



PUBLIC COMPANY UPDATE AND OTHER TRENDING TOPICS

February 4, 2026

BCLP.

01

Changes in the Political Landscape

Your Speakers



Jack Oliver
Senior Policy
Advisor -
Public Policy and
Government Affairs



Russ Carnahan
Senior Policy
Advisor -
Public Policy and
Government Affairs

02

The Current Diversity, Equity, and inclusion Landscape

In recent months, diversity, equity, and inclusion practices have seen significant shifts across both the public and private sectors. Many employers have been left questioning what is permissible under the law, and whether their D.E.I. practices have to be shuttered altogether. Join us for an in-depth review of the state of D.E.I. and a look as to what businesses and public institutions can expect in the coming months.

Your Speakers



Nelson Williams
Partner -
*Employment and
Labor
St. Louis*



Agenda

- 1 Overview and Background
- 2 Rationale and Importance
- 3 Current Legal Challenges
- 4 Private Sector Challenges and Risks
- 5 Next Steps – Options and Considerations
- 6 Discussion/Q&A



Overview and Background

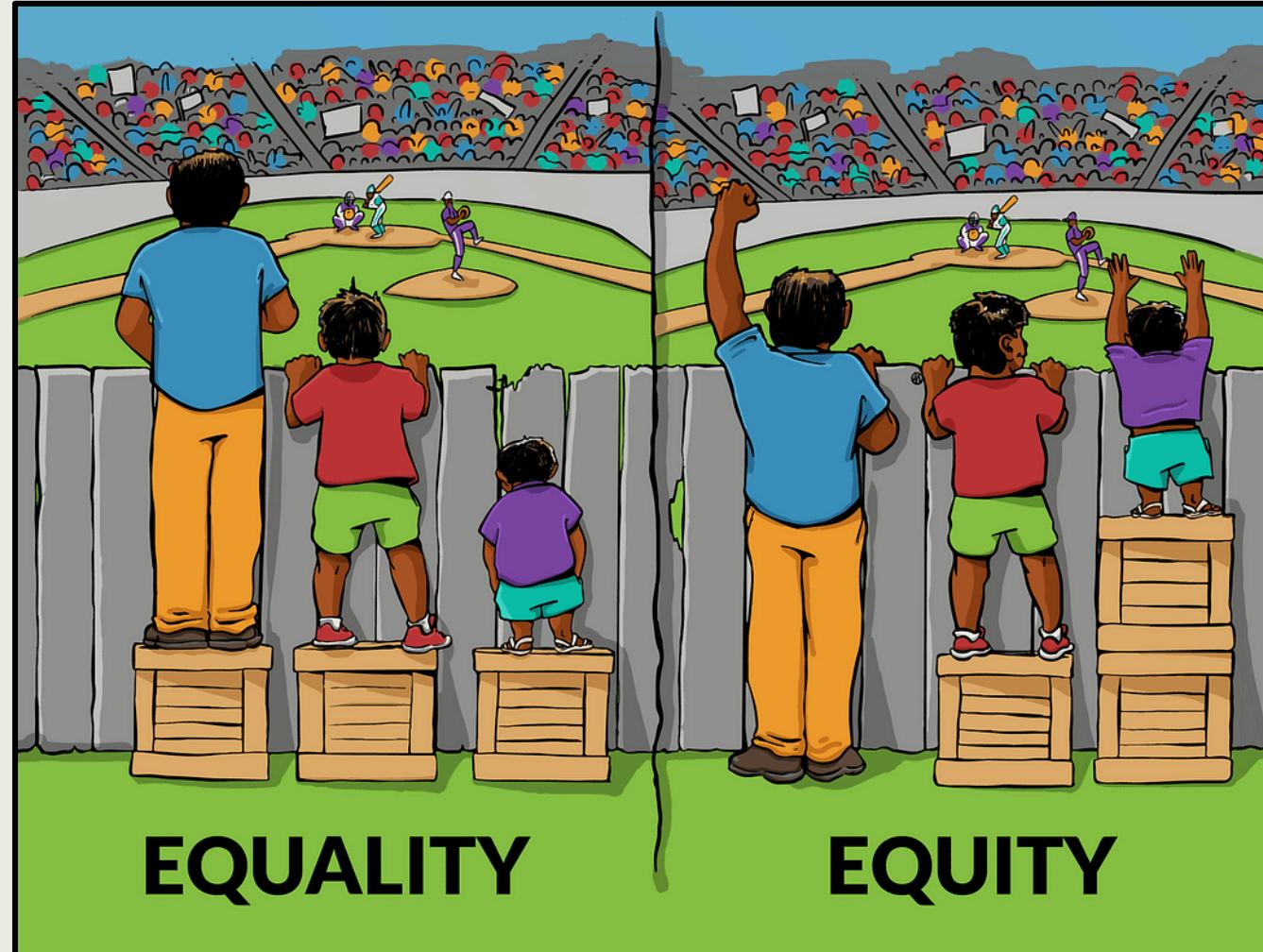
What is DEI?

- Inclusion of individuals from varying backgrounds. Emphasis on individuals from historically underrepresented groups
- Work to ensure equal access to opportunities.
- Creating a sense of belonging; fostering a welcoming environment individuals feel accepted

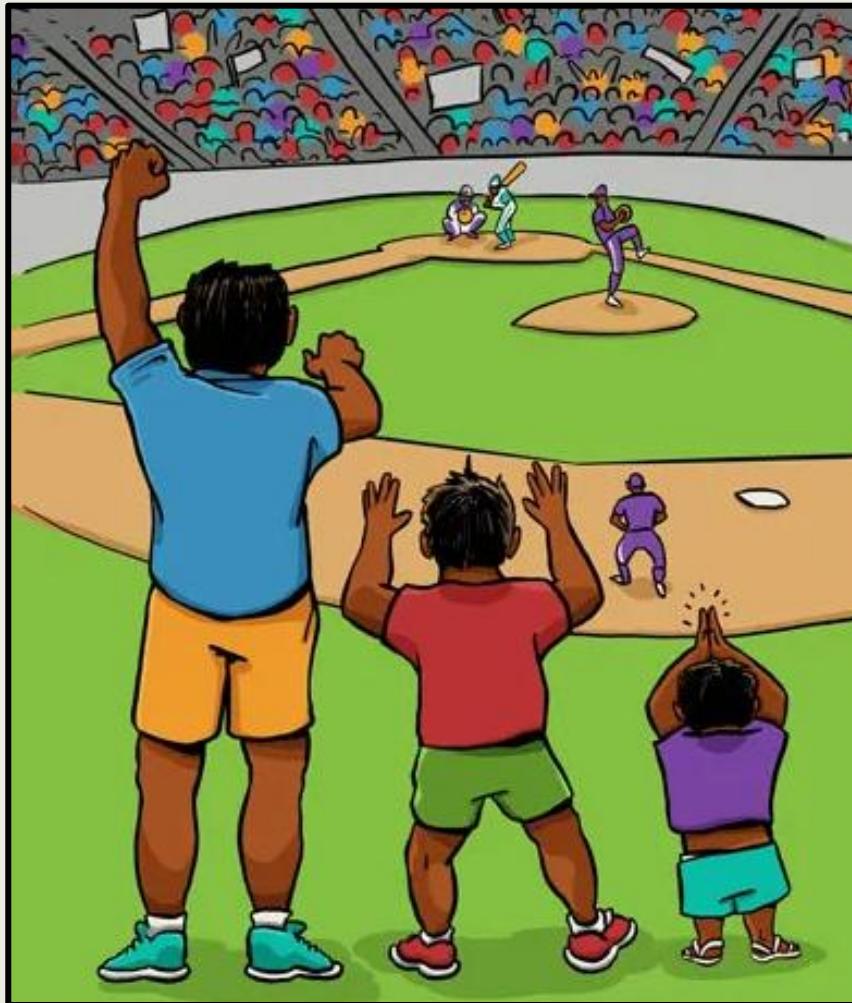
Examples

- Employee Resource Groups
- Pay equity and transparency
- Flexible work arrangements
- Implicit Bias Training and related initiatives

Traditional Framework...



...Reimagined





Overview and Background

Let's Debunk Some Myths

- It's not new
- Does not require quotas
- Does not require lowering standards
- It's profitable

McKinsey & Co Diversity Impact Studies (2023, 2020, 2018, 2015)

So, how did we get here?



Legal Challenges to DEI



The law has **NOT** changed;
the enforcement and scrutiny
has changed



Overview of **Students for Fair Admissions v. Harvard and UNC**

- Supreme Court ruling that struck down race-based admissions practices in higher education
- Decision based on the Equal Protection Clause of the 14th Amendment



Impact on Corporate DEI Programs

- Challenge extends to corporations and employers
- Potential legal scrutiny of DEI hiring practices, supplier diversity programs and ESG initiatives
- Increased litigation risk for race-based hiring or promotion

Public Sector DEI Challenges and Risks



Legal and Political Pushback

- Recently-issued executive orders
- Federal law
- State law

Public Reactions and Stakeholder Pressures

- Reactions from key stakeholders – employees, customers and business partners
 - Backlash against maintaining DEI programs
 - Backlash against retreating from DEI programs

Broad Executive Action

01

E.O. 14151

Targeting DEI
programs

02

E.O. 14281

Aimed at ending
disparate impact
claims

03

EEOC Guidance

04

**State Executive
Orders**

Private Sector DEI Challenges and Risks



Legal and Political Pushback

- Executive Orders targeting law firms
- Current status and legal action

Public Reactions and Stakeholder Pressures

- Responses from law firms have been mixed
- Reactions from the business sector

Next Steps – Options and Considerations

Three approaches

Do Nothing/Maintain all DEI Initiatives

1

Rework/Keep some DEI Initiatives

2

Roll Back/Terminate all DEI Initiatives

3

Assess all risk factors (litigation risk, brand reputation, client expectations, employee trust, etc.) and gauge your company's risk tolerance

How does your company want to proceed?

1. Maintain all DEI initiatives

- Review DEI policies and programs to ensure compliance with federal and state laws
- Document DEI initiatives to defend legal challenges
- Strategically communicate commitment to DEI initiatives and reasoning to stakeholders (shareholders, clients, employees, vendors, etc)
- Monitor and adjust policies and programs to achieve goals without potential discriminatory impact

2. Rework/Keep Some DEI Initiatives

- Review DEI policies and programs to identify areas to retain and ensure compliance with federal and state laws
- Revise policies to broaden definitions of "diversity" and enhance focus on "inclusion" and "belonging"
- Reconsider/Reassess your organization's use of acronyms/verbiage
- Strategically communicate changes with stakeholders to ensure alignment

3. Roll Back/Terminate all DEI Initiatives

- Review DEI policies and programs to identify those that pose significant risk of legal challenge
- Scale back with a phased approach
- Document rationale to prepare for challenges
- Strategically communicate changes with stakeholders, including rationale
- Consider alternative inclusive workplace initiatives



Questions?

Case law and references



- <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-matters-even-more-the-case-for-holistic-impact>
- *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023)
- *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, Exec. Order No. 14,173, 90 C.F.R. 8633 (2025-02097)

03

Securities Law Update

Review of recent SEC guidance and securities law developments including, changes to the shareholder proposal review process, updates on insider trading policies, California climate rules, FPIs and Section 16, risk factors, and other annual updates.



Your Speakers



Rob Endicott
Partner - *Corporate
& Finance
Transactions*



Bill Cole
Partner -
*Corporate & Finance
Transactions*
St. Louis



Ofir Klein
Partner - *Corporate
& Finance
Transactions*
St. Louis



Discussion road map

- 1 Shareholder Proposals
- 2 Insider Trading Policies
- 3 California Climate rules
- 4 Risk Factors and Other Annual Updates
- 5 FPIs and Section 16
- 6 Others

Changes to Shareholder Proposals and SEC No-Action Letter Process



On November 17, 2025, the Division of Corporation Finance staff of the SEC announced that, due to resource constraints:

The Division will not respond to most no-action letter requests to exclude shareholder proposals for the upcoming proxy season, other than requests under 14a-8(i)(1)

Companies will still need to make an informational notification of exclusion, including the reasons therefor, at least 80 days before filing definitive proxy materials

Staff will still provide a non-objection letter to the exclusion, even without substantive review, if a Company makes an unqualified representation that it has a reasonable basis to exclude a proposal under SEC rules, prior guidance or case law

Shareholder Proposal Process - Basics

14a-8 governs when shareholder proposals must be presented in Company's proxy statements

- **Shareholder must be eligible**
 - Continuously hold \$2K-\$25K in voting securities over 1-3 years
 - Rep. that will continue to hold through meeting
 - Reps about meeting with the company to discuss the proposal
- **Follow certain procedures**
 - One proposal; 500 words
 - Meets deadline (e.g., 120 days prior to last year's proxy release date)
- **Excludable for certain reason if Company follows the process**

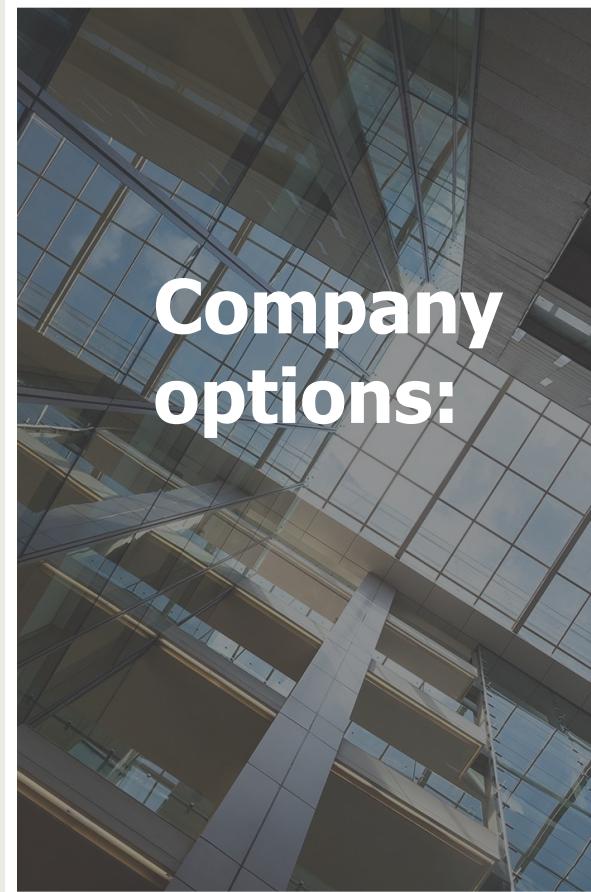


Shareholder Proposal Process -Basics

Excludable for certain
reason if Company
follows the process

- 1 Improper under state law
- 2 Violation of law/proxy rules (materially misleading)
- 3 Personal grievances; irrelevant; Company lacks power to implement
- 4 Management function/ordinary business/ micromanagement
- 5 Director Elections
- 6 Conflicts with Company Proposal
- 7 Substantially Implemented
- 8 Duplication/Resubmission (Less than 25% if voted on 3 years in a row)

Shareholder Proposal Process - Basics



- **Include proposal**
- **Negotiate with proponent**
 - Either before or after involving the SEC
 - Consider likely responses of others
 - Responses in subsequent years
- **Seek to exclude**
 - Seek No-Action Letter from SEC
 - Litigation

No-Action Letter Process

If seek to exclude a proposal, must notify SEC 80 days prior to filing proxy



Must "file reasons" with the Commission

Or later if staff finds Company demonstrated "good cause" for delay

Typically send email to staff through SEC website portal

Include explanation of why company believes it may exclude proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the Rule

Typically written as request that the staff concur in view that the proposal may be excluded and confirm that it will not recommend enforcement action to the Commission as a result of such exclusion

No-Action Letter Process *continued*

If seek to exclude a proposal, must notify SEC 80 days prior to filing proxy



SEC staff would either agree or not

During interim period, Company and proponent could negotiate/withdraw proposal or letter

If Company or proponent disagreed with staff, could always exclude and risk litigation

Often SEC does not respond until close in time to need to file proxy

No-Action Letter Process

SEC Staff Impact

04

Impacts regular work at staff

01

Very time intensive

02

May get 400+ requests per year

03

Task Force that acts over 3-4 months

SEC has considered changing process

05

06

Most recent government shutdown – decided to change process

- No Task force
- Less Review

07

May continue past this year

New Process

SEC will not respond substantively to most No-Action Letters on Shareholder Proposals

- 1 Does not apply to requests under 14a-8(i)(1)(improper under state law; not enough precedent)
- 2 Applies to the current proxy season (October 1, 2025 to September 30, 2026) and pending requests
- 3 Companies should still file reasons for exclusion 80 days before filing proxy statements. (14a-8(j)(1))
 - Companies do not need to seek the staff's views regarding their intention to exclude a proposal; response from the SEC is not required

New Process

- 1 Companies may still request “no objection” letters from the SEC
- 2 Include an “unqualified representation that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance and/or judicial decisions.”
- 3 Staff will respond with a letter indicating that, “based solely on the company’s or counsel’s representation, the Division will not object if the company omits the proposal from its proxy materials.”



New Process *continued*

- 1 Same website and portal
- 2 80 day deadline still applies
- 3 Notification letters and SEC responses still posted
- 4 Detailed arguments may be curtailed – but still provide explanation and refer to applicable authority
 - In practice may be much shorter
- 5 SEC turnaround has been very quick – a few days
 - Less time to negotiate
 - Less risk in result
 - If make request, very likely to get “no objections” letter



Considerations on New Process

Companies should carefully consider exclusions without substantive SEC review and the likely response from the proponent or others



Staff responses to both types of requests are not binding on the Commission



Companies are using process to request "no objection" letters

- May provide some additional comfort to companies as a "fig leaf" of at least staff acquiescence on the issue and as tangible support of its position to exclude
- Detailed arguments may be curtailed -- but consider different audiences
- Consider the likely response from the proponent and the potential for litigation or criticism from various constituencies, such as activists, media or others.

Considerations on New Process



Still need good faith/ reasonable basis to exclude

- May not be appropriate for cases conflicting with precedent or involving aggressive interpretations or novel arguments.
 - Although reasonable basis may not mean always in complete agreement with precedent
- Even with a no objections letter, the SEC is not precluded from taking enforcement action and proponents or others may still react negatively.



Could exclude even without SEC input

- Microsoft did so during shutdown. The proponent filed a notice of exempt solicitation appealing to shareholders to vote against the governance committee chair.



Consider Reactions of Various Groups

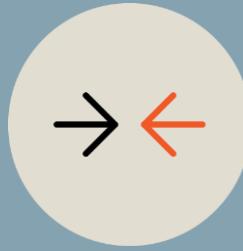
- As the “no objections” procedure is new, companies should carefully consider the potential for adverse reactions of proponents, shareholders and other constituencies.
- Shareholder analysis
- Proponent

Considerations on New Process - ISS Position (FAQ)



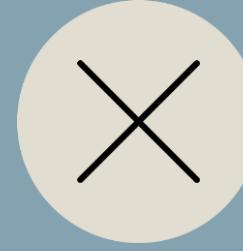
Ordinary Business

Clearly explain why excluded - how precedent supports company position



Substantially Implemented and Conflicts with Company proposal

Clearly explain reason(s) for any significant deviations of the company's relevant implemented practice from the terms of the shareholder proposal, or how it conflicts with the relevant proposal being put forward by the company



In certain cases, failure to present a clear and compelling argument for the exclusion of a proposal could be viewed as a governance failure

Leading to ISS highlighting the exclusion through direct reference in the report, contentious flag at the proposal level, or, in rare cases based on case-specific facts and circumstances, a recommendation to vote against one or more agenda items (which may be individual directors, certain committee members or the entire board).

Considerations on New Process

Litigation risks



Uncommon because expensive and NAL process; now may be more likely - at least in select cases



Companies may consider direct litigation against proponents

- Cannot make required representation (e.g., little precedent, such as false and misleading statements, ordinary business operations, purported evidence of stock ownership based on questionable documentation, or in other cases where a company disagrees with the staff's past positions)
- To establish precedent
- "Send a message" to potential future proponents

Insider Trading Policy review

Key considerations following disclosure of insider trading policies with SEC filings

How long after release is MNPI considered “public” (outside blackout periods)



One full trading day (most common)



Two full trading days

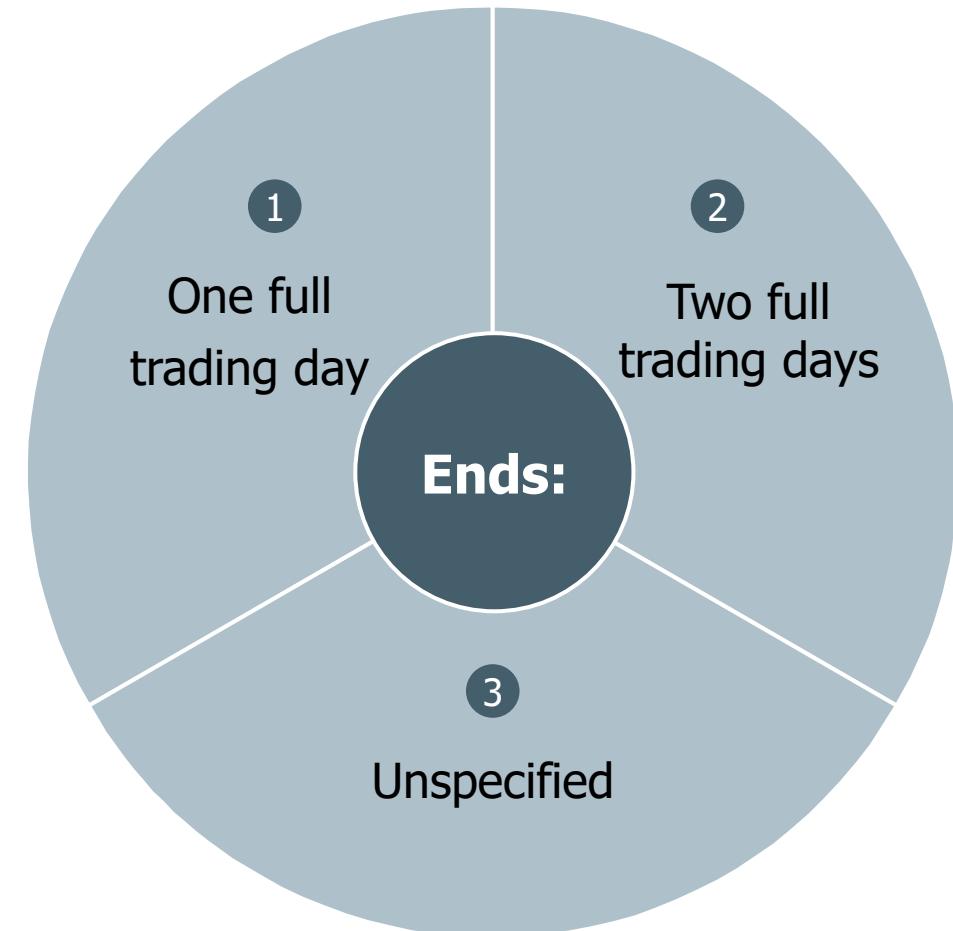


Unspecified



Insider Trading Policy review, cont.

When do quarterly black-out periods start and end?



Insider Trading Policy review, cont.

Who is subject to quarterly black-out periods?

- Directors, Section 16 officers and others with access to financial information (most common)
- Directors, Section 16 officers and **all** employees



Insider Trading Policy review, cont.

Who is subject to “preclearance” of trades during open windows?

- Directors and Section 16 officers only
- Directors, Section 16 officers and others with access to financial information (most common)
- Directors, Section 16 officers and “key employees”
- Directors, Section 16 officers and all employees (least common)

How long is preclearance effective before it needs to be re-obtained?

- Two trading/business days (slightly more common than five)
- Five trading/business days
- Not addressed

Insider Trading Policy review, cont.

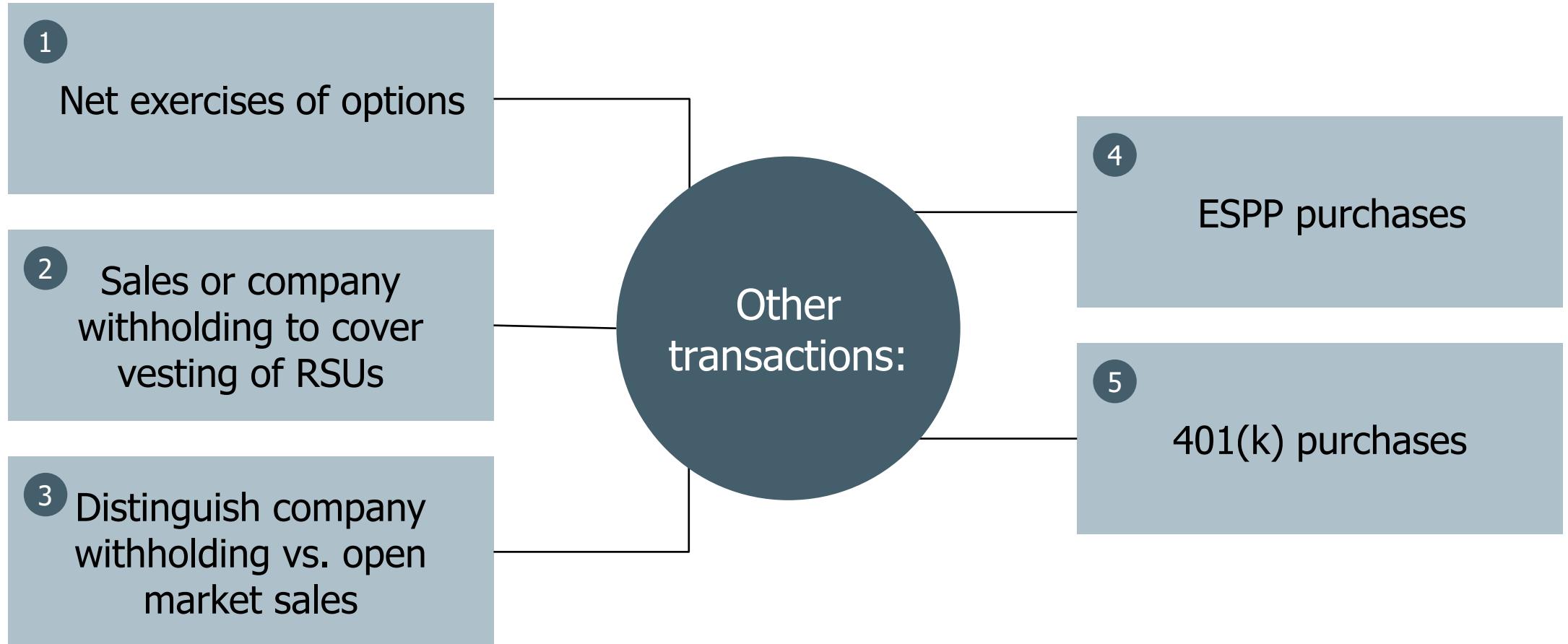


Insider Trading Policy review, cont.

- Hedging vs. Pledging and holding in margin accounts
- Treatment of exchange funds



Insider Trading Policy review, cont.



Insider Trading Policy review, cont.

Shadow trading

- Many policies cover trading in securities of company customers, suppliers and strategic partners
- Many fewer cover “economically linked” securities (typically Fortune 50 or 100 companies)

Policy covers post-termination?

- Yes, to all insiders, until any MNPI they possess has become public/is no longer material (e.g., end of the next following black-out period when information is released)
- Not addressed

Confidentiality in Insider Trading Context

- The U.S. Attorney in the Eastern District of New York charged two individuals with misappropriating material non-public information through their work as employees of an SEC filing service
- Although the misconduct took place at a vendor, the charges serve as a reminder to public companies to review their internal practices to protect confidential information



Confidentiality in Insider Trading Context, cont.

Best practices include:

Sharing material news only with those employees that have a need to know



Restricting access to documents on company networks to approved employees, including by:

- Securing sensitive documents from inclusion in searches by others in the company
- Establishing device and printing restrictions for sensitive documents before release

Using code names in documents for significant matters

Confidentiality in Insider Trading Context, cont.



Securing physical documents in locked drawers, whether at the office or at home

Reminding employees of their confidentiality obligations in connection with significant transactions or developments, including:

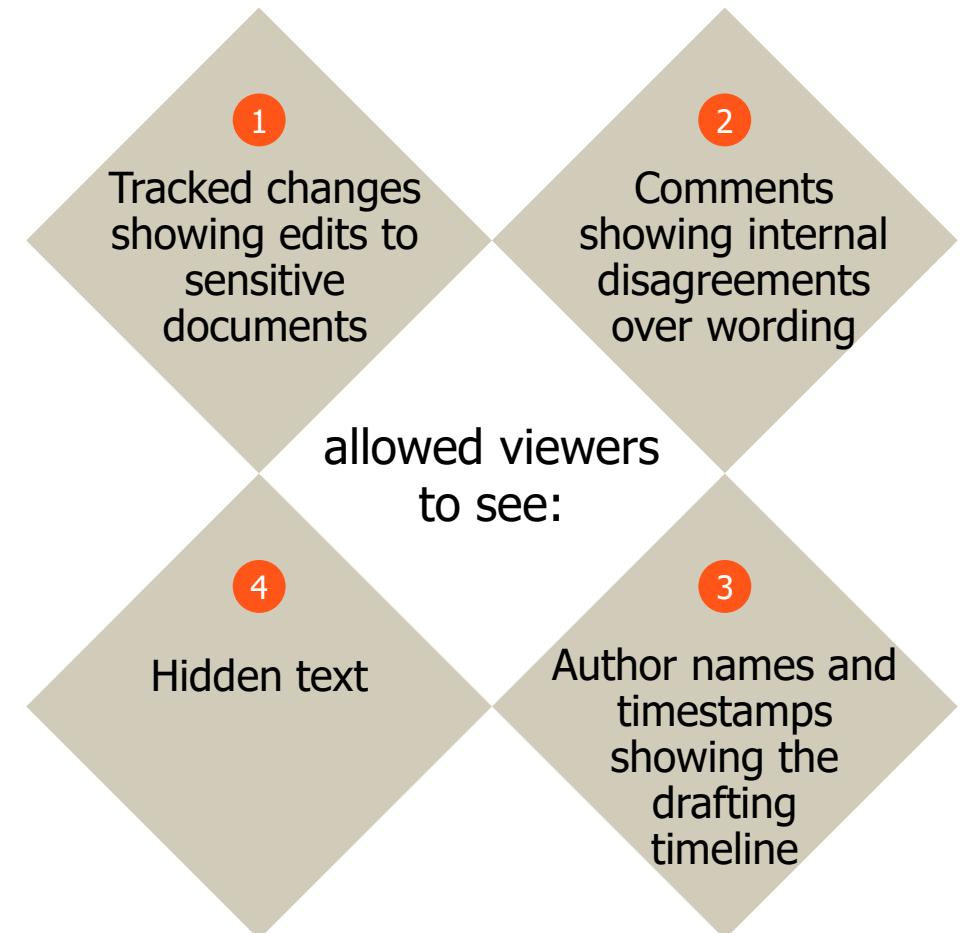
- Avoiding discussions with anyone outside the working group or in any location where others may overhear conversations
- Not discussing or sharing information with spouses or other family or household members

Evaluating third party agents for Edgarization or press release distribution, including with respect to their compliance policies, reputation, and employee training and confidentiality procedures

Protecting Public Disclosures

Review internal controls relating to public announcements, including:

Scrubbing metadata – or only using clean PDF formats - before releasing documents (or sharing via cloud collaboration). On some prior occasions, failures have allowed viewers to see:



Protecting Public Disclosures, cont.

Preventing premature posting, or mistaken posting of outdated versions, by:



Establishing clear communications with financial printers, filing and transfer agents, as well as IR and website teams and other third party vendors with access to confidential or sensitive information



Evaluating drafting and review controls, including collaboration tools with audit trails, to avoid confusion over drafts or final versions



Maintaining formalized levels of review by legal, finance, IR, and other relevant teams



Reconciling SEC filings and press releases to ensure consistency

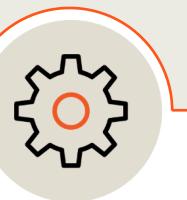
Protecting Public Disclosures, cont.



Evaluating controls for authorized release times, protocols for transmission to wire services and documentation of approvals from stakeholders



Periodically conducting testing for SEC filing and press release distribution protocols



Establishing procedures for promptly retracting or correcting erroneous communications, along with Form 8-Ks where appropriate



Reviewing or updating the external communications policy, including identification of parties authorized to speak to the media or analysts and related confidentiality obligations

California SB 253 and 261 – Climate disclosures

For entities incorporated in the United States that do business in California, SB 253 (the Climate Corporate Data Accountability Act) and SB 261 (Greenhouse Gases: Climate-Related Financial Risk) will have a broad impact based on the stated applicability thresholds

- SB 253 requires both public and private companies operating in California that have revenue exceeding \$1 billion to publicly report their greenhouse gas (GHG) emissions
- CARB (California Air Resources Board) is proposing an initial reporting deadline of August 10, 2026. The report will encompass Scope 1 and 2 emissions, based on the prior year's data. In 2027, on a date to be determined by CARB, entities must include Scope 3 emissions for the prior fiscal year. The measurement and reporting of these calculations must adhere to the GHG Protocol standards, along with any additional guidelines yet to be published by CARB



California SB 253, cont.



Starting in 2026, entities will need limited assurance from an independent accredited third party for Scope 1 and 2 emissions, moving to reasonable assurance beginning in 2030. Reporting entities shall include the assurance report and the name of the provider in their public disclosure



In 2029, CARB will reevaluate these requirements, such as Scope 3 reporting and qualifications for third-party assurance, against current reporting trends and common practices for potential changes by Jan. 1, 2030



California SB 261



SB 261 will affect both public and private companies operating in California that have global annual revenue exceeding \$500 million, with the caveat that companies subject to California Department of Insurance regulation, or conducting insurance business in other states, are exempt from this legislation

- **Nov. 18, 2025 update:** A U.S. appeals court has issued an injunction pausing the implementation of SB 261 pending appeal. This did not include SB 253. The outcome of the appeal is currently scheduled for January 2026

Entities to prepare a biennial public climate risk report which would be required to include the disclosure of the identified climate-related financial risk(s) and the measures taken to reduce and adapt to the physical and transition risks. Reporting should follow the guidance provided by the Task Force on Climate-Related Financial Disclosures, a framework being leveraged globally by regulators and standard setters, including the European Union and the International Sustainability Standards Board. Reports would be required to be made available to the public through a reporting entity's external-facing channels, like a website or webpage

Risk Factors and Other Annual Updates

Housekeeping considerations – Form 10-K

1

Filer status

5

SOX certifications

2

Cover page

6

Rule 405 disclosures

3

Data tagging

7

Non-GAAP disclosures

4

Exhibits

8

Director questionnaires

Risk Factors

1

Artificial intelligence developments

2

Government shutdown

3

Tariffs and trade policy

4

Continuing tariff uncertainties

5

Cybersecurity threats and vulnerabilities

6

Geopolitical risks

7

Supply chain and labor challenges

Additional reminder to risk factors:



- Avoid Boilerplate Disclosures
- Keep in mind that presenting risks as "hypothetical" or speculative when, in fact, a material adverse event has actually occurred can be misleading (e.g., indicating that an event "could" or "may" occur rather than "has" or "did" occur)
- Stay mindful of the "buried facts" doctrine, under which disclosure may be found to be false and misleading where its significance is obscured or buried
- Review the substance and priority of factors included in their forward-looking statement disclaimers
- Include a summary (concise, bulleted or numbered, and not more than two pages) where the risk factors section exceeds 15 pages
- List risks in general order of significance under relevant headings

Section 16(a) Rules Expanded to Foreign Private Issuer D&Os

- The Holding Foreign Insiders Accountable Act (HFIAA) eliminates the long-standing Section 16(a) exemption for directors and officers (D&Os) of foreign private issuers (FPIs)
- Effective March 18, 2026, D&Os of FPIs must comply with U.S. insider reporting requirements under Section 16(a)
- D&Os must disclose: (i) initial ownership of company equity securities, and (ii) any subsequent transactions, generally within two business days
- FPIs D&Os remain exempt from: Short-swing profit rules under Section 16(b)
- Currently 10% beneficial owners of FPIs remain exempt from all Section 16 requirements
- Recommended Next Steps

Questions



04

Human Resources in the Age of AI: Tools, Risks, and Legal Strategies for Success

Exploring the intersection of AI and HR and help human resource professionals, in-house teams and compliance officers, among others, navigate these cutting-edge issues.



Your Speakers



Goli Mahdavi
Partner - Data
Privacy and
Cybersecurity
AI Service Line Lead



Amy de La Lama
Partner and
Chair - Data
Privacy and
Cybersecurity



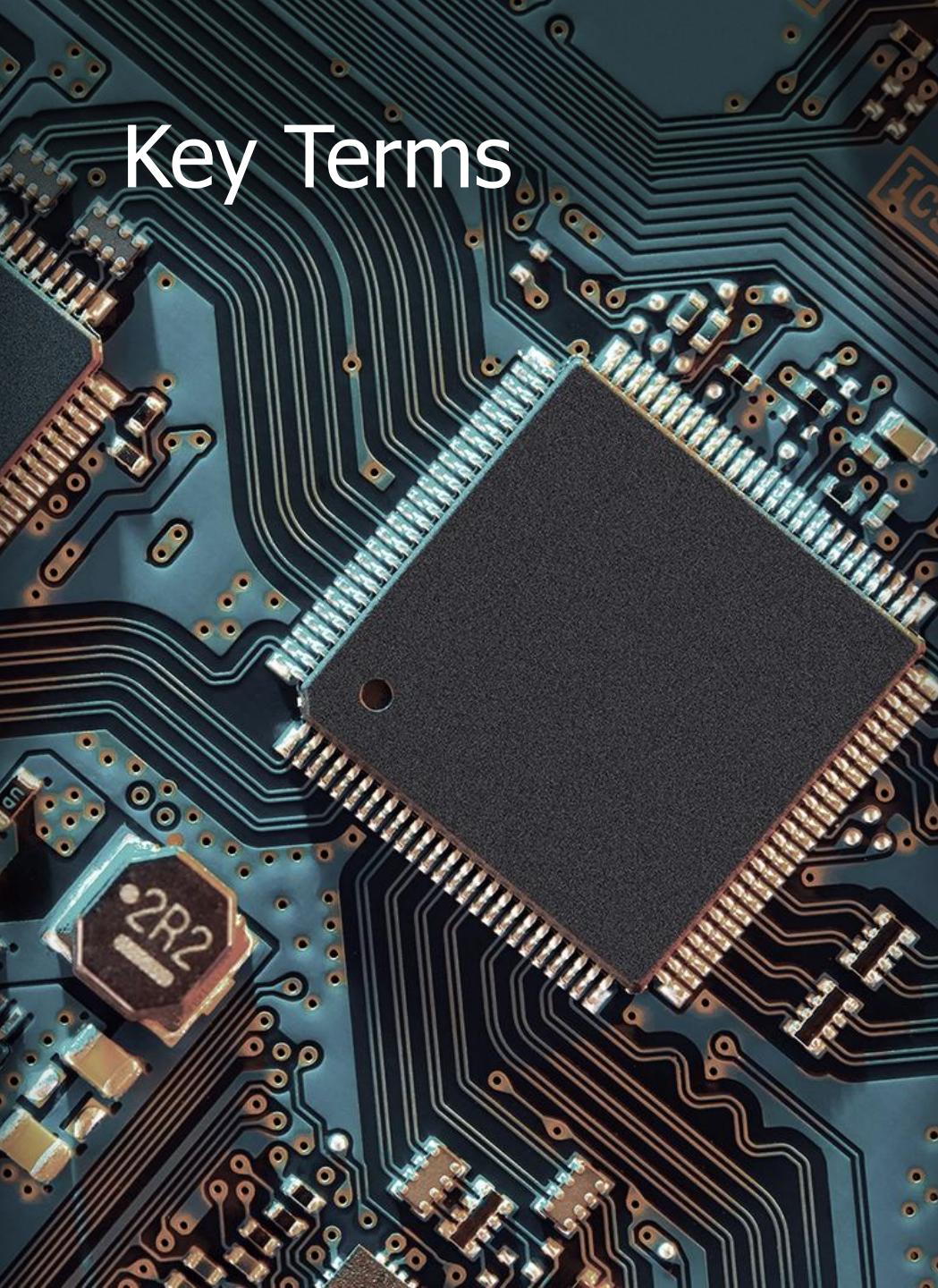
Nelson Williams
Partner -
Employment and
Labor

Agenda

- 1 Leveraging AI in HR
- 2 The regulatory landscape
- 3 The modern era of (alleged) algorithmic discrimination
- 4 A roadmap for the risk-managed use of AI in HR
- 5 Questions



LEVERAGING AI IN HR



Key Terms

Artificial Intelligence ("AI"):

Technology that processes data to produce information which augments human intelligence, perception and predictive abilities

Generative AI ("GenAI"):

A collection of models and systems that can produce new text, images, video, audio, code and synthetic data

Automated Decision-Making Tool ("ADMT"):

Any computer process (including AI) that provides a score, classification, or recommendation used to make, or substantially assist in making, decisions

Algorithmic Bias:

When an algorithm produces biased results as a consequence of errors in the assumptions made in the machine learning process

How HR Departments Use AI



Recruiting

- Using chatbots like AI recruiting assistants
- Drafting job descriptions
- Applicant pre-screening
- Interview reviewing for skill assessment
- Prediction of likelihood candidate will accept position or the salary offer necessary to obtain a potential recruit



Development & retention

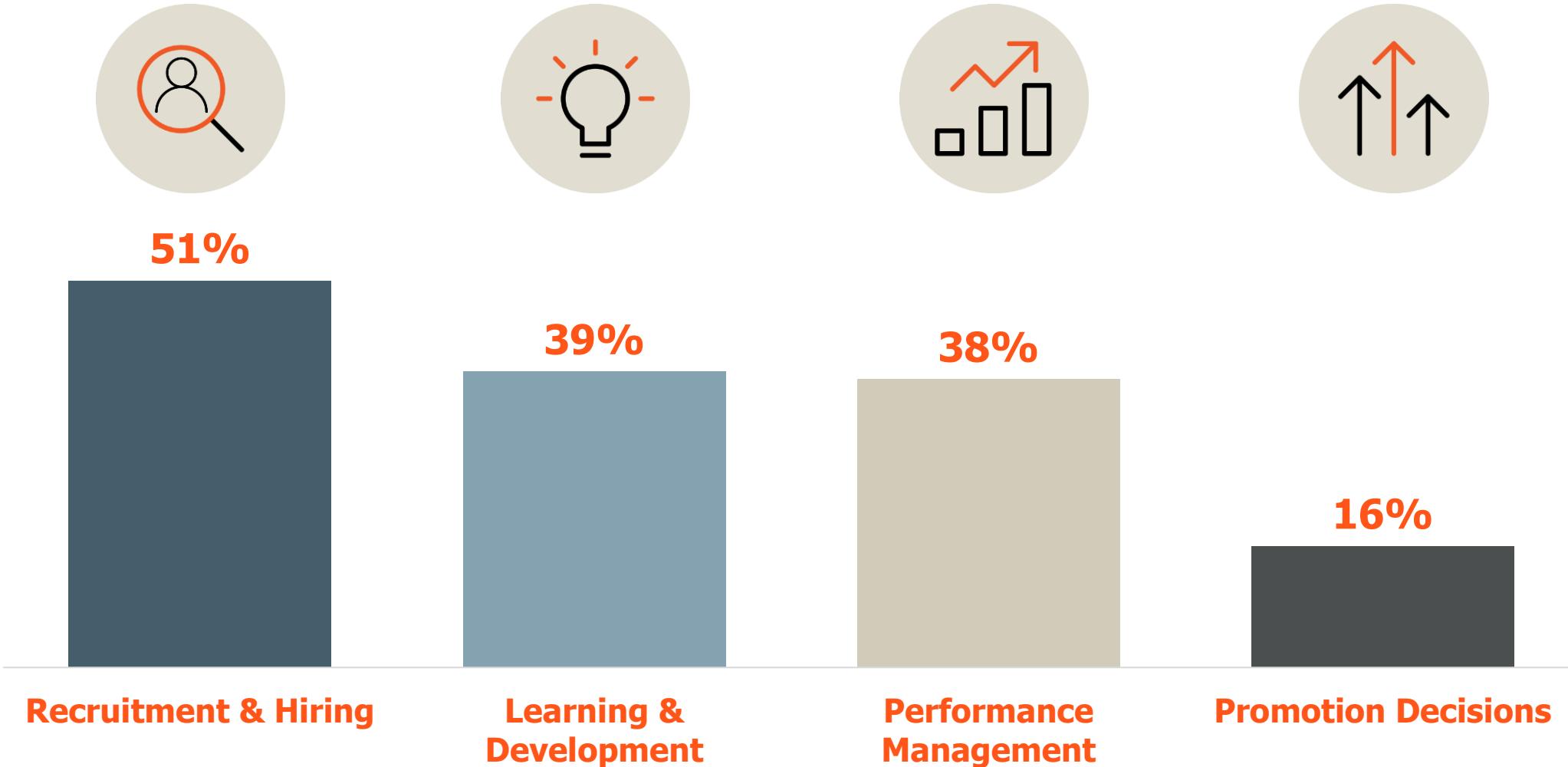
- 24/7 chatbots to answer employee FAQs
- Pattern recognition of skills in top employees
- Employee monitoring software
- Track employee learning
- Translation of employment policies



Performance Management

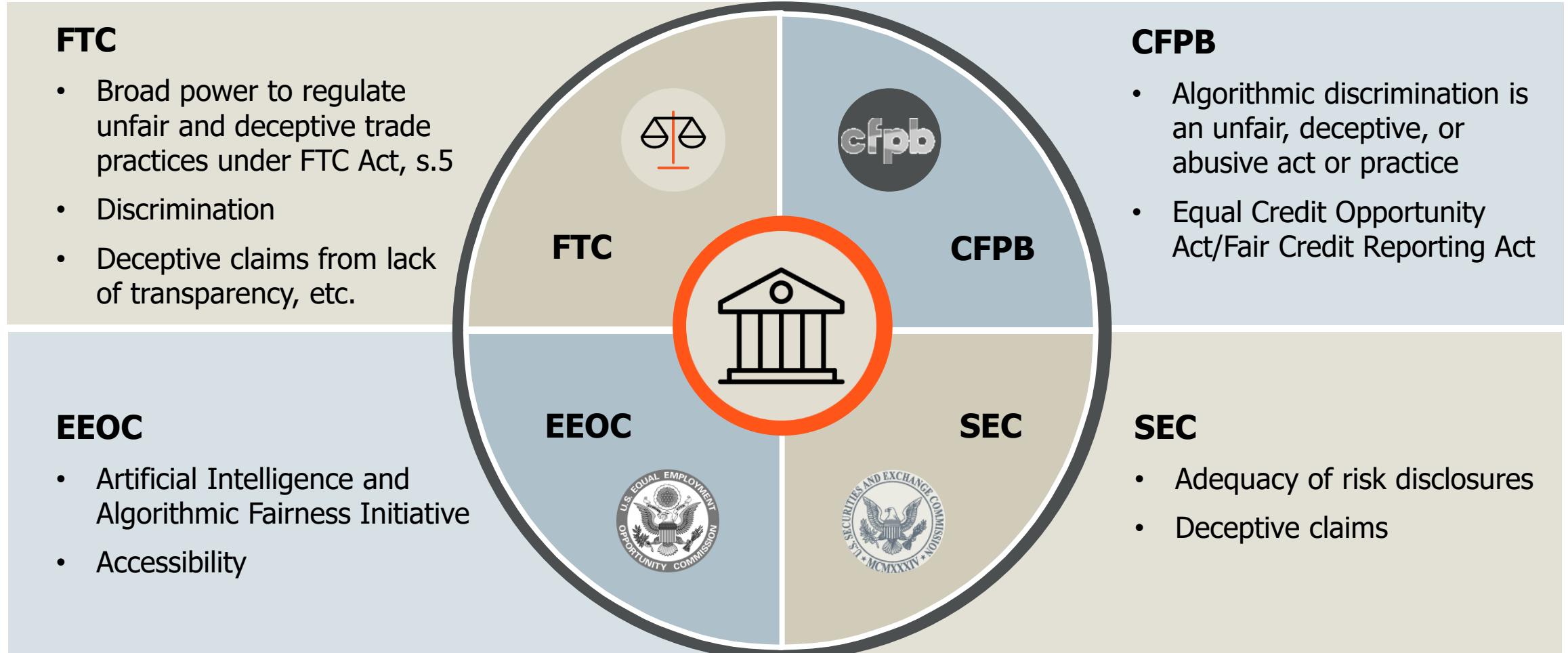
- Objective evaluation + actionable feedback
- Employee goal setting
- Reduction/Increase of hours based on demand

Utilization of AI by HR Professionals



THE REGULATORY LANDSCAPE

Existing Federal Oversight





Winning the Race
AMERICA'S
AI ACTION PLAN

JULY 2025



◀ PRESIDENTIAL ACTIONS

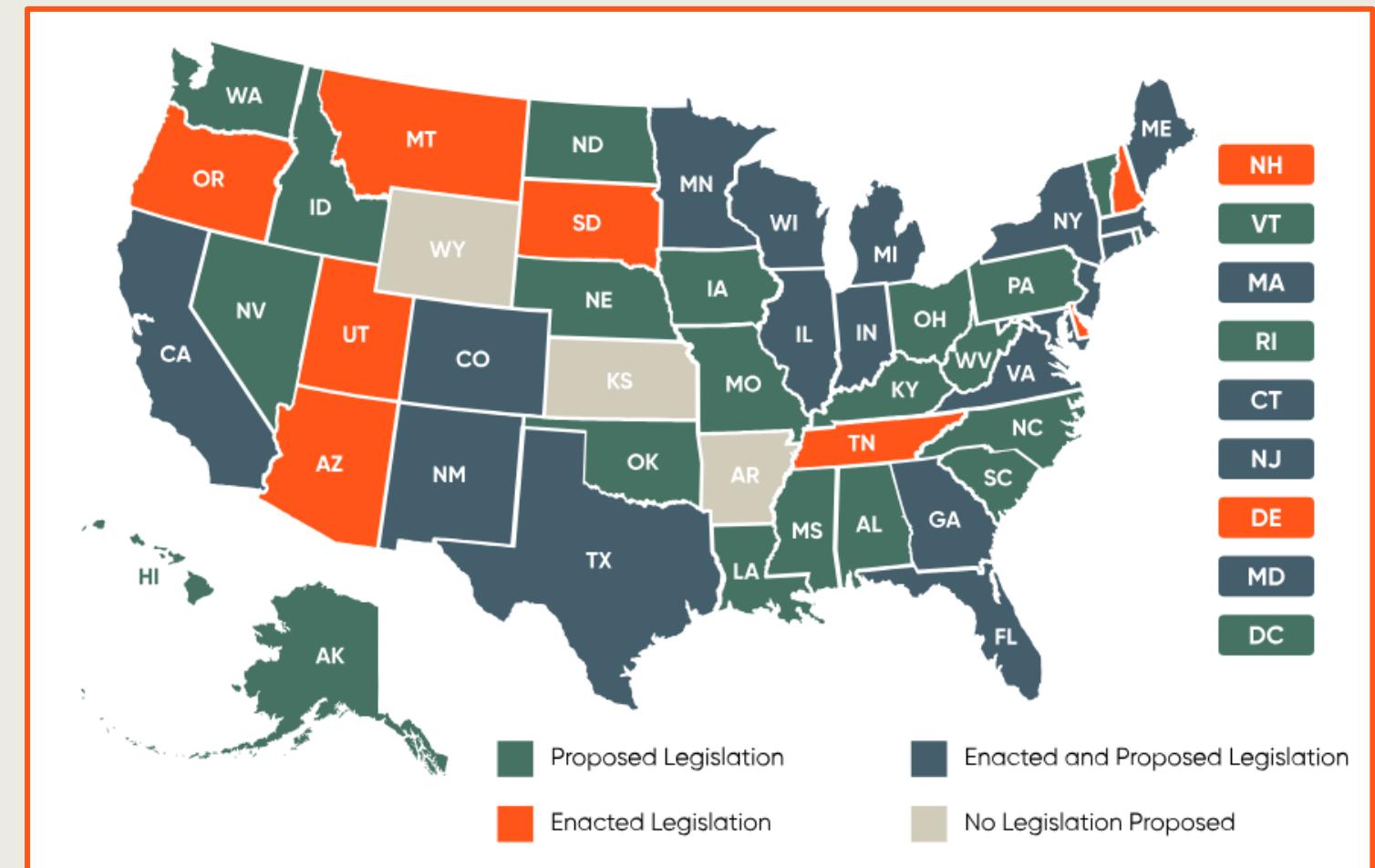
ENSURING A NATIONAL POLICY FRAMEWORK
FOR ARTIFICIAL INTELLIGENCE

Executive Orders | December 11, 2025

The Next Gen AI Laws

500+ AI-related bills introduced in 2025

- Sector focused: employment, healthcare, housing, etc.
- Companion chatbots + algorithmic pricing



NYC Local Law 144

Applies to
Automated
Employment
Decision Tools
(AEDTs) used in
hiring and promotion
decisions



Covers tools that
“substantially assist
or replace
discretionary
decision-making”



Bias audit:
Employers must
ensure the AEDT
undergoes an
annual, independent
bias audit performed
by a qualified third
party.



Results of the most
recent bias audit
must be publicly
available



Employers must
provide 10 business
days' advance
notice



The CO AI Act



Background:

- Signed into law on May 17, 2024
- New effective date of June 30, 2026
- Established the first comprehensive US framework for regulating high-risk AI systems
- Enforced by the CO AG → No private right of action

Applies to:

- **Developers:** Entities that create or substantially modify high-risk AI systems
- **Deployers:** Entities that use or implement high-risk AI systems in consumer-facing or decision-making contexts
- **High-Risk AI Systems:** Systems that make or significantly influence “consequential decisions”
- **Expressly applies to employment decisions**

Intent:

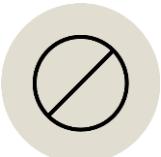
- Protect against algorithmic discrimination (unlawful differential treatment that disfavors an individual or group on the basis of protected characteristics)

The Illinois Human Rights Act (IHRA)

Effective date: January 1, 2026



Requirements:



Prohibition on discriminatory AI use in employment decisions



Transparency



Prohibition on using zip codes as a proxy for race

Does **not** require formal bias or impact assessments

CCPA - Automated Decisionmaking Technology

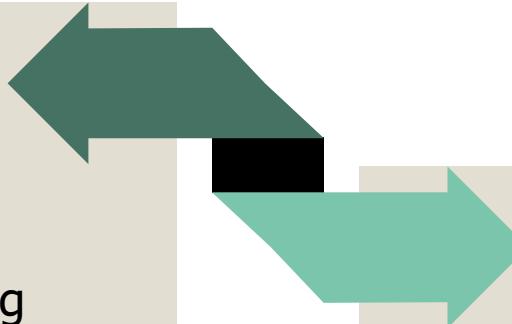


Rules Finalized September 2025; Effective January 1, 2027

Scope:

Automated decisionmaking technology used for

- 1) significant decision concerning consumer, **including employment decisions**
- 2) extensive profiling
- 3) training uses of ADMT



Obligations:

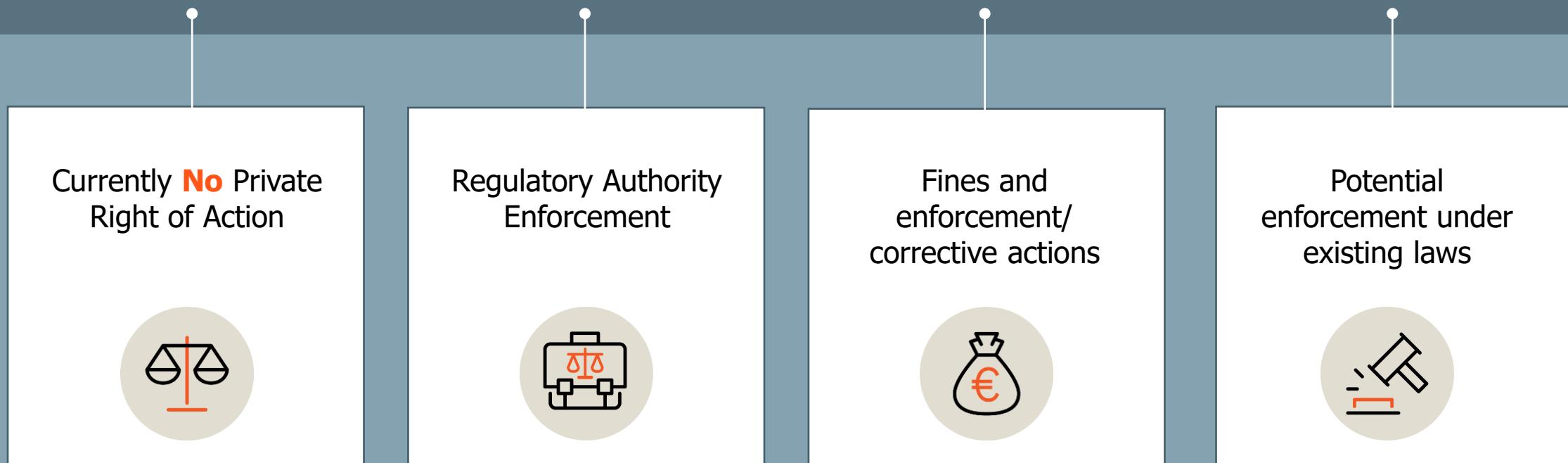
- 1) pre-use notice
- 2) right to opt-out
- 3) right to access
- 4) risk assessment (in certain contexts)

California Fair Employment and Housing Act (FEHA)

- Applies to all employers in California that use “automated-decision systems” or automated decision-making technology” to facilitate human decision-making with respect to the recruitment, hiring, and promotion of job applicants or employees
- Clarifies that it is unlawful to use an ADS that results in discrimination
- Strongly incentivizes proactive anti-bias testing
- Expanded record retention requirements for automated decision data – 4 years
- Effective 10/1/2025



Enforcement Risks and Fines



THE MODERN ERA OF (ALLEGED) ALGORITHMIC DISCRIMINATION

Mobley v. Workday, Inc.

Plaintiff is a 50-year-old African-American male suffering from depression and anxiety

Rejected by over 100 employers exclusively using Workday, Inc. as a recruiting tool

Alleges that Workday “determines whether an employer should accept or reject an application” based on race, age, and disability

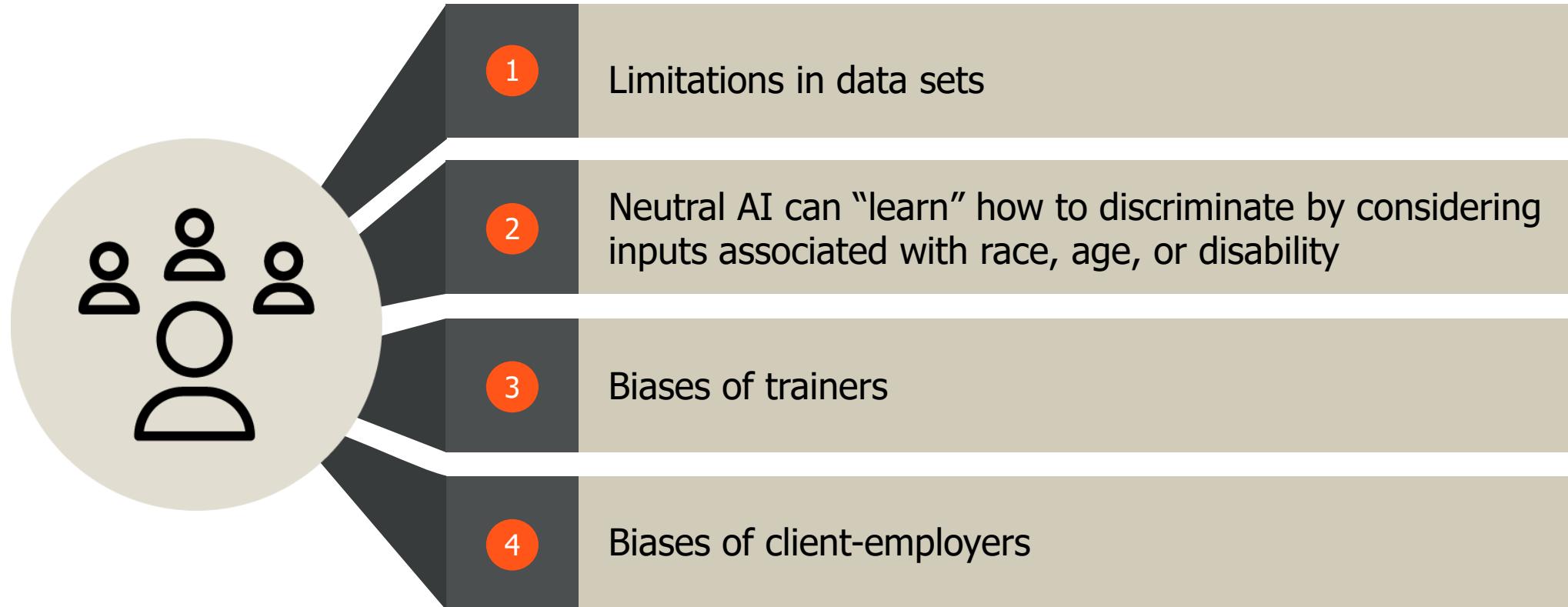
Alleges disparate impact and discrimination against African-Americans, applicants aged 40+, and disabled applicants

Asserts claims under:

- Title VII of the Civil Rights Act 1964
- Civil Rights Act 1866
- Age Discrimination in Employment Act 1967, and
- ADA Amendments Act 2008

What is Workday?
Enterprise software provider providing payroll, financial planning, and human resources programs. Used by 10,500 organizations, including more than 60% of the Fortune 500

How does Workday (Allegedly) Discriminate?



Mobley adequately alleges disparate impact claims – Court

The elements of a disparate impact claim include:



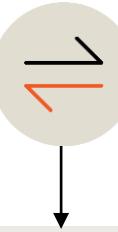
A disparate impact on a protected group

- “Mobley has applied to and been rejected from over 100 jobs. . . .The common denominator for these positions is Workday”
- “[B]ias in Workday’s training data and the tools’ reliance on information from pymetrics and personality tests[]. . . .”



A specific employment practice or selection criteria

- “Workday’s use of algorithmic decision-making tools” and reliance on personality tests

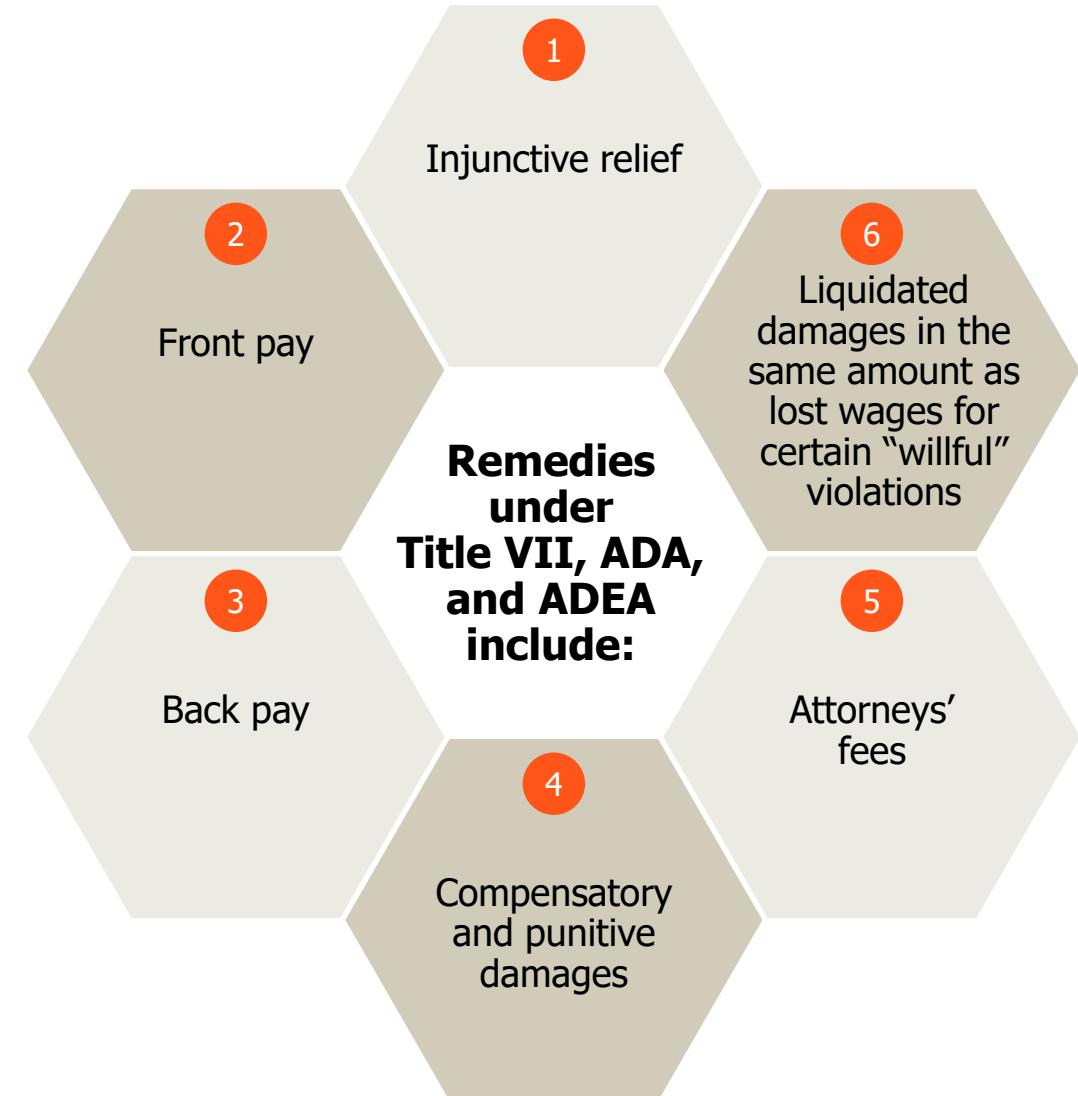


A causal relationship between the practice/criteria and the disparate impact

- Rejection emails are indicative of automation

Risks for Employers

- “Evaluating and dispositioning candidates are at the core of the traditional employment functions that the anti- discrimination laws seek to address.”
- “Workday’s role in the hiring process is no less significant because it allegedly happens through artificial intelligence.”
- Workday faces liability as an agent of an employer. An employer faces the same risks.

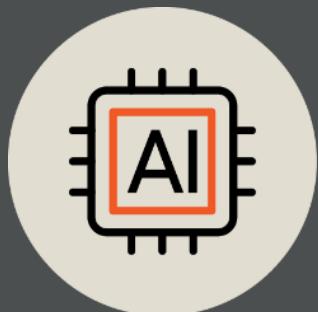


A ROADMAP FOR THE RISK-MANAGED USE OF AI IN HR

AI Governance

AI Governance *Principles*

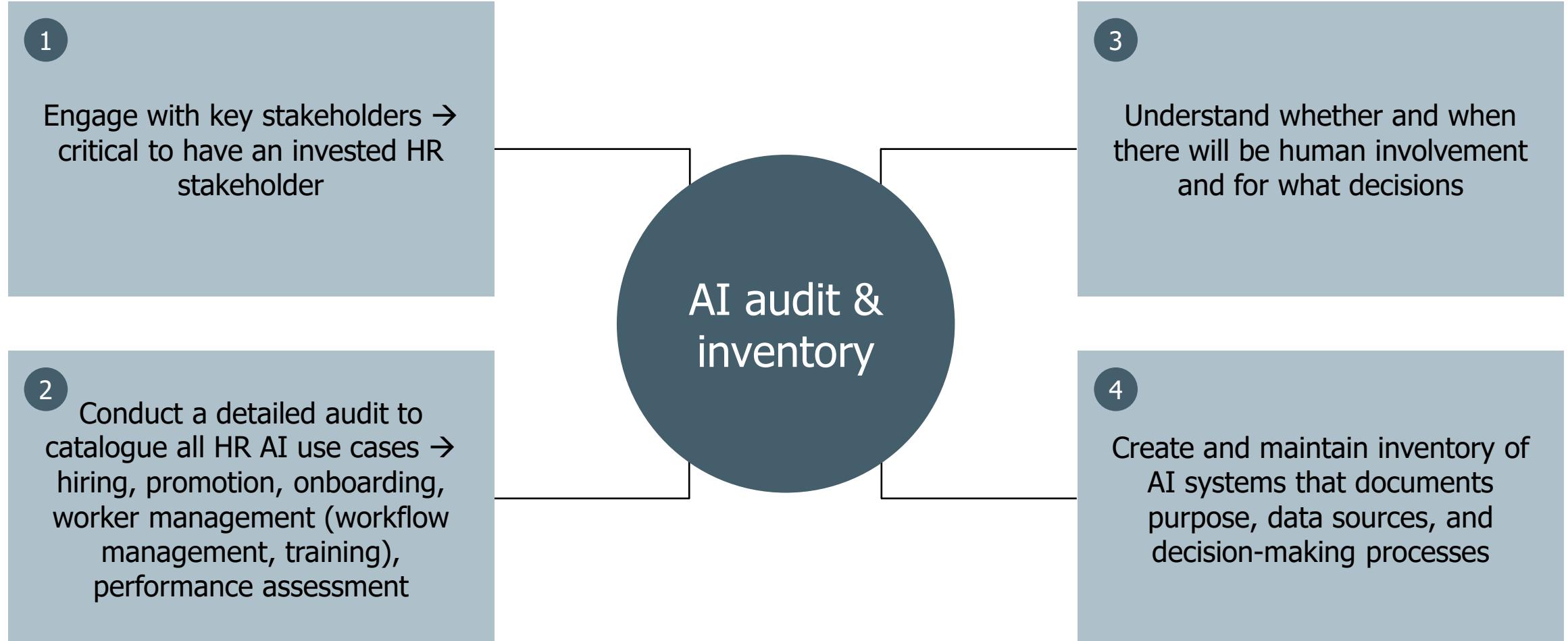
Values put forth by the organization



AI Governance *Framework*

- Operationalizing the principles
- Overarching framework that manages an organization's **development, use, and procurement** of AI
- Policies around permissible use, human oversight, training and awareness, ethical guidelines, data management, and risk assessment
- Right-sized to your organization
- Appoint a broad-based team
- Leverage existing regulatory and compliance organizational governance structures

AI Audit & Inventory



AI Risk Assessments

01

Analyze the potential risks each AI system poses to individuals, society, and to the business

02

Assess the likelihood and impact of these risks materializing, categorizing them by severity using a commercially recognized framework

03

Collaborate with technical experts and vendors to understand the intricacies of each AI system. Identify specific risk mitigation strategies

Notice and Disclosures



Combination of public disclosures and notices to impacted individuals may be required

- Time Requirements may apply



Pre-Notice to applicants/employees should disclose:

- That individuals are interacting with an AI system
- That high-risk systems are involved
- System's purpose and process
- Describe related rights (e.g. right of opt-out)



Notice of adverse decision (CO)



Notice when interacting with AI



Public (e.g., on website) disclosures may be required



Describe opt out rights, data access requests, or rights to human review of automated decisions, where mandated under state law

Prepare for New/Additional Individual Rights

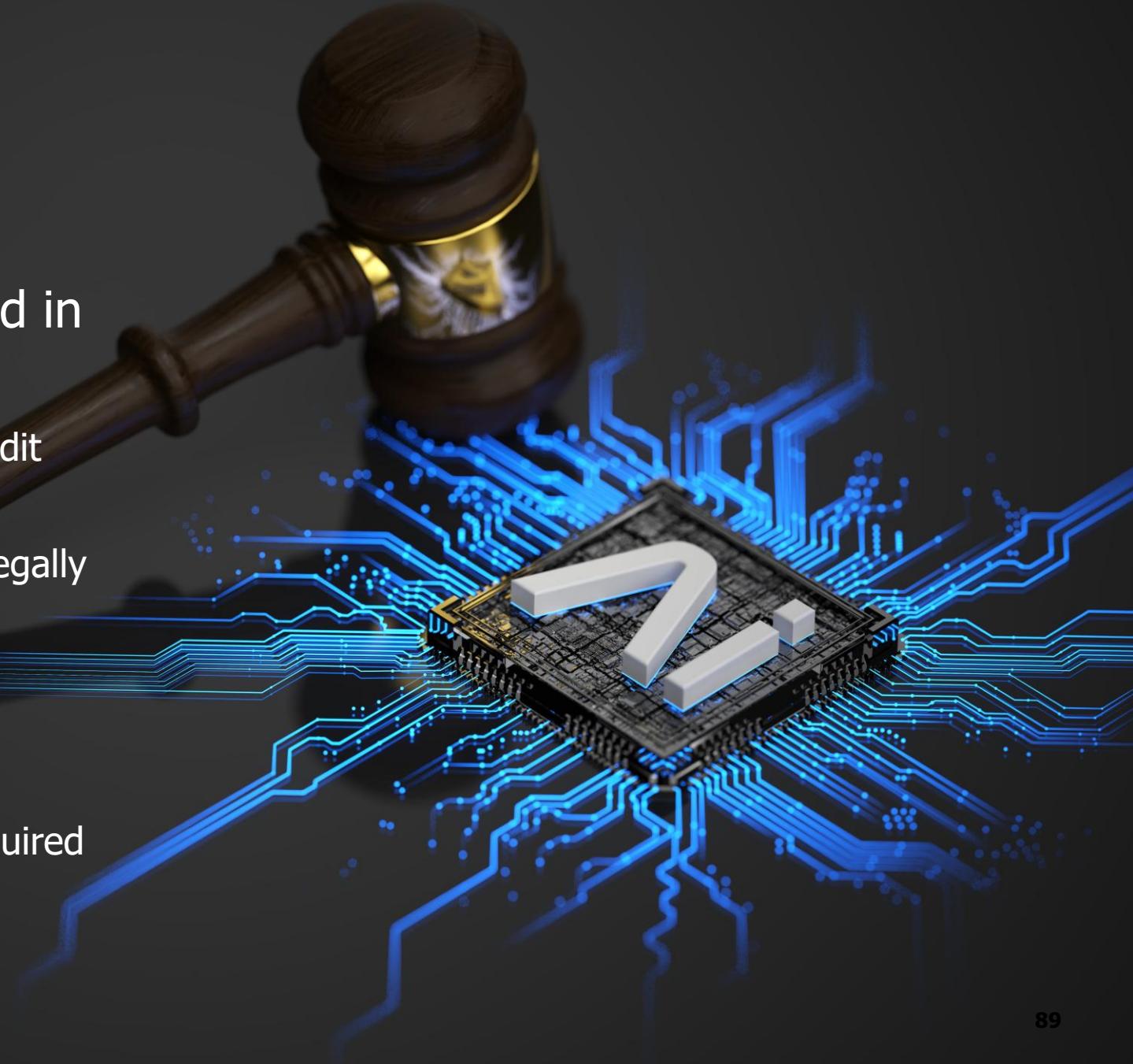


- 1 Right to Opt-Out
- 2 Right to Appeal/Request Human Review
- 3 Right Against Retaliation
- 4 Right to Correct
- 5 General Privacy Rights

Bias Audits

Bias auditing mandatory in some jurisdictions; strongly recommended in others

- Implement Bias Testing, Monitoring, and Audit Controls
- Confirm vendor provides data required for legally compliant audit
- Maintain audit logs documenting decision rationale, data provenance, and system performance
- Publicly post summary of audit results if required (NYC Local Law 144)



Vendor Due Diligence & Contracting

Update vendor due diligence process to screen vendors' use of AI for service delivery

Develop template language for standard contracts for AI tools and/or use of AI in service delivery

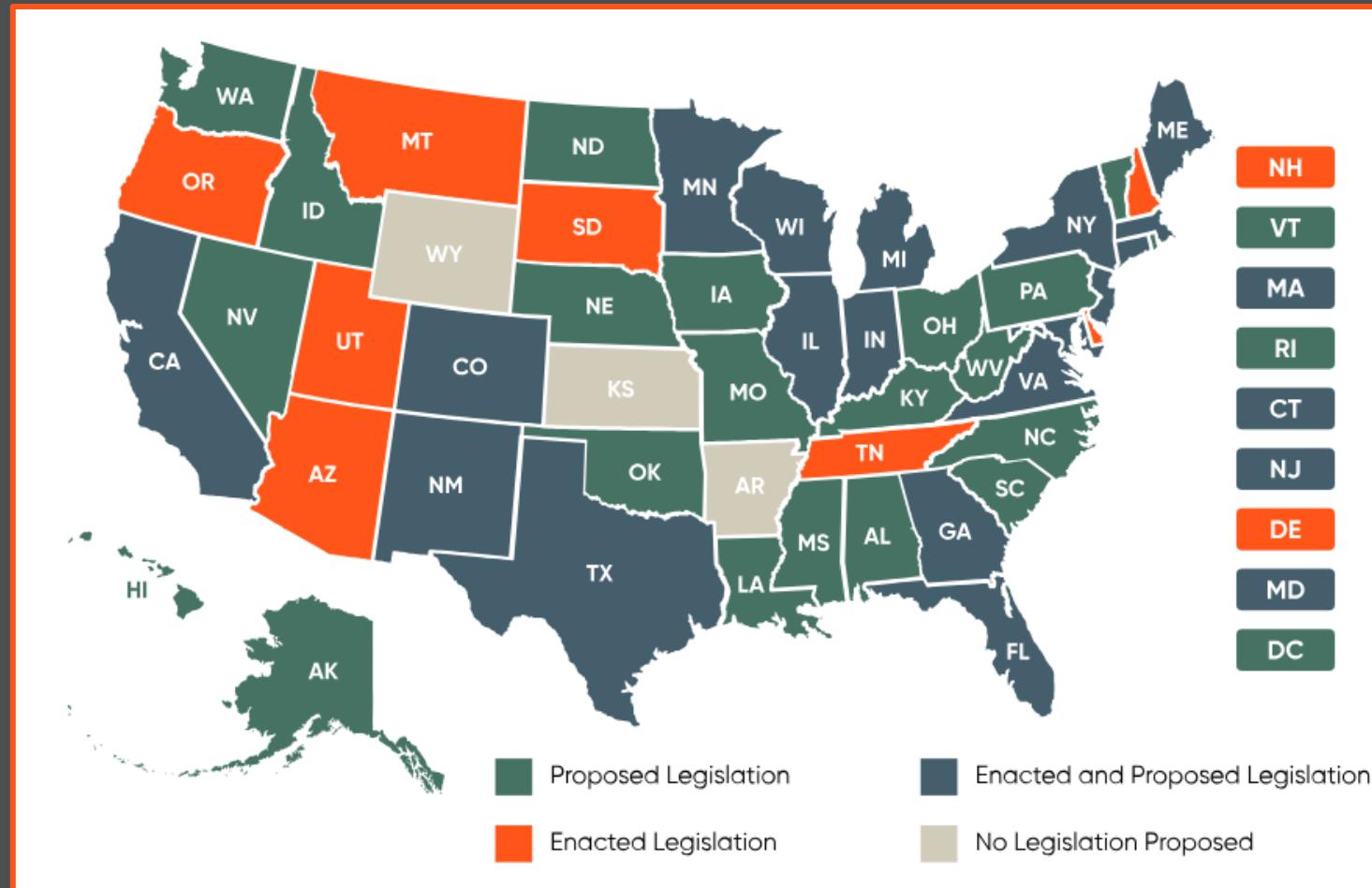
Key requirements should address:

- Audit rights
- Assist in meeting legal obligations including transparency and bias auditing
- Incident response
- Limitations on data use
- Indemnification

Review existing agreements and update as needed



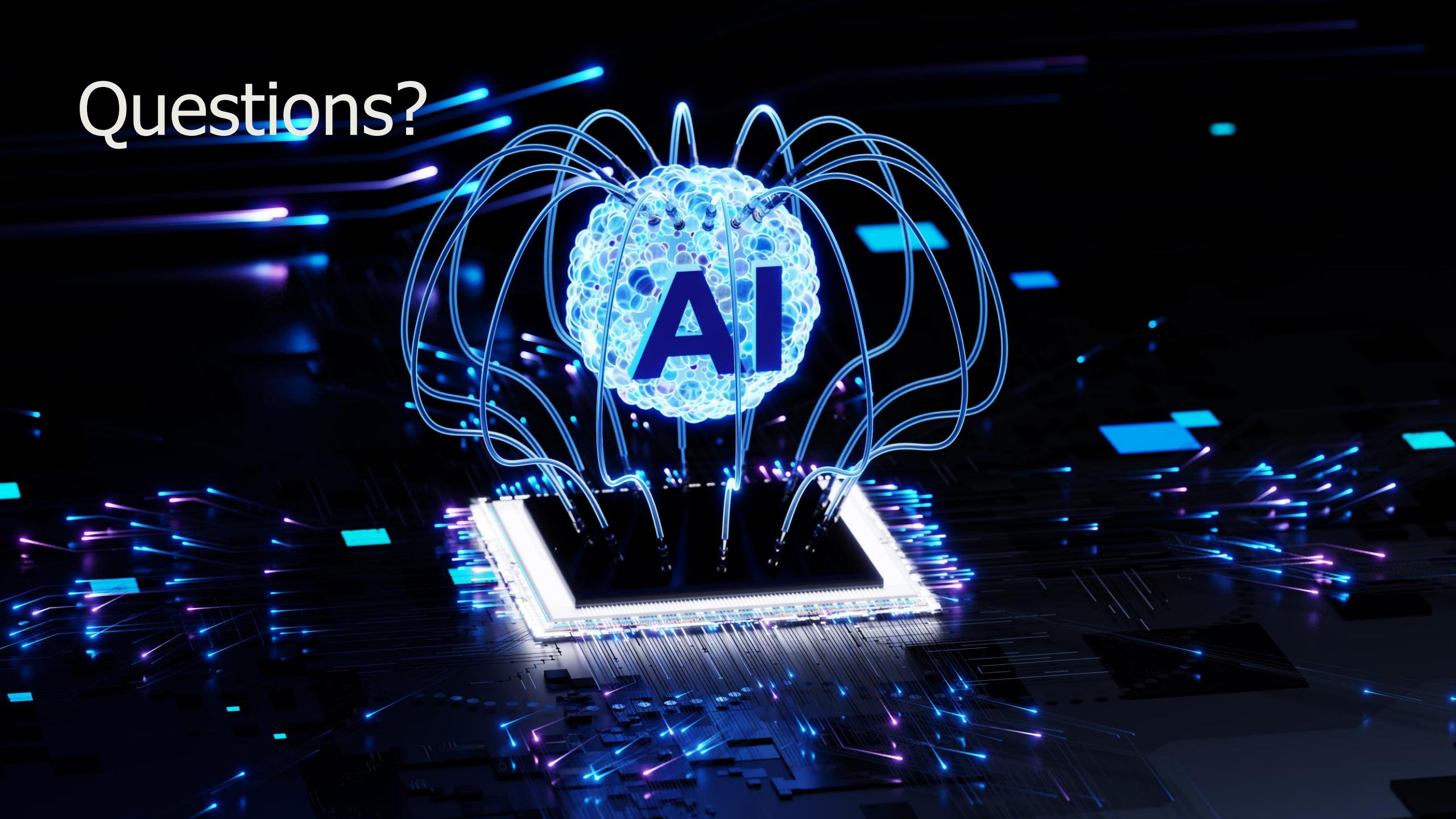
US state-by-state AI legislation snapshot



<https://www.bclplaw.com/en-US/events-insights-news/us-state-by-state-artificial-intelligence-legislation-snapshot.html>

<https://www.bclplaw.com/en-US/topics/artificial-intelligence/index.html>

Questions?



05

M&A Hot Topics from 2025

Emerging topics and recent case law relating to mergers and acquisitions.



Your Speakers



Stephanie Hosler
Partner – M&A and
Corporate
Transactions

Indemnification & Advancement Rights

Companies should consider giving additional scrutiny to indemnification and “advancement” rights in M&A and other agreements, including the potential need to insert limits or exceptions for fraud or other cases of severe conduct, especially where the potential liability risk may be higher.

Moelis & Company Case

Background & Parties

Moelis & Company
Global investment bank advised by **Ken Moelis** (founder/CEO /Executive Chairman)

Plaintiff
West Palm Beach Firefighters' Pension Fund (a stockholder in Moelis & Company)

Jurisdiction
Delaware



Central Issue: Shareholder Agreement Challenge



This agreement granted founder Ken Moelis broad *pre-approval and governance control rights*, including significant influence over board actions.

Key provisions challenged:

- Required board to take specific actions at direction of Moelis
- Unlimited veto power over operational decisions
- Agreements that locked the board into specific strategies, budgets or executive appointments

2024: Delaware Court of Chancery Ruling

Vice Chancellor Travis Laster (Delaware Chancery Court) invalidated parts of the shareholder agreement on Feb 23, 2024

Legal reasoning:

- The pre-approval and governance provisions effectively stripped the board of its statutory authority under **DGCL § 141(a)**, which mandates that corporate direction be under the board's control.
- The Court found these provisions facially invalid because they prevented directors from exercising independent judgment.

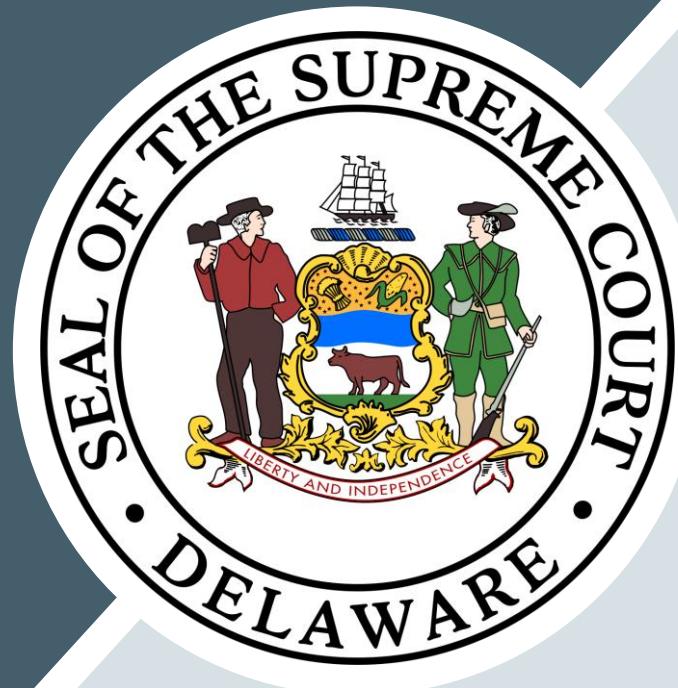
Implications:

Raised concern in corporate law circles that common stockholder agreement provisions could be at risk.



Broader M&A & Market Context

Impact on Founders & Investors



This case, along with other Delaware Supreme Court decisions signals Delaware's support for founder/investor protections in governance structures

Current Status

- The Moelis case is legally resolved in favor of Moelis & Company, with the Supreme Court decision restricting further facial challenges based on timing
- Market implications continue, especially for corporate governance and transactional risk assessment in M&A environments





bclplaw.com

This document provides a general summary and is for information/educational purposes only. It is not intended to be comprehensive, nor does it constitute legal advice. Specific legal advice should always be sought before taking or refraining from taking any action.

BCLP • Client Intelligent