

# PUBLICATION

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## The AI Revolution is Starting to Impact the Workplace

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**Technology is rapidly evolving, and the use of Artificial Intelligence (AI), automation and robotics is only just beginning to be felt in U.S. workplaces.**

One area of interest has been the use of AI in the hiring process. It is not uncommon for large companies to utilize AI technology in the recruiting and hiring process. Employers are using AI to scan resumes for key words, to assess the public profiles of candidates for indicators of certain personality traits, and to scan video interviews to evaluate the candidate's behaviors, tone of voice, word clusters, mannerisms and micro-expressions for indicators of professionalism and characteristics beneficial to the position at issue.

Some suggest that the use of such AI could remove human bias from the hiring equation, while others raise concerns regarding the potential for bias within the algorithms used by this technology. In fact, because the technology is so new, there are concerns that the algorithms may result in claims of bias leading to litigation. For example, if the algorithm focuses on certain subtle features that could ultimately result in screening out candidates within a protected class, employers using the technology could face litigation under federal and/or state discrimination laws. The resulting litigation is likely to be costly and time consuming as it will involve expert analysis of the underlying algorithms as well as statistical analysis of the impact of the AI's use on the protected class at issue.

In addition, Illinois lawmakers have passed the first law addressing the use of this technology in the workplace entitled the [Artificial Intelligence Video Interview Act](#). This statute imposes additional legal risks on Illinois employers who utilize AI to conduct video job interviews. Employers using AI to analyze applicant video interviews are required to provide notice to candidates of the use of such AI and information regarding how the AI works for evaluation purposes. Further, employers are required to obtain consent to AI evaluation from the candidate before using it. Because the statute does not include any express enforcement provision, there will likely be future litigation regarding proper enforcement of the statute, whether by the attorney general or through private litigation.

Employers should be aware that there is limited information available on the full impact of use of AI hiring technologies and that using such AI could present litigation risks as a result of unknown biases within the algorithms or as new laws develop regarding the use of such technologies.

Another area where employers are starting to feel the impact of new and evolving technology is the area of union negotiation and contract disputes regarding automation and the use of robotics in the workplace. There is a growing concern regarding the potential displacement of the current workforce as a result of the exponential growth in automation. On February 11, 2019, the President signed an [Executive Order on Maintaining American Leadership in Artificial Intelligence](#), which includes a focus on training America's workforce to prepare them for the jobs of the future.

Employers are regularly evaluating how automation of labor needs can aid in increased productivity, and job outlook suggests that the disruption due to automation could impact millions of workers over the next decade. As a result, certain unions have begun to seek displacement protections through contract negotiations and

even strikes. Some of the protections sought include advance notice of proposed automation, the right to negotiate regarding the implementation of automation, training/retraining of affected workers and wage replacement for displaced workers.

Employers may see an uptick in union activity in the coming years in an effort to address automation displacement, and employers will need to be aware of their rights and how best to handle negotiations and contract disputes regarding such issues. Further, union activity is only the beginning. Employers with more than 100 employees already have certain legal obligations that will be triggered under the Worker Adjustment and Retraining Notification Act (WARN) should they choose to replace their workers with automation. Employers should also anticipate that regulations will be passed to encourage employee protections and retraining when workplace displacements are caused by automation.