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*Businesses Beware: The Use of Artificial Intelligence in Hiring in a
'Work from Home' Economy*

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The COVID-19 pandemic has affected nearly every aspect of our lives. Arguably, one of the biggest changes has been the transition to a 'Work from Home' economy. Both employers and employees have had to combat the challenges of garnering productivity from within the walls of their homes. In an attempt to keep going and growing, businesses have also had to abandon traditional in-person interviews and job assessments in favor of virtual meetings and online tools to measure potential employees' cognitive capabilities, emotional intelligence, personality traits, and skill sets.¹ Employers have also opened their doors to new hiring practices by using Artificial Intelligence (A.I.) for recruiting and assessment in hiring decisions to help eliminate bias.² However, "[l]ike any new technology, artificial intelligence is capable of immensely good or bad outcomes."³ Businesses have found themselves in a dilemma when it comes to replacing a typical human review process with a 'bot.'⁴

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¹ Gary Friedman & Thomas McCarthy, *Employment Law Red Flags in the Use of Artificial Intelligence in Hiring*, BUSINESS LAW TODAY (Oct. 1, 2020), https://businesslawtoday.org/2020/10/employment-law-red-flags-use-artificial-intelligence-hiring/#_edn7.

² Frida Polli, *Using AI to Eliminate Bias from Hiring*, HARVARD BUSINESS REVIEW (Oct. 29, 2019) <https://hbr.org/2019/10/using-ai-to-eliminate-bias-from-hiring>.

³ *Id.*

⁴ Macy Bayern, *How artificial intelligence and machine learning are used in hiring and recruiting*, ZDNET (Apr. 1, 2020) <https://www.zdnet.com/article/how-artificial-intelligence-and-machine-learning-are-used-in-hiring-and-recruiting/>.

Many human resource managers have testified to increased efficiency, more transparent hiring process updates, and faster short listings through use of Artificial Intelligence.⁵ Human resource managers are also using A.I. to detect, mitigate and overcome bias in the employee lifecycle and have reported that they believe that A.I. can improve their company's diversity and inclusion efforts.⁶ While many human resource managers may be limited in time and resources, A.I. can help access and analyze an entire pipeline of candidates and eliminate unconscious human bias in the selection process by removing name, age, and genders of applicants.⁷

Despite the high praises, A.I. recruiting technology is certainly not free of flaws. A.I. programs may only be as good as the programmers who write the algorithm.⁸ If an A.I. tool is fed the resumes of only people who have previously been hired by a company, the recruiting departments' previous biases may be inherited by the tool.⁹ For example, Amazon ousted an internally developed recruiting tool after research brought to light that the algorithm was disfavoring resumes that included the word "women's," as in "women's chess club captain."¹⁰

Beyond the surface level impact A.I. systems may have during the hiring process lies potential risk under existing employment laws. The A.I. system will be subject to Title VII and the Age Discrimination and Employment Act (ADEA).¹¹ These federal laws protect employees and applicants against discrimination based on race, color, national origin, sex, religion, and age.¹² Because A.I. programs are subject to 'training,' an employer may face the same liability for the system as they would for their own human resources department.¹³ Further, an employer could face a disparate impact claim if use of an A.I. program adversely impacts a protected class, like female applicants under Amazon's recruiting tool.¹⁴

Despite the increased efficiency and our increased comfort with technology in a 'Work from Home' economy, businesses should beware and proceed with caution when implementing Artificial Intelligence into their hiring practices because of the potential liability.

⁵ *14 Ways Artificial Intelligence Will Disrupt Job Searches and Recruiting*, FORBES (Aug. 19, 2020), <https://www.forbes.com/sites/forbescoachescouncil/2020/08/19/14-ways-artificial-intelligence-will-disrupt-job-searches-and-recruiting/#f759ed420e44>.

⁶ Katica Roy, *How AI can ensure your transition to remote work is equitable*, WORLD ECONOMIC FORUM (June 26, 2020), <https://www.weforum.org/agenda/2020/06/ai-ensure-transition-to-remote-work-is-equitable/>.

⁷ Polli *supra* note 2.

⁸ Friedman & McCarthy *supra* note 1.

⁹ *Id.*

¹⁰ Jeffrey Dastin, *Amazon scraps secret AI recruiting tool that showed bias against women*, REUTERS (Oct. 10, 2018), <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>.

¹¹ Friedman & McCarthy *supra* note 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*