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The Proliferation of State Laws Regulating AI Use in Employment Decisions

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By: Naureen Amjad, Riebana E. Sachs

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While there is currently no comprehensive federal legislation regarding the use of Artificial Intelligence (“AI”) in recruitment or employment decisions, states are responding with a growing patchwork of various enacted and proposed legislation. Most recently, Colorado and Illinois passed laws regulating the use of AI in recruitment and employment decisions. Both AI laws are slated to be effective in 2026. Several other states, including California, Virginia, Texas, New York State, and Connecticut have similar laws or pending AI legislation.

Under the Colorado Artificial Intelligence Act (“CAIA”), which will go into effect on February 1, 2026, Colorado employers will be required to use “reasonable care” to protect employees from any “known or reasonably foreseeable risks of algorithmic discrimination” when AI is involved in “consequential decisions” related to employment. The CAIA creates serious notice, risk management and risk assessment obligations for covered employers. Under the Illinois AI statute which goes into effect on January 1, 2026, employers will be prohibited from using AI in a manner that causes a discriminatory effect based on any protected characteristic already covered under the Illinois Human Rights Act (“IHRA”), or zip codes as a proxy for a protected class under the IHRA. Covered Illinois employers will be subject to certain notice requirements that extend to applicants and employees.

As AI laws continue to be passed across the states, employers face nuanced definitions of what qualifies as a covered “AI system.” The CAIA, for example, is primarily focused on “high-risk” AI systems, defined as any AI system that “makes, or is a substantial factor in making, a consequential decision.” A “consequential decision” in turn, means a decision that has a material effect on the provision or cost of employment or an employment opportunity. Illinois’ AI statute defines “AI” as any “machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.” Both, the CAIA and the amendments to the IHRA, cover generative AI (i.e., an AI system capable of generating text, images, audio, videos, or other content that would otherwise be produced by humans), with the most commonly known ones being ChatGPT, Copilot or Gemini.

We will continue to monitor the rapidly changing regulatory landscape of AI employment laws. In the meantime, employers should ask their HR employees to inventory their AI use and analyze whether any or all of the AI

use may subject them to coverage under certain AI laws. Please contact Naureen Amjad, Riebana E. Sachs or any member of the Employment, Labor and Benefits Group with any questions.

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