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AI in Hiring: Legal Risks for Nonprofits Using Recruiting Technology

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Artificial intelligence is rapidly entering the hiring process and changing the way organizations find, evaluate, and hire talent. Tasks once handled by employers, such as drafting job descriptions, identifying candidates, and screening employees are now outsourced to machine learning tools with greater reach, efficiency, and capacity.

For nonprofit organizations looking to maximize resources, this can be an appealing and effective option. Surveys show that over 80% of U.S. employers, including many nonprofits, already use AI somewhere in their hiring process. This trend isn't expected to slow down: the market for AI screening tools is projected to surpass \$1 billion by 2027.

However, while AI offers significant benefits, it also introduces new legal challenges around fairness, privacy, and transparency for all employers, and specifically for nonprofit agencies.

What Are AI Hiring Tools?

Hiring has traditionally been a labor-intensive and human-driven process. However, AI is quickly moving from a supporting role to the forefront of recruitment. Employers are turning to AI tools at every stage of hiring. Key features of such tools include autonomous job creation and posting, candidate sourcing and matching, internal talent identification, and candidate assessment. AI can even conduct video interviews and evaluate candidate responses.

AI tools can be helpful in supplementing or optimizing HR functions, particularly to maximize budgets and resources. Organizations using AI hiring tools reported higher application completion rates, shorter hiring timelines, and increased efficiency. The benefits of these AI tools often extend beyond hiring into negotiations, offers, and onboarding.

Legal Risks of AI Hiring and How to Avoid Them

Along with the benefits of AI tools come inevitable legal challenges. Lawsuits involving AI hiring tools are rapidly increasing and highlight the risks of potential bias, security breaches, and regulatory missteps.

1. Bias and Discrimination

Risks: Many employers assume that outsourcing hiring to AI eliminates human bias from the process. However, the tough reality is that AI tools are more likely to reinforce existing biases rather than eliminate them. AI does



not operate in a vacuum; it learns patterns from the data it is trained on. If that data reflects bias, the AI will reproduce it.

In hiring, this can look like AI tools screening out candidates with protected characteristics such as race, age, or disability and erroneously penalizing employment gaps related to caregiving or illness. The pending *Mobley v. Workday* lawsuit in California illustrates these risks. It involves a class of jobseekers claiming AI human resources software discriminated against them in violation of state law.

Tips: Keep a “human in the loop” and spot check outcomes and data. Preventing bias in AI hiring systems requires continuous monitoring and refinement to discover and eliminate inequalities—consider having a team member assigned to keep tabs on the system and its determinations. Regular review and correction of biased AI outcomes is critical. “Red teaming” is another strategy that involves uncovering bias using a group of testers who mimic potential jobseekers with protected characteristics. Further, employing data cleansing tools can help organizations identify skewed patterns and biased data points.

2. Privacy and Security

Risks: Hiring involves large amounts of sensitive candidate data. However, AI platforms ingest, retain, and transform this data in complex ways that are not always visible to candidates or employers. Unauthorized data collection or over-retention by AI hiring systems can expose employers to liability under state and federal privacy laws.

Tips: Approach data collection in AI hiring with a standard of intentionality and transparency. Every piece of information collected should serve a recruitment objective. Candidates should also understand how their data is used, processed, and protected. Consider implementing clear internal policies and trainings about how information is collected, how long it is retained, and who has access to it. Further, when choosing AI recruitment tools, organizations should clarify vendor security certifications and data handling practices.

3. Regulatory Issues

Risks: Despite the increased popularity of AI hiring, there is no single federal law governing the practice. Rather, regulation in this area is fragmented and evolving. Various agencies regulate AI issues while industries adhere to their own specific regulations (ex: HIPAA for the healthcare industry). At the state level, some states have enacted AI data and privacy laws such as the California Privacy Rights Act (CPRA). Notably, Ohio has not yet enacted specific legislation governing AI in hiring decisions.

Tips: Stay informed and vigilant. While the law in this area is shifting quickly, there are five pillars organizations can use to build a solid AI governance foundation: 1) transparency and explainability, 2) quality control, 3) human oversight, 4) risk assessment and documentation, and 5) privacy and security controls. Organizations should focus on ensuring their AI hiring systems meet these requirements while continuously monitoring the regulatory and legal landscape for changes.



Looking Ahead

The hiring process is transforming and organizations that embrace AI now will have an edge in securing talent and optimizing hiring efficiency. Still, employers must remain vigilant of potential risks and evolving legal standards. The most successful nonprofit organizations will understand how AI enhances their mission but cannot outright replace team members' involvement in identifying the right talent.

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