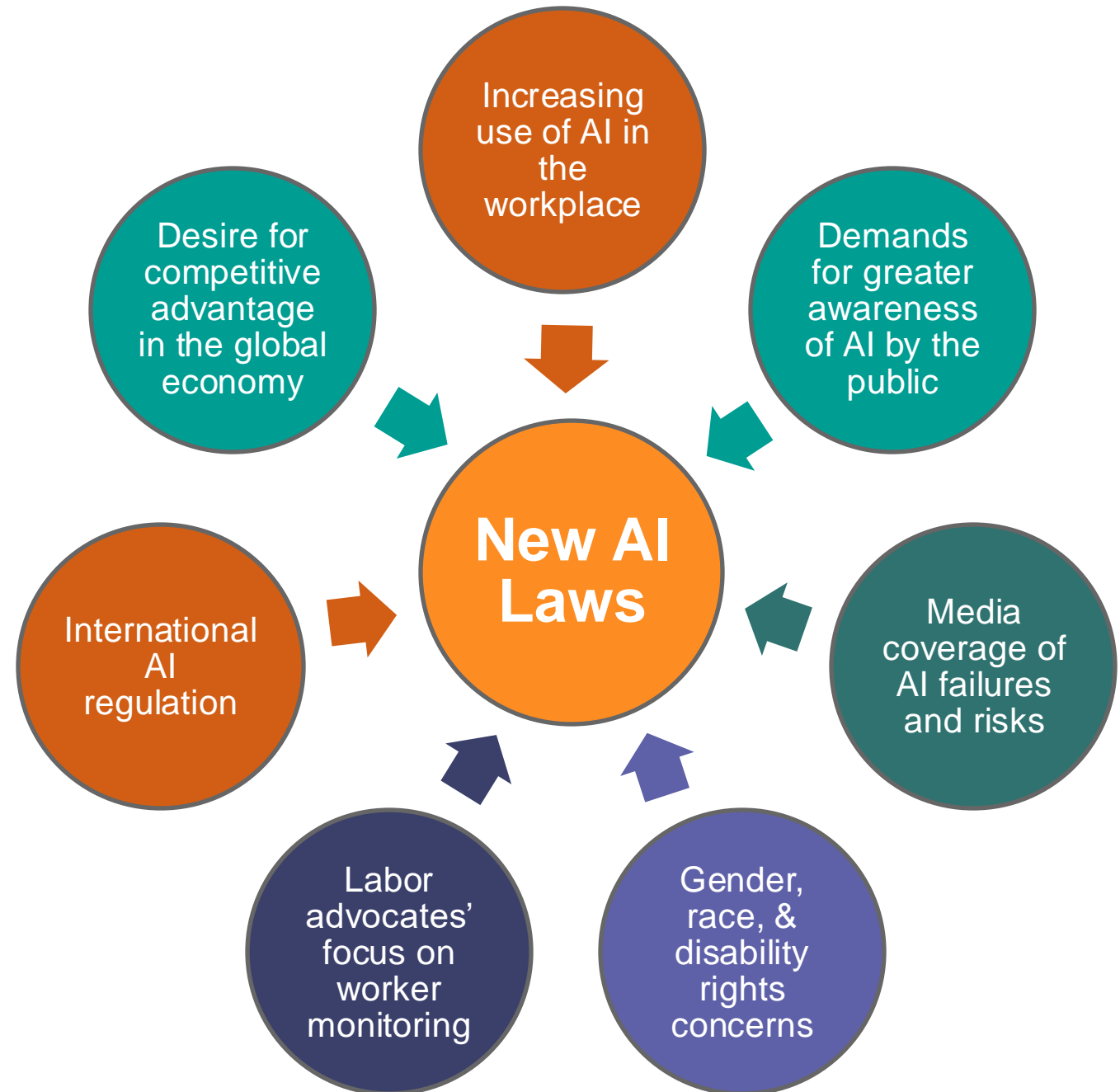
1. What's riving AI Regulation and Predictions About the AI Priorities of the Trump Administration

AI Use in HR Is Already Here, and Is Becoming More Common



Source: SHRM “State of the Workplace” research survey conducted in November 2023

Factors Driving AI Legislation and Regulation in Employment



Artificial Intelligence Priorities of the Second Trump Administration

- “AI is very scary, but we absolutely have to win. Because if we don’t win then China wins, and that’s a very bad world.”
 - Venture capitalists Mark Andreessen and Ben Horowitz, repeating a conversation with Trump about AI (Summer 2024)
- What does it mean to “Make America First in AI”?
- Lee Zeldin, Trump EPA nominee:
 - “We will restore US energy dominance, revitalize our auto industry to bring back American jobs, and make the US the global leader of AI.”
- Trump has promised to repeal President Biden’s Executive Order on AI, which the Republican platform says, “hinders AI innovation” and “imposes radical leftwing ideas.”



What Does This Mean?

OUR CRYSTAL BALL:

- No federal legislation on AI in employment in the foreseeable future. (This year's NDAA may incorporate some AI funding bills; Senator Ted Cruz will be Chairman of the Senate Commerce Committee, and he says he will prioritize job growth, AI development and commercial space activity).

Current Civil Rights Laws Apply to the Use of Artificial Intelligence

In April 2023, the leaders of the EEOC, Department of Justice Civil Rights Division, the CFPB, and the FTC issued a "Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems" reasserting, "***Existing legal authorities apply*** to the use of automated systems and innovative new technologies just as they apply to other practices."

Nine federal agencies joined in affirming this statement in April 2024.



Federal Enforcement of Existing Civil Rights Laws



- The EEOC has been actively seeking to investigate and litigate charges that AI (or any use of technology) causes discrimination in hiring. (This is a “Strategic Enforcement Priority” for the EEOC).
 - EEOC’s 2022 and 2023 technical assistance documents emphasize obligations under existing civil-rights laws when using AI (including the need for disability accommodations).
- OFCCP’s audits of federal contractors now inquire into the contractors’ use of AI in their hiring processes and require automatic disclosures from contractors.

Will the EEOC Pursue AI Litigation Under The Trump Administration?



- EEOC charges are being filed “at every stage of the [AI] life cycle” (EEOC Trial Attorney, during November 16, 2024, presentation)
- Under **current** Commission procedures, the Commission must vote to approve all “systemic” or “pattern or practice” cases and “cases that implicate areas of the law that are not settled”.
- On Day 1, President Trump will appoint Republican Commissioner Andrea Lucas as Chair or Acting Chair.
 - Assuming all the current Commissioners serve their full terms, Republicans will not have a majority on the EEOC until summer 2026.
 - Even without a majority, the Chair can **prevent** litigation recommendations from coming before the Commission for a vote.

EEOC Litigation and Enforcement and Career Staff




- Pursuant to Title VII, EEOC litigation is “conducted” by the General Counsel.
 - The Commission votes to initiate litigation, but the GC “conducts” litigation.
 - President Trump will fire the EEOC GC, and the Senate could confirm a replacement, but on her own the GC cannot initiate new litigation without Commission approval.
- We predict that like the rest of the federal government, the EEOC will face ongoing staffing challenges, meaning fewer resources for enforcement and litigation efforts.
 - EEOC already faced budget challenges in 2024, under Democratic leadership.
 - “Schedule F” will be subject to challenge and federal hiring takes time.



What Does This Mean?

OUR CRYSTAL BALL:

- Federal efforts on AI standards and AI safety will continue, but don't expect mandatory standards or safe harbors.
- EEOC litigation or amicus briefs pushing the boundaries of existing law are unlikely to be approved.

An AI-generated image showing several humanoid robots with glowing blue eyes and heads, set against a dark blue background. The robots are positioned on the left side of the slide, partially overlapping the text area.

In the absence of federal legislation or regulation on AI in employment, state lawmakers will feel increased pressure to act.

Where We Are Headed: Shifting AI Regulation and Enforcement: From End Result to Process + Results




Traditional Framework: Look At The End Result

- 1) Is there evidence of disparate treatment?
 - 2) Is there evidence of disparate impact?
- If so, validation is required



Shifting Framework: Focus On The PROCESS To Avoid A “Bad” End Result

- Review the processes used by developers
deployers
- Assess the training data sets and inputs
- Be Transparent
- Mandatory self-assessments and reporting



2. State Legislation that has Been Enacted (Colorado, Illinois, NYC) or Almost Enacted (Connecticut, California)



State Legislators and Regulators are Continuing to Propose New Laws Regulating the Use of AI

- In 2024, state legislatures have taken up the issue, with new ***employment-specific*** laws enacted in ***Colorado*** and ***Illinois*** (and an existing law in New York City), with more on the horizon next year.

State legislatures have ***also*** been active in passing or considering legislation:

- Prohibiting some uses of AI-generated content, including “deepfakes” (e.g. CA SB 942 (watermarking), CA SB 926 (deepfakes))
- Requiring AI safety testing of the most-advanced AI models (e.g. California SB 1047, vetoed by Governor Newsom on 9/29/2024)
- Regulating the state’s own use of AI

Legislative history: Colorado

(SB 205 enacted in
2024)



- **Colorado SB 205** was signed on May 17, 2024, making Colorado the first state to enact broad legislation regulating the use of AI.
- Requirements go into effect in **February 2026**.
- No private right of action -- enforcement is reserved to the Colorado Attorney General.
 - A private right of action continues to exist under Colorado’s nondiscrimination laws.
- When signing the bill, Governor Polis acknowledged that SB 205 “creates a complex compliance regime for all developers and deployers of AI doing business in Colorado”.
- On June 13, 2024, Governor Polis, Colorado AG Weisler, and Colorado Senate Majority Leader Rodriguez (the sponsor of SB 205) issued a joint statement committing to revise the new law and “minimize unintended consequences”.

Legislative history: Illinois

(HB 3773 enacted in
2024)



- **Illinois HB 3773** was enacted on August 9, 2024.
- Requirements go into effect on **January 1, 2026**.
- Requires employers to notify employees when the employer uses AI for employment decisions.
- Illinois Department of Human Rights (IDHR) has been granted authority to “adopt any rules necessary for the implementation and enforcement of this subdivision, including, but not limited to, rules on the circumstances and conditions that require notice, the time period for providing notice, and the means for providing notice.”
- HB 3773 affirms that it is unlawful for an employer to use AI to discriminate. It was already a violation of the Illinois Human Rights Act, 775 ILCS 5/2-102, for an employer to engage in discriminatory conduct on the basis of protected classes.

Legislative history: New York City

(LL 144 enacted
2022)



- **New York City Local Law 144** was passed in 2022, enforcement started July 2023.
- Criticized by worker advocates as being too-narrow and without public enforcement.
- LL144 applies only to tools which substantially assist or replace discretionary decision-making.
- Requires employers using tools subject to the law to:
 1. Conduct an independent “**bias audit**” within one year before the tool’s use, and
 2. Provides certain public **notices and disclosures**

Legislative history: Connecticut

(SB 2 did not pass
in 2024)



- **Connecticut SB 2** was passed by the CT Senate on April 24, 2024, but died following CT Governor Lamont’s threat to veto the bill if it reached his desk.
- SB 2 attempted to regulate broad categories of AI applications in Connecticut (not just employment).
- The bill’s sponsor, Sen. James Maroney, said in a September 26, 2024, [CT Mirror article](#) that he is planning to introduce AI legislation again next session and that he is “participating in a working group with lawmakers from 46 other states to develop AI standards in an effort to avoid that “patchwork of disparate laws.””

Legislative history: California

(AB 2930 did not
pass in 2024)



- **California AB 2930** was passed by the California Assembly in May 2024, but on August 31, 2024, the last day of the session, it did not progress in the California Senate despite significant momentum.
- AB 2930 was a re-introduced version of a California bill originally introduced in 2023.
- It originally covered a broad array of AI applications but in August 2024 was restricted only to employment.



3. Common Substantive Themes in State Legislation

Key Substantive Themes in State AI Legislation

Scope

Risk Management

Impact Assessments

Transparency

Accommodation

Enforcement

Scope Considerations:

State AI Laws Supplement Existing Non-Discrimination Obligations

New state AI laws like the ones recently passed in Illinois and Colorado supplement ***existing nondiscrimination obligations*** under state laws.

- Illinois' new AI law makes it unlawful to use AI “that has the effect of subjecting employees to discrimination on the basis of protected classes”
- But Illinois law already prohibited employers from subjecting employees to discrimination on the basis of protected classes

The scope of the underlying non-discrimination obligations under state laws may be greater than under federal law. State laws may have broader protected categories than federal law.

For example, protected categories under the Illinois Human Rights Act include

- Reproductive decisions (as of January 2025)
- military status
- unfavorable military discharge
- order of protection status
- family responsibilities (as of January 2025)
- conviction record
- arrest record

Scope Considerations:

The Reach of an Individual State's AI Law Can be Very Different From Other State Laws

- NYC LL 144 applies only to “automated employment decision tools” as defined in that law; many employers have interpreted this definition narrowly.
- Colorado SB 205 applies to AI systems that make, or are a substantial factor in making, a “**consequential decision**”, defined as a decision that has a “material legal or similarly significant effect on the provision or denial to any consumer of, or the cost or terms of ... employment”
- Illinois HB 3773 applies, **without qualification** in the statutory text, to AI applications used in “recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.”
- California Civil Rights Council’s proposed regulation includes every automated tool that “**facilitates human decision making** that impacts applicants or employees.”

Disclosures / Transparency

Illinois's new AI law requires broad-based consumer disclosures; IDHR is given rulemaking authority to define the scope and manner of these disclosures.

Colorado consumer disclosure requirements:

- Notify consumers about AI use in consequential decisions
- Provide purpose, nature of decision, and deployer contact information
- Explain adverse decisions, including AI's role and data sources
- Inform consumers about opt-out rights under Colorado Privacy Act

Also requires disclosure to the Colorado Attorney General –

- Mandatory disclosure of algorithmic discrimination within 90 days of discovery
- Deployers and developers must produce upon request:
 - Risk management policies
 - Impact assessments
 - Records of compliance

Risk Management: Some Legislation Tries to Incentivize Formal AI Risk- Management Practices

Colorado's AI law attempts to incentivize operationalizing formal risk-management frameworks such as NIST's AI Risk Management Framework.

- Colorado SB 205 requires both AI developers and AI deployers to exercise "reasonable care"
- An AI developer or AI deployer has a rebuttable presumption of compliance if it demonstrates compliance with the NIST AI RMF, or a similar framework.

Colorado's AI law also establishes that correcting issues following certain proactive measures (e.g., user feedback, adversarial testing) can serve as an affirmative defense.

Similar concepts were present in CT and other proposed legislation, but these concepts were cut in the final iterations of California's AI bill (which died on August 31).

A person wearing a white space suit and boots, standing in a futuristic, brightly lit environment. The person is positioned in the center of the frame, with their legs and feet visible. The background is a clean, white, curved surface, possibly part of a spacecraft or a futuristic building. The overall scene is brightly lit, with a strong blue tint. The text is overlaid on a dark blue rectangular box in the center of the image.

4. Looking Over the Horizon: Important Substantive Themes Coming Up in 2025 and Beyond

California Civil Rights Council Regulations



CCRC published additional modifications to its FEHA regulations, public comment period closed on November 18, 2024.

While CCRC's draft regulations have gone through several rounds of edits since their original publication, CCRC has not issued any update to its original cost assessment:

“The proposed amendments clarify existing law without imposing any new burdens.”

“[T]he Council has determined that these amendments will not have a significant adverse economic impact on business.”

California Civil Rights Council Regulations



4-year “save everything” retention period for all “Automated Decision-System Data”, which includes “Any data used in or resulting from the application of an automated-decision system.”

This includes training data, models, and output!

Retention requirements apply to “agents”, broadly – i.e., imposes records retention requirements on AI vendors.

Proposed regulations try to **incentivize** anti-bias testing:

“It is unlawful for an employer or other covered entity to use an automated-decision system or selection criteria ... that discriminates ... on the basis of their national origin or a proxy of national origin, subject to any available defense. Relevant to any such claim or available defense is **evidence of anti-bias testing or similar proactive efforts to avoid unlawful discrimination**, including the quality, efficacy, recency, and scope of such effort, the results of such testing or other effort, and the response to the results.”

California Privacy Protection Agency's ADMT Regulations



CPPA is moving forward with its rulemaking on Automated Decision Making Tools (ADMTs).

Public comment period is currently open and will likely remain open through Jan/Feb 2025.

Creates consumer right to request information, opt out, and to appeal decisions made using an ADMT.

Mandatory risk assessment (prior to processing data, and on an ongoing basis every three years).

- Request information about businesses' use of ADMT
- Opt-out of ADMT
- Appeal decisions made using ADMT, particularly in areas like employment, credit, and education

CPPA estimates the first-year compliance cost to California businesses is **\$835 million**. (Does not include costs to non-California businesses who have to comply).

The background of the slide features a warm, orange-toned gradient. In the upper right quadrant, several black corded light bulbs are suspended, with one bulb in the foreground being slightly out of focus. The overall aesthetic is professional and modern.

5. Key Focus Areas for Employers

Questions to Focus on If You Are Already Using AI in Your Employment Processes

- Exactly how are you using AI? What vendors or in-house resources are you using?
- How have you or your vendor tested the AI systems for unlawful bias?
- What ongoing steps are you or your vendor taking to monitor the AI system?
- How are you disclosing the use of AI tools in the employment process to applicants and employees?
- How confident are you in your ability to disclose your testing or monitoring processes and results to the public, to regulators, or to private litigants?
- What risks might those disclosures create?

Questions to Focus on If You Are Thinking About AI

- What ***specific benefits*** are you seeking to achieve by using AI in your employment processes?
- How are you ***identifying and measuring*** the risk that using AI might result in unlawful bias?
- What are you doing to identify and manage risks associated with ***people and processes***, combined with the ***technical*** risks?
- What efforts have you made to consider how ***individuals with disabilities*** may be affected?
- Employers should consider these questions even if they're not in a state that's recently passed legislation.

**thank
you**

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