

# AI and Automated Decision Making in Employment

2025 Regulatory Update

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*Dave Schmidt, Ph.D., Bre Timko, Ph.D., J.D.*

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**Dave Schmidt, Ph.D.**  
*Principal Consultant*



**Bre Timko, Ph.D., J.D.**  
*Senior Consultant*

# DCI: Data Driven – Client Focused

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## Our Mission

Advancing non-discrimination and fairness in the workplace by implementing merit-based and skill-focused employment practices.

## Our Vision

We believe every person deserves equal opportunity and fair treatment in the workplace and beyond.

# How DCI Can Help



## Compliance

- VEVRAA and Section 503 AAPs
- State affirmative action and non-discrimination
- EEO-1 and VETS-4212 reports
- DOL compliance review support
- State pay reporting
- Pay transparency
- Proactive guidance on regulatory change
- DEI risk mitigation



## Selection and Assessment

- Job analysis
- Selection procedure development and validation
- Expert evaluation/bias audit of HR systems, including artificial intelligence



## Workforce Analytics

- EEO disparity analyses
- Damage calculations
- Non-discrimination in employment plans
- Reduction-in-force analyses
- Barrier analyses



## Pay Equity and Compensation

- Pay equity studies
- EU Pay Transparency
- Pay compression studies
- Wage gap studies
- Job architecture development
- Market benchmarking
- Pay band creation
- Executive compensation reviews
- Bonus program reviews



## Litigation Support

- Consulting expert in applied research in class action litigation
- Testifying expert in case strategy, expert reports, & sworn testimony
- Expert reviews of AI-based hiring procedures

# Webinar Format

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- Participant phone lines are **muted**
- **Submit questions** by sending an email to [questions@dciconsult.com](mailto:questions@dciconsult.com)
- If you have any **technical difficulties during the call**, please email [questions@dciconsult.com](mailto:questions@dciconsult.com)

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# Federal AI Updates

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~~JULY 2019~~

~~OFCCP releases Validation of Employee Selection Procedures FAQ~~

~~MAY 2022~~

~~EEOC releases Guidance on ADA and Use of AI in Selection~~

~~OCTOBER 2022~~

~~White House releases Blueprint for an AI Bill of Rights~~

**JAN 2023**

EEOC Hearing: Navigating Employment Discrimination in AI and Automated Systems

~~OCT 2021~~

~~EEOC releases AI and Algorithmic Fairness Initiative~~

~~MAY 2022~~

~~DOJ releases Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring~~

**JAN 2023**

NIST releases AI Risk Management Framework

~~MAY 2023~~

~~EEOC releases Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964~~

~~JULY 2023~~

~~Congress proposes No Robot Bosses Act~~

~~SEPT 2023~~

~~Congress proposes Algorithmic Accountability Act of 2023~~

~~MARCH 2024~~

~~OMB releases Policy Regarding Federal Agencies' Use of AI~~

~~APR 2024~~

~~OFCCP releases New Guidance on Artificial Intelligence and Equal Employment Opportunity for General Contracts~~

~~AUG 2023~~

~~OFCCP releases updated scheduling letter, including item 21, requiring AI-based selection procedures to be disclosed~~

~~OCT 2023~~

~~White House releases Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (EO 14110)~~

~~APRIL 2024~~

~~Federal Agencies release Joint Statement on Enforcement of Civil Rights, Fair Competition, Consumer Protection, and Equal Opportunity Laws in Automated Systems~~

~~MAY 2024~~

~~DOL releases Artificial Intelligence and Worker Well-Being: Principles and Best Practices for Developers and Employers~~

■ OFCCP   ■ White House\*   ■ Joint federal agency activity  
■ EEOC   ■ NIST  
■ DOJ   ■ Congress

\*Including associated activity stemming from EO 14110

# Winning the Race: America's AI Action Plan – July 2025

**Purpose:** Position the United States as the global leader in artificial intelligence by fostering innovation, strengthening infrastructure, and promoting AI systems that align with democratic principles

## Pillar 1: Accelerate AI Innovation

- Remove regulatory barriers
- Ensure AI systems are objective and ideologically neutral
- Encourage open-source models
- Emphasize high data quality
- Promote adoption and use of AI
- Strengthen national capabilities through R&D and education

## Pillar 2: Build American AI Infrastructure

- Modernize and streamline infrastructure development to match the pace of AI innovation
- Revitalize domestic semiconductor manufacturing
- Promote security of AI innovations
- Train a workforce to support AI infrastructure

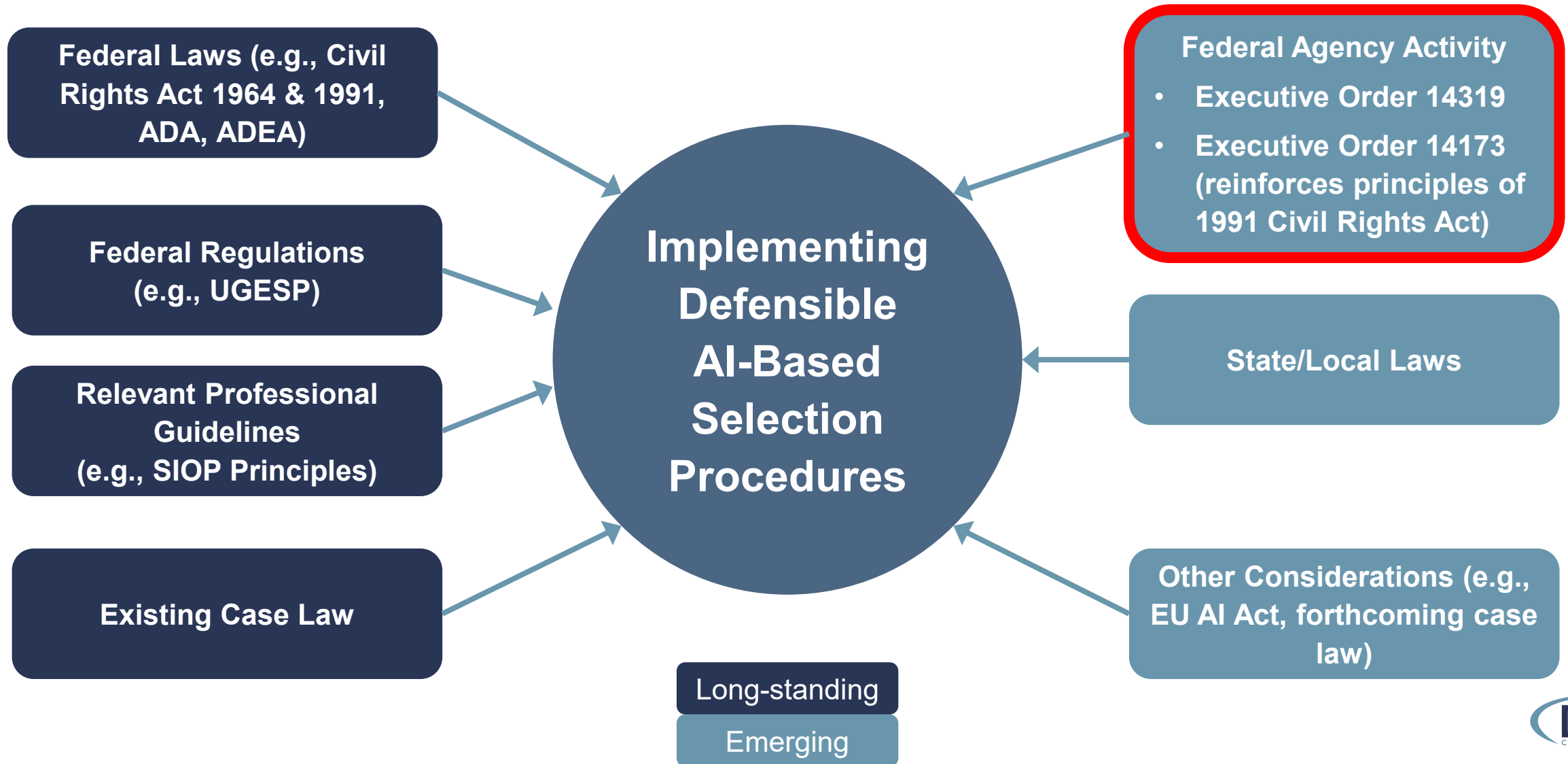
## Pillar 3: Lead in International AI Diplomacy & Security

- Promote strategic AI exports to allies and partners
- Influence global bodies around AI standards and governance
- Invest in national security and in biosecurity

# AI Executive Orders – July 2025 (14318, 14317, 14319)

EO Name	Purpose	Key Points
<b>Promoting the Export of the American AI Technology Stack</b> <a href="https://www.whitehouse.gov/presidential-actions/2025/07/promoting-the-export-of-the-american-ai-technology-stack/">https://www.whitehouse.gov/presidential-actions/2025/07/promoting-the-export-of-the-american-ai-technology-stack/</a>	Extend American leadership in AI and decrease international dependence on AI technologies.	<ul style="list-style-type: none"><li>• Creates the American AI Exports Program within 90 days</li><li>• Prioritizes strategic and secure AI exports</li><li>• Utilizes Federal financial tools like loans, guarantees, and diplomatic support to encourage US AI exports</li><li>• Emphasizes participation from small businesses and startups, not just big tech</li></ul>
<b>Accelerating Federal Permitting of Data Center Infrastructure</b> <a href="https://www.whitehouse.gov/presidential-actions/2025/07/accelerating-federal-permitting-of-data-center-infrastructure/">https://www.whitehouse.gov/presidential-actions/2025/07/accelerating-federal-permitting-of-data-center-infrastructure/</a>	Ease Federal regulatory burdens to building out AI data centers and infrastructure.	<ul style="list-style-type: none"><li>• Allows federally owned land and resources (including military sites) to be used to build data centers</li><li>• Offers financial support (loans, grants, tax incentives, etc.) for “qualifying projects”</li><li>• Streamlines environmental, wildlife impact, and permitting reviews</li><li>• Accelerates reuse of contaminated land (e.g., industrial sites) for new tech infrastructure</li></ul>
<b>Preventing Woke AI in the Federal Government</b> <a href="https://www.whitehouse.gov/presidential-actions/2025/07/preventing-woke-ai-in-the-federal-government/">https://www.whitehouse.gov/presidential-actions/2025/07/preventing-woke-ai-in-the-federal-government/</a>	Ensure AI tools used in government do not compromise factual accuracy and objectivity.	<ul style="list-style-type: none"><li>• “DEI...poses an existential threat to reliable AI”</li><li>• Establishes “Unbiased AI Principles” – Truth-Seeking and Ideological Neutrality</li><li>• Mandates that all Federal contracts involving LLMs include terms requiring compliance with the principles, with penalties for noncompliance</li><li>• Requires that OMB issue formal guidance to ensure compliance within 90 days</li></ul>

# Implications for Legal Defensibility



# State AI Regulation Updates: Colorado, California, and Texas

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# Colorado Artificial Intelligence Act (SB 24-205)



Takes effect on February 1, 2026

Applies to developers and  
deployers

Rebuttable presumption of  
reasonable care if the  
developer/deployer is in  
compliance with the law

Annual impact assessments  
+ within 90 days of any  
intentional and substantial  
modification to the AI system

Risk management program  
requirement

Applicant notices +  
notification to AG within 90  
days of discovery that an AI  
system has caused  
discrimination

Publication of information  
about the AI system in a  
clear and readily available  
manner on company website



# California Fair Employment and Housing Act Amendment



Takes effect on October 1, 2025

Applicant record keeping (4 years) for race, sex, and national origin

Uniform Guidelines on Employee Selection Procedures (UGESP) formally adopted

Explicitly recognizes “proxy” discrimination

Refined definition of employment agency – “opportunities to work”

Adverse inference analysis where employers do not have records

Potential for an affirmative defense if proactive efforts to avoid unlawful discrimination

Annual reporting requirements

Applicant notices



# Texas Responsible AI Governance Act



Takes effect on January 1, 2026

Broad applicability: advertises or conducts business in the state, produces a product or service used by TX residents, or develops or deploys AI in TX

Explicitly prohibits AI systems that intend to unlawfully discriminate against protected classes

Establishes a “safe harbor” provision for businesses who seek to uncover potential violations

Establishes a regulatory sandbox program

Notice requirements for governmental agencies and healthcare service providers

Establishes Texas AI Council



# Other AI Regulatory Considerations

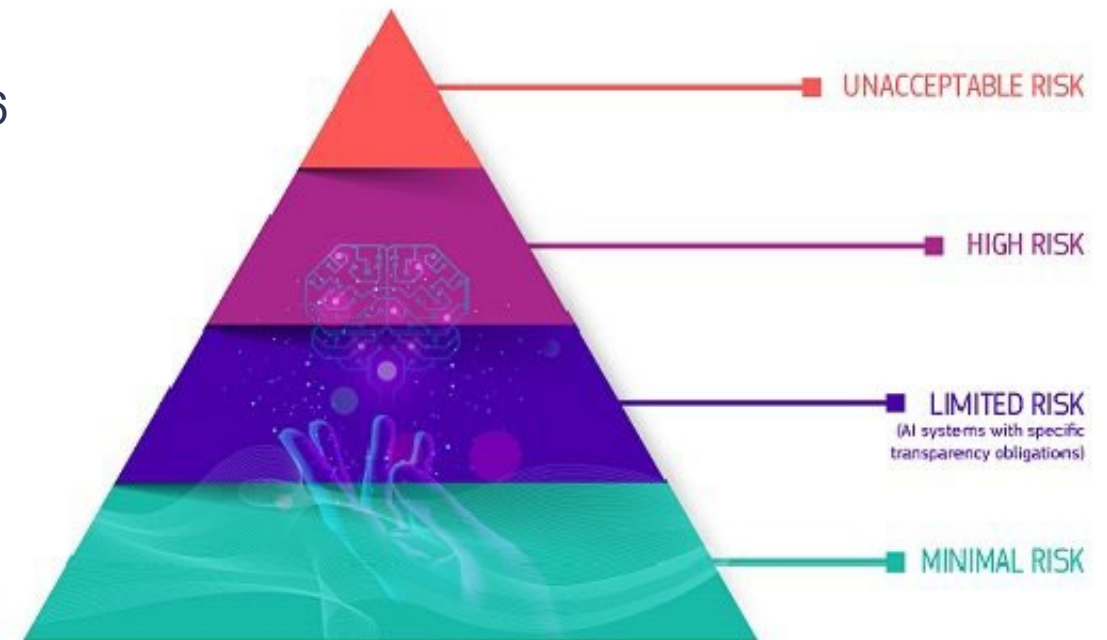
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# European Union AI Act

- Broad, covering wide range of AI use, including employment
- Proposed in 2021, approved by European Parliament June 2023
- Takes a risk-based approach to regulation
  - Employment practices are considered “high risk”
  - High risk AI systems compliance starts in August 2026
- Some requirements of note:
  - Ensure relevant, representative data used (for training, validating, testing)
  - Document, logging to allow for traceability, auditability
  - Ensure transparency
  - Ensure human oversight
  - Ensure robustness and accuracy



# Recommendations for Employers

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# Recommendations for Employers



# Thank you for your attention!

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Questions?

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