

Dueling Federal and State Directives on AI Hiring Technology Bring Compliance Challenges for Employers

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August 6, 2025

Summary

The federal government recently unveiled America's AI Action Plan (the Plan), a sweeping policy roadmap aimed at clearing away regulatory barriers, supercharging U.S. investment in infrastructure and talent surrounding AI, and asserting U.S. leadership in global AI markets. In part, the Plan directs federal agencies to eliminate regulations that could impede AI technology development and calls for the funding of various federal initiatives to help workers retrain and thrive in an AI economy. The Plan also threatens to withhold federal funding and program awards from states that have strict AI regulatory environments.

Meanwhile, several states are currently scheduled to implement laws that regulate how employers may use artificial intelligence during the hiring process and when they make other personnel decisions. It remains to be seen whether the Plan will deter these states from pursuing new AI regulation, including restrictions on how companies use AI technology in their hiring processes.

Just yesterday, Colorado Governor Jared Polis scheduled a special legislative session later this month to address the State's budget—including the impact of Colorado's AI legislation on consumers, businesses, and State and local governments.

Continue reading for more information and insight about laws in Colorado, as well as California, Illinois, and Texas, regulating AI hiring technology, which are scheduled to take effect soon, and the potential impact of America's AI Action Plan on the future of AI technology regulation.

The federal government recently unveiled America's AI Action Plan (the Plan), a sweeping policy roadmap aimed at clearing away regulatory barriers, supercharging U.S. investment in infrastructure and talent surrounding AI, and asserting U.S. leadership in global AI markets. Read our full legal update on the Plan [here](#).

In part, the Plan directs federal agencies to eliminate regulations that could impede AI technology development and also encourages states to roll back any AI regulations. Specifically, the Plan instructs federal agencies to "consider a state's AI regulatory climate when making funding decisions and limit funding if the state's AI regulatory regimes may hinder the effectiveness of that funding or award." This directive comes on the heels of a failed congressional proposal that would have deterred states from passing regulations on AI technology for 10 years. Federal lawmakers attempted to include the proposal in the Trump administration's One Big Beautiful Bill Act passed on July 4, 2025, but the measure was ultimately struck down in the Senate.

The Plan also calls for accelerating AI innovation that could bring new opportunities for the American workforce. Specifically, the Plan establishes an "AI Workforce Research Hub" within the Department of Labor that will evaluate AI's impact on the labor market and create proactive solutions for job displacement. The Plan also calls for various workforce training programs, apprenticeships, and other federally funded AI skill and literacy initiatives throughout many departments to help workers retrain and thrive in an AI economy. Finally, the Plan calls for the development of programs that may allow some employers to offer tax-free reimbursement for AI-related skill development training.

It remains to be seen whether the Plan's call for AI deregulation, state funding threats, and promises of federal incentives will deter states from pursuing AI regulation, including regulations on AI hiring technology. Some state legislatures fear that AI hiring technology has the potential to increase employment discrimination and widen opportunity gaps for certain protected classes.

Currently, California, Colorado, Illinois, and Texas are all scheduled to join the growing list of state and local jurisdictions that regulate how employers may use artificial intelligence during the hiring process and when they make other personnel decisions. Below is a summary of the state legislation currently scheduled to take effect in 2025 and 2026.

California

On June 30, 2025, California's Civil Rights Department announced its final regulations under the Fair Employment and Housing Act to address employment discrimination in automated-decision making systems. These regulations are set to go into effect on October 1, 2025.

The regulations clarify that it is unlawful under California law to use automated-decision systems in hiring or personnel decisions that discriminate against applicants or employees based on a protected characteristic, such as age, gender, race, or disability. The regulations also clarify that automated-decision systems that elicit information about an applicant or employee's disability may constitute an unlawful medical inquiry.

Employers that use automated-decision systems must preserve data and related records for four years from the latter of the data's creation or the personnel action involved.

Colorado

Yesterday, Colorado Governor Jared Polis called for a special session scheduled for August 21, 2025, to address the impact of the new federal bill on Colorado's budget—including "...adjustments and reductions to the fiscal and implementation impacts of SB24-205 on covered businesses and State and local governments." SB 205 was passed back in May 2024 and is currently scheduled to take effect on February 1, 2026. It is the most comprehensive law among those passed by the states, regulating the use of "high-risk" AI systems to protect consumers, including applicants and employees, from unfavorable and unlawful differential treatment. Violations of SB 205 constitute an unfair trade practice under Colorado's Consumer Protection Act. The law states an AI system becomes "high risk" when it is used to make, or is a substantial factor in making, a consequential decision that materially affects or denies a consumer employment or an employment opportunity. The law also regulates other areas, such as education, lending, health care, housing, insurance, and other opportunities and services.

SB 205 will require companies that develop AI systems to disclose to the users of their systems, including employers, the "reasonably foreseeable" uses and known harms of their system, the data used to train the system, the purpose of the system and its intended use and benefits, any known or reasonably foreseeable risks of algorithmic discrimination, and documentation of how the developer attempted to mitigate any algorithmic discrimination.

Employers will have a duty of reasonable care to protect applicants and employees from any "known or reasonably foreseeable" risk of algorithmic discrimination. Employers must implement a risk management policy and program governing the AI system, complete an annual impact assessment, and disclose to applicants and employees when they are interacting with an AI system, and when the system has made a decision adverse to an applicant or employee's interest, such as a job or promotion denial. Finally, employers will be required to post website disclosures about any high-risk AI systems used and what information is collected by the system.

Some employers are exempted from the new law, such as employers with fewer than 50 full-time equivalent employees and those that do not use their own data to train a high-risk AI system.

Prior to yesterday's special session announcement, Gov. Polis previously released a statement urging Colorado lawmakers to "fine tune" SB 205 before its implementation, and there have been recent failed efforts to delay the law's effective date until January 2027. The Colorado Attorney General's office was expected to release regulations and guidance on the law in the coming months. Colorado employers should be on the lookout for future efforts to modify the law or delay its implementation date.

Illinois

HB 3773 was passed in August 2024 and takes effect on January 1, 2026. The law amends the Illinois Human Rights Act to regulate the use of AI systems in employment decisions. Under the amendment, all Illinois employers are prohibited from using AI in a manner that causes a discriminatory effect (both intentional and unintentional) on any protected class under the Illinois Human Rights Act. Employers are also prohibited from using ZIP codes as a proxy for protected classes.

The law requires employers to provide notice to employees when AI is used for decisions about recruitment, hiring, promotion,

discipline, termination, or any other employment terms. The notice needs to include the specific purposes of the employer's AI system and specify any characteristics assessed. The Illinois Department of Human Rights is set to adopt rules that further clarify employers' notice obligations and the timing of such notices.

While the amendment does not grant a private right of action, individuals can file complaints with the Illinois Department of Human Rights.

Texas

Texas Governor Greg Abbott recently signed into law the Texas Responsible Artificial Intelligence Governance Act (TRAIGA), which takes effect on January 1, 2026.

The law establishes a general framework for AI development, government transparency, and consumer rights. However, it imposes few restrictions on private-sector businesses or employers. Specifically, the law prohibits companies from developing or employers from using AI systems "with the intent to unlawfully discriminate against a protected class in violation of state or federal law."

However, the law explicitly carves out disparate impact as a theory of discrimination for AI systems. If an employer's use of an AI system has an unintended result of impacting disproportionately a protected class, such as age, employers will not face liability under TRAIGA.

Critically, TRAIGA does not grant individuals a private right of action and is exclusively enforced by the Texas Attorney General. The law creates an online reporting mechanism where individuals can report potential violations. Individuals who violate the law will be given a cure period. If not cured within 60 days, the Attorney General may bring enforcement action and seek injunctive relief with varying levels of civil penalties.

Ballard Spahr continues to monitor all AI legislative and regulatory activity across the federal, state, and local levels. Our AI Legislation Tracker provides a comprehensive view of AI-related legislative activities with significant potential impact on businesses.

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