

AI For Advancing Diversity In The Workplace: Friend Or Foe?

By **Consuela Pinto and Dawn Siler-Nixon** (April 17, 2023)

Artificial intelligence is transforming applicant sourcing, screening and selection processes.

To date, much of the discussion surrounding the use of AI in the workplace has focused on the potential pitfalls associated with these tools.

Indeed, AI tools have been flagged by government agencies for their potential effects on workplace diversity, equal employment opportunity and accessibility.

The White House,[1] the U.S. Equal Employment Opportunity Commission[2] and Federal Trade Commission[3] have all issued guidance outlining the potential for bias and discrimination posed by AI tools.

Additionally, on Jan. 31, the EEOC held a hearing on the use of AI in employment, titled "Navigating Employment Discrimination in AI and Automated Systems: A New Civil Rights Frontier" to explore the potential benefits and drawbacks of AI selection tools.[4]

State and local governments are also responding to the potential threats posed by the implementation of AI tools in the workplace by passing laws regulating the use of such tools in the employment context.

Blindly adopting any selection tool without a keen understanding of how it works can lead to biased employment decisions. This is particularly true of AI tools where the design, source data and any assumptions built into the design of the device are generally unknown.

However, if used effectively, AI tools can positively affect workplace diversity and inclusion initiatives.

Effective Use of AI Leads to Increased Diversity and Advancement Toward ESG Goals

AI-based tools are gaining popularity with employers interested in streamlining employment processes. These tools automate the recruitment, selection and performance management decisions, minimizing the need for human intervention and significantly reducing hiring costs.

AI technology provides employers with an efficient means of accomplishing otherwise labor-intensive tasks, such as facilitating remote work.

For example, if a position has a telework option, a greater cross section of qualified applicants, particularly individuals with disabilities, women and single parents can be considered.

Additionally, AI can quickly assess thousands of applications to identify a handful of the most qualified candidates, who are most likely to accept an offer of employment, as well as assess the demographics of a workforce.



Consuela Pinto



Dawn Siler-Nixon

Employers can also leverage AI tools to create a more diverse and inclusive work environment enhancing its environmental, social and governance, or ESG, objectives.

These tools have the capacity to:

- Analyze the qualifications of individuals who express interest in employment with the company across multiple recruiting efforts/platforms to source the best diverse talent.
- Identify the ideal mix of skills and experience for hard-to-fill roles, making those opportunities available to a previously untapped talent.
- Scan job postings and position descriptions for biased terms and recommend more inclusive language.
- Identify trends in turnover data allowing employers to focus on key drivers and take effective action to retain diverse talent.
- Identify areas within the company that lack diversity because of hiring or promotion practices.
- Assess proposed starting pay decisions and compensation increases associated with a promotion to identify potential gender and race disparities.
- Assess market data allowing employers to offer competitive compensation and benefits packages.
- Analyze the diversity of a workforce without requiring self-identification or visual observation identification of demographics.

- Determine the amount of initial pay offers and annual salary increases to more closely reflect the value of the skills and experience each individual brings to the job, and reward those with necessary but hard to find skills and experience.

Even though the use of AI can have many benefits, unfettered reliance on AI can result in systemic discrimination because AI methods can reflect the biases of their human designers and users.

Managing the Risks and Reaping the Rewards of AI

While AI can enhance diversity, equity, inclusion and accessibility, or DEIA, in the workplace, it is not a silver bullet. However, with the appropriate guardrails in place, AI can enhance workplace diversity.

The key to reaping the rewards of AI while minimizing the potential risks is human oversight:

- Train AI users. Human resources professionals should understand the design of, and assumptions underlying, any AI tools. Selection tools should not be a black box to those who use them and rely on them to make recruiting and employment decisions.[5]
- Prior to implementing an AI tool, test the underlying data for bias. Make adjustments where needed.
- Monitor recruiting and selection results against the company's goals and objectives.
- Periodically test for biased decision making and impact on workplace diversity. This is a necessary protocol for any employment selection procedure, but is particularly important when machine learning tools are used.
- Continue robust targeted recruiting of a diverse pool of applicants and retool by expanding recruiting sources.
- Use a diverse slate process for interviews in conjunction with any AI tools.[6]

- Continuously monitor workplace diversity.
- Be transparent to job applicants about the use of AI in selection and promotion processes.
- Test AI tools for accessibility and make changes where needed and provide reasonable accommodations.
- When using tools like ChatGPT, implement guardrails around how this technology may be used and by whom. Develop protocols for ensuring confidentiality of personnel data and monitor the use and actions taken by human resources and management based on feedback they received from ChatGPT.
- Demand transparency from AI vendors regarding source data and the methodology and results of any adverse impact testing.
- Regular assessments of AI-supported compensation decisions are particularly important. Any bias in AI-supported pay decisions will quickly debase employers' proactive pay equity advances and expose them to significant legal risk. Smart employers will continue to conduct annual pay equity analyses. While AI tools exist to conduct pay equity analyses, they too may have embedded biases.

Conclusion

In the wake of the #MeToo movement and social justice reforms, employers across the country embraced diversity, equity and inclusion initiatives, including voluntary diversity goals, employee resource groups, out-of-the box recruitment strategies and more.

Investors did their part by putting a focus on the S in ESG, implementing enhanced reporting obligations related to diversity and inclusion, nondiscrimination and pay equity.

Prospective employees joined the movement sizing up prospective employers' level of diversity and demonstrated commitment to DEIA before accepting an offer of employment.

There is no question that AI has the potential to positively move the DEIA needle, significantly enabling employers to identify areas for improvement and develop targeted strategies for attracting and retaining diverse talent.

However, like any other recruiting and selection tool, if left unchecked, AI tools have the potential to reinforce prior biased decision making resulting in less diversity and an

increased risk of disparate impact claims.

A rigorous compliance program focused on the design and implementation of AI tools coupled with periodic bias assessments of employment decisions are critical. With such preventive measures in place, employers can reap the benefits of AI while enhancing diversity and minimizing the risk of discrimination claims.

Consuela A. Pinto and Dawn Siler-Nixon are partners at FordHarrison LLP.

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[1] Blueprint for an AI Bill of Rights | OSTP | The White House. <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>.

[2] The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees | U.S. Equal Employment Opportunity Commission (eoc.gov). <https://www.eoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence>.

[3] FTC Report Warns About Using Artificial Intelligence to Combat Online Problems | Federal Trade Commission. <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-report-warns-about-using-artificial-intelligence-combat-online-problems>.

[4] EEOC Hearing can be accessed here. <https://www.youtube.com/watch?v=rfMRLestj6s>.

[5] Black Box refers to an AI system whose inputs and operations are not visible to the user or other party.

[6] A diverse slate process requires that a selection decision will only be made where a number of diverse candidates are interviewed for a particular position. Diverse slates are typically employed for management and executive level positions and should be implemented in compliance with legal guardrails.