

Law

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

82% (Mohan, 2024). A representation of the percentage of companies worldwide currently employing AI technology in the primary screening of resumes. Companies receive an average of 250 resumes for a single corporate job. Artificial intelligence is capable of preparing valuable data from these in a matter of minutes, a task that would have otherwise entailed hours of workload for the organization's Human Resources department (Stefanowicz, 2024). In a world where achieving profitability is becoming more and more challenging, using AI to cut costs is a tempting idea, justifying the expected increase in its use from 2024 into 2025.

Employment law plays a pivotal role in ensuring the implementation of AI remains just and fair, setting legal frameworks for its ethical, transparent, and equitable use. Throughout this essay, employment law will be understood as a system of legally binding rules, which outlines the relationship between an employee and their employer (CIPD, 2024), whereas artificial intelligence will be recognized as the “ability of a computer to perform tasks commonly associated with human beings”. (Britannica, 2024) To proficiently assess the current situation, this essay will explore the current deployment of artificial intelligence in hiring as well as workplace management, focusing on the fragile balance between fostering innovation and protecting workers' rights. It will analyze the potential legal gaps present, providing possible broad solutions and arguing for a proactive legal approach.

AI has become ubiquitous, evolving into a tool that is used daily by thousands of people. As such, it comes as no surprise that the corporate world is already employing various AI models during the job recruitment process. Platforms such as Workable provide AI models that both generate fitting job descriptions as well as assist in sourcing and screening possible candidates. Industry giants such as Unilever have reported up to a 90% reduction in time spent on recruitment since implementing AI (RecruitBPM, 2024). With this in mind, AI is undeniably transformative in hiring, allowing overworked recruiters to focus on interviews instead of sifting through a vast number of resumes.

Employees, on the other hand, are far less enthusiastic about the change, fearing that potential bias in a model's algorithm may cost them the job. Apart from bias, there are multiple other factors contributing to a predominantly negative response from workers, such as the obvious lack of transparency in an AI's decision process, often resulting in little to no feedback given on the reason for a rejection. Moreover, for many, the prospect of their personal data being stored in an unknown AI database may be immensely daunting, especially if the person is applying for their first job. A study conducted by Pew Research Center in 2022 interviewed more than 11,000 adults on their perspective on the use of AI in hiring as well as the evaluation of workers. Unsurprisingly, it found that the vast majority of US adults, 71% to 7%, strongly opposed AI making a final hire decision, whilst 41% also opposed AI screening applicant resumes in general.

While some countries have yet to implement restrictions on AI, there are already proficient legal frameworks that control and limit AI interference, not only in the hiring process but in all business practices. The EU AI Act, passed by the European Parliament in March of 2024, outlines the limits to which AI models are allowed to be used as well as the obligations that their developers and users have to follow. As such, the EU has prohibited AI from tracking or evaluating any human behavior, such as social scoring or personal traits, as well as classifying individuals by their biometrics. While the use of AI in hiring is not forbidden under the act, it is nevertheless classified as a high-risk Annex III case (EU AI Act, 2024), and as a result has to be secured with additional safety measures such as detailed technical documentation along with a risk management system. Such measures aim to prevent an AI model from profiling individuals and thus violating their privacy.

In order to prevent human rights violations and uphold a fair recruitment process, it is vital that specific legal measures are added to traditional employment law to secure these. A resource that AI will never be able to take advantage of when making a decision is experience. When accepting or rejecting applicants, a person's years of valuable knowledge specifically related to the task they are performing is invaluable in ensuring that the right candidate is chosen. Taking this into account, employment law should regulate and ensure that the ultimate decision in the hiring process is always made by a human. By doing so, potential bias in an AI's algorithm can be excluded. Furthermore, an AI should only be able to provide an analytic summary, potentially categorizing a person based on their previous experience/degree without receiving further details about a person's appearance, age, sexuality, or other characteristic traits. To conclude, as already achieved by the EU, there should be clear and concise communication between an applicant and the employer, highlighting both the use of AI and providing updates on how their data is being managed.

AI exhibits similar threats when used in workplace management, gathering sensitive personal data and later using these to create an intimate employee profile. Employee and value discipline are key to a business's success, and as such, it is thus of utmost importance to monitor and improve these. As a firm grows, this task becomes more and more difficult to complete, leading to overall inefficiency possibly costing the organization thousands, even millions of dollars. If a business is not able to track and analyse the task an employee is currently performing, serious miscommunication may occur, limiting a firm's ability to operate effectively. Such inefficiency, in other words wasted time, especially when producing in competitive markets, may easily be the difference between success and bankruptcy. Once more, it is time that is causing such a large number of businesses to implement AI. New files released by Vice in 2022 outline how Amazon has used AI-backed software that precisely track their employees' every move, whether it is going to the bathroom, talking to an employee, or even accidentally going to the wrong floor. If these combined accumulate to a time-off-task (TOT) of more than 30 minutes on three separate days, the employee is at high risk of being fired. Without the implementation of AI systems that scan and track the employees' movement through the facility, such a detailed analysis would not be possible.

Among employees, the negative response to such a profound breach of their privacy is even greater than previously towards hiring, underscoring the overall stance towards AI. Referring back to the study conducted by the Pew Research Center, while the responses towards whether AI should be used to analyze a retail worker's interaction with a customer varied, the vast majority, once again, voted against AI tracking in fields such as a worker's movement or their time-off-task (TOT). A demonstration of the overall opinion on this issue, these number should acts as a wake-up-call, initiating proactive steps by global governments to fulfill their duties in protecting human rights.

When analyzing the legal frameworks already present to combat privacy breaches, we observe a scene similar to what has hitherto been encountered in hiring. While other nations, such as the USA and China, have also enacted restrictions on the use of AI, the EU can again exhibit a comprehensive and structured plan. Workplace management falls under the same Annex III cases as hiring, thus requiring identical restrictions and appropriate levels of “accuracy, robustness, and cybersecurity.” (EU AI Act, 2024). Despite this, it requires far more sophisticated laws and regulations to adequately protect billions of workers around the world. These must be able to evolve and counter the rapid evolution of AI, taking its immense capabilities into account. Most importantly, employment law should encourage and protect a safe working environment that employees feel comfortable being in. This may include, but is not limited to, strict limits on the use of artificial intelligence or introducing mandatory quality checks by humans after an AI has made a first evaluation. Inaccurate decisions made by an AI can thus be prevented due to the human acting as a second layer of verification. Regular third party audits may also be used to ensure that businesses do not hide or misuse their AI softwares. Such measures protect integrity and privacy in a workspace, inevitably also benefitting the business' efficiency as employees feel comfortable, safe and satisfied.

In our modern world, change occurs daily, whether it be with new trends or record-breaking discoveries. And while this provides countless extremely valuable opportunities, it also requires adequate regulations to avoid exploitation and preserve a supportive environment. Undoubtedly, AI has transformed our lives in ways that were until recently perceived as impossible. Current employment law however is in no way sufficiently prepared to combat potential threats, or even to protect against current ones. Thus it is fundamental that global nations work together, address these pressing issues and protect generations to come.

Word count (Excluding in text citations, headnotes, title, question statement and bibliography):
1485

Bibliography:

Chartered Institute of Personnel and Development. (n.d.). Employment Law.
<https://www.cipd.org/uk/knowledge/employment-law/>
 Britannica. (2024, January). Artificial Intelligence.
<https://www.britannica.com/technology/artificial-intelligence>

Mohan, P. (2024, October 31). *70% of companies will use AI for hiring in 2025, says new study.* *FastCompany*.

<https://www.fastcompany.com/91220282/70-of-companies-will-use-ai-for-hiring-in-2025-says-new-study>

ResumeBuilder. (2024, October 22). *7 in 10 companies will use AI in hiring process in 2025 despite most saying it's biased.*

<https://www.resumebuilder.com/7-in-10-companies-will-use-ai-in-the-hiring-process-in-2025-despite-most-saying-its-biased/>

Stefanowicz, B., Szaniawska-Schiavo, G. (2024, December 2). *AI Recruitment Statistics: What is the future of hiring?* Tidio. <https://www.tidio.com/blog/ai-recruitment/>

Workable. (2024). *We're Workable. We make great software.* <https://www.workable.com/about>

Adrian, T. (2023, October 10). *Higher-for-longer interest rate environment is squeezing more borrowers.* International Monetary Fund.

<https://www.imf.org/en/Blogs/Articles/2023/10/10/higher-for-longer-interest-rate-environment-is-squeezing-more-borrowers>

Pew Research Center. (2023, April 20). *AI in hiring and evaluating workers: What Americans think.*

<https://www.pewresearch.org/internet/2023/04/20/ai-in-hiring-and-evaluating-workers-what-americans-think/>

Clifford Chance. (2024, August). *What does the EU AI Act mean for employers?*

<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/08/what-does-the-eu-ai-act-mean-for-employers.pdf>

RecruitBPM. (n.d.). *The perception challenge: Exploring AI's role in hiring and firing.*

<https://www.recruitbpm.com/blog/artificial-intelligence-in-recruitment/#:~:text=Hilton%3A%20Hilton%2C%20a%20global%20hospitality,to%2Dfill%20since%20implementing%20AI>

Kitterman, T. (2024, September 10). *How great companies use AI to mitigate bias in the workplace.* Great Place to Work.

<https://www.greatplacetowork.com/resources/blog/how-great-companies-use-ai-to-mitigate-bias-in-the-workplace>

YouTube. (2019, February 9). *This is what makes employees happy at work | The Way We Work, a TED series.* <https://www.youtube.com/watch?v=PYJ22-YYNW8>

Ashworth, B. (2022, June 4). *Amazon watches its workers and waits for them to fail.* Wired.

<https://www.wired.com/story/amazon-worker-tracking-details-revealed/>

Gurley, L. K. (n.d.). *Internal documents show Amazon's dystopian system for tracking workers every minute of their shifts*. Vice

<https://www.vice.com/en/article/internal-documents-show-amazons-dystopian-system-for-tracking-workers-every-minute-of-their-shifts/>