

Compliance Overview

Highlights

Key tips for drafting a policy regarding AI in the workplace include the following:

- Establish a committee in charge of AI;
- Assess all risks;
- Define the scope of the policy;
- List which AI systems employees are permitted to use;
- Describe how to use AI systems properly;
- Conduct audits and update the policy; and
- Seek the advice of legal counsel.

Tips for Drafting a Policy for AI in the Workplace

Artificial intelligence (AI) has fundamentally altered how many employees perform their jobs, resulting in greater efficiency and increased productivity. Employers are seeking the use of AI to make their companies more productive and profitable.

While AI can be an extremely valuable tool in the workplace, its improper use may lead to costly mistakes and lawsuits for employers. Having a clear written policy on the use of AI in the workplace can help employees use such systems properly and reduce the risk of costly mistakes. This Compliance Overview outlines key tips for drafting a policy regarding AI in the workplace.

While this overview provides guidelines for employers to consider when creating a policy, it is strongly recommended that employers consult local counsel to help ensure the policy meets the company's needs while complying with all applicable laws.

Links and Resources

- [Artificial Intelligence and the ADA](#), from the U.S. Equal Employment Opportunity Commission
- [US Department of Labor Releases AI Literacy Framework Providing Foundational Content Areas, Delivery Principles to Guide Nationwide Efforts](#), from the U.S. Department of Labor

Tip #1: Establish a Committee in Charge of AI

In their policies, employers should consider designating an internal committee that is in charge of the organization's use of AI. Employers should consider making this committee responsible for a number of items, including, but not limited to, the following:

- ✓ Providing oversight of all uses of AI, including designating which tasks (and job categories) employees are permitted to use AI for;
- ✓ Listing which AI systems employees are permitted and not permitted to use, including approving or denying employee requests to use AI systems that are not specifically listed in the company policy;
- ✓ Clearly communicating the policy and training employees on the proper use of AI systems;
- ✓ Ensuring that confidential company and employee information is properly protected from data breaches and other security risks, including implementing proper security systems;
- ✓ Responding to any data breaches or other security incidents;
- ✓ Overseeing and communicating any monitoring of employee activity that occurs in order to properly protect employee privacy;
- ✓ Complying with all ethical obligations;
- ✓ Evaluating and eliminating any bias or discrimination found to exist in the organization's use of AI;
- ✓ Answering any questions employees may have about the AI policy or the use of AI, and providing an avenue for employees to give feedback; and
- ✓ Assisting the organization's HR department with investigating potential employee violations of the company's AI policy and recommending appropriate discipline.

Employers should consider listing the names and contact information of committee members so employees know who to contact in the event that they have questions or encounter any issues.

Tip #2: Assess All Risks

To assist with crafting an effective AI policy, employers should consider assessing any risks that the use of AI may entail. For example, using AI carries the potential that an organization's security system may be breached, compromising data privacy. Such breaches may lead to costly litigation (including class actions) and remedial measures.

Other potential risks may include, but are not limited to, violations of copyright laws and ethical issues. By assessing all such risks at the outset, employers will be better prepared to address these issues and potential mitigation measures when drafting their AI policy.

Tip #3: Define the Scope of the Policy

Employers should consider clearly defining the scope of their AI policy and specifying the uses of AI to which the policy applies. For example, will the policy only cover uses of AI systems that are outside the company, or will it cover all potential uses of AI, including AI systems that are internally created and only accessed by the company? Having a clear understanding of what the policy covers will aid employees in compliance.

Key Points: When defining the policy's scope, employers should consider using language that is easily understandable by all employees (including those without a technological background), and they should consider avoiding technical, industry-specific jargon to the extent possible. Employees of all job classifications and levels should be able to easily read and understand the policy without having to research specific words or phrases. This will help ensure that employees fully comprehend their obligations under the policy.

Tip #4: List Which AI Systems Employees are Permitted to Use

Employers should consider providing a list of AI systems employees are permitted to use to help ensure employees are only using reputable systems that lessen the chances of a data security breach or other risks. Employers can also create a process in their policy for employees to request approval to use AI systems that are not specifically listed in the company policy.

Aside from listing the AI systems that employees are permitted to use, employers should consider listing the AI systems that are off-limits for employee use. There may be AI systems available that are too high-risk, even if the systems are helpful. Employers should consider specifically outlining which systems are not permitted for employee use, along with the potential consequences employees may face for violating company policy, such as disciplinary action up to and including termination.

Tip #5: Describe How to Use AI Systems Properly

Employers should consider clearly describing how employees should use AI systems properly. For example, there may be specific tasks for which employees are permitted to use AI and tasks for which employees are not. Proper use may also vary by job category. Furthermore, improper use may lead employees to inadvertently violate intellectual property (IP) rights, which may result in legal trouble. Employers should consider clearly articulating rules for using AI systems properly to help avoid employee confusion and costly mistakes.

In any section on the proper use of AI, employers should consider emphasizing diligent human oversight of any use of AI. While AI may be helpful and increase productivity, employees should always ensure the accuracy of any work product produced by AI. Employers should consider describing any processes on how employees may monitor and check the accuracy of the AI work product.

In addition, an employer should consider clearly outlining that employees should keep sensitive information, such as company trade secrets and employees' personal information, confidential. Employers should consider describing when employees may (if ever) and may not enter sensitive information into AI systems—and what the consequences may be for employees who violate these rules.

Properly using AI also involves checking for any bias or discrimination that AI work products may contain. For example, an organization may use AI to make decisions involving employee selection, such as hiring, promotion or termination. An employer should consider clearly articulating the dangers of bias or discrimination inherent in any such use of AI and how employees can monitor and eliminate bias.

Key Points: AI can be an extremely valuable tool—if used properly. Improper use of AI may lead to costly mistakes, such as inaccurate work product, violation of IP rights, data security breaches and even discrimination lawsuits. Clearly articulating how to properly use AI systems in a company policy can help lessen the chances that such mistakes will occur. Furthermore, training employees on proper use of AI systems will help ensure that employees know how and when to utilize AI in their jobs.

Tip #6: Conduct Audits and Update the Policy

Auditing employee use of AI systems may help ensure that an employer’s policy is being followed and that AI is being used properly. An employer should consider thoroughly discussing AI audits, including how and when audits will be conducted, who will be responsible for conducting audits and what the consequences will be for employees discovered to be violating company policy.

In addition, employers should consider updating the policy as needed to stay current with changing laws, advances in technology and shifting company priorities. Failure to keep abreast of changes in law and technology may result in an organization’s being out of legal compliance or lagging in technology. Employers should consider tasking the committee in charge of AI noted above with conducting audits, monitoring legal and technological changes, and updating company policy as needed.

Tip #7: Seek the Advice of Legal Counsel

Employers are strongly encouraged to work with local counsel when drafting or updating their AI policy. Local counsel can help employers comply with any applicable legal requirements, which may be particularly challenging and complex for multistate employers. Having a qualified legal professional can help employers avoid costly compliance mistakes and potential lawsuits.

Aside from helping to ensure legal compliance, local counsel can also assist with drafting the policy to help ensure that it is easily understandable by all employees, especially those without a legal or technological background. Local counsel can also help update the policy whenever needed due to changing legal requirements, advances in technology and shifting company priorities.

Employer Takeaways

As AI continues to evolve, employers are seeking to use it to make their companies as productive and profitable as possible. While AI can be a valuable tool in the workplace, its improper use may lead to costly mistakes and lawsuits for employers. Having a clear written policy on the use of AI systems can help employees properly use them and decrease the chances that employers will be subject to costly mistakes. It is strongly recommended that employers consult local counsel when drafting or updating their AI policy to help ensure it meets company needs while complying with all applicable laws.