

Appraisal of the Legal and Ethical Framework for Algorithmic Transparency in Ai-Driven Recruitment

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Abstract

There is no gainsaying the fact that despite its overwhelming benefits, the dominance and adoption of Artificial Intelligence (AI) in practically all human endeavours have gradually become a threat to the existence and sustenance of the human race particularly, in the area of labour and the economy. Artificial Intelligence, which has been adopted in recruitment processes now triggers concerns about fairness, discrimination, and how reliant these systems can be in making decisions for the organizations that adopt them for recruitment. The paper which adopted a doctrinal method of research, found a significant gap in current regulations regarding algorithmic transparency in artificial intelligence systems that are used for recruitment and concluded by underscoring the essence for comprehensive reforms and tailored regulations to promote inclusivity, fairness and accountability in recruitment processes. The paper recommended implementation of **clear guidelines** that define ethical standards for AI usage and fairness. Ultimately, it recommended a clear structure and system of remedy to be provided, with institutions designated for their enforcement.

Keywords: Artificial Intelligence, Recruitment, Algorithmic Transparency, Bias

1. Introduction

An organization or company's reliance on outdated practices across its operations has been tuned down due to the emergence of new technologies, the dynamics of globalization, and the heightened competition in the global market. This is particularly, relevant in the recruitment process, which encompasses essential steps such as selecting and appointing qualified candidates for open positions in an organization. Companies invest considerably to financial and human resources in the search for suitable applicants, and when these selected candidates do not meet the company's standard upon being employed, the investment becomes futile. Reuters revealed in October 2018 that Amazon had discontinued the recruitment tool it had been working on for the previous four years.¹ The application evaluated resumes and gave each candidate a score ranging from one to five stars using artificial intelligence, more especially machine learning. Thankfully, the business learnt that the AI technology was discriminating against women no later than its trial phase.² The AI system was taught by identifying trends in résumés that were submitted to the organization over the previous ten years in order to get its ranking. Nonetheless, a high number of these résumés were that of the male applicants, reflecting the widespread under-representation of female professionals in the technology business. Résumés with the phrase "women's" or the names of all-women universities were negatively assessed, but résumés using verbs like "executed" and "captured," which are frequently used in the self-descriptions of male engineers, were highly awarded.³ Amazon acknowledged that it was unable to ensure equality in the AI system, despite

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¹ J **Dastin**, "Insight – Amazon Scraps Secret AI Recruiting Tool that showed Bias against Women | Reuters". (2018) Available at <https://www.reuters.com/article/world/insight-amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK0AG/> (Accessed: 10 November 2024).

²Ibid.

³A Siapka, "The Ethical and Legal Challenges of Artificial Intelligence: The EU Response to Biased and Discriminatory AI", (2019) SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3408773 (Accessed: 10 November, 2024).

its best attempts to make it neutral towards these terms. The development team was eventually disbanded, and the public was informed that recruiters had chosen not to use it as the basis for their evaluations.

Recently, most remote enterprises adopt AI systems in the workplace to screen a large number of applicants globally. Despite these challenges, many companies overlook the vulnerabilities associated with the recruitment tools they adopt. Specifically, biases inherent in algorithms used during the screening process can inadvertently exclude certain individuals from consideration. This research paper aims to address the implications of these biases and explore the development of more legal, ethical and equitable decision support tools to enhance the recruitment process. To ensure inclusivity, fairness and accountability in recruitment processes done by AI systems, we identified significant gaps in current regulations regarding algorithmic transparency, and emphasized how urgent it is for comprehensive reforms and tailored regulations.

2. What is Artificial Intelligence?

Over time, the creation of machine learning algorithms, the integration of statistical analysis into a broader understanding of the world, and an ongoing quest for new algorithms have all contributed to the growth and advancement of artificial intelligence. Healthcare, real estate, entertainment, banking and financial services, travel, retail and e-commerce, manufacturing, and food technology are just a few of the many sectors and businesses, today, that use artificial intelligence extensively. In artificial intelligence, human intelligence is replicated in computers that are programmed to think and act like people. Prior to becoming a reality over time, artificial intelligence was merely fiction of early science fiction writers. Though his theories were mocked at the time, the British polymath Alan Turing postulated in 1950 that a computer could have artificial intelligence if it replicates human behaviours in particular situations.⁴

The phrase "artificial intelligence" was first used explicitly in 1956 at a symposium on the topic by computer scientist John McCarthy. Artificial intelligence has developed into what it is today since then. The field of artificial intelligence is exhibiting positive trends as it continues to advance quickly and continuously, ushering in the Age of Automation. The fields of machine learning, language processing, and systems management converge to form artificial intelligence (AI). Up until recently, robotics was the primary application of artificial intelligence. These days, machines are built and configured to function independently of humans, requiring them to supply the inputs and instructions needed for each task.

3. Historical Background on AI in Recruitment

Historically, recruitment has been a labor-intensive and time-consuming effort, often relying on manual processes and subjective assessments. Recruiters typically sifted through hundreds of résumés, conducted numerous interviews, and utilized various assessment methods to identify the best candidates. This traditional approach is not only resource-intensive but also prone to biases that can affect recruitment outcomes. As the demand for skilled talent continues to grow amidst an increasingly competitive job market, organizations are turning to AI to optimize their recruitment strategies. From the regular duties of a human resource manager in evaluating the potentials of applicants for a job position, we have advanced to artificial intelligent systems making these

⁴ B St George, and A S Gillis, (2024) What is the Turing test? Definition from TechTarget, Search Enterprise AI. Available at: <https://www.techtarget.com/searchenterpriseai/definition/Turing-test> (Accessed: 10 November 2024).



evaluations and decisions on behalf of the human resource manager, as against human objectivity thereby reshaping how organizations identify, attract, and select outstanding talents.

Organizations have gone further to adopt AI résumé screening tools, which subjects an applicant's résumé to be screened through an automated test based on AI even before the human resource manager gets to see them. No doubt, this advancement aids in time management as organizations receive hundreds of applications for a single position and recruiters find themselves overwhelmed with applications, necessitating more efficient methods for screening candidates.⁵

AI in recruitment encompasses a variety of applications, including résumé parsing, candidate sourcing, predictive analytics, and chatbots. Résumé parsing tools utilize natural language processing algorithms to analyze and categorize résumés, which helps recruiters to easily identify the best candidates for the role, relying on the standards already set out by the organization. Candidate sourcing platforms leverage AI to automatically search through a vast array of online profiles, job boards, and social media platforms to identify potential candidates who may not have applied directly. Predictive analytics tools help organizations assess candidates' likelihood of success in specific roles by analyzing historical data and performance metrics, while AI-powered chatbots facilitate initial candidate interactions, answering queries and scheduling interviews efficiently.

4. Benefits of AI in Recruitment Processes

The use of **artificial intelligence** in the recruitment of candidates have created significant benefits and notable challenges in most work places. As the competition for skilled workers intensifies, traditional recruitment methods often fall short in efficiency and effectiveness. AI tools used in recruitment helps to streamline processes, thereby enhancing efficiency and speed in the recruitment process. For instance, a study highlighted that **43% of HR professionals** are already leveraging AI to simplify their recruitment processes, leading to faster candidate selection and onboarding.⁶ Also, it is essential to note that video interviews that were analyzed by AI algorithms and gamified tests were part of Unilever's AI-driven recruiting procedure. This method not only shortened the hiring process but also enhanced the candidate experience by making it more interesting. As a result, Unilever reported a **50% reduction in hiring time** while maintaining high-quality candidate selection.

Secondly, these AI tools enhance the quality of hires by utilizing data-driven insights to identify the best candidates. Through extensive data analysis, these tools can predict which applicants are likely to be successful in specific roles in the organization. This predictive capability helps organizations make more informed hiring decisions. IBM's AI recruitment tool, Watson, analyzes resumes and matches candidates with job descriptions based on skills and experiences. This method has led to a **30% increase in the quality of hires**, as the AI system can identify candidates who may have been overlooked in traditional processes.

⁵ C Zhisheng, "Collaboration Among Recruiters and Artificial Intelligence: Removing Human Prejudices in Employment". (2022) Available At: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9516509> (Accessed: 19 August 2024).

⁶ A Andy, "How AI Is Transforming the World of Recruitment". (2023) Available at: <https://www.jobylon.com/blog/how-ai-is-transforming-the-world-of-recruitment> (Accessed: 22 August, 2024).

Also, AI can significantly improve a candidate's experience by providing timely feedback and personalized communication. In order to make the recruiting process more transparent and interesting, tools like chatbots and virtual assistants can organize interviews, respond to applicants' questions, and provide updates. AI can help reduce the need for extensive human resources in initial screening phases, leading to lower operational costs.⁷

Despite these benefits, and most significantly, the shift in managing large volumes of applications and enhancing the quality of hires by focusing on data-driven insights⁸, these AI systems are characterized by vulnerabilities when processing applicants' data. This can lead to the exclusion of qualified candidates from underrepresented groups, resulting in a homogenous workforce that lacks diversity. Furthermore, the opacity of AI decision-making processes raises concerns about accountability and fairness, as organizations may struggle to understand how certain hiring decisions are made.

5. Ethical Concerns in AI-Driven Recruitment

Discussing ethics in relation to AI initially sounds strange because morality usually assumes the existence of a human actor.⁹ However, even in the absence of moral consciousness, AI algorithms are made up of materials by humans working towards a common objective. Latour contends that neither the technological system nor the human actor bears ultimate moral responsibility.¹⁰ Instead, the system allows the human actor to assign responsibilities to it to variable degrees without reducing or eliminating the ultimate duty.¹¹ Because of this, one should consider the morality of the corresponding human behaviour in the event that this delegation had never occurred while assessing the ethical operation. This is especially true for AI systems that replace human decision-makers in socially significant domains like housing, justice, education, and employment.

5.1 Bias in Automated Decisions

The notion of developers and scientists generally, in addressing the nature of AI systems, had always been that these systems are void of biases and errors, having been based on sound and logical statistical foundations and not swayed by emotional tendencies like humans.

It is important to note that a sort of prejudice based on preconceived notions or stereotypes that is directed towards or against a group is known as bias. Bias in machine learning can arise from widespread false presumptions, which could lead to discrimination when AI uses machine learning to understand how to apply its own recruiting standards. This bias could be the consequence of machine learning, programming errors, code inserted by the programmer, or the data set (which is limited to former employees).

The possibility of bias in recruitment processes done with the use of AI tools is one of the main ethical concerns. AI is frequently used to assess a person's employability, creditworthiness, or

⁷M Umasankar, S Padmavathy, S Shefali and D Ashish, "A Study of Artificial Intelligence Impacts on Human Resource Digitalization in Industry. (2023) Available at: <https://www.sciencedirect.com/science/article/pii/S2772662223000899> (Accessed: 22 August, 2024).

⁸P Martín-Hernández, "Artificial Intelligence: The Present and Future of Human Resource Recruitment and Selection Processes". (2023) Available at: <https://www.mdpi.com/2673-4591/56/1/188> (Accessed: 19 August 2024).

⁹H Sidgwick, "Outlines of the History of Ethics for English Readers. (1886). Available at: <https://archive.org/details/outlinesofhistor00sidguoft> (Accessed: 20 October 2024).

¹⁰Ibid

¹¹Ibid



chance of recidivism, among other factors.¹² These results are referred to as target variables since they represent what human operators seek to discover.¹³ It is the responsibility of AI developers to define the target variable because it is not always stated from the start. This implies that their first responsibility is to comprehend the goals and specifications of the product, as these are determined by the company that developed it.¹⁴ Second, they must convert this real-world issue into a query It includes an attribute to be targeted and the labels for the classes it can perform.

Developers are guided in this selection process by their personal opinions about the issue at hand and potential solutions. Whether they like it or not, they might pinpoint a target variable that has a consistent correlation with particular social groupings and would, thus, have a particular impact on those groups. When developing a recruitment AI, for instance, the AI system will probably have a negative effect on men and older applicants where the developer decides to use a criterion of years and gender as its target variable.

Existing biases can be exacerbated by AI if not used appropriately. That is, the possibility that an AI system has biases is suggested by the fact that humans are the ones who create, design, and use the data. As a result, studies in computer science and data analytics have concentrated on figuring out how real biases in AI software develop and persist. In addition, in a recently released technical assistance document designed to provide guidance to firms by the U.S. Equal Employment Opportunity Commission (EEOC) stated thus:

*Employers increasingly use automated systems, including those with AI, to help them with a wide range of employment matters, such as selecting new employees, monitoring performance, and determining pay or promotions. Without proper safeguards, their use may run the risk of violating existing civil rights laws”.*¹⁵

5.2 Transparency and Accountability of AI Systems

Ethical concerns are exacerbated by the fact that most AI algorithms are cloudy. For there to be accountability and trust, AI decision-making procedures must be transparent. Employers must ensure that AI tools used in the course of recruitment are utilized appropriately and are transparent enough about how they are used to evaluate applicants.

Algorithmic transparency refers to the degree to which the operations and methods of making decisions through algorithms are made understandable and accessible to users, stakeholders, and the public. In an era where algorithms increasingly govern critical aspects of society, from hiring practices and loan approvals to law enforcement and healthcare, ensuring transparency becomes essential for accountability, fairness, and trust. The advancements in machine learning have birthed a widespread adoption of algorithms across various sectors. Organizations utilize these algorithms to process vast amounts of information, identify patterns, and make predictions that inform

¹² A Siapka, “The Ethical and Legal Challenges of Artificial Intelligence: The EU response to biased and discriminatory AI”, (2019) SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3408773 (Accessed: 20 October 2024).

¹³S Barocas, and A D Selbst, “Big Data's Disparate Impact”, (2014) SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477899 (Accessed: 20 October 2024).

¹⁴ Ibid

¹⁵U.S Equal Employment Opportunity Commission (2023) EEOC Releases New Resource on Artificial Intelligence and Title VII. Available at: <https://www.eeoc.gov/newsroom/eeoc-releases-new-resource-artificial-intelligence-and-title-vii> (Accessed: 19 August 2024).

decision-making. While the use of algorithms can enhance efficiency and accuracy, it also raises concerns about the opacity of their functioning. Many algorithms operate as "black boxes," where the inner workings are not visible or understandable to those affected by their decisions. The Italian courts, having held in 2019 that administrative decisions based on algorithms are illegitimate, reversed that view in 2021. The courts welcomed the speed and efficiency of algorithmic decision-making but clarified that it is subject to general principles of administrative review in Italian law, including transparency, effectiveness, proportionality, rationality and non-discrimination.¹⁶

In a world that is becoming more computerized, transparent algorithms becomes essential for promoting accountability, equity, and trust. Since algorithms have a big influence in shaping societal outcomes, it is extremely important to make sure that their operations are understandable and accessible. By prioritizing transparency, organizations can mitigate biases, enhance public trust, and comply with emerging regulatory frameworks. Ultimately, fostering algorithmic transparency not only benefits organizations but also contributes to a fairer and more equitable society. Further research and collaboration among stakeholders will create standards and best practices that will enhance transparent algorithmic systems. When algorithms are deployed in situations that have significant consequences, such as recruitment, understanding how decisions are made is crucial for ensuring that organizations can be held responsible for any adverse outcomes. Transparency allows stakeholders to spot and fix any biases or errors in algorithms.

Algorithms may reinforce preexisting biases, which would produce discriminating results. For instance, a recruiting algorithm may favour some demographics over others if it is educated on previous data that shows biased recruiting practices. By making algorithms transparent, organizations can better assess their fairness and take corrective measures to mitigate bias and promote equitable outcomes. Informed consent is a cornerstone of ethical practice, particularly in contexts involving personal data. Individuals should understand how algorithms affect their lives and the rationale behind decisions that impact them. People are empowered to make knowledgeable decisions regarding their data and involvement in algorithm-driven processes when there is transparency.

5.2.2 Practical Approaches to Enhancing Transparency

1. **Explainable AI:** Explainable artificial intelligence (XAI) is an emerging field focused on creating algorithms that that give concise, intelligible justifications for the choices they make. The term describes strategies and tactics intended to help people comprehend the decision-making processes of AI systems. By employing techniques that elucidate how algorithms arrive at specific outcomes, organizations can enhance transparency and foster user understanding.
2. **Documentation and Reporting:** Organizations can maintain transparency by documenting their algorithms' development processes, including data sources, design choices, and performance evaluations. Regular reporting on algorithmic performance and impact can help stakeholders assess the algorithms' effectiveness and fairness.
3. **Stakeholder Engagement:** Engaging stakeholders in the algorithm development process can enhance transparency. By involving diverse perspectives, organizations can detect

¹⁶ K Jones, AI Governance and Human Rights. Available at: <https://www.chathamhouse.org/2023/01/ai-governance-and-human-rights/06-remedies-ai-governance-contribution-human-rights> (2023) (Accessed: 7 November 2024).



possible biases and ethical issues early in the life cycle of an AI system, which produces more equitable results.

6. Legal Frameworks Governing AI-Driven Recruitment

There are currently few regulations that govern the use of artificial intelligent systems in recruitment processes and the extent to which employers can use these AI systems without prejudicially breaching workers' rights.

A, United States of America

In addressing these concerns, a number of federal and state laws have been enacted in the United States to regulate the use of AI systems for recruitment. Title VII of the Civil Rights Act of 1964 of the United States provides that the act of an employer becomes unlawful when such employer denies an applicant of an employment opportunity on the altar of race, sex, religion, color or origin.¹⁷ This rule is, however, not without exceptions. Again, the Age Discrimination in Employment Act¹⁸ provides that it is unlawful for an employer to fail or refuse to hire or otherwise discriminate against any individual because of such individual's age; to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age.

For laws against biases in AI recruitment process, the New York City's Local Law 144¹⁹ prohibits employers and employment agencies from using automated employment decision tools (AEDT) unless the tools have been subject to a bias audit within one year of the use of the tool, and the information about the bias audit would be publicly available, and certain notices to be provided to the employees or job candidates.²⁰ It requires employers to conduct bias audits of AI-driven employment decision tools. § 20-871 of the New York City's Local Law 144 provides thus:

- 6.1.1.1 In the city, it shall be unlawful for an employer or an employment agency to use an automated employment decision tool to screen a candidate or employee for an employment decision unless:
1. Such tool has been the subject of a bias audit conducted no more than one year prior to the use of such tool; and
 2. A summary of the results of the most recent bias audit of such tool as well as the distribution date of the tool to which such audit applies has been made publicly available on the website of the employer or employment agency prior to the use of such tool.

The New York Mandatory Bias Audit Legislation was passed to ensure that organizations run a bias audit for all AI-driven recruitment tools used in the city. This is an important step towards ensuring that algorithms do not present a barrier to equal employment opportunity, or prevent a diverse workforce from being hired.

¹⁷ Civil Rights Act of 1964, Section 703 (1) and (2).

¹⁸ Age Discrimination in Employment Act of 1967 (Pub.L. 90-202) (ADEA), section 4(2).

¹⁹ Local Laws of the City of New York for the Year 2021 (New York Mandatory Bias Audit Legislation 2021).

²⁰2023: Automated Employment Decision Tools (AEDT), NYC Consumer and Worker Protection. Available at: <https://www.nyc.gov/site/dca/about/automated-employment-decision-tools.page> (Accessed: 19 August 2024).

The Artificial Intelligence Video Interview Act of Illinois²¹, which was enacted in 2020, placed certain notice, consent, confidentiality, and data destruction responsibilities on employers who elected to use artificial intelligence (AI) to evaluate job candidates in Illinois.²² This is the first state law regulating the use of AI for employee interviews. The Act provides for disclosure of the use of artificial intelligence analysis, which demands prior notice to be given to an applicant for a job before the use of AI in the recruitment process involving video interviews and, more importantly, the assessment of the Applicant using AI to determine his suitability for the job.²³ The Act mandates employers who use artificial intelligence analysis for applicant-submitted videos to carry out the following:

1. Notify each applicant before the interview that artificial intelligence may be used to analyze the applicant's video interview and consider the applicant's fitness for the position.
2. Provide each applicant with information before the interview explaining how the artificial intelligence works and what general types of characteristics it uses to evaluate applicants.
3. Obtain, before the interview, consent from the applicant to be evaluated by the artificial intelligence program as described in the information provided.

According to the Artificial Intelligence Video Interview Act of Illinois, candidates who have not given their consent to be analyzed by artificial intelligence cannot be evaluated by an employer using this technology. To ensure confidentiality and protect the privacy rights of applicants, employers are disallowed from sharing the videos of applicants with anyone other than those whose knowledge is essential in the assessment of the applicant's suitability for the said position. Although not provided in the law, this should not be without the consent of the Applicant too. All applicant video interviews, including any electronically generated backup copies, will be deleted by the employers upon request.

Consequently, the Artificial Intelligence Video Interview Act was amended in January 1, 2022 to include section 20 which introduced reporting requirements for employers who elect to use video-recorded interviews. Section 20 of the Amended AI Act provides thus:

Section 20 Report of demographic data

(a) An employer that relies solely upon an artificial intelligence analysis of a video interview to determine whether an applicant will be selected for an in-person interview must collect and report the following demographic data:

- (1) the race and ethnicity of applicants who are and are not afforded the opportunity for an in-person interview after the use of artificial intelligence analysis; and
 - (2) the race and ethnicity of applicants who are hired.
- (b) The demographic data collected under subsection (a) must be reported to the Department of Commerce and Economic Opportunity annually by December 31. The report shall include the data collected in the 12-month period ending on November 30

²¹ Artificial Intelligence Video Interview Act 101-0260

²² A M Gibson, "The Artificial Intelligence Video Interview Act Mandates Reporting for Employers Electing to Use Video-Recorded Interviews". , (2022) Available at: <https://www.agdglaw.com/the-artificial-intelligence-video-interview-act-mandates-reporting-for-employers-electing-to-use-videorecorded-interviews/> (Accessed: 2 November 2024).

²³ Section 5



preceding the filing of the report. HB0053 Enrolled LRB102 03931 KTG 13947 b
Public Act 102-0047

- (c) The Department must analyze the data reported and report to the Governor and General Assembly by July 1 of each year whether the data discloses a racial bias in the use of artificial intelligence.²⁴

From the above quoted amendment from the Illinois AI Act, the law is silent on enforcement, remedies, and penalties for violations. The law does not define “artificial intelligence,” nor does it provide specific guidance about what the employer’s explanation of AI used in connection with video interviews should contain.²⁵

B. Europe

AI has already significantly improved recruiting practices for many by boosting productivity, accuracy, and the ability to handle enormous volumes of data. However, these advancements in AI systems continue to raise concerns about the transparency of the systems, equity, fairness and the decline of human participation in decision-making.

The European Union’s Artificial Intelligence Act (EU AI Act) 2024 established strong regulations to govern artificial intelligence and its application in various professional landscapes. A key principle of the EU AI Act is transparency, particularly with respect to how AI decisions are shared amongst those impacted by them. It is a mandatory requirement under the EU AI Act to continuously evaluate AI systems to guarantee their safety and compliance with the provisions of the Act throughout the AI system’s lifecycle. This simply implies that human resource professionals, and everyone using AI tools shall continuously evaluate same in line with the provisions of the Act. Human resource professionals must inform applicants and employees respectively of the existence and impact of AI tools already adopted in their organization.

Article 50 of the EU AI Act 2024²⁶ outlines some of the transparency requirements for specific AI systems *to wit*:

1. Unless it is clear from the situation and the context of usage, providers must make sure AI systems meant to interact with humans are created and built such that people are aware that they are engaging with an AI system. AI systems that are legally permitted to identify, stop, look into, and prosecute criminal acts are exempt from this duty, unless they are accessible to the general public for the purpose of reporting criminal offences.
2. Users of biometric categorization or emotion recognition systems must notify those who are exposed to the technology about how it operates. AI systems used for biometric classification, which are legally allowed to identify, stop, and look into criminal acts, are exempt from this requirement.
3. When an AI system creates or modifies image, audio, or video content that significantly mimics real people, things, locations, or other entities or events and would deceitfully seem

²⁴ Artificial Intelligence Video Interview Act, Section 20.

²⁵ A J Burstein, “Employers Beware: The Illinois Artificial Intelligence Video Interview Act Is Now in Effect” (2020). Available at: <https://www.kelleydrye.com/viewpoints/blogs/ad-law-access/employers-beware-the-illinois-artificial-intelligence-video-interview-act-is-now-in-effect> (Accessed: 2 November 2024).

²⁶ European Union Artificial Intelligence Act 2024, Article 50.

genuine or accurate to a human (a process known as "deep fake"), users are required to reveal that the content was created or altered.

The EU AI Act further provides that before the deployment of an AI system, it is mandatory to carry out thorough evaluation to ascertain potential effects that may affect the fundamental rights of individuals, inclusive of privacy and non-discrimination. Given the high stakes and substantial risk of bias or privacy violations in recruitment processes, this provision of the EU AI Act is crucial.

Article 6 of the EU AI Act, which provides for AI systems classified as high risk, emphasizes on the safeguarding of rights of individuals and mandates that the design and development of high-risk AI systems such as recruitment, worker management, and essential public services must guarantee that their functioning is sufficiently transparent to allow deployers to understand and utilize the system's output.

Furthermore, Article 13(1) of the EU AI Act provides thus:

High-risk AI systems shall be designed and developed in such a way as to ensure that their operation is sufficiently transparent to enable deployers to interpret a system's output and use it appropriately. An appropriate type and degree of transparency shall be ensured with a view to achieving compliance with the relevant obligations of the provider and deployer set out in Section 3.

This transparency requirement is crucial in ensuring that high-risk AI systems, which have a significant impact on individuals' lives, are accountable and can be properly monitored and understood by those deploying them. It empowers users to make informed decisions and mitigates the risks of biased or opaque decision-making that could violate fundamental rights. By mandating thorough evaluations and transparency for high-risk AI systems, the EU AI Act aims to strike a balance between fostering innovation and safeguarding the rights and wellbeing of European citizens. This approach recognizes the immense potential of AI while prioritizing the need for responsible development and deployment of these transformative technologies.

To guarantee that the provider and deployer of an AI system are in compliance with their respective commitments as required by the EU AI Act, a suitable level of transparency must be maintained. Instructions for the usage of high-risk AI systems must be provided in a suitable digital format or in another format, and they must contain clear, accurate, and concise information that is relevant, accessible, and understandable to deployers.

Algorithmic transparency in AI driven recruitment is not achievable without a participation of human intelligence and judgment. The controversy has always been how to determine through AI facilities or machines a non-discriminatory, unbiased recruitment process. In resolving this issue, *Article 14* of the EU AI Act provides for human oversight. The AI systems must have suitable tools for human interfaces that allow natural beings to efficiently manage the systems while they are in operation. A high-risk AI system's use may present hazards to one's health, safety, or fundamental rights, which human control is intended to prevent or reduce. Recruiting is really about personal interactions, therefore, building relationships, deciphering the subtleties of a candidate's experience, and reading between the lines of a curriculum vitae are all abilities that AI cannot duplicate. Any AI systems used for recruitment must have the right amount of cybersecurity, accuracy, and resilience, and they must function consistently in those areas over the course of their functionality.



Who Bears the Responsibility for Bias and Discrimination in AI-driven Recruitments?

In an attempt to settle the recurrent issue of who bears the responsibility for bias, discrimination, and untransparent practices in the recruitment process, the EU AI Act imposes a chain of obligations on diverse persons involved in the use of AI from the providers²⁷, importers,²⁸ distributors²⁹ to the deployers referred to as operators. Employers are increasingly using AI tools to help them make recruiting decisions, which raises the question of who is legally liable if such decisions are allegedly biased.

The United States District Court for the Northern District of California in *Derek Mobley v Workday Inc*³⁰, sustained, in relevant part, a discrimination complaint filed against Workday, Inc. by an applicant for jobs with other companies that used Workday's AI applicant screening tools. The plaintiff, Derek Mobley, alleged that he unsuccessfully applied for work with many Workday customers that used its algorithm-based applicant screening tools. Mobley sued Workday for, among other things, discrimination under Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Workday moved to dismiss the amended complaint on the ground that it was not an "employer" within the meaning of those statutes and, therefore, could not be liable for any allegedly discriminatory decisions its customers made.

In response, Mobley argued that he could establish Workday's liability as the employer-customer's "agent," an "indirect employer," or an "employment agency." Notably, the Equal Employment Opportunity Commission filed an amicus brief in support of Mobley's arguments. The court held that Mobley plausibly alleged Workday was an "agent" of its customers and, therefore, Mobley had stated a claim for discrimination under the relevant statutes. In particular, the court highlighted his allegations that Workday's AI screening software does not simply implement in a rote manner the criteria that employers select for hiring decisions but instead participates in the decision-making process by recommending some candidates and rejecting others. Thus, according to the court, Mobley had plausibly alleged Workday's customers delegated their traditional hiring function to Workday such that Workday could be liable as their "agent." The court distinguished other scenarios in which agency liability would not attach, such as where (i) a software vendor provides a database program to an employer, which the employer uses to filter out applicants over 40, or (ii) an email provider informs an employer's applicants they have been rejected via email. In those cases, the court reasoned, the vendor's software does not participate in deciding whom to hire. Though the court allowed the case to proceed under the theory that Workday was the employer's agent, it rejected Mobley's argument that he plausibly alleged Workday was an "employment agency." Interestingly, as the use of AI in recruitment increases, the more challenges posed to users and organizations by these tools. It is expected that victims of such bias by AI-driven recruitment tools approach the courts for justice and remedies as this will aid the courts in arriving to a decision with respect to liabilities of AI-driven recruitment tools, and also help the common man in safeguarding his freedom from discrimination.

²⁷ Article 16

²⁸ Article 23

²⁹ Article 24

³⁰ (2024) Case No. 23-cv-00770-RFL

Interestingly, the Act provided for what it termed remedies in case of violation of its provisions, *albeit*, they are more or less rights. As it relates to the topic of research, the remedies include the right to know how each person makes their own decisions. If an applicant is subject to a decision made by the deployer based on the results of a high-risk AI system during the recruiting process, and that decision has legal ramifications or otherwise significantly impacts the applicant in a way that they believe negatively impacts their fundamental rights, they have the right to receive from the deployer meaningful and unambiguous explanations of the AI system's role in the decision-making process and the key components of the decision made. In addition, such a person has the right to file a complaint with the proper authority, which will not take away from his ability to pursue legal remedies.³¹

The Act also protects the complainant for reporting such infringement. Although these provisions are classified erroneously as remedies they are at best, rights exercisable by the applicants. What happens where these rights are violated, is not stated in the Law, that is the legal redress available to the applicant. To show the inchoate nature of the remedies, Article 96 of the EU AI Act goes on to provide that the Commission shall develop guidelines on the practical implementation of this Regulation, and in particular on the practical implementation of transparency obligations laid down in Article 50 of the EU AI Act.

While some African countries have already begun to adopt their National AI strategies such as Kenya, Egypt, Mauritius, South Africa, Rwanda and Nigeria, others are still consulting with stakeholders on AI policies, while some are yet to make any announcements regarding their approach to AI regulation.

6. Conclusion and Recommendations

Ethical AI in recruitment involves the appropriate and best application of AI tools and algorithms throughout the recruiting process. Making sure AI systems are developed and used to advance equity, openness, and responsibility is part of this. Regular bias auditing and stakeholder engagement are essential for maintaining ethical standards. Furthermore, implementing these principles in organizations requires clear guidelines, continuous improvement, and regulatory oversight, which would aid in bridging the gap between AI technology and ethical practices is crucial for fostering innovation while upholding societal values.

To make sure AI systems are equitable, inclusive, and advantageous to all stakeholders, this entails accepting different viewpoints, carrying out in-depth research, and putting strict testing and mitigation techniques into place. Organizations, developers, and regulatory agencies are among the stakeholders who must pledge to create and use AI responsibly. To avoid biases and guarantee fair results, this entails upholding moral standards, incorporating different viewpoints, and consistently assessing and enhancing AI systems. Employers and job seekers can both gain from a more moral and efficient hiring process if parties collaborate. In totality, right without a remedy is having a bank account without money.

While it is commendable to have legislation like the EU AI Act of 2024, its potency is tested by the enforceable rights and remedies available to the Applicant. It is therefore, ultimately, recommended that a clear structure and system of remedy be provided with institutions designated for their enforcement.

³¹ Article 85