News Brief

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EEOC and DOJ Issue Guidance on the ADA and the Use of Artificial Intelligence, Algorithms and Software

The U.S. Equal Employment Opportunity Commission (EEOC) and Department of Justice (DOJ) recently issued new guidance about how employers' use of artificial intelligence (AI) and other software tools to make employment decisions may result in unlawful disability discrimination under the Americans with Disabilities Act (ADA).

The agencies warned that algorithmic decision-making tools—mainly when used to hire, monitor performance, determine pay or performance, or establish other terms and conditions of employment—may discriminate against people with disabilities.

"We are sounding an alarm regarding the dangers tied to blind reliance on AI and other technologies that we are seeing increasingly used by employers."

- Kristen Clarke, DOJ assistant attorney general, during a press call

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EEOC Guidance

The EEOC's guidance highlighted how employment software tools might violate the ADA, such as:

- The employer does not provide a reasonable accommodation necessary for an individual to be rated fairly and accurately by software.
- The software screens out an individual with a disability, even though the individual can do the job with a reasonable accommodation.
- The software makes disability-related inquiries or includes medical examinations.

The EEOC also provided best practices to help employers avoid these violations.

DOJ Guidance

The DOJ's guidance provides examples of the types of software tools employers use, clarifies that employers must consider various disabilities when designing or choosing their software and explains when an employer must provide a reasonable accommodation when using software tools.

Employer Takeaway

Several factors have led these agencies to address this topic. One is the ongoing unemployment challenge for workers with disabilities. The Bureau of Labor Statistics' April data revealed a labor force participation rate of 23.1% for people with a disability, compared with 67.5% for those without.

Employers should review this guidance and assess their employment technology and processes to ensure they are not at risk for ADA violations. Contact us today for more additional resources.

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