



AI Meet HR, HR Meet AI

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PRESENTERS



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TECHNOLOGIES

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Agenda

- AI – What is it?
- The Technology
- The New Legal Frontier
- The Good, the Okay, and Please Never Uses
- Best Practices



Why AI is not “just another technology”

 Intelligence	Human Intelligence	Artificial Intelligence
 System	The body	Technology (servers, networks, applications, cloud, etc.)
 Components	Organs, parts of body	CPUs, memory, I/O devices
 Substrate	Carbon, oxygen, hydrogen, nitrogen, etc.	Silicon, copper, gold, oxygen, etc.
	 Biology	 Technology

AI is a simulation of human intelligence

-
- Learns
 - Reasons
 - Self-corrects



Think of AI as a race of aliens

-
- Vast knowledge
 - Rapid processing
 - Zero emotion
 - Zero conscience
 - Not one, but many



3 coming waves of AI

-
1. Enhancement
 2. Replacement
 3. Revolution



How HR leaders should respond

Find AI-enabled, industry-specific software

Finance



Marketing



Operations



Human Resources



How HR leaders should respond

Be mindful of privacy and security

-
- Deepfakes
<https://beta.character.ai/>
 - Automated & Enhanced Phishing Attacks
 - AI-Powered Malware



How HR leaders should respond

Partner with IT, cybersecurity, and AI thought leaders



How HR leaders should respond

Put human flourishing first





Please Scan QR Code

[Pollev.com/brianbouchard310](https://pollev.com/brianbouchard310)

Question 1

Do you regularly use artificial intelligence in your H.R./ People Manager professional life?



Question 1

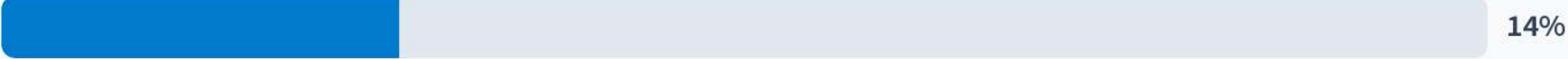
Yes



No



Not sure



In which areas does HR currently utilize automation and/or AI?

**Question was select all that apply.*



79%

Recruitment and hiring



41%

Learning and development



38%

Performance management



18%

Productivity monitoring



8%

Succession planning



4%

Promotion decisions

Broad HR Use

Source: SHRM

Current
Worker
Usage



Source: SHRM, Salesforce



The AI Concern

Question 2

Florist Gump uses Recruiting Tech. Inc. to hire a new marketing director for its nationwide campaign for the new Golden Curran(t) flower. 60 apply. Recruiting Tech. screens out/rejects 20 applicants because their backgrounds have an 80% misalignment with Florist Gump's recent preferences and hiring history.

Permissible or Impermissible

Question 2

Permissible



Impermissible



Answer

- > Possibly impermissible
- > It is unclear why the Recruiting Tech. rejected the 20 candidates other than the candidates appeared to have a material misalignment with “preferences” and “hiring history”
- > Codes for discrimination

Potential Problem

Unless carefully trained and monitored, using AI for recruiting and hiring tends to reinforce social stereotypes and replicate existing workforce dynamics

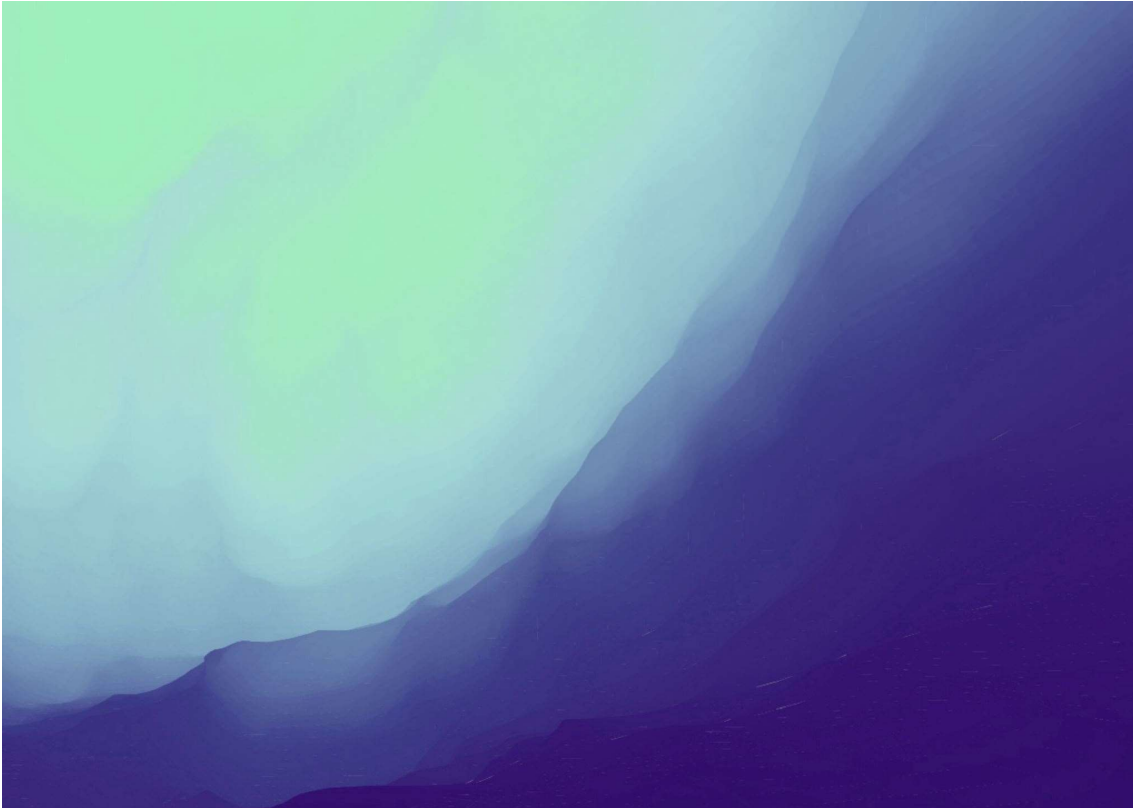
- > Zip codes
- > Colleges
- > Backgrounds

Regulatory Oversight

- > EEOC – Five Year Strategic Enforcement Plan (ends 2027) identified use of A.I. as the “next discrimination frontier”
- > EEOC - Highest priority of EEOC is combatting algorithmic discrimination
- > NYC – Automated Employment Decision Tool law
- > Executive Order on Safe, Secure, and Trustworthy Development and Use of A.I.

Settlement of Lawsuit

- > August 2023 – EEOC settled its first AI lawsuit
- > Company called iTutorGroup paid a \$365,000 settlement after EEOC found that its recruiting tool “automatically rejected” female applicants over 55 and male applicants over 60.



A.I. Language Models

The GOOD

- > Optimal for non-personalized communications, general workplace policies (excluding anti-harassment/ retaliation and most safety), facilitating communications, and developing engagement initiatives
 - Cellphone policies
 - Safe driving policies
 - Clean kitchen policies
- > Eliminating repetitive tasks
- > Assisting with editing and tone

What are the key provisions for an effective inclement weather policy?

used information expectations location vacation
judgement home communicate factor makes
timing effect accwsd communication human types
state decisions does office paid notice conditions
giving benefit choice employee closures delay
snow advance essential vs use come decision
define call weather safety actually sick
staff content ability time pay work absent gary
here... day umbrella closed incentive done
emergency closing apply employees comp follow remote
making culture behavior attendance miss process
type expected compensation contingency method
manager

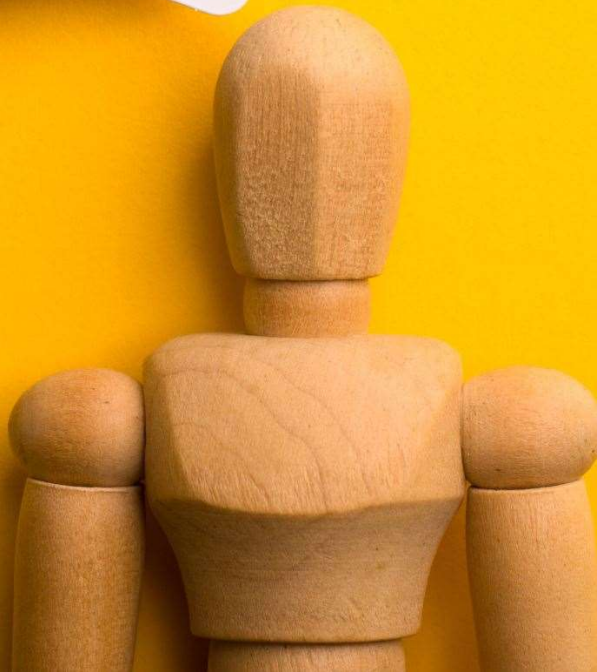
Policy Examples

- [Driving Policy](#)
- [Inclement Weather Policy](#)
- [Reimbursable Business Expenses](#)



Question 4

What is the *most significant* problem with having A.I. write more consequential policies, like those pertaining to employee discipline, harassment, and safety?



What is the most significant problem with having A.I. write more consequential policies, like those pertaining to employee discipline, harassment, and safety?

unlawful organizational relevance impersonal platform
inconsistent factor evaluation inaccurate specificity
pulling consistency awareness generic legality
honesty business culture legal cultural hippa
secure broad area leaves
discrimination lack
law empathy state bias laws consistency
nuance differ vague compliance bad feel lacking
discriminatory alignment gray issues
specific examples company customization policies
sufficiency privacy discretion human objectively security
judgement room

Answer

- > Perception and liability
- > Same issue with having an A.I. language model draft personalized or sensitive email communications
- > Consider: How would a jury react to having an instrumental policy drafted by automated technology in seconds

Repetitive Task Usage

- > Emailing applicants for interview scheduling (not job offers)
- > Developing employee surveys
- > Developing interview questions
- > Creating performance reviews
- > Reminders for holidays and events
- > Basic memos

What about an LLM Policy. . .



Policy governing employee use of A.I. language model technologies for work-related purposes



Only 26% of companies have adopted



When is A.I. use encouraged, when is it tolerated, and when it is verboten?

The OKAY

Policies, communications, and tasks that may require *inspiration* but also require *tailored* application, *careful* review, and *conscientious* input from the user

Question 5

What is the most important HR / Employment related document for employee management?

Question 5

A. I-9



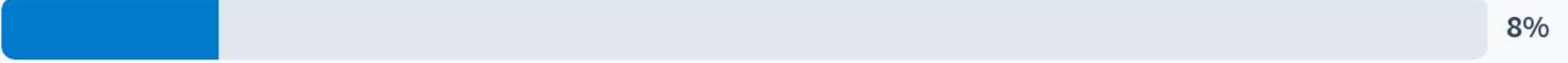
B. Handbook



C. Job Description



D. Performance Improvement Plan



Answer

- > C. Job description
- > A good job description will:
 - Set/communicate expectations
 - Establish essential qualifications
 - Carefully define “essential functions” of the position
 - Tailored to the position, location, and industry



Find a great hire, fast

Rated #1 in increasing quality of hire.

Job title


Company

Workplace type

Job location 

Job type

[Start free job post](#)

[Learn how job posting works](#) 

Rated #1 in increasing quality of hire¹



+ New Chat

Previous 30 Days

- Salary Benchmarking Process
- Marketing Associate Job Desc
- Expense Reimbursement Polic
- Snow Inclement Weather Polic
- NH Company Cellphone Drivin

March

- New chat
- Mentorship's Power.
- Non-Disparagement Clause C
- Complaint for Race Discrimina


February

- AI for Legal Compliance

January

- Write NH Paid Family Leave No
- Write NH Paid Leave Notice
- User Expresses Loathing, Assi

Upgrade to Plus

 **Brian Bouchard**

GPT-3.5

GPT-4

ChatGPT

Explain superconductors
like I'm five years old

Plan a trip
to see the best of New York in 3 days

Write a text
inviting my neighbors to a barbecue

Give me ideas
for what to do with my kids' art

Write a job description for an entry-level marketing associate at a medium-sized accounting firm

Free Research Preview. ChatGPT may produce inaccurate information about people, places, or facts. ChatGPT September 2023

Other “Okay” Uses

- > Competency guides
- > Performance plans and goals (not a PIP)
- > On-boarding materials
- > General methodology learning: Examples:
 - What is a “salary benchmark”
 - Steps for conducting a wage & hour audit
- > <https://chat.openai.com/>

The PLEASE DON'T

Use of language model platforms for matters that require a *substantive knowledge base* to identify whether the work product generated by A.I. is legitimate or a hoax

Do not use A.I. for . . .

Legal Compliance
(including
wholesale
handbooks)

Complicated
Benefit Policies

Critical Handbook
Policies (i.e. anti-
discrimination and
anti-retaliation)

Do not use A.I. for . . .

Employment
Agreements
Generally

Restrictive
Covenants

Non-Disclosure
Agreement

Severance
Agreements

Sensitive
Communications

Fundamental Problems

1. The internet generally
2. Evolution of the law
3. Hallucinations – Occurs when A.I. simply invents a plausible sounding but ultimately fictitious reponse

Question 6

What are the problems with the non-solicitation provision from the next slide?



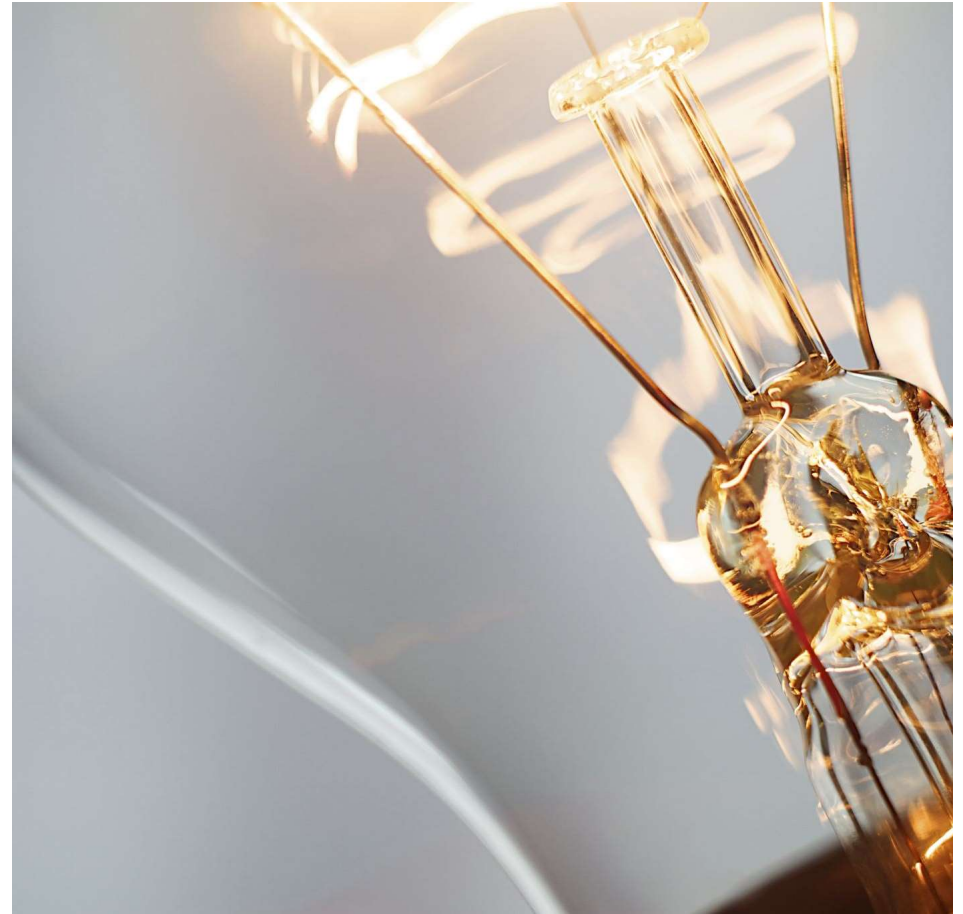
Here is a sample non-solicitation clause that could be included in an employment agreement in New Hampshire:



"During the term of Employee's employment with Company and for a period of one year after the termination of Employee's employment, Employee shall not, directly or indirectly, solicit, divert, or take away any business from Company, or attempt to solicit, divert, or take away any business from Company. This includes, but is not limited to, soliciting or attempting to solicit any customer, client, supplier, vendor, or employee of Company to do business with any entity other than Company."

Compliance Uses

Use of A.I. for compliance purpose works *only if* the user is knowledgeable enough to (a) ask the right question, (b) in the correct way, and (c) already knows the answer



The NEVER

Using A.I. to assist H.R. in resolving sensitive or confidential employee issues or to obtain guidance in response to a specific situation that has developed in the workplace

Question 7

Steve writes the following prompt into ChatGPT: “Marco has been diagnosed with degenerative disc disorder and is requesting an accommodation. Given the intensive physical requirements of Marco’s job, management believes we would be better off separating Marco. Is that legal? When are final wages due?”

What’s the problem here?

Question 7

A. The message is not privileged/confidential



B. The company needs more information to determine payment of final wages



C. The company is not engaging in the interactive process



D. The company violated Marco's HIPAA rights



Answer

- > A. The “conversation” is not privileged.
- > One step removed from posting the question on a message board or forum (e.g. LaborNet)
- > Discovery requests
- > ADA & Confidentiality Concerns

Best Practices for Generative A.I.

- > Great tool to increase efficiency and to obtain a “third-party” perspective on non-sensitive matters
- > Great for basic policy drafting and first drafts of *certain, basic* policies
- > Be mindful of confidentiality and copyright concerns

Best Practices for Generative A.I.

- > Subpar tool for agreements or legal compliance
- > NEVER USE for sensitive questions about specific employees or questions that should not be shared publicly
- > Develop an A.I. use policy



Questions