



2023 AIRLINE LABOR & EMPLOYMENT LAW SYMPOSIUM

Artificial Intelligence in Employment: Assessing Value, Bias and Risk Mitigation

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SEPTEMBER 21 AND SEPTEMBER 22, 2023 | ST. ANTHONY HOTEL | SAN ANTONIO, TX

Eric M. Dunleavy, Ph.D. Bio

Eric M. Dunleavy, Ph.D. is Vice President of the Employment and Litigation Services Division at DCI Consulting Group, where he leads teams of Industrial/Organizational Psychologists and Labor Economists involved in a wide variety of personnel selection, work analysis, workforce analytics, and litigation support projects. He conducts applied research related to employment outcomes such as hiring, promotion, and pay across a broad range of clients, industries, and jobs. His recent work has focused on the evaluation and validation of a wide range of technology-enabled assessments. He co-edited (with Scott B. Morris) the book *Adverse Impact Analysis: Understanding Data, Statistics and Risk* (Taylor & Francis, 2017). Dr. Dunleavy is a SIOP Fellow and has served as a consulting or testifying expert on matters related to Title VII, ADEA, Executive Order 11246, and the California Fair Pay Act.





What are we talking about when we say AI?

Artificial Intelligence (AI)

- Broad, academic discipline
- Use of computers and software to perform tasks that typically required human intelligence to complete (SHRM)

Machine Learning (ML)

- Automating computer learning process without explicit programming
- Algorithms/models are used to draw inferences from patterns in data
- Approach taken depends on question/problem being addressed

Supervised Learning

- Has a known outcome
- Purpose is to develop a model that accurately classifies or predicts outcome
- Two main sub-categories
 - Regression
 - Classification

Unsupervised Learning

- No known outcome
- Purpose is to explore the data (e.g., cluster, organize, interpret)
- 3 main sub-categories
 - Clustering
 - Association rule mining
 - Dimension reduction

Other key points around:
 (1) Natural Language Processing
 and
 (2) Predictive versus generative AI



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Why use AI in recruiting, hiring, and other decision making?

How much is AI being used in HR?

- About 1 in 4 organizations use AI to support HR-activities
❖ (42% in XL organizations)
- 79% of the employers using AI, use it for recruiting or hiring
- 25% of employers plan to start or increase their use of AI

Why use AI in recruiting and hiring?

- 85% Can saves time or increase efficiency
- 44% Can help identify top candidates
- 30% Can reduces bias in hiring decisions
- 18% Can help identify more diverse candidates

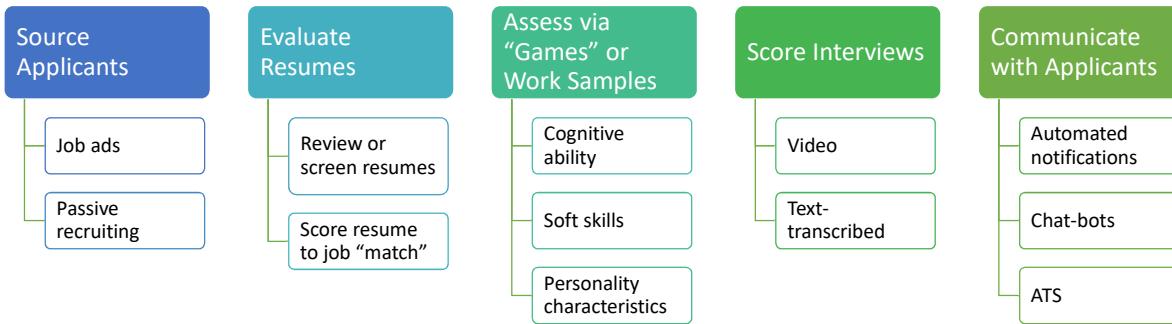
Other key points:
 (1) It is easy for vendors/ researchers to make claims and harder to actually demonstrate value.
 (2) There is additional complexity around what information is proprietary/"the secret sauce"



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What types of tools in the employment processes *could* be using AI/ML methods?



SHRM 2022 Survey Results ...

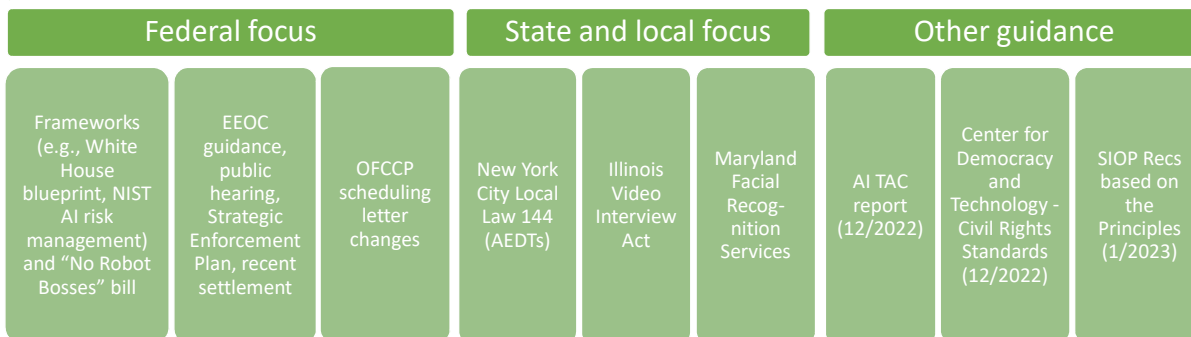
"92% of organizations that use automation of AI ... source some [24%] or all [68%] of these tools directly from a vendor."

"Only 2 in 5 organizations that purchase automation or AI tools from vendors say their vendor(s) are **very transparent** about the steps taken to ensure the tools prevent or protect against discrimination or bias."



What should we be focusing on in the tidal wave of increased regulation?

Activity re: Regulating the Use of AI/AEDT in Employee Selection



Many other proposed state laws





What should we take from the EEOC ADEA settlement with Itutor?

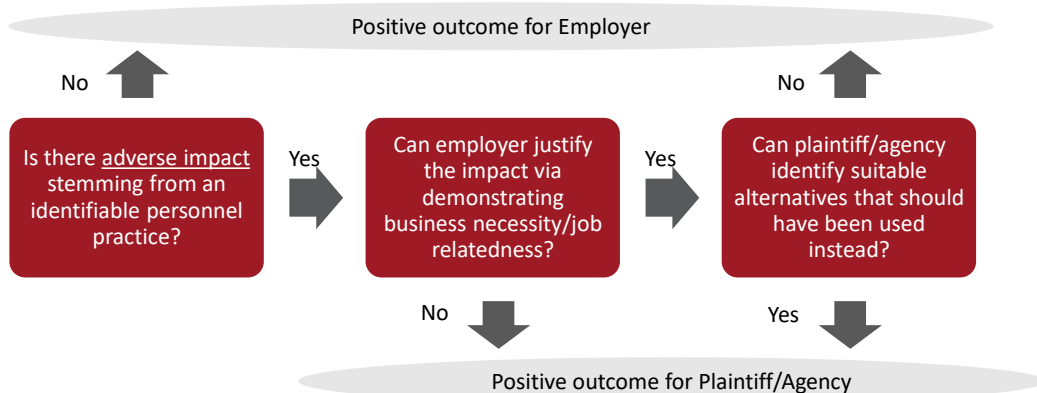
- EEOC discussing as the “First lawsuit concerning artificial intelligence (AI) bias”
- Allegation focused on software that rejected older applicants based on birthdate entered in the application
 - rejected female applicants over the age of 55 and male applicants over the age of 60.
 - Applicants often do not know no idea why they are rejected during the selection process
 - one applicant decided to resubmit an application identical to one that was rejected but with a more recent birthdate.
- The algorithm at issue was simple in nature
 - Did not involve advanced artificial intelligence-based tools that involve many features and machine learning
- The allegation was a disparate treatment theory of discrimination (i.e., intentional discrimination) as opposed to disparate impact theory (i.e., where a facially neutral tool results in discrimination).



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How would a Disparate Impact/Uniform Guidelines style challenge of an AI tool look?



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How should we plan to respond to Item 21 from OFCCP's new scheduling letter?

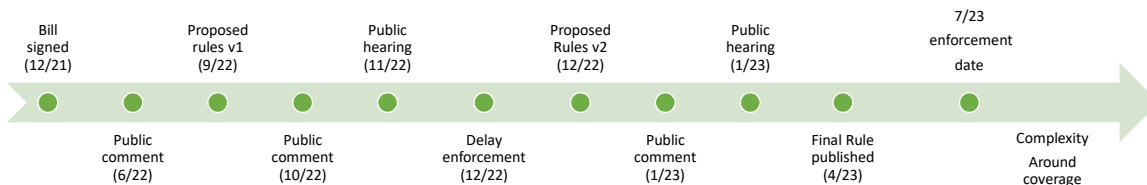
- Identify and provide information and documentation of policies, practices, or systems used **to recruit, screen, and hire**, including the use of *artificial intelligence, algorithms, automated systems or other technology-based selection procedures*.
- What should employers think about?
 - Inventory of policies/practices/systems?
 - Assess item 21 coverage (good luck)?
 - In-depth risk evaluation for high volume/high stakes roles/other context?



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What is the latest on the NYC LL 144 on AEDTs?



A "bias audit" for each AEDT

- Adverse impact analyses
 - Race, gender, intersectional
- Conducted by an independent auditor
- Tables of results and samples made publicly available on website

Provision of notices to applicants

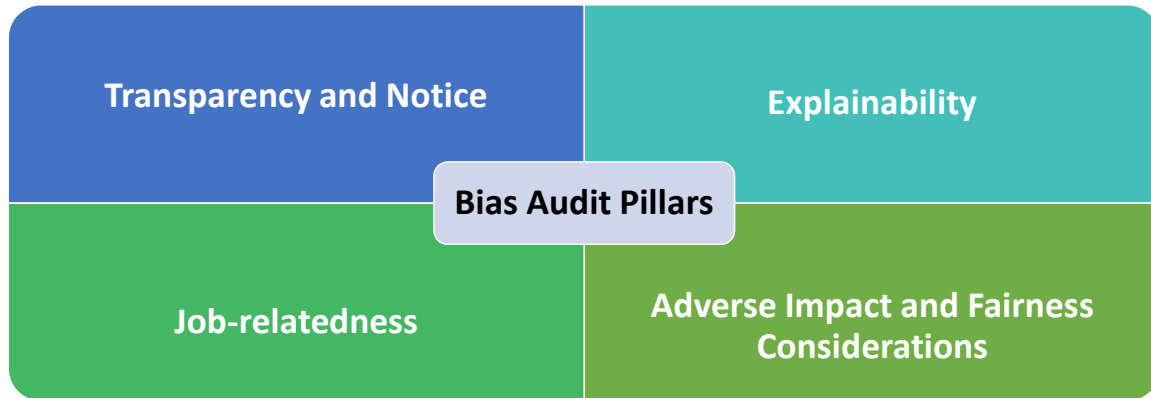
- Assessment is an AEDT
- Job qualifications, characteristics being evaluated
- Type and source of data; data retention policy
- Information on requesting alternative process (only required to provide alternative for accommodation)



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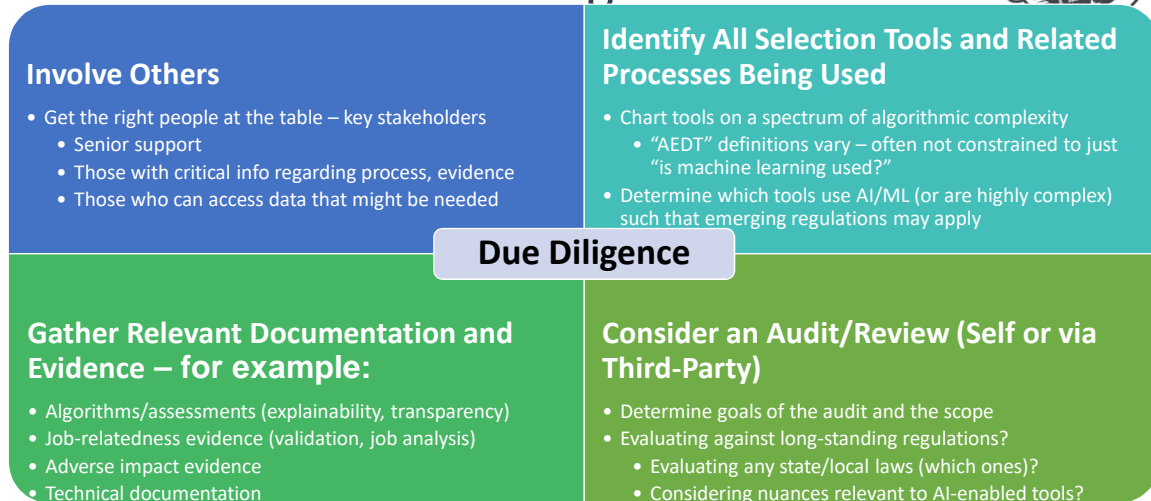
What are some common pillars of bias audit research across compliance sources?



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What else does due diligence look like?



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Questions?

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