

Handbook Hot Topics: Workplace AI Risks

By **Laura Corvo** (March 5, 2024, 2:33 PM EST)

Over the past few years, generative artificial intelligence tools have penetrated nearly every aspect of our lives, including our workplaces.

For many employers, these exciting new AI tools represent a promising new frontier that, when effectively mined, can improve worker efficiency, promote growth and generate creativity.

But this new technological frontier can also present dangers to employers, especially if employees are left unchecked to navigate those AI tools.

Without sound AI policies and procedures, employers can lose control of how these tools will operate in their workplaces, resulting in unwanted legal exposure and potential damage to their brands.

In order to maximize the benefits of AI tools and minimize the risks, employers should begin to incorporate policies and procedures in their employee handbooks by laying out the rules for employee use of AI tools.

Here are three reasons why employers need to include a sound AI policy in their employee handbook.

1. Legal liability lurks.

While AI tools present great promise, they are not without the risk of legal exposure. The misuse of AI tools can expose employers to lawsuits, penalties and other liabilities.

In October 2023, the Biden administration issued a sweeping executive **order** designed to ensure the safety, trustworthiness and security of AI tools.

Federal agencies, including the U.S. Equal Employment Opportunity Commission, have released guidance on AI tools and more than one-third of the states have passed some form of legislation governing AI tools, while multiple other states and municipalities are considering passing legislation aimed at AI tools.

For employers, there is a trend in laws and regulations designed to curb discrimination and bias when AI tools are utilized to make hiring or other employment decisions.



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In January 2023, New York City passed legislation requiring employers utilizing AI for hiring and other employment decisions to conduct detailed bias audits and post the results of those audits on company websites.

In May 2023, the EEOC issued a technical assistance document warning of liability under the federal employment discrimination statute — Title VII of the Civil Rights Act — in cases where algorithmic decision-making tools used in hiring and other employment decision making produce a discriminatory result.

States like Maryland and Illinois have also required certain notices and consent be issued to and obtained from job candidates when AI hiring tools are utilized in interviewing and recruitment.

Other states have proposed legislation designed to prevent discrimination and bias in employment decisions when AI tools are utilized.

To avoid the potential for exposure to costly discrimination suits, employers should consider either implementing policies and procedures that prevent the use of AI tools in hiring and other employment decision-making processes, or craft careful policies and procedures designed to ensure compliance with applicable discrimination laws and root out the potential for discrimination and bias.

In addition to preventing discrimination lawsuits from employees and job applicants, employers should also develop policies and procedures that are designed to minimize the risk of claims from customers and other third parties.

Multiple states have passed laws designed to protect consumer data and privacy, ensure transparency, and prevent copyright infringement when AI tools are utilized.

This means that employers need to adopt policies and procedures that: govern if and how customer and third-party data is shared with AI tools; provide transparency when AI tools are utilized; and prevent copyright and other intellectual property infringement.

AI tools are a relatively new technology and the law pertaining to AI is constantly evolving. Therefore, employers not only need to draft policies that comply with the current trends in the law, but they also need to stay abreast of new changes and trends, and be ready to update their policies when new requirements are adopted.

2. Stay in control of how AI tools will work in your business.

In addition to ensuring compliance with current and emerging laws, employers also need to control how AI policies will work for their businesses. This means that employers need to carefully and clearly instruct employees if, when and how to use AI tools.

Failing to provide that instruction will provide grounds for abuse and misuse of AI tools. It's akin to introducing a basket of scissors to a preschool classroom.

There is enormous potential for the creation of great artwork, but, without clear expectations, guidelines and instructions, there is also a guarantee of disaster.

So, if employers want to keep control of the use of AI tools in their business, what do they need to instruct their employees? While the guidelines for each business will vary, there are some basics that all AI policies should cover.

First, employers need to provide instruction on whether employees will be permitted to use AI tools in the first place. Some businesses may determine that the risks associated with AI tools do not outweigh the benefits, and prohibit employee use of AI tools. Other businesses may decide that AI tools may be utilized by only some of their employees, while other businesses may decide that all employees should use AI tools.

Once a business determines which employees will be permitted to use AI tools, the employer needs to set out the circumstances under which employees will be authorized to use those tools.

For example, an employer may want to require supervisor or management approval for the use of AI tools, or permit employee use of AI tools in certain circumstances, but not others.

Lastly, employers should develop policies that explain how employees are permitted to use AI tools and provide guardrails and processes designed to ensure compliance with legal requirements.

If, for example, employees are prohibited from using AI tools in hiring and employment decisions, the policy should state that. Likewise, employees should be instructed on how consumer data and the businesses' own confidential information will be handled to ensure privacy.

In addition, employees should be instructed not to engage in copyright infringement or plagiarism, and be given clear instruction not to pass off work products generated by AI tools as their own.

3. Protect your brand.

Along with protecting against legal exposure and maintaining control of how AI tools will be utilized by employees, employers also should adopt policies designed to make sure that the use of AI tools does not diminish the quality of their brands.

The last thing any business wants is to invest in an AI tool designed to promote efficiency, only to end up having to defend its reputation when the AI tool yields a product that is inaccurate, fake or subpar.

AI tools have made remarkable advancements and can create unbelievably sophisticated outputs. However, AI tools have yet to surpass human intellect, reason and judgment. They are prone to hallucinations or the creation of patterns or objects that are nonexistent, nonsensical or wrong.

With AI tools in play, there is also the potential for deepfakes, or fake images or content that resemble real ones. Unchecked AI tools are known to produce sloppy content with errors in grammar and spelling.

To maintain quality control and the integrity of the product and services that the employer's business produces, employers should build into their AI policies, processes and procedures that require some human oversight of AI-generated products.

For example, employers should require that human employees verify the accuracy and veracity of any output produced by an AI tool as well as spelling, grammar and style content.

Conclusion

In sum, as AI tools penetrate workplaces, employers need to incorporate sound and clear AI policies in their employee handbooks so that they can prevent legal liability, maintain control of this new technology, and protect the quality of their products and services.

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This article is part of a monthly column that discusses trending employee handbook issues.

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