



News & Types: Employment, Labor & Benefits Update

AI and Attorney-Client Privilege: What Employers Should Know

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A recent ruling in *United States v. Heppner*, addressed the application of the attorney-client privilege and the work-product doctrine to materials generated by a client using a consumer-grade generative Artificial Intelligence (AI) tool, without direction of an attorney. In *Heppner*, a criminal defendant input information, which included private and confidential discussions with his attorney, into the AI platform, Claude. He intended to prepare reports outlining defense strategies and potential arguments. He later shared these AI generated reports with his attorney. The *Heppner* Court ruled that the output from the AI tool was neither protected by the attorney-client privilege nor the work-product doctrine because the input loaded into Claude and Claude's output was not an exchange between a client and his attorney. Further, the defendant did not maintain confidentiality, because Claude's privacy policy clearly stated that a user's data and prompts will be used for model training and disclosed to third parties. The defendant had waived any existing privilege because he voluntarily disclosed discussions with his attorney to a third party (*i.e.*, the AI platform). Likewise, the Court ruled that the work-product doctrine also did not apply because the materials were not generated at an attorney's direction and did not disclose an attorney's legal strategy or mental impressions.

Establishing and enforcing a robust AI policy is highly recommended as the best way for employers to preserve attorney-client privilege and protect work-product in this AI era. Employers should only use AI platforms that have been formally vetted by their legal and IT departments. Enterprise AI versions may be the preferable choice because they typically include "opt-out" clauses for data training and other stricter data isolation protocols. Because AI use by employers is now regulated in certain states (including Illinois), it is always best to consult with counsel first.

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