



**Employment
Law Update**

Session 3

The New John Henry: Human Accountability for AI in HR

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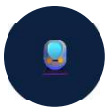
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The Legend of John Henry



A steel-driving man

John Henry worked the post-Civil War railroads, driving steel spikes by hand to bore tunnels through rock.



Man versus machine

When a steam-powered drill arrived, promising to outwork any man, John Henry raced it to prove human skill still had a place — and won.

THE COST

Dies due to strain

THE LESSON?

2

Where We're Headed

AI tools increasingly make or influence hiring, promotion, and other employment decisions.



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1. The Risk Is Real — and It's Yours

AI doesn't shift liability. If a tool discriminates, the employer is accountable.

ILLINOIS TAKES ACTION

- Amended Human Rights Act effective Jan. 1, 2026
- Cannot use AI that has the "effect" of discriminating on the basis of protected classes. Must provide Notice of using AI, explaining its purpose and operations
- AI = infers from inputs how to generate outputs e.g. predictions, recommendations, or decisions

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1. The Risk Is Real — and It's Yours

AI doesn't shift liability. If a tool discriminates, the employer is accountable.

ILLINOIS TAKES ACTION

- Artificial Intelligence Video Interview Act
- Notice to applicant that AI will be used to analyze submitted video interview. Explain how the AI works and what it evaluates. Obtain consent.
- If relying solely on AI to select applicants, must report demographic data to Dept. of Comm. and Econ. Opp.

1. The Risk Is Real — and It's Yours

AI doesn't shift liability. If a tool discriminates, the employer is accountable.

ILLINOIS TAKES MORE ACTION?

- Proposed legislation
- Employment, state agencies, education
- Principles: Safety, Transparency, Accountability, Fairness, and Contestability

1. The Risk Is Real — and It's Yours

AI doesn't shift liability. If a tool discriminates, the employer is accountable.

IOWA IS ASSESSING

- Proposed legislation for state agencies
- IA Dept. of Management policy on Gen AI; self guidance Pottawattamie County, University of Iowa
- AI is a tool; human oversight matters

"No law in my state yet" is not the same as "no risk."

2. The Landscape Will Shift – but look familiar

● Federal Posture

EEOC withdrew its AI guidance and is deprioritizing enforcement of disparate-impact liability — but Title VII, the ADA, and the ADEA still apply.

● Private Litigation & Bargaining

Private plaintiffs can still sue; collective actions and collective bargaining. *Mobley v. Workday* (California federal)

● Draft Legislation & Guidance

Great American AI Act in early discussions.
OMB guidance M-24-10 for federal agencies.

● State & Local Law

The active front. Illinois, California, New York City, Colorado.

What Exposure?

CONSEQUENCES

- Civil rights violations and statutory penalties
- Mandatory demographic reporting failures
- Private lawsuits under state law
- Reputational harm with employees and applicants

AREAS OF CONCERN

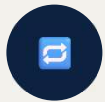
- No testing before deployment
- No human review of AI-driven decisions
- No disclosure to applicants or employees
- Relying on AI output as the sole basis for a decision

3. Building a Defensible AI Practice



Vendor Due Diligence and Contracting

Documentation, training data, and testing history



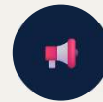
Ongoing Testing

Not one-and-done — retest after updates or new use cases



Human Oversight

Trained reviewers in the loop on AI-influenced decisions



Notice & Opt-Out

Tell people AI is involved; offer a path to human review

Contracting with AI Vendors

Negotiation levers worth raising — even without significant bargaining power

● Improvement incentives

Short-term, renewable contracts tied to demonstrated AI performance

● Testing & reporting duties

Start with hands-on tests. Obtain reports on demographics and outcomes. Audits.

● Indemnification language

Require compliance with the law – and liability protection for failures.

Back to John Henry



John Henry set out to prove the Human is better than the Machine.

In employment decisions, the durable model isn't human versus machine — it's **human accountable for machine**, with oversight and judgment applied at every step the AI is allowed to touch.

The employer must use experience and existing frameworks to **test, understand, and deploy AI — responsibly.**

Questions & Discussion

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