

What role should employment law play in regulating the use of artificial intelligence and automation in hiring and workplace management practices?

The function of artificial intelligence is an ever changing topic, as AI is developing rapidly and exponentially to the point where legislation surrounding the subject struggles to keep up. The use of AI shockingly dates back to the 1940's when it was dubbed the 'Artificial Neural Network'. This has expanded substantially since then, subconsciously affecting our everyday life. Specifically in employment, AI takes over career after career as it evolves abruptly and begins to find ways of fulfilling the jobs we humans do- faster, and better. There is major irony behind that sentiment as employment law "regulates the relationship between employers and employees." It governs what employers can expect from employees, what employers can ask employees to do- but not once does this law stipulate that there will be a third party intervening from within. Consequently, it sparks the question of whether there need to be restrictions on its use in hiring and workplace management practices- and will we achieve this before AI changes employment law to a point of no return.

Artificial intelligence is an extremely vast territory that, due to its rapid pace of development, is difficult to control and restrict in the workplace. The GDPR (General Data Protection Regulation) lightly touches on the topic of regulating AI to protect our data and privacy. Any AI systems must integrate security practices to prevent data infringements and unauthorised access, and individuals must have the right to obtain their data and relocate it to another service if required. Under the GDPR, companies can keep data on applicants and past employees indefinitely, therefore such security measures can add reassurance that your data will be safe. However, regulations of AI ,specifically in the workplace, are extremely vague. The GDPR does state that non-compliance to these regulations could lead to large fines, up to

€10 million or 2% of a firm's annual revenue, but is this enough for employment companies to ensure your entitlement to privacy of your data is kept?

The world's first comprehensive law on AI is extremely recent, considering the impact AI has already had on the world around us. The EU AI Act was proposed in April 2021 and states that AI systems that can be used in different applications are analysed and classified according to the risk they pose to users. Furthermore, AI systems that cover employment, worker management and access to self employment have to be registered in an EU database to ensure the safety of the population, so people know exactly what artificial technology is being used. The EU parliament adopted this act in March 2024, but will only be fully applicable by 2026. Despite this, the UK government is still taking a 'light touch approach' towards AI regulation. They do acknowledge the eventual demand for legislation on restricting the use of AI, however as we currently stand the regulations are poor and unclear- both towards use of AI as a whole and how it affects employment law. The government published a regulatory framework to keep up with the developments of AI in March 2024, however the focus of it is mostly on using AI to its greatest ability and to make the UK a 'Science and Technology superpower' by 2030. Although AI can be incredibly helpful and has already amassed successes far beyond what we could've expected, the issues behind its use need to be addressed and regulated. Specifically in employment law, companies should clearly disclose what forms of AI they use. They should be required to state how they apply this to the workplace and the type of employee data that will be stored by the automation. The privacy and safety of workers is at risk with unregulated AI systems, so employment law needs to catch up with the infiltration of AI to control what happens with the data it has access to.

Hiring has never been a simple matter- companies need to identify what role they're looking for, how many hours they want, the type of person they need. But why struggle with this when AI can simply do all that for you? The increase in using AI chatbots for gathering data on a potential employee and analysing if they would fit the job is immense. It is estimated that AI chatbots could automate up to 70-80% of the top recruitment interactions. These recruitment chatbots gather information about the applicant so it's easier to process, ask them fitting questions to see if they are capable of taking on the role, and offer updates on their application status. The functions of these recruitment chatbots are growing increasingly and rapidly, and essentially fulfill the job of a human recruiter at a faster rate, and at any time of day. Some might argue that the chatbots could be a major advantage and a step in the right direction- a number of companies have utilised AI to help increase racial and ethnic diversity in the workplace. This would be an incredible way of combating any bias that could be present during the hiring process. However, this outcome may not always be achievable. AI gathers information by 'Web Scraping and Crawling'- which is essentially extracting content and data from multiple different websites swiftly in order to produce an answer. If the AI chatbot is exposed to any racist or sexist information, then its output may unintentionally reflect that research. This is an extreme problem that is unacceptable for employers to allow, as AI cannot replace the "nuanced understanding that human judgment provides". Therefore laws restricting the power AI has during the hiring process are essential to counteract any potential bias that may be present when chatbots are used. Companies are becoming increasingly reliant on AI to complete hiring tasks for them, however there should be laws that significantly limit the extent to which AI can be used without human oversight.

Workplace management refers to the practices and procedures used to ensure that the workplace runs smoothly and efficiently, by overseeing the daily operations of the workplace.

This is incredibly important to ensure that the workplace functions effortlessly and is continuously improving to achieve new goals and satisfy the employees- as a productive work environment allows for productivity of the workers. One of the most notable areas that AI intervenes with surrounds performance monitoring of the workers. AI tools can analyse copious amounts of data to track the performance of their workers and compare this to other employees- easily contrasting the worker efficiency. This seems like a huge improvement from relying on meetings to track employee progress that can be heavily subjective and influenced by bias. Furthermore, this data- driven approach allows managers to make fair decisions surrounding promotions and finding areas of weaknesses that ultimately will improve the efficiency of the workplace. However, many companies have taken AI monitoring a step further in order to investigate a worker's productivity by analysing internet browsing, checking computer usage and chat logs between employees. Monitoring that typically requires human intervention, can now simply be completed by an AI software, allowing employers to observe their workers' behaviours during working hours without wasting any time of their own. It is seemingly incredible that AI has the potential to do so, but morally where do we draw the line? Despite employees having the right to be informed on the collection and use of their data, it concerns me that employers could be using the technology to track their staff without their consent. Jonothan Scollen, an employment law solicitor at Howarths, states that companies have never had it “easier” in relation to monitoring and gathering people’s data. However, “while the tech might be new, the usual employment and data protection laws will apply, so employers do need to be careful when it comes to using AI for managing staff”. This may be reassuring for the time being, but the use of artificial intelligence and automation for workplace management is at an all time high and the more it is used, the more difficult it will be to regulate. Therefore, restrictions on the use of AI are too amorphous- and can allow for further loopholes in the law to be found, giving

employers more power to use automation in ways that are essentially spying on their employees.

We are currently experiencing an era of artificial intelligence that has reached such extreme levels of power that I can undoubtedly say that legislation restricting the usage of AI is extremely outdated. The exponential growth of automation in hiring and workplace management practices is threatening the safety and entitlement of data protection for workers. Despite this, use of AI has essentially become the new norm and is socially accepted without considering the potential risks. Employment law urgently needs to reconsider the approach that is taken towards regulations of AI, as despite being a fairly new introduction to the workplace, it is already questionable if such features can be used ethically and responsibly without any human interference.

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