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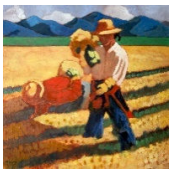

Employment Law Note

JULY 2025

One Big Beautiful AI?

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The debate over AI and its effects on the workforce as we know it took a turn for the dramatic in July when Ford CEO Jim Farley made headlines for proclaiming "half" of all white-collar workers would be replaced by AI in the United States.[1] It is within the context of these seeming apocalyptic forecasts of worker displacement (and other concerns) that calls for action have been growing to combat the seeming inevitable arrival of our super-intelligent robot overlords. This note explores recent developments related to AI legislation and litigation and how they may impact employers and employees alike.

A 10-Year Moratorium?

Proponents and opponents of the accelerated advent of AI closely watched an intriguing subplot within the debate over passage of the One Big Beautiful Bill Act (OBBBA), which included proposals for a federal moratorium against AI regulation by the states. On May 22, 2025, the House passed, by the skin of its teeth, their version of the OBBBA, which included a 10-year moratorium on state-level AI regulation. This act of federal preemption was vigorously debated within the Senate with proposals to water down the time to five years. The AI debate was often overshadowed by debates over other provisions within the OBBBA. Nonetheless, it was a critical flashpoint that pitted odd-couple factions against those in favor of a moratorium. A whirlwind of interests (states-rights champions, consumer protection groups, labor activists, national security hawks, the Tech Industry, privacy guardians, etc.) meshed and collided in the Senate. Ultimately, the Senate removed any moratorium and that was how the issue concluded with President Trump signing the OBBBA into law on July 4, 2025.

The Growing Patchwork of AI Regulation

Without the moratorium, states are now free to continue with their growing efforts to rein in AI. Employers should note the trend to extract greater transparency and ensure that AI algorithms are held accountable for discriminatory decision-making. This means California's recent final regulations under the California Fair Employment and Housing Act (FEHA), approved on June 27, 2025, will move forward. Key provisions in the FEHA regulations clarify how employers may not unlawfully use discriminatory "automated-decision systems." Looking ahead, it remains to be seen whether additional regulations will be enacted, such as California's so-called No Robo Bosses Act (SB 7), which would mandate some level of human responsibility over machine decision-making.

This trend is not unique to just "blue" states. The non-passage of the federal moratorium also ensures that Texas' own landmark AI law can move forward. Called the Texas Responsible Artificial Intelligence Governance Act (TRAIGA), the Texas legislature moved to prohibit the use of AI systems that unlawfully discriminate against state/federal protected classes. Like California, Texas also expressed its concerns over appropriate oversight and

[1] https://fortune.com/2025/07/05/ford-ceo-jim-farley-ai-white-collar-jobs-essential-economy-skilled-trade-jobs-shortage/

the need to ensure transparency in how AI was being implemented. The two states highlight the growing trend across the political spectrum to address core concerns regarding the anticipated upheavals caused by AI. In Washington state, the legislature has established an AI Task Force, administered by the Attorney General's Office and set to deliver its interim report by December 1, 2025, and a final report by July 1, 2026. The findings from the AI Task Force will almost certainly spawn new legislation from our state's chambers.

Emerging Litigation

In addition to legislation, private civil actions may have resounding implications for how companies implement and utilize AI, especially in the employment marketplace. Plaintiffs and defense counsel took notice last month when the US District Court for the Northern District of California granted preliminary collective certification for a plaintiff's case against Workday, Inc. The plaintiff alleged unlawful discrimination in how Workday's AI-based applicant-recommendation system was screening prospective employees. The litigation made headlines for its attempt to seek transparency in the murky world of AI-based algorithms.[2] The case also turned heads because of the size of the potential class – Workday highlighted to the court that if conditional approval were granted, potentially *millions* of individuals may be deemed part of the collective action. Workday's efforts to dismiss the case have failed to date and it remains to be seen how successful the plaintiff will be in peeling back the AI curtain.

Implications

In this volatile emerging landscape, what should an employer do? There are few, if any, clear answers. However, it is apparent that employers should be mindful of some general key principles as they increase their integration of AI-based tools in the workplace. Privacy concerns should always be at the forefront as employers share data/information with AI-based systems. Transparency is also a common theme related to ensuring proper oversight over how and why certain decisions/actions are being made by AI. Finally, accountability is something employers should be particularly mindful of, understanding that liability for AI-based decisions will likely be imputed back to *some* human/corporate figure and that a "the machine made me do it" defense will likely face strict and stern scrutiny in a court of law.

The potential issues are infinite. Employers with questions about their obligations under federal, state, or local employment laws are encouraged to contact Sebris Busto James.

For more information about this month's Employment Law Note
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[2] https://www.wsj.com/lifestyle/careers/ai-resume-screening-hiring-676a4701