

WHEN HAL CONDUCTS THE INTERVIEW: ILLINOIS EMPLOYERS FACE NEW LAW REGARDING USE OF A.I. IN EMPLOYMENT INTERVIEWS

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Technology has always had a significant impact on the way companies do business. With the increasing use of artificial intelligence (“A.I.”), no task is exempt from a robotic upgrade. In fact, a growing number of companies are utilizing A.I. to screen potential employees through, among other processes, the video interview. As the New Year approaches, it is important that Illinois employers familiarize themselves with changes in the law surrounding A.I. in hiring. Specifically, beginning January 1, 2020, employers using A.I. to screen applicant video interviews for Illinois-based employment will be subject to the Artificial Intelligence Video Interview Act (the “Act”).

But What Is A.I. Video Interview Screening?

Most A.I. screening of video interviews involves applicants recording themselves answering a series of interview questions. Like HAL, the conflicted computer in *2001: A Space Odyssey*, more sophisticated A.I. even has the ability to simulate “natural” human conversation with which interviewees interact. The video interview is then analyzed using “deep learning,” which is essentially an algorithm that evaluates several data points such as facial expressions, word choice, body language, vocal tone, etc. By the end of the analysis, the A.I. generates an applicant score based on the collected data points and, in some instances, provides a recommendation on whether the applicant is a good fit for the position sought.

So How Does The Act Regulate A.I. Video Interview Screening?

Here is what we know about the Act signed into law by Governor J.B. Pritzker (D) on August 8, 2019:

Requirements:

- Employers must notify applicants that A.I. may be used to analyze their fitness for the position;
- Employers must provide applicants with an information sheet explaining how A.I. works, and the types of characteristics A.I. uses to evaluate applicants;
- Employers must obtain the applicant’s prior consent; and

- Within 30 days of an applicant's request, the employer must delete the video recording of the applicant and instruct anyone who received copies of the video to delete it, including all backup copies.

Prohibitions:

- Employers may not utilize A.I. to evaluate applicants who have not consented to the use of A.I. analysis; and
- Employers may not share an applicant's video, except that an employer may share applicant videos with persons with the expertise or technology necessary for the evaluation of an applicant's fitness for the position;

While the Act outlines several requirements and prohibitions, it is silent on enforcement and available remedies for the aggrieved. What is possibly more troubling, the Act is silent as to the interplay between the Act and Illinois' Biometric Information Privacy Act passed in 2008. An amendment or regulation may be on the horizon addressing the omissions. If not, the task will be left to the courts. Stay Tuned.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers and other professionals prepared to help employers review their employee policies. If you or your organization would like more information on any state-specific laws or any other employment issue, please contact an attorney in the Employment and Labor practice group.

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