

# Compliance in the Age of AI

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# The Institute for Workplace Equality

Employer Membership Association, formed to assist the contractor community in responding to rapidly changing compliance challenges. The Institute provides national training programs and webinars addressing the latest EEO developments and strategies for effective compliance.

For more information on The Institute for Workplace Equality, visit: [www.theinstitute4workplaceequality.org](http://www.theinstitute4workplaceequality.org)

# Institute Membership Offers Many Benefits

- Monthly members-only roundtable meeting covering cutting edge issues, including:
  - Washington Insider Insights
  - Changing enforcement initiatives, priorities and trends
  - Growing patchwork of domestic and international pay equity laws
  - Strategic and practical key takeaways (Takeaways PDF provided after each roundtable for members to share within their organizations)
- Unique access to EEO Agency leadership
- Complimentary registration for all webinars
- Institute conferences led by our 18-person faculty of nationally recognized EEO attorneys and statisticians
- Four or more\* complimentary registrations for Institute conferences, annually
  - Member organizations do not pay conference registration fees on top of annual dues
  - *\*number of complimentary registrations depends on your organization's membership tier*
- Access to The Institute's extensive Member Resources Library
- Access to The Institute's Member Directory, a valuable networking opportunity for members to share best practices, guidance, and knowledge
- The Institute writes white papers addressing our members compliance concerns and priorities
- Opportunities for Institute members to collaborate and attend brainstorming sessions with federal EEO Agency leadership
- Semiannual meetings with The Institute's Advisory Board, U.S. DOL, and EEO Agency leadership

# SHRM Survey Responses

## How HR Uses Artificial Intelligence

*\*Question was select all that apply. Among those who indicated their organization uses AI to support HR-related activities.*



### “Other” areas HR uses AI

- “Administrative tasks”
- “Policy writing and communications”
- “General communication (announcements, social media posts, company emails, etc.)”
- “Forms and resource writing”
- “Drafting documents, communications, messages, and tasks lists”
- “Internal communications, policy and procedure drafting”
- “Content generation for documents, presentations, and awards.”
- “Answering FAQs”

Source: SHRM 2024 “Talent Trends” survey

# Federal AI Priorities and Actions

**1. Build** and **Promote** AI Development and Competitiveness in the US

**2. Review, Rescind** and **Amend** Prior Administration's AI Actions that Inhibit AI Development and Competitiveness

**3. Impose a Deregulatory** Agenda to Eliminate Unnecessary Restraints on AI Development

# **NEW: Artificial Intelligence Action Plan**

- Released July 23, 2025
- Three New Executive Orders Are Expected
- 3 Pillars of AI Action Plan
  - 1. Accelerate AI Innovation**
    - Remove onerous regulations
    - OMB to work with federal agencies with AI-related funding sources to consider state's AI regulations
    - FCC to evaluate whether state AI regulations interfere with authority under the Communications Act
    - NIST to revise Risk Management Framework to eliminate references misinformation, DEI, and climate change
  - 2. Build American AI Infrastructure**
  - 3. Lead in International AI Diplomacy and Security**

# Artificial Intelligence Priorities of the Trump Administration

1. In January 2025, President Trump issued EO 14179, "Removing Barriers to American Leadership in Artificial Intelligence". EO 14179 seeks to:
  - Sustain and enhance US global AI dominance
  - Promote AI development free from “ideological bias or engineered social agendas.”
  - Review and revise or rescind actions taken under the prior administration that are inconsistent with the new policy
  - Promises Artificial Intelligence Action Plan within 180 Days
2. On April 3, 2025, OMB issued Memo M-25-21, "Accelerating Federal Use of AI through Innovation, Governance, and Public Trust," which directs federal agencies to maximize the use of American-developed AI solutions.
  - M-25-21 also requires federal agencies to implement minimum risk management practices for "high-impact" AI uses, including the federal government's own employment decisions such as hiring, termination, pay, promotion, and performance management.
  - Risk management practices contemplated by M-25-21 for “high-impact” systems include ongoing monitoring, human oversight, and appeals processes.



# Artificial Intelligence Priorities of the Trump Administration

3. On April 3, 2025, OMB also issued Memo M-25-22, “Driving Efficient Acquisition of Artificial Intelligence”, which sets forth revised procedures for the federal government’s AI purchasing.

- Agencies must identify whether procured AI systems will be used for "high-impact" purposes (including employment decisions) during the acquisition process.
- Requires federal contract to ensure compliance with minimum risk management practices for high-impact AI use cases.

4. On April 23, 2025, President Trump signed an executive order, “Advancing Artificial Intelligence Education for American Youth”.

- Seeks to integrate AI education from K-12 through postsecondary education and workforce development, establish an AI Education Task Force, and create a Presidential Artificial Intelligence Challenge.
- It also encourages public-private partnerships to provide resources for AI education

# Executive Order "Restoring Equality of Opportunity and Meritocracy" (April 23, 2025) and Disparate Impact

On April 23, 2025, President Trump signed EO 14281, "Restoring Equality of Opportunity and Meritocracy."

**Key Directive:** "It is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible"

**Federal Enforcement Changes:** All federal agencies must "deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability" EEOC and DOJ directed to assess "all pending investigations, civil suits, or positions taken in ongoing matters...that rely on a theory of disparate-impact liability" and take "appropriate action"

## Impact on AI Regulation:

- The federal government is unlikely to pursue AI discrimination cases based solely on statistical disparities
- EP 14281 specifically states disparate impact liability has "hindered businesses from making hiring and other employment decisions based on merit and skill" due to fear of lawsuits
- Suggests that federal agencies will not investigate or pursue enforcement actions against AI tools that produce disparate outcomes without intentional discrimination

# Impact of Federal AI Priorities and Actions

- **No Federal Legislation on AI in Employment in the Foreseeable Future**
  - In the absence of federal legislation or regulation on AI in employment, state lawmakers will feel increased pressure to act.
- **One Big Beautiful Bill Act -- Initial Moratorium on State Regulation of AI Removed**
  - State and local legislatures and regulatory agencies will continue their efforts to regulate AI
- On July 1, 2025, the Senate voted 99-1 to strike the House language. The moratorium on state AI regulation is not in the version of the “Big Beautiful Bill” signed by President Trump on July 4.

*For the time being...the moratorium's defeat means that state and local legislatures and regulatory agencies may continue their efforts to regulate AI. But given release of America's AI Action Plan the federal government will be taking multiple approaches to influence state action*

# **The State Landscape**

# NIST AI Risk Management Framework

NIST Management AI Risk Management Framework: originally published in January 2023.

Multiple state have signed or introduced legislation that follow the NIST AI RMF; also applicable to state's use of AI

Many private-sector employers have worked to operationalize the NIST AI RMF.



# Artificial Intelligence: Key Themes in State and Local Legislation

Coverage

Non-  
Discrimination

Assessment &  
Human  
Oversight

Disclosure &  
Transparency

Accessibility &  
Accommodation

Enforcement

## Local Law Regulating AI: New York City



### LL 144 – Enacted in 2022

- **New York City Local Law 144** was passed in 2022, enforcement started **July 2023**
- Criticized by worker advocates as being too-narrow in scope and geographic limitation, and without public enforcement
- LL 144 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
  2. Provide certain public **notices and disclosures**

## State Guidance on AI: New Jersey



# NJ Civil Rights and Technology Initiative

In January 2025, NJ's Attorney General and Division on Civil Rights (DCR) launched the *Civil Rights and Technology Initiative* and issued guidance clarifying that the **NJ Law Against Discrimination (NJLAD) prohibits algorithmic discrimination**—bias caused by automated decision-making tools

### Key Risks Identified:

- Design flaws – Biased inputs, proxies for protected traits (e.g., SSN vs. ITIN)
- Training bias – Incomplete or unrepresentative datasets
- Deployment misuse – Inconsistent application or use beyond intended purpose

### Legal Theories Covered:

- Disparate treatment – Intentional or facially biased tool use
- Disparate impact – Disproportionate effects on protected groups
- Failure to accommodate – Tools that don't account for disability, religion, or pregnancy-related needs

### Employer Liability & Best Practices:

- Employers remain liable even if using third-party tools
- Ask vendors questions about design, data, and outcomes
- Train users, audit tools, and monitor impacts
- Provide notice to users and consult legal counsel regularly



## California Civil Rights Council Regulations



# Employment Regulations Regarding Automated Decision Systems

- CCRC secured approval for regulations to protect against employment discrimination related to AI
  - New rules effective **October 1, 2025**
- The amendments to FEHA provide increased clarity on how existing antidiscrimination laws apply to the use of AI in employment decisions
  - The use of an automated-decision system may violate California law if it harms applicants or employees based on protected characteristics, such as gender, race, or disability
  - Maintain employment records, including automated decision data, for a minimum of four years
  - Automated-decision system assessments, including tests, questions, or puzzle games that elicit information about a disability, may constitute an unlawful medical inquiry

## State Laws Regulating AI : Illinois Human Rights Act Amendments



## 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

## State Laws Regulating AI: Texas Responsible Artificial Intelligence Governance Act (TRAIGA)



## HB 149 – Enacted in 2025

- **Texas HB 149** was enacted on June 22, 2025
- Requirements go into effect on **January 1, 2026**
- TRAIGA prohibits the development or deployment of AI systems with the **intent** to unlawfully discriminate against a protected class in violation of state or federal law
  - Under TRAIGA, disparate impact alone is **not** sufficient to show intent
- The law includes safe harbors for substantial compliance with recognized risk management frameworks (e.g., NIST AI Risk Management Framework) and for violations discovered through internal testing or audits
- No private right of action – enforcement is reserved to the Texas Attorney General
  - The AG must provide a 60-day cure period for violations

## State Laws Regulating AI: Colorado AI Act



### 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**
- Covers broad AI uses, including employment
- Incentivizes AI risk management practices
- Requires impact assessments, consumer disclosures, and opt-out notices for many applications
- No new 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

# Employers will face a patchwork of AI regulatory efforts:

## INTERNATIONAL



- The EU AI Act was formally adopted in July 2024 and entered into force on August 1, 2024
- Under the EU AI Act, AI-powered employment decision-making systems are classified as “high risk”.
  - Under the EU AI Act, “high risk” AI applications must undergo a “fundamental rights impact assessment” before being deployed.
  - EU consumers will also have rights to be informed when AI is used in decision-making, opt out, and to receive an explanation of the AI system’s decisions.
  - Provisions regarding “high risk” AI applications will be effective in mid-2026.

## **The AI regulatory environment will continue to be very complex**

- Between, federal, state, local, and international regulators, in addition to private industry groups publishing their own governance frameworks, the AI regulatory environment in 2025 will continue to be active and complex.
- State legislatures are expected to take up legislation attempting to regulate AI risks.
- Regulation of AI is likely to proceed on the local and state level
- Employers looking to harness the potential of AI should continue to be mindful that the AI regulatory environment and consensus on how to best manage AI risk can develop and shift just as rapidly as the underlying technology.

# Thank You