



# Loudon Monroe Seminar 2026

**AI: Artificial Intelligence or Annoying Interloper?**

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# AI: Artificial Intelligence or Annoying Interloper?

First, the answer is both!

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Lawyers and technology do not always mix well.

- **Mata v. Avianca (2023):** Two lawyers of Levidow Law Firm used ChatGPT to write a brief, which produced fake cases with citations. They were sanctioned \$5,000 each.
- **California Attorney Fined (2025):** CA Attorney was fined \$10,000—the largest fine for AI fabrication in California at the time—for submitting a brief with 21 non-existent cases generated by ChatGPT.
- **Mike Lindell's Lawyers:** Lawyers for MyPillow CEO Mike Lindell were ordered to pay \$3,000 each after using AI to generate a court filing that included fabricated case citations.
- **Georgia Prosecutor Case:** A Clayton County prosecutor used AI for Georgia Supreme Court filings, resulting in at least five non-existent case citations.
- **Utah Court of Appeals Case:** Attorney was sanctioned for a brief containing a non-existent case, *Royer v. Nelson*.
- **Australian Murder Case:** A senior lawyer in Australia apologized for filing submissions containing fake quotes and fabricated case judgments created by AI.



## Common AI Uses

Summary of documents

Research for information

Generate language (emails, presentations, legal briefs, etc.)

Algorithmic software and automated decision systems (ADS)



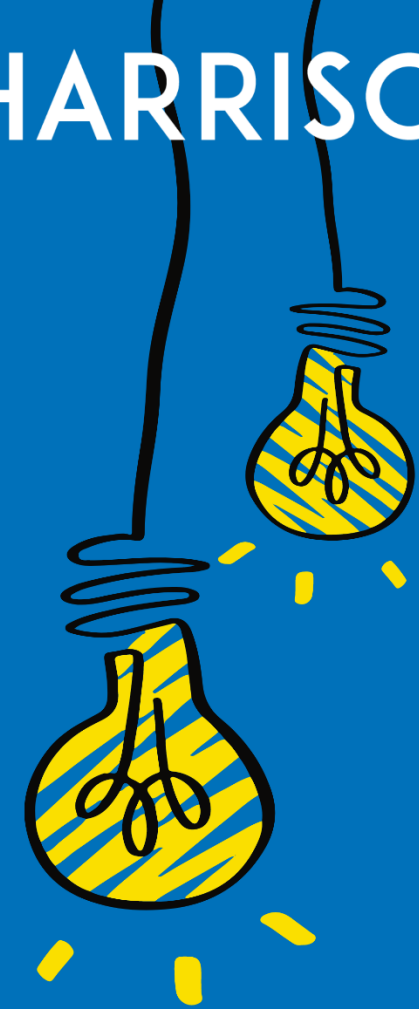
## HR Related Areas of Use

Hiring

Performance evaluation

Compensation reviews

Other employment related decisions (promotion,  
discharge)



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## Who Cares?

**Algorithms can lead to charges of discrimination.**

**If used on a broad scale, the algorithm can impact thousands of decisions.**

**i.e. Its use increases the scale of potential harm.**



## Automated Technology Tools With The AI Twist

Algorithms commonly use and process data based on predefined rules.

Generative AI can “learn” from the data, and make autonomous adjustments over time.

Is that a good thing or a bad thing?



## Examples Used In HR

**Applicant tracking systems (ATS) use algorithms to score applicants compared to the position description, or rank resumes by comparing skills.**

**Skills-based search engines use algorithms to match job seekers with open positions.**

**AI powered interview platforms assess candidate responses in video interviews, evaluate facial expressions, tone and language to predict things such as fit or likelihood of success**



## Examples Used In HR

Automated performance evaluation systems can analyze data such as productivity metrics and feedback to provide ratings.

AI systems can listen to phone calls and score employee and customer service interactions.

AI systems can analyze background check information as part of the hiring process.

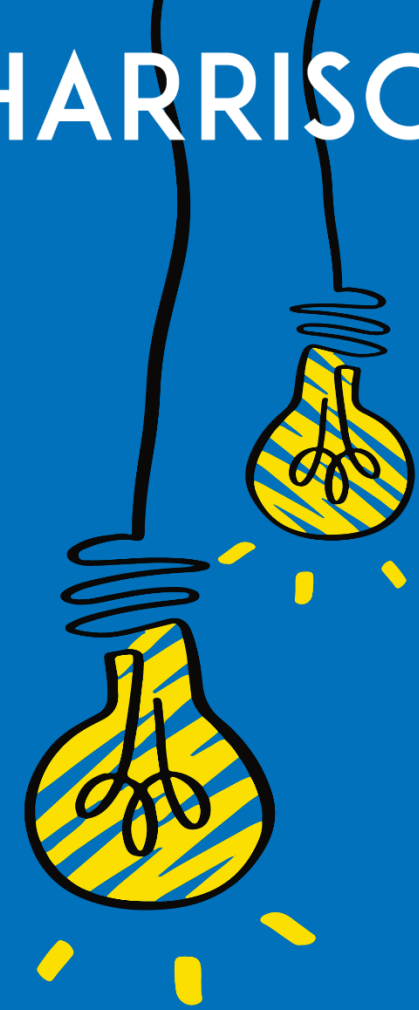


## Examples Used In HR

**Automated technology can be incorporated into compensation processes to predict salaries, assess market fairness, evaluate pay equity.**

**Automated systems used in the hiring process for scheduling or other logistics.**

**AI models can analyze historical hiring data and predict which candidates are more likely to succeed, or a greater risk for early turnover.**



## That All Sounds Great! What's The Issue?

Title VII protects against discrimination on the basis of race, color, religion, sex or national origin.

AI systems designed to be neutral, but if it disproportionately impacts a protected class, a disparate impact claim can be made. That is still in Title VII, though the current administration has said they will not pursue it.



## ADA

If an AI system screens out individuals with disabilities, they could violate the ADA. Also, AI based systems must be accessible, and reasonable accommodations made where needed.

## ADEA

Prohibits age discrimination against applicants and employees forty years old and older.

## Equal Pay Act

AI tools that use compensation and salary data may replicate past pay disparities. Employers using AI for pay and compensation purposes need to ensure this does not happen.



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## EU AI Act

Passed comprehensive legislation designed to ensure safe and ethical use of AI in the European Union.

## State and Local Laws

There is no federal AI legislation yet. Some states and localities have either passed or proposed laws re topics such as video interview, facial recognition software, bias audits of automated employment decision-making tools, and notice and disclosure requirements.

## Data Privacy Laws

International, state and local laws governing data privacy.



## The Challenge Of Algorithmic Transparency

**How does the algorithm decide?**

**Unlike a human interviewer, for example, generative AI does not explain its response.**

**Viewed as “black boxes”, which make it difficult for employers to understand, or defend, challenged decisions.**

**Because AI learns, standards applied to one candidate or set of candidates may not be the same with respect to other subsequent candidates.**



## Thoughts Re Mitigating Risk

**Policies governing AI use and related issues such as transparency and data privacy.**

**Conduct due diligence on AI vendors.**

**Do not utilize AI tools without understanding their purpose and impact.**

**Provided training for those who will use AI tools.**



## Thoughts Re Mitigating Risk

Have human oversight over ultimate workplace decisions.

Ensure compliance with applicant or other notice and disclosure requirements, and any audit requirements.

Have systems in place for providing reasonable accommodations.

Monitor AI tools through workforce analytics to guard against disparate impact claims.



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**Kistler and Bhaumik v. Eightfold, AI, Inc.**

**Filed in CA in January.**



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**Eightfold AI, Inc.**

**Provides a variety of AI tools for use in recruiting candidates.**

**Improve hiring decisions, save time, get better candidates.**



## Complaint allegations.

**Eightfold “uses hidden Artificial Intelligence (“AI”) technology to collect sensitive and often inaccurate information about unsuspecting job applicants and to score them from 0 to 5 for potential employers based on their supposed “likelihood of success” on the job.”**

**Eightfold gathers data “such as social media profiles, location data, internet and device activity, cookies, and other tracking to create a profile about the candidate’s behavior, attitudes, intelligence, aptitudes and other characteristics that applicants never included in their job applications.”**



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“These job applicants have no meaningful opportunity to review or dispute Eightfold’s AI-generated report before it informed a decision about” their employment.

“Eightfold runs this information through its proprietary Large Language Model (“LLM”), which according to Eightfold incorporates “more than 1.5 billion data points,” including “more [than] 1 million job titles, 1 million skills, and the profiles of more than 1 billion people working in every job, profession and industry.”

Eightfold uses the data and its evaluation tools to rank applicants and make predictions about their fit or likelihood of success.

Eightfold sells the reports to employers for use in making employment decisions.



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**This all sounds “big brother” like for job seekers.**

**What’s the legal problem if Eightfold is gathering this data via sources that are accessible, such as Linked-In, Indeed, social media, etc.?**



## The Fair Credit Reporting Act.

General FCRA requirements.

Limits disclosure of adverse items of information, other than criminal convictions, to 7 years.

Requires procedures to ensure accuracy.

Requires consumer reporting agency (CRA) to make consumer report available to the consumer upon request, and to investigate and correct errors.



## **Employment specific FCRA requirements.**

**Applicants must receive a clear, specific stand alone disclosure that a consumer report will be obtained for employment purposes.**

**Applicants may withhold authorization.**



## Employment specific FCRA requirements.

**Applicants must have opportunity to review and correct information before an adverse decision.**

**CRA may provide consumer report to an employer only after receiving certification from the employer that:**

- (1) the employer has complied with the FCRA's disclosure and authorization requirements;**
- (2) the employer will comply with the FCRA's notice, dispute and error correction requirements; and**
- (3) the employer will not use consumer report information in violation of any applicable federal or state equal opportunity law or regulation.**



## Employment specific FCRA requirements.

CRA must also notify employers of their FCRA responsibilities.



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CA has its own law.

California Investigative Consumer Reporting Agencies Act (ICRAA)

Like FCRA, requires procedures to ensure accuracy, notice obligations to applicants, authorization from applicants, and opportunities to correct.



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**Complaint alleges Eightfold compiles and sells the reports without complying with FCRA or ICRAA requirements.**

**Seeks a nationwide class.**



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This case illustrates ways that AI can intersect with the law and with workplace practices in unexpected ways.

As they used to say on Hill Street Blues, be careful out there!



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