

# Client Alert

Global Human Capital and Compliance

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## Employers' Use of Artificial Intelligence in the Workplace After President Trump's Executive Orders

During the first weeks of the new administration, President Trump has taken actions which place an emphasis and spotlight on artificial intelligence ("AI"). To date, such actions indicate a pivot from the Biden administration's focus on federal oversight of AI to a framework centered on reduction of regulatory barriers, with a stated goal of establishing US global leadership and innovation in AI.

While the ultimate and specific impact of President Trump's actions on the use of AI in the workplace is yet to be seen, employers should continue to ensure that the use of AI complies with federal and state discrimination laws and state/local AI-specific laws—which remain unaffected by the new administration's actions. For a broader perspective on President Trump's actions related to AI beyond the workplace, please see our February 14, 2025 client alert [here](#).

### THE TRUMP AI EXECUTIVE ORDER

On January 23, 2025, President Trump issued an Executive Order entitled "[Removing Barriers to American Leadership in Artificial Intelligence](#)" ("Trump AI EO"), which revokes "existing AI policies and directives that act as barriers to American AI innovation" and emphasizes development of AI systems that are "free from ideological bias or engineered social agendas."

This Executive Order follows President Trump's January 20, 2025, Executive Order revoking the Biden Administration's Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence ("Biden AI EO"), which focused on the safe and responsible development and use of AI through a coordinated federal approach. The Biden AI EO emphasized the development and use of AI in a manner

consistent with existing discrimination laws to advance worker well-being and to prevent infringement upon workers' rights and privacy.

The Trump AI EO directs: (1) the development of an action plan within 180 days by the Assistant to the President for Science and Technology (APST), the Special Advisor for AI and Crypto, and the Assistant to the President for National Security Affairs (APNSA) in coordination with Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Management and Budget (OMB Director) and the heads of all agencies they deem relevant, (2) a review of all policies, directions, regulations and other actions taken pursuant to the revoked Biden AI EO that are or may be inconsistent with, or present obstacles to, the Trump AI EO's stated policy by the APST, the Special Advisor for AI and Crypto, and the APNSA in coordination with heads of all agencies they deem relevant, and (3) the heads of relevant agencies identified through such a review to suspend, revise, or rescind actions, or propose suspending, revising, or rescinding any such identified actions.

The Trump AI EO does not reference the potential impact of AI in the employment context.

### RESPONSE BY FEDERAL AGENCIES

Certain federal agencies and departments have already begun to act upon the Trump AI EO.

For example, the Equal Employment Opportunity Commission ("EEOC") removed previous guidance regarding the use of AI in compliance with Title VII of the Civil Rights Act ("Title VII") and the Americans with Disabilities Act ("ADA") from its website. That guidance educated employers about potential uses of AI which may discriminate against workers.

The Office of Federal Contractor Compliance ("OFCCP") also removed guidance for federal contractors using AI to comply with existing federal discrimination laws and affirmative action requirements regarding hiring from its website.

The Department of Labor's ("DOL") previously issued guidance entitled "Artificial Intelligence and Worker Well-Being," provides principles and best practices for employers regarding the development and deployment of AI in the workplace to ensure workers benefit from new opportunities created by AI and are protected from its potential harms. That guidance was issued pursuant to the Biden AI EO and remains available on the DOL website. However, the website now contains a caveat explaining that "[a]s of 01/20/2025, information in some news releases may be out of date or not reflect current policies."

### POTENTIAL IMPACT ON EMPLOYERS' USE OF AI

Certain US states and local jurisdictions have also enacted laws regulating employers' use of AI, which remain unaffected. For example, several US jurisdictions, such as New York City, currently require employers to provide employees with notice and the ability to opt-out if AI is used to make employment decisions.

Other state and local jurisdictions may soon implement even broader regulations and requirements regarding employers' use of AI. For example, the California Privacy Protection Agency has issued proposed regulations that will require employers using AI for purposes in addition to and other than making employment decisions—such as conducting "extensive profiling" of workers and training AI systems/models using workers' personal data—to also comply with a variety of obligations including notice, opt-out, and risk-assessment requirements.

At the federal level, the ultimate impact of the Trump AI EO on employers' use of AI will largely depend upon further actions taken in response by federal agencies. While there is currently no federal legislation, Congress has shown interest in certain federal legislation frameworks. Given the Republican-controlled Congress, any potentially viable legislation in the next year will likely resemble President Trump's AI policy.

Certain employers will also need to consider tensions between President Trump's AI policy and international AI regulations, particularly the EU AI Act. The EU AI Act's prohibited and high-risk AI system requirements and focus on regulation of AI-driven misinformation may create challenges for employers operating in both markets.

### NEXT STEPS

Employers must still comply with existing federal, state and local laws regarding the use of AI, which remain unaffected by the Trump AI EO, regardless of the purposes for which it is used—including recruiting, interviewing, evaluating candidates or workers, hiring and firing, determining compensation, and monitoring worker performance, productivity or efficiency.

Existing federal and state laws prohibiting workplace discrimination apply regardless as to whether employment decisions are made using AI and/or with human involvement. In some circumstances, the use of AI may increase the risk of such claims due to a lack of human involvement/oversight.

In sum, employers should continue to: (1) monitor developments by federal agencies in response to the Trump AI EO, (2) ensure that use of AI complies with existing laws, and (3) consider conducting prior training for employees on AI literacy and performing regular risk assessments/audits if using AI.

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