

AI in HR: Innovation or Legal Minefield?



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**West
Virginia**

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What We'll Cover Today

- Practical aspects
 - How HR uses AI
 - What works
 - What requires close attention
- Legal issues
 - Discrimination
 - Confidentiality
 - Limitations on use by employees

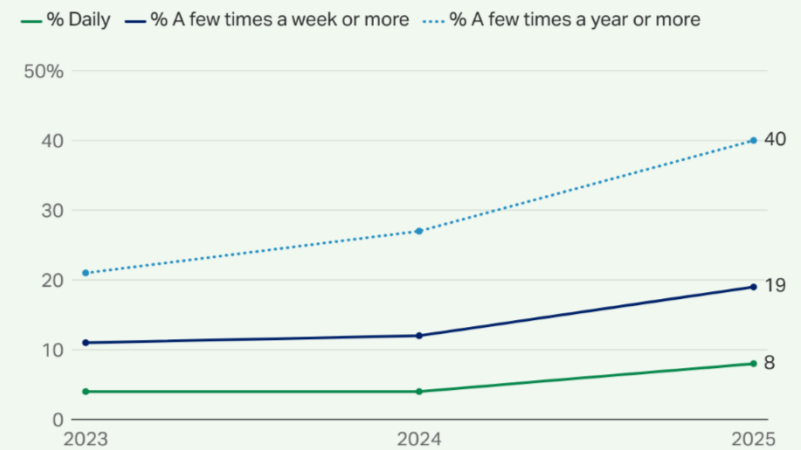
Use of AI at Work

According to a recent Gallup poll:

- U.S. employees using AI have nearly **doubled**
- Among those using AI, the most common uses are **to generate ideas, to consolidate data, and to automate basic tasks**

Regular AI Use Growing Rapidly Among U.S. Workers

How often do you use artificial intelligence in your role — daily, a few times a week, a few times a month, a few times a year, once a year, less than once per year, or never?



WF Q2 2025, U.S. employees

GALLUP

How Are Employers Using AI?



Image Source: SHRM 2024 Talent Trends: Artificial Intelligence in HR

SHRM West Virginia

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Perils of AI

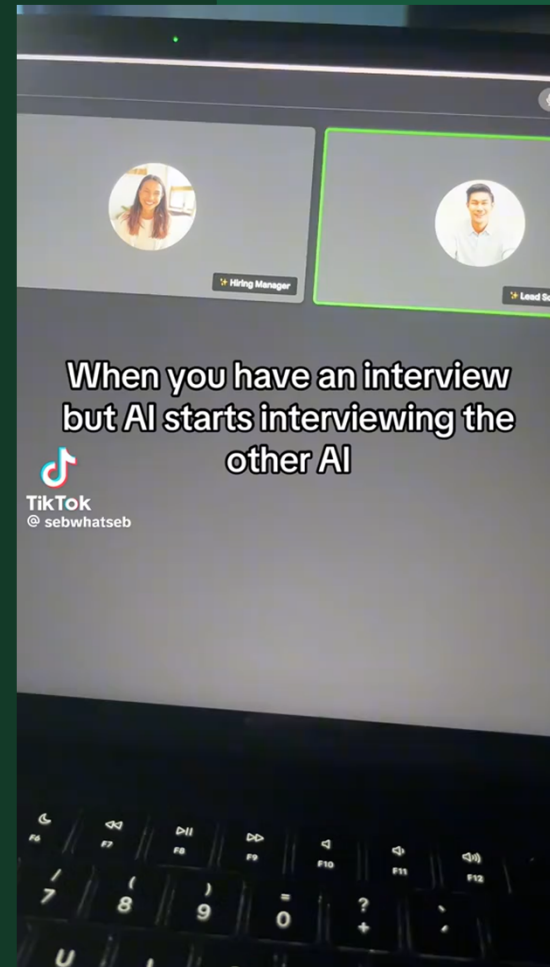
- 1 Legal Risks
- 2 Confidentiality Concerns
- 3 Employee Resistance

70%

of organizations say they've
faced at least one challenge
when using AI to support
HR-related activities

Advantages/Challenges for HR

- **Fast drafting** (training plans, PIPs, discipline, job descriptions, performance evals, policies, etc.)
- **Fast research** (resumes, applications, policies, performance-related documents, requests, recommendations)
- **Interviews** (conduct the interview, draft the questions, rate the responses)
- **Patterns and predictions ≠ quality**
- **Proofing/issue spotting takes time**
- **Employees may resent AI content**
- **Candidates want human contact**
- **AI vendor's patterns/predictions become your new content**
- **Creates the need for an AI policy**
- **Monitoring employees' use takes time and effort**





Google Gemini

I'm here to help you with any questions or tasks you may have.

I need a performance improvement plan for a receptionist who doesn't answer the phone



Image Generation



Web Search

Gemini ▾



Text Summary



Data Analysis



Coding



Image Generation



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 PDF


I need a new job description for a supervising attorney clearly showing supervisory responsibility|



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Gemini

✎

◆ Show thinking ▼

I have revised the warning letter to adopt a more formal and professional tone, suitable for official company documentation.

I've updated the language throughout the document to be more formal, enhanced the clarity of the policy violation, and adjusted the closing statements to maintain a strictly professional tone.

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Ask Gemini

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Gemini can make mistakes, so double-check it

Warning Letter - Attendance

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Normal text ▼

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Create ▼

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Subject: Formal Written Warning – Attendance Deficiencies

Date: [Insert Current Date, e.g., November 5, 2025]

To: Joe Smith, [Employee Title/Department] From: [Your Name], [Your Title]

This correspondence serves as a formal written warning regarding your unsatisfactory attendance record.

According to official records, you have accumulated **8 (eight)** unexcused absences during the [Year, e.g., 2025] calendar year.

These absences occurred on the following dates:

- [Date 1]
- [Date 2]
- [Date 3]
- [Date 4]
- [Date 5]
- [Date 6]
- [Date 7]
- [Date 8]

This pattern of attendance is not in compliance with the standards articulated in the [Name of Company] Employee Handbook. Section [Insert Section Number, if known], states: [Quote the relevant attendance policy, e.g., "Regular and punctual attendance is an essential function of all positions within the company."]

Your frequent absences create operational disruptions, place an inequitable burden on colleagues, and impede the department's ability to meet its strategic objectives.

Build on top of this

Create something new based on this, like an Audio Overview, web app, or timeline

Got it

⋮

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🔍



Connect Google Workspace?

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To complete your requests, Gemini will:

- Access and manage items from Google Workspace, like your emails and documents
- Share parts of your conversation, and other relevant info, with Google Workspace, which may be used to improve its services

When Gemini responds using other connected apps, your content may be shared if it's included in your conversation

How Google respects your privacy:

Your Google Workspace content is not used to improve Gemini. You can turn off Google Workspace from the Apps page. [Learn how your content is used.](#)



Turn on both Workspace smart feature settings

Open Gmail settings, select See all settings, go to Manage Workspace smart feature settings. Check both of the boxes next to smart feature setting

[Read more](#) [Ask again](#)

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Learning & Development

Among those organizations using AI:

- Nearly **half** are using AI to recommend or create personalized learning & development opportunities for employees
- Another **45%** are using AI to help them track employees' learning and development progress



Learning & Development

- *“**Preparing customized training for our employees is easier with AI.** I can insert a prompt or policy, and the program will develop a training outline. It definitely requires intervention and correction, but just getting a template outline is very helpful.”* – Large employer in the education industry
- *“**We have AI tools that will assess our calls,** and from there we will understand what the most frequently asked questions are and the most common calls from our customers. **We compile that data and look at learning opportunities for our employees.**”* – Medium-sized employer in the banking industry

Review of the Law: Executive Order 14110 (Biden Admin)

- Executive Order No. 14110 – “The Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence”
 - The EO directed federal agencies to address several core issues relating to AI use, including safety and security, privacy, and civil rights and equity
 - More specifically, the order required agencies, like the Department of Labor, to take steps to prevent discrimination caused by AI

EO 14110 Rescinded

- The Trump administration is taking a different approach
- Rescinded Executive Order 14110 – “unnecessarily burdensome . . . for companies developing and deploying AI”
- Reverses Biden-era guidance on AI

So...What is the Current Law Regarding AI?

- Equal Employment Opportunity Commission (EEOC) Guidance
 - Improper application of AI could violate federal anti-discrimination law
 - The “four-fifths rule” can apply to AI selection processes
 - Employers are liable for discrimination by third-party AI tools
- Department of Labor (DOL) Guidance
 - Outlined ways AI can violate employment laws, including the Fair Labor Standards Act (FLSA) and Family and Medical Leave Act (FMLA)
 - Best practices for employers implementing AI in the workplace



An AI Twist on Familiar DOL Issues

FLSA:

- AI determining exempt/non-exempt status
- AI determining W-2 or independent contractor status
- AI drafting bonus policies and determining eligibility

FMLA:

- AI granting/denying FMLA requests
- AI drafting FMLA letters
- AI determining whether to seek a second opinion

An AI Twist on Labor-management Issues

- **Construction employers:** use of AI to determine which hours worked fall under CBA wages and benefits and which do not
- AI drafting grievance responses
- AI researching and drafting contract proposals
- AI drafting NLRA-compliant policies

An AI Twist on Familiar EEO Issues

Title VII, ADEA, and State Equivalents

- AI use of nuanced discriminatory language (example: *XYZ Co. seeks energetic managers open to fresh ideas and ready to make a long-term commitment to personal growth*)
- Disparate impact in resume reviews and interviews/screenings

ADA and State Equivalents

- AI granting/denying requests for accommodation
- AI overreaches when drafting a list of essential functions
- AI accessibility regarding the application and interview process

State & Local Governments May Signal What the Future Holds

Although no federal statutes specifically govern AI, other jurisdictions have enacted their own regulations:

- **New York City Local Law (2021)** – Requires employers to annually audit AI tools for evidence of bias and make the results public
- **Illinois Human Rights Act (2024)** – Prohibits use of AI that has “effect of discriminating against individuals belonging to a protected class”; mandatory disclosure requirements
- **California Fair Housing & Employment Act** – Clarifies prohibition on use of AI that has the effect of discrimination against individuals; “available defenses”
- **Colorado AI Act (2026)** – Will require developers and users of “high-risk” AI systems to take reasonable care to prevent biased outcomes; mandatory disclosure requirements

AI and Disparate Impact

- “AI Bias” has been defined as “the occurrence of biased results due to human biases that skew the original training data or AI algorithm – leading to distorted outputs and potentially harmful outcomes.”
- Recent Litigation
 - *EEOC v. iTutorGroup Inc. et al.*, No. 1 :22-cv-02565 (E.D.N.Y. May 5, 2022)
 - *Mobley v. Workday, Inc.*, No. 23-cv-00770-RFL, 2024 U.S. Dist. LEXIS 11573 (N.D. Cal. Jan. 19, 2024)



More on Disparate Impact

“For example, suppose that 80 White individuals and 40 Black individuals take a personality test that is scored using an algorithm as part of a job application, and 48 of the White applicants and 12 of the Black applicants advance to the next round of the selection process. Based on these results, the selection rate for Whites is $48/80$ (equivalent to 60%), and the selection rate for Blacks is $12/40$ (equivalent to 30%).”

“The ratio of the two rates is thus $30/60$ (or 50%). Because $30/60$ (or 50%) is lower than $4/5$ (or 80%), the four-fifths rule says that the selection rate for Black applicants is substantially different than the selection rate for White applicants.”

Additional Legal Risks

- Possible “hallucinations”
- Must check and double-check
- Legal review is KEY!



Re: *In re CorMedix Securities Litigation*, No. 21-cv-14020 (D.N.J.)

Dear Judge Neals,

We write on behalf of Defendants in connection with the Court’s June 30, 2025 Opinion, which denied Defendants’ motion to dismiss. ECF No. 114 (the “Opinion” or “Op.”).

While Defendants do not seek reconsideration of the Opinion pursuant to Federal Rule of Civil Procedure 59(e), we wish to bring to the Court’s attention a series of errors in the Opinion—including three instances in which the outcomes of cases cited in the Opinion were misstated (i.e., the motions to dismiss were granted, not denied) and numerous instances in which quotes were mistakenly attributed to decisions that do not contain such quotes—so that the Court may consider whether amendment or any other action should be taken. We also write to alert the Court that these and related issues have been raised in a parallel securities class action lawsuit pending in the District of New Jersey and are the subject of briefing in that case. See *In re Outlook Therapeutics, Inc. Sec. Litig.*, 2:23-cv-21862 (D.N.J.).

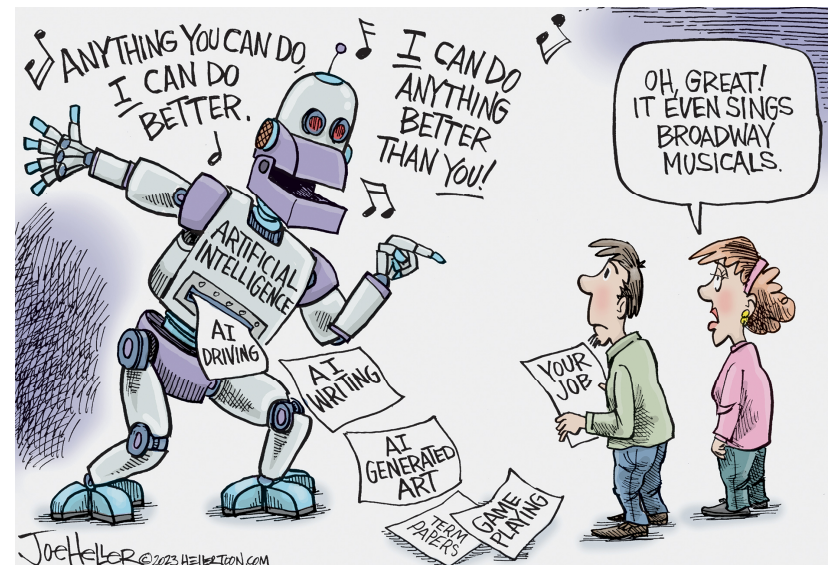
Confidentiality Concerns

- Risk of inadvertent disclosure of confidential information



Employee Resistance to Change

- Of those employers using AI, **21%** have experienced employee resistance to or lack of trust in AI tools
- Employees experiencing “automation anxiety”



How Much Should You Allow Your Employees to Use AI?

- What happens to your data when you interact with AI?
- Can you/should you “lock it down”
- What should you disclose about your use of AI?
- Remember, AI is a ***copilot***, not a ***replacement***

AI Employment Policy

- Who has access and for what purposes
- What must be done to protect confidential information
- What uses are prohibited
- If you intend to monitor use (a good idea), make that clear
- Seek legal guidance

Remember, Third-Party Vendors Can Impact You

- Ex: A temp agency uses AI to screen applicants, it places with you, and uploads your policies and forms into its model in order to do so
- Require vendors to disclose AI usage
- Reach an agreement on what data can and cannot be used

Monitoring AI in the Workplace

- Maintain an inventory of AI uses
- Set role-based access controls
- Audit compliance with AI Employment Policy
- Correct behaviors and retrain as necessary
- Designate an “AI Officer”

Human-in-the-Loop

- An approach to adopting AI that keeps people integrated in the process
- AI+ HI (human intelligence) = ROI

**“Human judgment
is a superpower.
This is what we do
best.”**

Susan Anderson, SHRM-SCP, Head of
HR Compliance Experts Mitrtech

Questions?

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