



State of AI Policy and Regulations in Employment Decisions (Merve Hickok)¹

Use of algorithmic tools in employment decisions, such as recruitment, termination, and promotion, is a topic gathering more attention in policy, regulatory and professional circles globally. Since the beginning of 2021, several international organizations, regulatory agencies, and local governments have passed legislation, drafted regulatory frameworks, or published warnings and guidance documents related to these systems. Some artificial intelligence (AI) and automated decision-making systems are used by employers to reach a wider pool of candidates, engage with previously passive candidates, and hence increase the diversity and opportunity for better hires. The tools which are of most concern and under the microscope for the current regulatory efforts, on the other hand, are those used to narrow down the number of applicants through the hiring process. In other words, the systems which are used to rank, score, classify, rate, recommend, match, or analyze a candidate against a job description and may result in a candidate being rejected from the process. Employers use these systems to screen resumes, analyze language and facial expressions during video interviews, and implement tests or games to assess personality traits, abilities, and aptitudes.

This policy brief provides insights about the current state of policy and regulatory discussions for AI systems used for employment decisions, and forecasts what employers and vendors could expect going forward. An analysis of the current landscape can help different stakeholders (policy and lawmakers, employers, vendors, civil society, and impacted individuals) to see the convergence and divergence of some of the approaches. As mentioned above, policy and legislative developments on AI and algorithmic systems used for employment decisions are numerous. However, across the different jurisdictions and approaches, the focus of concern for policymaking can be classified in a smaller number of categories. These focus areas are bias and disparate impact (for a discrete set of protected categories), privacy, impact on people with disabilities – and an overall consideration for human rights as it relates to anti-discrimination and equality laws.

UNITED STATES:

In the US, several federal laws regulate the responsibilities and liabilities of employers and vendors for tools used in employment decisions. However, most of these regulations and rules date back to an era when the collection of data and use of algorithmic systems were not ubiquitous as they currently are. Employers are subject to the requirements under Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act of 1990 (ADA), the Age Discrimination in Employment Act of 1967 (ADEA), and Equal Employment Opportunity

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Commission (EEOC) Uniform Guidelines on Employee Selection Procedures.² The vendors and users of AI, on the other hand, are subject to oversight by the Federal Trade Commission (FTC) and its powers to enforce FTC Act (prohibiting the sale or use of unfair or deceptive practices), and the Fair Credit Reporting Act (when an algorithm is used to deny people employment). The regulatory agencies, EEOC and FTC, charged with rulemaking and enforcing the existing laws are acutely aware of the need for updates to the legislative system and additional tools and approaches to enable them better oversight and regulation of these newer systems. Towards that end, they have initiated various approaches.

EEOC: Responsible for enforcing federal laws making it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability or genetic information, EEOC's initiatives on algorithmic systems focus on bias and disparate impact in employment decisions as they relate to these categories. EEOC also works to prevent discrimination before it occurs through outreach, education, and technical assistance programs.³

Commissioner Sonderling has been one of the most vocal voices at the EEOC, calling on both employers and vendors to design, use and govern the algorithmic systems responsibly. Recounting both the benefits and risks of AI systems, the Commissioner underlines the fact that “if it is poorly designed and improperly deployed, AI can discriminate on a scale and magnitude far greater than any individual HR professional.”⁴ The Commissioner also acknowledged that “The EEOC needs to be providing guidelines or answers or clarity on exactly how our laws apply to this ever-advancing technology. The industry has been asking for guidance, all sides of the industry.”⁵ While the agency's initiatives are ongoing, and US is debating federal legislation on privacy and algorithmic accountability, an EEOC commissioner charge⁶ might also be in the horizon as a way to start an investigation and set precedent.

EEOC Chair Burrows launched the AI and Algorithmic Fairness Initiative, bringing together industry and civil society partners to discuss the most important impacts of algorithmic systems in the workplace. The initiative aims to examine more closely how technology is fundamentally changing the way employment decisions are made, and guide applicants, employees, employers, and technology vendors in ensuring these technologies are used fairly and are consistent with federal equal employment opportunity laws.⁷ Following this Initiative, the

² EEOC. *Uniform Guidelines on Employee Selection Procedures*. <https://www.eeoc.gov/laws/guidance/employment-tests-and-selection-procedures>

³ EEOC. *Overview*. <https://www.eeoc.gov/overview>

⁴ Sonderling, Keith (December 2021). *How People Analytics Can Prevent Algorithmic Bias*. IHRIM. <https://www.ihrim.org/2021/12/how-people-analytics-can-prevent-algorithmic-bias-by-commissioner-keith-e-sonderling/>

⁵ Smith, Paige (September 1, 2021). *AI Bias Needs EEOC Oversight, Official Says*. Bloomberg Law. <https://news.bloomberglaw.com/daily-labor-report/artificial-intelligence-bias-needs-eeoc-oversight-official-says>

⁶ Commissioner charge: A Congressionally-authorized process whereby “Any person or organization may request the issuance of a commissioner charge for an inquiry into individual or systemic discrimination” by submitting the request, “with any pertinent information” to an EEOC office. <https://www.eeoc.gov/commissioner-charges-and-directed-investigations>

⁷ EEOC (October 28, 2021). *Initiative on AI and Algorithmic Fairness*. <https://www.eeoc.gov/newsroom/eeoc-launches-initiative-artificial-intelligence-and-algorithmic-fairness>



EEOC also published its first technical assistance guidance with practical tips and considerations to employers on how to comply with the ADA. The guidance also provides suggestions to job applicants who think their rights may have been violated. For example, if a candidate believes their employment-related ADA rights may have been violated, they can file a charge of discrimination with the EEOC for the agency to investigate.⁸

Finally, in May 2022, the EEOC filed suit against an online tutoring company (*EEOC v. iTutorGroup, Inc.*) for allegedly programming its online tutor recruitment software to automatically reject older applicants because of their age.⁹ It is clear the agency will use a variety of tools available in its toolkit to tackle the issue of bias and discrimination in employment decisions. While the agency is working with employers, vendors, researchers, and civil society organizations to understand the different components of the issue, it will continue to educate the public on possible harms and risk, provide guidance and clarification. It will also use its investigation mechanisms and make its resources available to protect the rights of candidates and employees.

FTC : With regards to overseeing AI and algorithmic systems, The Commission has multiple tools in its toolkit. So far, the FTC published a report on concerns about AI harms¹⁰; conducted a hearing on algorithms, AI and predictive analytics¹¹; and issued multiple business guidance on AI and algorithms¹² and truth, fairness, and equity.¹³ In this latest FTC guidance post, the FTC concluded with **“Hold yourself accountable – or be ready for the FTC to do it for you.”** The FTC enforcement actions can be supported by complaints to the Commission by interested parties. In 2016, the civil society organization EPIC filed a complaint to the FTC regarding HireVue, an AI-based candidate interview and assessment system, and requested investigation for unfair and or deceptive trade practices.¹⁴ In addition to the authority to investigate AI and algorithm vendors regarding their claims, the FTC also holds federal rule-making authority to issue industry-wide regulations.¹⁵ To this end, the FTC recently announced that it is exploring rules to crack down on harmful commercial surveillance, resulting in discrimination against consumers based on legally protected characteristics like race, gender, religion, and age, and harming the ability to obtain

⁸ EEOC (May 12, 2022). The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees. <https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence>

⁹ EEOC (May 5, 2022). EEOC Sues iTutorGroup for Age Discrimination. <https://www.eeoc.gov/newsroom/eeoc-sues-itutorgroup-age-discrimination>

¹⁰ FTC (June 16, 2022). Combatting Online Harms Through Innovation. <https://www.ftc.gov/reports/combating-online-harms-through-innovation>

¹¹ FTC (November 13, 2018). Hearing #7: The Competition and Consumer Protection Issues of Algorithms, Artificial Intelligence, and Predictive Analytics. <https://www.ftc.gov/news-events/events/2018/11/ftc-hearing-7-competition-consumer-protection-issues-algorithms-artificial-intelligence-predictive>

¹² FTC (April 8, 2020). Using AI and Algorithms. <https://www.ftc.gov/business-guidance/blog/2020/04/using-artificial-intelligence-and-algorithms>

¹³ Federal Trade Commission (April 19, 2021). Aiming for truth, fairness, and equity in your company’s use of AI. <https://www.ftc.gov/business-guidance/blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai>

¹⁴ The Electronic Privacy Information Center (EPIC) Complaint to FTC re HireVue (November 6, 2019). https://epic.org/wp-content/uploads/privacy/ftc/hirevue/EPIC_FTC_HireVue_Complaint.pdf

¹⁵ FTC (May 2021). A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority. <https://www.ftc.gov/about-ftc/mission/enforcement-authority>



housing, credit, and employment.¹⁶ All vendors and users of AI and algorithmic employment decision tools should watch closely the increasing focus of the Commission and future rule-making process. In the meantime, any individual or civil society organization can file complaint with the FTC, asking the agency to investigate unfair or deceptive trade practices. The Commission uses these complaints to spot trends, investigate and bring wider cases against fraud, scams, and bad business practices.

White House - The Office of Science and Technology Policy (OSTP): In October 2021, the OSTP issued a call for the development of an AI Bill of Rights and started a public request for information (RFI) process. The President’s Science Advisor and Director of OSTP Dr. Eric Lander and OSTP Deputy Director for Science & Society Dr. Alondra Nelson said, "Powerful technologies should be required to respect our democratic values and abide by the central tenet that everyone should be treated fairly."¹⁷ Feedback on hiring software was specifically requested in the RFI.¹⁸ The OSTP was “eager to listen” to interested parties on the use of biometric technologies for the purposes of identity verification, identification of individuals, and inference of attributes including individual mental and emotional states. The OSTP also noted how some AI systems “can embed past prejudice and enable present-day discrimination.”¹⁹ The OSTP established a public comments deadline of January 15, 2022.

The Center for AI and Digital Policy (CAIDP) identified the OSTP AI Bill of Rights initiative as possibly the most significant AI policy initiative in the United States in the *AI and Democratic Values Index*, an extensive review of the AI policies and practices in 50 countries.²⁰ However, the early progress has stalled for unknown reasons. CAIDP strongly supports this initiative, as an AI policy “that advance democratic values and promote broad social inclusion based on fundamental rights, democratic institutions, and the rule of law. CAIDP also started a campaign urging individuals and organizations to join the effort to move the process forward.²¹ I have recommended that U.S. policymakers should move forward the AI Bill of Rights to keep pace with the AI policy initiatives of China and Europe.²²

¹⁶ FTC (August 11, 2022). FTC Explores Rules Cracking Down on Commercial Surveillance and Lax Data Security Practices. <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-explores-rules-cracking-down-commercial-surveillance-lax-data-security-practices>

¹⁷ Lander, Eric and Nelson, Alondra (October 8, 2021). Americans Need a Bill of Rights for an AI-Powered World. Wired. <https://www.wired.com/story/opinion-bill-of-rights-artificial-intelligence/>

¹⁸ National Archives (October 8, 2021). Notice of Request for Information (RFI) on Public and Private Sector Uses of Biometric Technologies. Federal Register. <https://www.federalregister.gov/documents/2021/10/08/2021-21975/notice-of-request-for-information-rfi-on-public-and-private-sector-uses-of-biometric-technologies>

¹⁹ The White House (October 22, 2021). ICYMI: WIRED (Opinion): Americans Need a Bill of Rights for an AI-Powered World. <https://www.whitehouse.gov/ostp/news-updates/2021/10/22/icymi-wired-opinion-americans-need-a-bill-of-rights-for-an-ai-powered-world/>

²⁰ CAIDP (February 2022). AI and Democratic Values Index 2021. <https://www.caidp.org/reports/aidv-2021/>

²¹ CAIDP (May 18, 2022). Support the OSTP AI Bill of Rights. <https://www.caidp.org/statements/ostp/>

²² Marc Rotenberg and Merve Hickok, Council on Foreign Relations (August 22, 2022). Artificial Intelligence and Democratic Values: Next Steps for the United States. Net Politics Blog. <https://www.cfr.org/blog/artificial-intelligence-and-democratic-values-next-steps-united-states>



In addition to the developments at the federal level, several state and local governments are also legislating the employment decision space as it relates to AI and algorithmic systems. Some of these jurisdictions, such as Illinois, Maryland and New York City, have passed laws, and a few others have introduced bills currently being discussed.

New York City: On January 1, 2023, the New York City (NYC) Local Law 144 will go into effect. This NYC legislation requires employers to conduct annual bias audits for every automated tool they use for employment decisions.²³ I have provided extensive analysis regarding this law and its implications on candidates, employers and vendors in a previous article.²⁴ NYC Council has not published any further rules since the publication of the law in December 2021. However, the NYC Department of Consumer and Worker Protection (DCWP) has been assigned as the enforcement entity. The DCWP so far published penalty schedules for violations.²⁵ However more rule-making activity and further clarification on the legislation should be expected from the DCWP in the coming days.

Illinois Biometric Information Privacy Act (“BIPA”): The legislation, passed in 2008, was one of the first State laws addressing collection of biometric data by private entities. Although the legislation is focused on how this data is collected and used across multiple domains, there is a clear implication for its use in video interviews or data collection in workplace. Employers are required to provide notice to candidates, acquire consent and refrain from profiting from such data collection.²⁶ Since BIPA provides individuals harmed by violations a private right of action, the number of cases (including class action) has increased significantly in the State. *In Rosenbach v. Six Flags Entertainment Corp.*, the Supreme Court of Illinois held in 2019 that a person did not have to sustain actual damage to pursue a lawsuit under BIPA. Violation of the person’s legal rights were enough.²⁷ Legal professionals also warn employers about arrangements they might have with third parties and ensuring their compliance to reduce risk.²⁸

Since January 2022, employers relying “solely” on AI systems to select candidates for “in-person” interview are required to collect and report the race and ethnicity of candidates who are

²³ New York City (NYC) Local Law 144. <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4344524&GUID=B051915D-A9AC-451E-81F8-6596032FA3F9>

²⁴ Hickok, Merve (August 11, 2022). NYC Bias Audit Law: Clock ticking for Employers and HR Talent Technology Vendors. Medium. <https://medium.com/@MerveHickok/nyc-bias-audit-law-clock-ticking-for-employers-and-hr-talent-technology-vendors-cfba60a8c907>

²⁵ The Department of Consumer and Worker Protection (August 5, 2022). Adopted rules to implement Local Law 144 of 2021. <https://rules.cityofnewyork.us/rule/force-fed-products-open-captioning-in-motion-picture-theaters-and-automated-employment-decision-tools/>

²⁶ Illinois Biometric Information Privacy Act. <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3004&ChapterID=57>

²⁷ Illinois Supreme Court (January 25, 2019). *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186. <https://www.illinoiscourts.gov/Resources/f71510f1-fb2a-43d8-ba14-292c8009dfd9/123186.pdf>

²⁸ Golden, Ryan (July 14, 2021). A new lawsuit ‘every single day’: Employers see legal action over use of biometric info. HR Dive. <https://www.hrdive.com/news/a-new-lawsuit-every-single-day-employers-see-legal-action-over-use-of-bi/603328/>



and are not offered an in-person interview versus of those who are hired. This data is to be analyzed by the State to understand and “disclose a racial bias in the use of AI.”²⁹

Maryland H.B. 1202: Similar to BIPA, Maryland’s Labor, and Employment - Use of Facial Recognition Services Prohibition Legislation requires employers to collect applicant’s consent if facial recognition technology will be used during pre-employment job interviews.³⁰

Several draft bills should also be closely followed for implications for both employers and vendors providing AI or automated decision-making systems to employers.

American Data Privacy and Protection Act (H.R.8152): ADPPA was introduced in June 2022 as a bipartisan federal privacy bill.³¹ Although the bill is more focused on data privacy and protection, it does introduce several obligations for covered entities (entities subject to the FTC Act), such as evaluation of the design, structure, and inputs of the algorithm, as well as impact assessment obligation. When defining ‘covered data’, the legislation excludes ‘employee data’ – information relating to a job applicant collected by a covered entity. However, under the Algorithmic Impact Assessment Scope section, the ADPPA would require assessments to cover “detailed description of steps the large data holder has taken or will take to mitigate potential harms to individuals, including potential harms related to... making or facilitating advertising for, or determining access to, or restrictions on the use of housing, education, employment, healthcare, insurance, or credit opportunities.” The ADPPA, if enacted, will be subject to public comment and modifications so it is possible the exclusion might be removed during this process.

Washington D.C B24-558 - The “Stop Discrimination by Algorithms Act of 2021”: In December 2021, D.C. Attorney General Racine introduced draft legislation, which if enacted, would change District law to strengthen civil rights protections and protect marginalized communities from the harm caused by algorithmic bias by making it illegal for companies and organizations to use discriminatory algorithms to make decisions about key areas of life opportunity, including education, employment, housing, and public accommodations and services like credit, health care, and insurance. Companies would be required to perform an audit each year to ensure algorithmic processing practices do not discriminate directly and to determine whether the results show a disparate impact on protected groups. Companies would be required to make easy-to-understand disclosures to all consumers about their use of algorithms to reach decisions, what personal information they collect, and how their algorithms use it to reach decisions.³² A public hearing is scheduled for September 2022.

²⁹ Illinois HB 00523. Amendments to Artificial Intelligence Video Interview Act.

<https://www.ilga.gov/legislation/billstatus.asp?DocNum=53&GAID=16&GA=102&DocTypeID=HB&LegID=127865&SessionID=110>

³⁰ Maryland’s Labor and Employment - Use of Facial Recognition Services Prohibition Act. Effective Date: October 1, 2020. <https://mgaleg.maryland.gov/mgaweb/legislation/Details/1202?ys=2020RS>

³¹ H.R.8152 - American Data Privacy and Protection Act. <https://www.congress.gov/bill/117th-congress/house-bill/8152/text#toc-H6332551148B14109B1F2D9598E099E38>

³² Office of the Attorney General for the District of Columbia (December 9, 2021). AG Racine Introduces Legislation to Stop Discrimination in Automated Decision-Making Tools That Impact Individuals' Daily Lives. <https://oag.dc.gov/release/ag-racine-introduces-legislation-stop>



California Privacy Rights Act (CPRA): The CPRA of 2020 amended and expanded the California Consumer Privacy Act (CCPA) of 2018. Enforcement starts on January 1, 2023. Assuming no further applicable extensions or amendments are passed, legal experts recommend businesses prepare to fully comply with CPRA obligations (notice, employee rights and data governance) for employees, job applicants, and independent contractors.”³³ The rights include access, deletion, correction, restricted processing, and opt-out requests.

California Draft Modifications: In March 2022, The California Fair Employment and Housing Council (now called Civil Rights Council), published draft changes to the State’s employment anti-discrimination laws, under Modifications to Employment Regulations Regarding Automated-Decision Systems.³⁴ If approved, the law would cover activities under applications, screening, interviews, background checks and other pre-offer inquiries and hold employers or third-party agencies using AI and automated-decision systems liable for discriminatory impact.

In addition to the issues already covered in the above policy and legislative activities, there is an additional level of risk and possibility for bias which I raised in my public testimony with California Civil Rights Council.³⁵ The modifications to the Code suggests that “employers are prohibited from inquiring into, considering, distributing, or disseminating information related to the criminal history of an applicant until after the employer has made a conditional offer of employment to the applicant.” Further, Subsection 1 of the same Article states “Prohibited consideration under this subsection includes, but is not limited to, inquiring about criminal history through an employment application, background check, or internet searches.” There are 4 main concerns with this current wording:

- The wording, in its current form, prohibits employers to conduct web searches on ‘criminal history’ specifically. However, it is widely known and evidenced that an employer does not need to specifically search for criminal history for this information to show in the search results. Employers can only search for the candidate’s name and access this information, and other protected category information (such as disability, sexual preferences, etc.), without admitting they have ‘specifically’ inquired for these categories.
- Furthermore, online searches can be racially biased against black-sounding names. Academic research has shown that “ads suggesting arrest tend to appear with names associated with blacks, and neutral ads or no ads appear with names associated with whites, regardless of whether the company placing the ad reveals an arrest record associated with the name.”³⁶
- Similarly, the current wording prohibits ‘employers’ to conduct an inquiry. Instead of a direct inquiry, employers widely utilize a variety of social media background check vendors to access

³³ The National Law Review (August 30, 2022). CPRA and Employee Data – What Businesses Need to Know. <https://www.natlawreview.com/article/cpra-and-employee-data-what-businesses-need-to-know>

³⁴ California Fair Employment & Housing Council Draft Modifications to Employment Regulations Regarding Automated-Decision Systems. <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/03/AttachB-ModtoEmployRegAutomated-DecisionSystems.pdf>

³⁵ Hickok, Merve (August 10, 2022). Written Comments Re California Fair Employment & Housing Council Draft Modifications to Employment Regulations Regarding Automated-Decision Systems. https://www.linkedin.com/posts/mervehickok_written-testimony-activity-6963495673686102017-zZsw

³⁶ Sweeney, Latanya (2013). Discrimination in Online Ad Delivery. Communications of the ACM, Vol. 56 No. 5



similar information. This loophole for employers allows the vendors to parse all public information on the web (including criminal history) and provide a decision / rating / score / report to employers without disclosing the source of information.

- In either of the cases above, the applicants would have no way to know or evidence that a decision was made according to their criminal history and/or other protected category information disclosed in the process. Therefore, applicants could not have a way to redress or request correction.

Although I refer to the sections of California draft legislation, these concerns are applicable to all employers who conduct any internet search or inquiry about candidates directly or indirectly via social media background check vendors.

UNITED KINGDOM

The Information Commissioner’s Office (ICO) is UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. AI is one of the priority areas for ICO due to the potential to pose a high risk to individuals and their rights and freedoms. The ICO provides guidance and resources for both private and public organizations and sets the standards for public entities. In July 2022, the ICO published its strategic plan, The ICO25 Plan, setting out how the ICO will regulate and prioritize work over the next three years. One of the four focus areas is “considering impact the use AI in recruitment could be having on neurodiverse people or ethnic minorities.” The other priority areas are the impact of predatory marketing calls, the use of algorithms within the benefits system, and ongoing support of children’s privacy.³⁷ The ICO has been one of the leading regulators globally to drive work on standards, guidelines and frameworks governing AI systems. Therefore, similar level of output and focus should be expected from the future work of the organization. Especially as it relates to impact of AI in recruitment on neurodiverse people, the ICO might provide a technical guidance or standard similar to the one published by EEOC.

EUROPEAN COMMISSION:

In April 2021, European Commission introduced the Proposal for Harmonised Rules on AI (AI Act).³⁸ The EU AI Act classifies AI systems into four tiers: prohibited AI practices, high-risk AI systems, limited risk AI systems, and minimal risk AI systems. High-risk AI systems are defined as those that pose a risk of harm to the health and safety, or a risk of adverse impact on fundamental rights, that is, in respect of its severity and probability of occurrence, equivalent to or greater than the risk of harm or of adverse impact posed by the high-risk AI systems. Providers of such systems are obligated to provide technical documentation on data and models, implement a risk management system, conduct conformity assessments, and register in EU database.

³⁷ ICO (July 14, 2022). UK Information Commissioner sets out focus on empowering people through information. <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/07/uk-information-commissioner-sets-out-focus-on-empowering-people-through-information/>

³⁸ European Commission (April 21, 2021). AI Act. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>



Employment, workers management, and access to self-employment are considered high-risk systems, and include (a) AI systems intended to be used for recruitment or selection of natural persons, notably for advertising vacancies, screening or filtering applications, evaluating candidates in the course of interviews or tests; (b) AI intended to be used for making decisions on promotion and termination of work-related contractual relationships, for task allocation and for monitoring and evaluating performance and behavior of persons in such relationships.

The draft Act has so far been deliberated in the Internal Market and Consumer Protection (IMCO) and the Civil Liberties, Justice and Home Affairs (LIBE) committees in the European Parliament. The Rapporteurs of these committees presented their draft report in April 2022. The other five committees of the Parliament (JURI, ITRE, CULT, ENVI, TRAN) will also provide their respective opinions. The AI Act is to be voted on jointly by the two committees in late September. Vote in the plenary is expected for early 2023. AI systems related to employment decisions will remain part of the high-risk AI systems. However, some AI systems such as emotion analysis or biometric categorization, might eventually be considered a ‘prohibited’ practice.

As evidenced above, the policy and regulatory space is changing rapidly. If not there already, there should be a reckoning about the risks employers undertake by implementing AI and automated decision-making systems which they do not properly understand. The best way to prepare, stay agile and meet the demands of these regulatory developments is to invest in responsible AI, necessary capacity-building, and governance in your organization – whether as an employer or a vendor providing these tools to employers. In a follow-up article, I will provide recommendations to employers on how to meet the demands of changing liabilities, responsibilities, and expectations.

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Note: This article is meant to provide thought leadership, not legal advice. A follow up article provides recommendations to employers on how to meet the demands of changing liabilities, responsibilities, and expectations.

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Disclosure: The author also provides capacity building training and consulting to organizations for AI system procurement due diligence, responsible design, and governance. Merve Hickok is a certified Human Resources (HR) professional with 20 years of experience, an AI ethicist and AI policy researcher. She has written extensively about difference [sources of bias in recruitment algorithms](#), [impact on employers and vendors](#), [AI governance methods](#); provided public comments for regulations in different jurisdictions ([New York City Law 144](#); [California Civil Rights Council](#), [White House Office of Science and Technology RFI](#)), co-crafted policy statements ([European Commission](#)) and contributed to drafting of audit criteria for audit of AI systems ([ForHumanity](#)), and has been invited to talk in a number of [conferences, webinars and podcasts](#) on AI and recruitment, HR technologies and impact on candidates, employers, businesses and future of work.; was interviewed by both HR professional organizations ([SHRM Newsletter](#), [SHRM opinion pieces](#)) and by newspapers ([Guardian](#)) about her concerns and recommendations.