Expert Opinion

Artificial Intelligence Artificial Intelligence in the Workplace: The Evolving Legal Landscape for New Jersey Employers

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Artificial intelligence (AI) has become part of everyday workplace decision making. Employers now use AI-powered and algorithmic tools to screen resumes, rank applicants, evaluate interviews, monitor productivity, assess performance, and inform promotion and termination decisions. Generative AI adds another layer, helping managers and human resources professionals draft job descriptions, summarize employee records, and handle workplace communications.

For New Jersey employers, the growing availability of these tools presents an important reality: the technology may be new, but many of the laws governing its use are not. Federal and state anti- discrimination laws still apply whenever an employment decision is made or influenced by an automated system. Regulators are increasingly focused on algorithmic discrimination, and New Jersey lawmakers are weighing legislation that would impose more specific requirements on employers using automated employment decision tools. Employers should therefore treat AI governance as a present compliance issue, not something to address only after comprehensive AI legislation is enacted.

AI and Existing Employment Laws

No statute expressly prohibiting "AI discrimination" is needed before an employer can face liability for a discriminatory decision involving AI. Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act, and the New Jersey Law Against Discrimination (LAD), all apply to employment decisions whether those decisions are made entirely by humans or with the assistance of technology.

The risk is significant because a tool need not be intentionally programmed to discriminate to create liability. Both Title VII and the LAD reach facially neutral practices that produce a disparate impact on a protected group. The Third Circuit has long recognized that an employment practice adopted without discriminatory intent may still violate Title VII if it produces a disparate impact and cannot be justified by business necessity. See NAACP v. North Hudson Reg'l Fire & Rescue, 665 F.3d 464 (3d Cir. 2011). New Jersey courts apply a parallel framework under the LAD, requiring a plaintiff to show that a neutral criterion produced a significantly discriminatory pattern before the burden shifts to the employer. See Schiavo v. Marina Dist. Dev., 442 N.J. Super. 346 (App. Div. 2015).

A seemingly neutral system can produce exactly that outcome. Consider software that ranks applicants based on traits shared by historically successful employees: if the historical workforce skewed toward one demographic group, the tool may reproduce that pattern. Likewise, a videointerview tool that analyzes speech, facial movement, or response patterns may disadvantage individuals because of disability, national origin, or another protected characteristic.

Employers should not assume that buying a product from a third-party vendor shifts responsibility for discriminatory outcomes to that vendor. The employer remains responsible for employment practices carried out on its behalf, and the LAD's prohibition on aiding, abetting, or participating in discriminatory arrangements can reach the deployment of a vendor's tool that produces discriminatory results. A vendor's assurance that a product is "bias-free" or legally compliant is no substitute for the employer's own assessment of how the tool is used and whether its results create legal risk.

New Jersey's DCR Has Put Employers on Notice

New Jersey has already taken a significant step. In January 2025, the New Jersey Office of the Attorney General and Division on Civil Rights (DCR) issued guidance on algorithmic discrimination under the LAD. Its central message is straightforward: although automated decision-making technology may be new, the LAD applies to algorithmic discrimination just as it applies to other discriminatory conduct.

DCR defines automated decision-making tools broadly and recognizes their use in recruitment, hiring, performance reviews, promotions, demotions, and terminations. Its position is not limited to intentional discrimination. New Jersey's disparate-impact framework can also apply when an employer uses a facially neutral automated tool that disproportionately harms people based on a protected characteristic. DCR has reinforced this through its disparate-impact regulations, N.J.A.C. 13:16, which expressly address automated decision-making tools; examples the State cites include online application systems and facial-analysis technology used in hiring.

The practical implication is significant. An employer may have no discriminatory intent, and may not fully understand how a vendor's algorithm works, yet the resulting practice can still create exposure under the LAD. Employers should therefore understand not only which AI products they use, but what information those systems evaluate, how recommendations are generated, and whether their use produces materially different outcomes among protected groups.

Federal Enforcement Remains Relevant

Federal regulators have recognized the same risks. The Equal Employment Opportunity Commission (EEOC) has identified technology-related employment discrimination as an enforcement priority. Its Strategic Enforcement Plan for Fiscal Years 2024-2028 names the use of artificial intelligence and machine learning in recruitment and hiring as an area of focus, including systems that exclude or adversely affect protected groups.

Disability discrimination is a particular concern. The ADA's implementing regulations prohibit qualification standards or tests that tend to screen out individuals with disabilities unless the standard is job-related and consistent with business necessity. 29 C.F.R. Section 1630.10. An AI assessment may "screen out" an applicant with a disability even though the applicant could perform the job's essential functions with or without a reasonable accommodation. Employers must also consider whether an applicant or employee needs an alternative assessment or other accommodation when interacting with an automated system.

For instance, a tool measuring typing speed as a proxy for productivity could misjudge an employee with a visual disability who uses voice-recognition software. Video or voice-analysis tools may likewise misread applicants whose disabilities affect speech, expression, or movement. The broader lesson is that employers cannot treat an automated system's output as inherently objective simply because a computer produced it.

New Jersey Legislation Could Create More Specific Obligations

New Jersey lawmakers are also considering legislation that would go beyond existing anti-discrimination principles and directly regulate workplace AI. Among the pending proposals is Assembly Bill No. 2726, which would regulate "automated employment decision tools." As drafted, it would require independent bias audits, disclosure of audit information, and advance notice to applicants and employees before covered tools are used. It would also require employers to provide certain information after the tool is used, including the qualifications or characteristics evaluated and, following an adverse decision, disclosures allowing the individual to contest it.

Other pending proposals address broader uses of AI, including electronic monitoring and meaningful human oversight of automated systems. These measures remain proposed legislation, not existing law, and may be amended substantially before enactment, if enacted at all. Their direction is nonetheless instructive: transparency, bias testing, notice, and meaningful human oversight are recurring themes in AI regulation. Employers operating in multiple jurisdictions may already face AI-specific requirements elsewhere, so a policy built solely around current New Jersey statutes may quickly become outdated.

Advising Employers: AI Governance Before AI Litigation

The most effective approach is usually not to prohibit AI, but to govern how it is acquired and used. That process should begin with an inventory. Employers often find AI already in use across the organization, not only in human resources but by individual managers using commercial products without formal authorization. Employers should identify which systems influence recruitment, hiring, compensation, scheduling, performance management, discipline, promotion, and termination, and apply higher scrutiny where a tool materially affects an employment decision.

Vendor diligence is equally important. Because business necessity is the employer's central defense to a disparate-impact challenge, employers should, before implementing an AI-based product, determine what data it uses, what characteristics it measures, whether it has been validated as job-related and tested for disparate outcomes, how often it is audited, and what contractual protections the vendor offers.

Human review must be meaningful. Requiring a manager to click "approve" after an algorithm makes a recommendation does little to reduce risk if the manager lacks the information or authority to question it. Employers should train decision makers to evaluate AI-generated results independently and to recognize when further review is warranted. Policies should also address reasonable accommodations, confidentiality, and the handling of employee and applicant information, and should give individuals a way to raise concerns about an automated assessment or request an alternative method of evaluation. Finally, employers should document the process. If an AI-assisted decision is later challenged, records showing what information was considered, how the system was used, and what independent judgment was exercised may prove critical.

Takeaway

Artificial intelligence offers real gains in efficiency, consistency, and data-driven decision making, but automation does not erase an employer's existing legal obligations. For New Jersey employers, the core principle is simple: an employment decision is not insulated from discrimination law merely because an algorithm helped make it. The regulatory framework will keep developing, and pending legislation may eventually impose detailed audit, transparency, and oversight requirements. Employers need not wait. Building an AI inventory, conducting vendor diligence, monitoring outcomes, maintaining meaningful human oversight, and establishing clear internal policies can reduce risk today while preparing organizations for the regulation likely to follow.

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