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# An Analysis Implications of AI Technologies in Employment Law

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RAJKUMAR R.<sup>1</sup>

## ABSTRACT

*This paper explores the impact of artificial intelligence (AI) on employment law and workers' protection. AI is being increasingly used to automate routine tasks, potentially leading to job displacement in certain industries. The paper explores how AI may affect areas such as discrimination, wage and hour laws, and workplace safety. It also considers the potential impact of AI on worker protections, including workers' compensation and employee benefits. The paper concludes that AI's impact on employment law and workers' protection is still evolving, and employers need to ensure their AI systems are designed and tested to avoid unintended consequences. The paper analyzes the existing legal framework governing AI use, including the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act, and the National Labor Relations Act (NLRA). It also evaluates recent developments in case law and legislative initiatives aimed at addressing AI's challenges. The findings suggest that while the current legal framework provides some protection to workers, further reforms are needed to address the unique challenges presented by AI.*

**Keywords:** *Implications of AI in employment, Areas of development of AI system, Employee Monitoring, Employee Discrimination, Employee privacy.*

## I. INTRODUCTION

Artificial intelligence (AI) is revolutionizing various industries, including employment law. Companies like Unilever are utilizing AI in their recruitment processes, such as Hire Vue, which analyzes video interviews and assesses candidate suitability based on facial expressions, tone of voice, and language. The system also uses data from resumes and online tests to build a comprehensive profile of each candidate. However, concerns have been raised regarding potential biases in the algorithms used.

One of the most pressing concerns is the potential for AI to perpetuate bias and discrimination in the hiring and employment process. AI systems can be trained on biased data, leading to discriminatory outcomes, such as favoring certain candidates based on race, gender, or other protected characteristics. This raises questions about employers' responsibility to ensure their

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<sup>1</sup> Author is a student at Tamil Nadu, Dr.Ambedkar Law University Chennai, India.

AI systems are free from bias and comply with anti-discrimination laws.<sup>2</sup>

The increasing use of AI in employment raises questions about privacy, data protection, and transparency. Employers must ensure that they collect and use employee data in compliance with data protection regulations and are transparent about how AI systems make decisions about employees. Overall, integrating AI systems into employment raises complex legal and ethical issues that require careful consideration and regulation to ensure that employees' rights and protections are not compromised.<sup>3</sup>

This chapter aims to identify the potential implications of AI systems' introduction in the workplace by examining different types of AI systems, discussing the economic areas and aspects of employment affected, identifying the positive and negative aspects of deploying AI systems in the workplace, and providing conclusions and thoughts on the next steps of regulating AI systems in the context of employment.

## **II. AREAS OF DEVELOPMENT AND TYPES OF AI SYSTEMS**

Artificial intelligence (AI) systems are increasingly being used in various industries, including employment, to manage human resources, automate tasks, and provide insights for informed decision-making. This article identifies different areas where AI systems will be introduced and highlights types of AI systems that will impact employment in the coming years.

### **(A) Areas of deployment of AI systems:**

#### **a. Recruitment:**

AI has become a common application in employment, particularly in recruitment. With the development of online labour markets, AI systems can analyze resumes, job applications, and social media profiles to identify potential candidates for job openings. They can also conduct initial interviews through chatbots, saving recruiters time and effort. While most stages of the recruitment process still involve human intervention, AI-driven job interviews may reject candidates that still need to meet certain requirements.<sup>4</sup>

However, the use of AI in recruitment has raised concerns about bias and discrimination. AI-driven job interviews may attempt to assess an applicant's personality based on inflexion and timber in their voice, potentially involving biometrical personal data. Additionally, facial

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<sup>2</sup> Nilsson, N.J. (2014). "Artificial Intelligence: A New Synthesis. Morgan Kaufmann. Available at: Google Books (last visited on March 20, 2024)

<sup>3</sup> workplace by Facebook. "AI and the future of work." Workplace Blogs, Facebook, <https://en-workplace.com/blog/ai-and-the-future-of-work> (last visited March 20, 2024)

<sup>4</sup> WIPO. "About IP." Accessed on 20 March, 2024. Available at: <https://www.wipo.int/aboutip/en/>

recognition aspects of AI systems need to eliminate biases, as they still perform poorly on darker skin tones.

AI systems can benefit employers in resume screening, automated interviews, candidate matching, diversity and inclusion, skill assessment, and feedback and analytics. However, concerns about potential bias and the potential elimination of the human touch from the recruitment process remain. It is crucial for recruiters to use AI systems as a tool to assist with the recruitment process, rather than relying entirely on them.

**b. Performance management, task distribution, and evaluation:**

AI has become a popular tool in recruitment, particularly in online labour markets. AI systems can analyze resumes, job applications, and social media profiles to identify potential candidates for job openings. They can also conduct initial interviews through chatbots, saving recruiters time and effort. While most stages of the recruitment process still involve human intervention, AI systems can reject candidates that still meet certain requirements. This reduces the hiring time, sometimes from 24 to nine days. However, concerns about bias and discrimination have been raised, as AI systems can perpetuate or amplify biases in the data they are trained on. AI-driven job interviews may assess an applicant's personality based on inflexion and timber in their voice, potentially involving biometrical personal data. Additionally, facial recognition aspects of AI systems need to eliminate biases, as they perform poorly on darker skin tones.

AI systems can benefit employers in resume screening, enabling recruiters to quickly screen and shortlist candidates due to the data-driven nature of candidate onboarding procedures.

**c. Employee:**

In 2015, US District Judge Edward M Chen highlighted the potential of AI systems to significantly impact employee monitoring. AI systems can monitor employee activity across various digital channels, providing employers with a wealth of data on employee activity. This increased monitoring capabilities compared to previous eras, where it would be time-consuming and cost-ineffective for individuals to process such volumes of data. AI systems can learn to detect behavioral patterns, analyze employee behavior to identify patterns indicating low productivity, dissatisfaction, or potential security breaches. Employers can use predictive analytics to identify trends and predict future outcomes, enabling proactive measures to improve employee productivity, satisfaction, and retention. AI systems can automate tasks in employee monitoring, reducing workload on managers and HR staff. However, it is crucial for employers to strike a balance between using AI systems to monitor employee performance and respecting employee privacy and autonomy. Employers should ensure ethical and transparent use of AI

systems and appropriate oversight and accountability mechanisms.

**(B) Different types of AI systems in the employment ecosystem:**

AI systems are expected to be increasingly used in employment in the coming years, with a focus on electronic surveillance, algorithmic management, and AI-driven performance. As technology advances, more innovative uses of AI in the workplace are expected. However, the availability of artificial general intelligence remains uncertain, and any estimation of when these systems will be widely used remains uncertain.

**a. Robotics:**

Robotic systems are being used in the workplace to automate tasks previously performed by humans, improving efficiency, productivity, safety, and cost reduction. However, this deployment raises ethical concerns. AI-powered robots are already used in manufacturing and logistics for repetitive, dangerous, or precision tasks. As technology advances, robots may become more capable of performing complex tasks and interacting more naturally with humans.<sup>5</sup>

**b. Chatbots and virtual assistants:**

Chatbots and virtual assistants are gaining popularity in customer service roles, such as recruitment, employee engagement, and onboarding. They assist HR departments in answering queries, scheduling interviews, and providing personalized assistance, improving employee and customer experience, and even conducting transactions on customers' behalf.<sup>6</sup>

**c. Predictive analytics:**

AI-powered predictive analytics tools enable companies to analyze large amounts of data, identify patterns, and make informed decisions in fields like finance, healthcare, and marketing. In employment, they forecast workforce trends, identify potential employee churn, and assess performance. This helps employers make informed decisions about staffing, training, and development, optimize workforce, and improve employee engagement and retention.<sup>7</sup>

**d. Natural language processing (NLP):**

Natural language processing (NLP) is a technology that aids in the development of AI-powered chatbots and virtual assistants, enhancing communication and collaboration between employees

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<sup>5</sup> Wisconsin law Journal. "The Future of Intellectual Property in the Era of Artificial Intelligence." June 20, March 2024. Available at: <https://wislawjournal.com>

<sup>6</sup> Brookings Institution. "Workforce Ecosystems and AI." Brookings, <https://www.brookings.edu/research/workforce-ecosystems-and-ai/>. (last visited on 20 March, 2024)

<sup>7</sup> Summit Human Capital. "The positive Effect of AI on the job Market." Last visited on 20 March 2024. <https://summithumancapital.com>

and management. It can analyze unstructured data, such as employee feedback and performance reviews, to identify key insights and trends, enabling HR departments to make data-driven decisions and improve employee engagement. NLP can automate tasks like responding to queries and scheduling interviews, allowing HR personnel to focus on strategic initiatives. This technology is transforming workforce management by enabling more efficient communication and decision-making.<sup>8</sup>

### **III. IMPLICATIONS OF AI IN EMPLOYMENT CONTEXT**

#### **(A) Benefits associated with the use of AI in employment context:**

AI-based tools have the potential to improve efficiency and equality in decision-making during the recruitment process, ensuring more inclusion and diversity. By mitigating bias in algorithmic decision-making processes, AI systems could increase societal fairness. Additionally, AI-based tools can increase the efficiency of employee evaluation processes by providing objective and neutral ways to measure employees' performance.

AI-based tools during the recruitment process may save resource time and costs by reviewing and filtering job applications, determining a candidate's suitability, and reducing the time spent by recruiters.

They can identify ideal candidates for specific roles, match job requirements with skills and experience, recommend jobs and roles, and screen volumes of CVs and referrals. AI can also achieve more reliable and predictive power than human recruiters during interviews by analyzing data on interviewees' facial expressions, speech patterns, and body movements.

In the workplace, AI is likely to increase employee productivity by taking over or facilitating repetitive tasks that would otherwise be carried out by humans. In other jobs, AI can supplement and support elements of the job, allowing employees to focus more on interpersonal or 'soft' skills than on technical skills. This could enhance and support employees' 'uniquely human' abilities.

Lastly, AI has the power to improve occupational safety and health in the workplace by automating dangerous tasks.

#### **(B) Risks associated with the use of AI in employment context**

AI's potential employment benefits are significant, but concerns arise regarding employee displacement. This chapter addresses the implications of AI tools used by employers in

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<sup>8</sup> World Economic Forum."Future of jobs Report 2020. <https://www3.weforum.org> (last visited on 20 March 2024)

employment decisions. AI systems, based on machine learning techniques, require large amounts of data for training, impacting the effectiveness and fairness of AI systems. The quality and access to this data can lead to issues of discrimination and employee privacy.<sup>9</sup>

### **(C) Employee discrimination**

Bias is a prejudice that can lead to unfair decisions and different outcomes for people from different social groups. AI tools, designed by humans and based on machine learning data-driven techniques, may be biased due to human input into the system. Data sets used by AI systems may include inadvertent historic bias, incompleteness, and bad governance models. In the employment context, AI tools can reproduce patterns of systemic discrimination already present in the workforce. If training data are not inclusive and balanced enough, the system could learn to make unfair decisions.<sup>10</sup>

These discriminatory outcomes cannot be prevented simply by removing protected characteristics from algorithms. Machine learning algorithms can discover subtle correlations and proxies for protected characteristics, even when they are purposefully omitted from the model-building process. This could occur intentionally or unintentionally, as characteristics can be correlated with protected characteristics in unexpected ways. AI tools often rely on unexplained correlations with observable characteristics to make predictions about an individual's future behavior or job performance, which may lack any causal connection to the relevant skills or abilities.

The right to equality before the law and protection against discrimination based on certain protected characteristics is a fundamental right recognized by the Universal Declaration of Human Rights and numerous international treaties. Anti-discrimination laws impose equal treatment and prohibit both direct and indirect discrimination.<sup>11</sup> Direct discrimination occurs when one person is treated less favorably than another due to certain protected characteristics, while indirect discrimination occurs when an apparently neutral provision, criterion, or practice would put persons of certain protected characteristics at a particular disadvantage compared to other persons.

Laws are crucial when AI systems are used in employment decisions, as their opacity, complexity, dependency on data, and autonomous behavior can negatively impact the

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<sup>9</sup> Brookings Institution. "Workforce Ecosystems and AI." Brookings, <https://www.brookings.edu/research/workforce-ecosystems-and-ai/>. (last visited on 20 March 2024)

<sup>10</sup> Ballas Pelecanos & Associates LPC, Implication of AI Technologies in Employment law, [lexology](https://www.lexology.com), <https://www.lexology.com> (last visited on 20 March,2024)

<sup>11</sup> Tech Target, "AI accountability: who's responsibility when AI goes wrong?", <https://www.techtarget.com> (last visited on 20 March,2024)

fundamental right to non-discrimination. The principle of equal treatment requires that AI systems cannot generate unfairly biased outputs. To protect employees' fundamental rights, reasonable measures must be taken regarding AI systems used in the employment context. The deployment and use of AI systems must be fair, ensuring equal distribution of benefits and costs, and avoiding unfair bias, discrimination, and stigmatization. Data collection and training should be inclusive, representing different population groups. Oversight processes should be established to analyze AI systems' purpose, constraints, requirements, and decisions in a clear and transparent manner. Employers should closely monitor AI tools' operation and discontinue them if they have a disparate impact unless they are clearly job-related and consistent with business necessity. Employees should have the ability to contest and seek effective redress against decisions made by AI systems and human operators. Hiring from diverse backgrounds, cultures, and disciplines can ensure diversity of opinions, and informing, consulting, and negotiating with employees and their representatives can help assess AI system functionality. AI systems, such as certification or specialized auditing, are crucial in combating discriminatory applications of AI in the employment context.

**(D) Employee privacy:**

AI relies on data to train algorithms and improve accuracy, but the quality and quantity of data are crucial for its effectiveness and fairness. This puts employees' right to privacy and personal data at risk. New technologies have made monitoring and collecting data from employees easier, cheaper, and more comprehensive.<sup>12</sup> Employers can track employee movements and activities online, while AI-enabled devices may gather more data than expected or use it in untransparent algorithms. Examples include wearable devices that measure employee gathering together, algorithms that affect ratings and pay, and health-monitoring wearable devices that consider hours worked, rest breaks taken, and activity levels.

Data protection laws can help mitigate the negative consequences of AI at work. At the European level, the General Data Protection Regulation (GDPR)'s principles of lawfulness, fairness, transparency, purpose limitation, data minimization, and accuracy can significantly mitigate the risk of harmful AI systems being implemented in the workplace. The GDPR applies to processing personal data, including those in the employment context. Employers must ensure employee data is processed for legitimate purposes proportionate and necessary, while providing transparent information about monitoring technologies and their implications.

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<sup>12</sup> “product liability law as a way to address AI harms”, Brooking institution, <https://www.brookings.edu> (last visited on 20 March,2024).



Employers must enable data subject rights, keep data accurate, and retain it no longer than necessary.

In cases where processing using new technologies poses a high risk to employees' rights and freedoms, employers must conduct an assessment of the impact of processing operations on personal data protection. A data protection impact assessment (DPIA) is particularly required for automated processing that significantly affects employees or has legal effects.<sup>13</sup>

Employees have the right to be informed about decisions made solely through automated processing, including profiling, which can have legal effects on them. Employers must ensure meaningful oversight and human authority to change decisions. While AI-driven decision-making processes offer advantages, the challenge lies in balancing innovation and privacy. Employers must determine when data processing ends in relation to AI applications, as there will be more data for algorithms to learn from. This balance is crucial for effective data privacy legislation.

#### **IV. THE PROPOSED EU REGULATORY FRAMEWORK FOR AI**

The European Commission has proposed the Draft AI Act, the first-ever legal framework on AI, based on a risk-based regulatory approach. AI systems used in employment, employee management, and self-employment, such as recruitment, selection, promotion, termination, task allocation, monitoring, and evaluation, are classified as high-risk and subject to specific safeguards. The Act acknowledges that AI systems may perpetuate historical patterns of discrimination, such as against women, certain age groups, persons with disabilities, or those of certain racial or ethnic origins or sexual orientation. This approach aims to ensure fair and inclusive employment practices.<sup>14</sup>

The Draft AI Act, part of the European Commission's AI package, aims to make the EU a world-class hub for AI and ensure that AI is human-centric and trustworthy. High-risk AI systems must be developed using high-quality training, validation, and testing data sets, accompanied by technical documentation, traceability throughout their lifecycle, and provide necessary information for users to interpret and use. The Act should be designed to be overseen to minimize potential risks to fundamental rights generated by the systems. The implementation of AI technologies in the employment context is at the crossroads of labor, data protection, and anti-discrimination laws. The Draft AI Act would issue an all-encompassing framework to

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<sup>13</sup> Patrick Henz, Ethical and legal responsibility for Artificial Intelligence, 5 column, 1 (2024), <https://link.springer.com/article/10.1007/s44163-021-00002-4>

<sup>14</sup> "AI and Privacy: the privacy concerns surrounding AI & its potential Impact on personal data", [https://economictimes.indiatimes.com/\(last visited on 20 March,2024\)](https://economictimes.indiatimes.com/(last visited on 20 March,2024)).

determine what AI is trustworthy, weakening the capacity of existing laws. It is crucial to put the Act in service of other laws that govern the introduction and use of AI and algorithmic management systems in the work environment. While the Act might regulate AI, the governance of AI at work must draw on many more areas of law.

## **V. CONCLUSION**

The rise of AI in the workplace is inevitable, with potential to disrupt labor relations and impact working conditions. While AI offers significant benefits, it also poses significant disadvantages, including potential threats to candidates' and employees' fundamental rights. To mitigate these effects, a response to AI at work should be based on established human rights and fundamental principles. Legislators must adapt existing European legislation to address the challenges AI poses, such as anti-discrimination, data protection, and other labor and employment rights. The Draft AI Act should be prioritized over other laws governing AI and algorithmic management systems, requiring material amendments to the current draft. A coherent set of measures across different fields of law is required to regulate AI at work effectively, focusing on human dignity, as AI cannot fully replace the human factor. The current draft of the AI Act should be revisited to ensure effective enforcement mechanisms in various areas.

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