

# EEOC Brings First-of-Its-Kind Enforcement Action Against Employer for Using Artificial Intelligence to Discriminate Against Applicants; Settles for Six Figures

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Increasingly, employers are utilizing automated systems, including artificial intelligence (AI) or machine learning, to target job advertisements, recruit applicants, and make hiring decisions. Such systems expose employers to liability if they intentionally or unintentionally exclude or disparately impact protected groups. According to the Equal Employment Opportunity Commission (EEOC), that's precisely what happened with iTutorGroup, Inc.

iTutorGroup is the brand name for three integrated companies that provide English-language tutoring services to students in China. According to the EEOC, iTutorGroup programmed its application software to reject female applicants over the age of 55 and male applicants over the age of 60.

A disappointed applicant, Wendy Pincus, suspected discrimination when she applied using her real birthdate, indicating that she was over 55. However, iTutorGroup invited her for an interview when she later applied with a more recent birthdate and otherwise identical application information.

Pincus filed a charge with the EEOC, which sued the company under the Age Discrimination in Employment Act on behalf of the Pincus and over 200 other job applicants. The suit seeks lost wages and liquidated damages for each class member, as well as strong injunctive relief to prevent future age discrimination.

Last week, the parties filed a consent decree indicating that they agreed to settle the case for \$365,000, in addition to extensive compliance, employee notice, training, monitoring, reporting, and recordkeeping requirements. The decree will become final if the court accepts it.

In January, the EEOC announced its focus on employment decisions in which employers utilize technology that may violate employment laws. This includes software featuring algorithmic decision-making or machine learning (such as AI), automated recruitment and selection tools, production and performance management tools, and other existing or emerging technological tools. This announcement can be found [here](#).

In April, EEOC Chair Charlotte A. Burrows further emphasized this interest in a [joint statement](#) with leaders of the US Department of Justice (DOJ), the Federal Trade Commission (FTC), and the Consumer Financial Protection Bureau (CFPB), stating that, “that the use of advanced technologies, including artificial intelligence, must be consistent with federal laws. America’s workplace civil rights laws reflect our most cherished values of justice, fairness and opportunity, and the EEOC has a solemn responsibility to vigorously enforce them in this new context. We will continue to raise awareness on this topic; to help educate employers, vendors, and workers; and where necessary, to use our enforcement authorities to ensure AI does not become a high-tech pathway to discrimination.”

*iTutorGroup* is the first enforcement action involving the use of AI in employment decisions, illustrating that employers that misuse those tools could face serious consequences.

ArentFox Schiff will continue to monitor developments in this area. If you have any questions or if you would like assistance in reviewing your use of automated systems to make employment decisions, please contact the authors or the ArentFox Schiff professional who regularly handles your matters.

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