Practice Guides

LEGAL TECHNOLOGY

Contributing editor
Gero Schreiber

START READING

LEXOLOGY
Getting the Deal Through

6

Implications of AI Technologies in Employment Law

Grace Katsoulis, Zoe Provata and Nikolaos Papadopoulos[1]

Introduction

As artificial intelligence (AI) continues to advance and transform various industries, it also significantly impacts employment law. AI systems are increasingly used in the workplace to automate tasks and make processes more efficient. Still, they also raise several legal and ethical questions that must be addressed.

As of today, several companies are using AI in their recruitment process. One example is Unilever, a global consumer goods company, implementing an AI-powered recruitment tool called HireVue.[2] HireVue uses AI to analyse video interviews and assess candidate suitability for the role based on facial

1 Grace Katsoulis is a partner, Zoe Provata is a senior associate and Nikolaos Papadopoulos is an associate at Ballas Pelecanos Law

2 W Knight, 'Job Screening Service Halts Facial Analysis of Applicants', *Wired* magazine, https://www.wired.com/story/job-screening-service-halts-facial-analysis-applicants/ (last accessed 24 March 2023).

expressions, tone of voice, and language. The system also uses data from other sources, such as resumes and online tests, to build a comprehensive profile of each candidate. This way, the employer tries to improve the quality of future hires, reduce the time and cost associated with the recruitment process and calibrate the diversity of its candidate pool.

Although the use of AI, in this case, has significantly streamlined the recruitment process, concerns have been raised regarding potential biases in the algorithms used. Following controversies regarding the facial recognition features of their algorithm, the company discontinued this aspect of video interviews after internal research pinpointed that visual analysis of interviews no longer added value to the assessment due to the rapid advancement in natural language processing.[3]

One of the most pressing concerns is the potential for AI to perpetuate bias and discrimination in the hiring and employment process. AI systems can be trained on biased data, leading to discriminatory outcomes such as disfavouring certain candidates based on race, gender, or other protected characteristics. This raises questions about the responsibility of employers to ensure that their AI systems are free from bias and comply with anti-discrimination laws. In addition, the increasing use of AI in employment raises questions about privacy, data protection, and transparency. Employers must ensure that they collect and use employee data in a way that complies with data protection regulations and that they are transparent about how AI systems make decisions about employees. Overall, integrating AI systems into employment raises complex legal and ethical issues that require careful consideration and regulation to ensure that the rights and protections of employees are not compromised.

This chapter aims to identify the potential implications of AI systems' introduction in the workplace. First, we will approach different types of AI systems and discuss which economic areas and which aspects of employment will be affected. Then, we will identify the positive and negative aspects of deploying AI

3 Society for Human Resource Management (SHRM), 'HireVue Discontinues Facial Analysis Screening', https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/hirevue-discontinues-facial-analysis-screening.aspx (last accessed 24 March 2023).

systems in the workplace. Finally, we will provide our conclusions and thoughts on the next steps of regulating AI systems in the context of employment.

Areas of deployment and types of AI systems

Artificial intelligence (AI) systems have been deployed in various industries, including employment. AI systems in employment can assist organisations in managing human resources, automate certain tasks, and provide insights that help businesses make informed decisions. Below, we identify different areas of employment where such AI systems will be introduced. Subsequently, we highlight types of AI systems that will affect employment in the coming years.

Areas of deployment of AI systems

Recruitment

One of the most common applications of AI in employment is recruitment. Recent years have seen the development of online labour markets in which the matching of firms and workers is done online, the work itself is performed online, and the output of this work is also delivered electronically.[4] AI systems can analyse resumes, job applications, and social media profiles to identify potential candidates for job openings. These systems can also conduct initial interviews through chatbots, saving recruiters time and effort.[5]

For example, scholars have noted that although most stages of the recruitment process still seem to involve human intervention, at this particular stage, candidates that still need to meet certain requirements may be rejected on a fully automated basis. They significantly reduce the time businesses take to hire someone, sometimes shortening it from an average of 24 to nine days.[6]

4 A Adams, 'Technology and the labour market: the assessment', *Oxford Review of Economic Policy*, Vol. 34, No. 3, 2018, pp. 349–361.

5 European Parliament, Panel for the Future of Science and Technology (STOA), 'AI and digital tools in workplace management and evaluation, An assessment of the EU's legal framework', May 2022.

6 ibid.

However, the use of AI in recruitment has raised concerns about bias and discrimination, as these systems can perpetuate and even amplify existing biases in the data they are trained on. For instance, AI-driven job interviews may attempt to assess an applicant's personality based on inflexion and timber in their voice, which arguably entails biometrical personal data of candidates. Also, facial recognition aspects of AI systems still need to eliminate biases, as they continue to perform poorly on darker skin tones.[7]

Due to the data-driven nature of the candidate onboarding procedures, employers may benefit from AI systems in several ways:

- Resume screening: AI-powered systems can analyse resumes and cover letters to identify relevant skills, experience, and qualifications, enabling recruiters to screen and shortlist candidates quickly.
- Automated interviews: AI-powered chatbots and video interviews can conduct initial interviews and screen candidates, saving recruiters time and effort.
- Candidate matching: AI can match job requirements with candidate profiles and recommend the most suitable candidates for a particular job.
- Diversity and inclusion: AI systems can help remove unconscious bias by eliminating factors like name, gender, or ethnicity and focus solely on the qualifications and experience of the candidate.
- Skill assessment: AI can assess a candidate's skills and knowledge through online tests, simulations, or games, providing a more objective assessment of their capabilities.
- Feedback and analytics: AI can provide feedback to recruiters on the effectiveness of their recruitment strategies and identify areas for improvement.

However, there are also concerns about the potential bias in AI systems and the possibility of eliminating the human touch from the recruitment process. As a result, it is important for recruiters to use AI systems as a tool to assist with the recruitment process, rather than relying entirely on them.

7 J Buolomwini, 'When the Robot Doesn't See Dark Skin', *The New York Times*, 21 June 2018.

Read this article on Lexology

Performance management, task distribution, and evaluation

AI systems can also assist with performance evaluations, employee scheduling, and workforce management. The combination of a variety of data sources, including wearable devices, communication tools and other work tools, makes it possible to obtain what is commonly referred to as 'big data', which combines multiple data sources and large volumes of data with the capacity to generate and process such data at high velocity.[8]

This kind of AI assessment allows the employer to allocate the workforce efficiently to different tasks, to evaluate them, schedule their work and manage their performances. The organisation of those aspects of human resources in a data-driven format, instead of traditional performance reviews, could also reinforce the efficiency of the algorithm, which is fed with more and more precise data points. For scholars, the continual feedback process is meant to engage workers more, and even render the AI systems as workers' coaches.[9] For instance, AI-powered scheduling systems can optimise work schedules to ensure that the right number of employees with the required skills are available at the right time. These systems can also help managers monitor employee productivity and provide feedback on areas for improvement.

Even though the use of big data for human resources management is increasingly common among corporate trends, it is often suggested that any decision should be implemented after human review. Retaining a human person in the loop ensures the transparency and fairness of any decision-making. Also, it allows the subjects of the decision to negotiate and counter any decision.[10]

Employee monitoring

In a 2015 decision, US District Judge Edward M Chen noted: 'Uber's application data can . . . be used to constantly monitor certain aspects of a driver's

8 A.McAfee, E Brynjolfsson, 'Big Data: The Management Revolution', *Harvard Business Review*, 2012.

9 B Babic, Boris et al, 'A Better Way To Onboard AI', *Harvard Business Review*, 2020.

10 V de Stefano, 'Negotiating the Algorithm: Automation, Artificial Intelligence and Labour Protection', *Comparative Labor Law & Policy Journal*, Vol. 41, No. 1, 2019.

behavior. This level of monitoring, where drivers are potentially observable at all times, arguably gives Uber a tremendous amount of control over the "manner and means" of its drivers' performance.'[11]

AI systems have the potential to impact employee monitoring significantly. AI systems can monitor employee activity and behaviour across various digital channels, including email, chat, and social media, providing employers with a wealth of data on employee activity. The ability to collect such a variety of data points significantly increases the monitoring capabilities of the employer, compared with previous eras, where it would be time-consuming and cost-ineffective for any person to go through such volumes of data.

Via the processing of volumes of data, AI systems learn to detect behavioural patterns. They can analyse employee behaviour to identify patterns that may indicate low productivity, dissatisfaction, or even potential security breaches. Further, employers may use predictive analytics to identify trends and patterns in employee behaviour and predict future outcomes, enabling employers to take proactive measures to improve employee productivity, satisfaction, and retention.

AI systems can automate many of the tasks involved in employee monitoring, reducing the workload on managers and HR staff. AI can be beneficial in terms of security, productivity and efficiency.[12] However, it is important for employers to strike a balance between using AI systems to monitor employee performance and respecting employee privacy and autonomy. Employers should also ensure that AI systems are used ethically and transparently and are subject to appropriate oversight and accountability mechanisms.

11 *Douglas O'Connor v Uber Technologies Inc.*, 82 F.Supp.3d 1133, 1151–2 (ND Cal. 2015).

12 A Aloisi, E Gramano, 'Artificial Intelligence Is Watching You at Work. Digital Surveillance, Employee Monitoring, and Regulatory Issues in the EU Context', Special Issue of *Comparative Labor Law & Policy Journal*, 'Automation, Artificial Intelligence and Labour Protection', edited by Valerio De Stefano, Vol. 41, No. 1, pp. 95–121.

Different types of AI systems in the employment ecosystem

AI systems will likely be introduced in employment in the coming years. These recent developments arguably foreshadow a more intense recourse to electronic surveillance, algorithmic management and (AI-driven) performance in the years ahead.[13] We list just a few examples of AI systems that will likely be introduced in employment. As technology advances, we can expect to see even more innovative uses of AI in the workplace. It is imperative to remember that artificial general intelligence has yet to be available. Any estimation regarding when such systems will be available for wide use cannot be certain.

Robotics

Robotic systems are increasingly being deployed in the employment context to automate tasks that were previously performed by humans. Robotic systems in employment can improve efficiency, productivity, and safety, and they can also reduce costs for businesses. However, the deployment of robotic systems in employment also poses challenges and raises ethical concerns.

AI-powered robots are already being used in manufacturing and logistics to perform repetitive, dangerous tasks or tasks that require a high degree of precision. As technology improves, robots may become more capable of performing more complex tasks and interacting with humans more naturally.[14]

Chatbots and virtual assistants

Chatbots and virtual assistants are becoming increasingly popular in customer service and support roles, including recruitment, employee engagement, and customer service. Chatbots can assist HR departments in responding to employee queries, scheduling interviews, and onboarding new hires. They can also provide personalised assistance to employees and customers,

13 See footnote 5.

14 E Bourke, S H Hymers, 'How a new breed of robots could revolutionise the workplace', *Euronews*, https://www.euronews.com/next/2022/07/13/how-a-new-breed-of-robots-could-revolutionise-the-workplace (last accessed 24 March 2023).

improving their overall experience, or they even conduct transactions on customers' behalf.[15]

Predictive analytics

AI-powered predictive analytics tools can help companies analyse large amounts of data to identify patterns and make more informed decisions. This can be useful in fields such as finance, healthcare, and marketing.

Predictive analytics is used in employment to forecast workforce trends, identify potential employee churn, and assess employee performance. By analysing employee data, employers gain insights into workforce behaviour and make informed decisions about staffing, training, and development. Predictive analytics can help them optimise their workforce and improve employee engagement and retention.[16]

Natural language processing (NLP)

Natural language processing (NLP) is used to develop AI-powered chatbots and virtual assistants to understand and respond to natural language queries. It is also used in employment to improve communication and collaboration between employees and management.[17]

NLP technology can analyse unstructured data, such as employee feedback and performance reviews, to identify key insights and trends. This can help HR departments to make data-driven decisions and improve employee engagement and retention. NLP can also automate certain tasks, such as responding to employee queries or scheduling interviews, freeing HR personnel to focus

15 S Roddy, 'What Is the Potential of Chatbots in Recruitment?', *Spiceworks*, https://www.spiceworks.com/hr/hr-strategy/articles/what-is-the-potential-of-chatbots-in-recruiting/, (last accessed 24 March 2023).

16 R Delgado, 'The Modern Job Hunt: How to Beat the Big Data System', *Wired* magazine, https://www.wired.com/insights/2014/06/modern-job-hunt-beat-big-data-system/ (last accessed 24 March 2023).

17 For example, see https://eva.ai/the-role-of-nlp-in-hiring-process-automation/ (last accessed 24 March 2023).

on more strategic initiatives. Overall, NLP is transforming how employers manage their workforce by enabling more efficient and effective communication and decision-making. This can be useful in customer service, support, and even recruitment.

Implications of AI in employment context

Benefits associated with the use of AI in employment context

As with any new technology, the use of AI has both advantages and disadvantages in the employment context. If developed and deployed correctly, AI-based tools have the potential to bring significant benefits. More specifically, the implementation of AI technologies could potentially improve efficiency and equality in decision-making during the recruitment process, since bias against some groups of applicants may be reduced, ensuring more inclusion and diversity. Any bias in AI-driven decision-making processes can be mitigated in ways that are not usually possible with human judgement, since humans might not even consciously know all the inputs that went into their decision. On the contrary, algorithmic decision-making processes inherently depend on making any decisional criteria formal and explicit, which creates the potential to detect and remove sources of bias.[18] If unfair biases can be avoided, AI systems could even increase societal fairness.[19] Likewise, there is potential for tools using AI to increase the efficiency of the employee evaluation process, given that algorithms may provide more objective and neutral ways of measuring employees' performance and eliminate the possibility of individual biases by supervisors.[20]

In addition, AI-based tools during the recruitment process may save resource time and costs by reviewing and filtering job applications and, therefore, determining a candidate's suitability, reducing at the same time the amount of time

18 World Economic Forum, 'Employment Law and AI-Based Recruitment: A Close Examination of Existing Regulatory Gaps and the Path Forward', May 2020.

19 High-Level Expert Group on Artificial Intelligence set up by the European Commission, 'Ethics Guidelines for Trustworthy AI', 8 April 2019.

20 European Parliament, 'Study Requested by the AIDA Committee, Improving Working Conditions Using Artificial Intelligence', June 2021.

that needs to be spent by recruiters.[21] In particular, AI-based tools are able to identify ideal candidates for certain roles, match job requirements with skills and experience, recommend jobs and roles to potential candidates, etc, while digital assistants are able to screen volumes of CVs and referrals, establishing patterns between candidates and persons who successfully undertook the same tasks before. Importantly, during interviews, AI can achieve more reliable and predictive power than human recruiters in recognising or predicting an applicant's personality, since AI can analyse data on the interviewee's facial expressions, speech patterns and body movements to evaluate the applicant's non-verbal communication skills and fit for the job role.[22] AI tools can also process market data and provide insights regarding wages, contract duration, etc, contributing in this way to successful recruitment and management of valuable employees (eg, translating personal data and behavioural signals into terms of productivity, efficiency, and engagement with assigned duties).

Moreover, the use of AI in the workplace is likely to increase employee productivity by taking over or facilitating repetitive or routine tasks that would otherwise be carried out by humans, while in other jobs, the use of AI to supplement and support elements of the job may lead to employees being able to focus more on interpersonal or 'soft' skills than on technical skills. In this way, AI could enhance and support employees' 'uniquely human' abilities.[23] Finally, AI has the power to improve occupational safety and health in the workplace by automating dangerous tasks.

Risks associated with the use of AI in employment context

Despite the benefits of AI in the employment context, its use raises considerable concerns. A lot of attention has focused on the displacement of employees by AI. Notwithstanding the importance of this question, this chapter deals

21 Morgan Lewis, 'AI in the UK Workplace: Key Employment and Privacy Considerations', 6 December 2022.

22 B Kammerer, 'Hired by a Robot: The Legal Implications of Artificial Intelligence Video Interviews and Advocating for Greater Protection of Job Applicants', 2022.

23 See footnote 20.

with the implications arising when AI tools are used by employers for making employment decisions.

AI systems are based on machine-learning data-driven techniques, which usually require a large amount of data for training. The degree of access to data and the quality of such data have a direct impact on the effectiveness and fairness of AI systems, which could create issues in terms of discrimination and employees' privacy.[24]

Employee discrimination

Bias is a prejudice for or against something or somebody, which may result in unfair decisions[25] that result in different outcomes for people from different social groups. Humans often have explicit or implicit biases, which can unfairly disadvantage racial minorities, women, or other disadvantaged groups. AI tools are expected to be objective and thus drive a decision-making process that is free of the biases that affect human judgements. However, AI systems are designed by humans and are based on machine learning data-driven techniques.[26] Bias is embedded in every societal or economic aspect; therefore, since AI tools are driven by data extracted from human society, it is possible that humans inject their bias into them, even in an unintended way. Data sets used by AI systems (both for training and operation) may suffer from the inclusion of inadvertent historic bias, incompleteness, and bad governance models.[27] In the employment context, AI tools can reproduce patterns of systemic discrimination already present in the workforce. If the training data are not inclusive and balanced enough, the system could learn to make unfair decisions. These types of discriminatory outcomes cannot be prevented simply by removing protected characteristics from the algorithms. Machine learning algorithms can discover subtle correlations and proxies for protected characteristics, even

24 See footnote 18.

25 The European Commission's High-Level Expert Group on Artificial Intelligence, 'Draft Ethics Guidelines for Trustworthy AI, Working Document for Stakeholders' Consultation', 18 December 2018.

26 ibid.

27 See footnote 19.

when they are purposefully omitted from the model-building process.[28] This might occur intentionally when a proxy is used to screen out a disfavoured group, but the effect could be unintentional as well, because characteristics can be correlated with protected characteristics in unexpected ways.[29] For example, place of residence could be correlated with race in many cities, causing an algorithm to implicitly discriminate against racial minorities, even if the employer neither knows nor intends to screen on that basis.[30] Moreover, AI tools often rely on unexplained correlations with observable characteristics to make predictions about an individual's future behaviour or job performance, which may lack any causal connection to the relevant skills or abilities.[31] As AI assessment technologies can invisibly automate large numbers of rejections by determining which applicants get serious consideration, such technologies deserve close scrutiny.[32]

The right to equality before the law and protection against discrimination based on certain protected characteristics, such as race, colour, ethnicity, religion, national origin, sex, gender identity, sexual orientation, age, familial status, disability, or genetic information, constitutes a fundamental right recognised by the Universal Declaration of Human Rights and numerous other international treaties. Anti-discrimination laws impose equal treatment and prohibit both direct and indirect discrimination. Direct discrimination occurs where one person is treated less favourably than another is, has been or would be treated in a comparable situation because of certain protected characteristics, while indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of certain protected characteristics at a particular disadvantage compared with other persons.

28 The Leadership Conference on Civil and Human Rights, 'Civil Rights Principles for Hiring Assessment Technologies', July 2020.

29 P Kim, M T Bodie, 'Artificial Intelligence and the Challenges of Workplace Discrimination and Privacy', 35 *ABA Journal of Labor and Employment Law* 289, 2021, Saint Louis U. Legal Studies Research Paper No. 2021-26.

30 ibid.

31 ibid.

32 See footnote 28.

Such laws are relevant when algorithms are used to make employment decisions. The opacity, complexity, dependency on data and autonomous behaviour of AI systems can adversely affect the fundamental right to non-discrimination. The principle of equal treatment requires that an AI system's operations cannot generate unfairly biased outputs. In order for employees' fundamental rights to be protected, reasonable measures shall be taken with regard to AI systems used in the employment context. The deployment and use of AI systems must be fair, meaning that the equal and just distribution of both benefits and costs must be ensured, while individuals and groups must be free from unfair bias, discrimination, and stigmatisation. Data collected and used for training of AI algorithms must be done in a way that avoids discrimination.[33] The data sets used to train AI systems should be as inclusive as possible, representing different population groups. Oversight processes shall be established to analyse and address an AI system's purpose, constraints, requirements and decisions in a clear and transparent manner.[34] Employers should closely monitor how AI tools operate in practice and should not use them, or should discontinue using them, if they have a disparate impact unless they are clearly job-related and consistent with business necessity.[35] In any case, employees shall have the ability to contest and seek effective redress against decisions made by AI systems and by the humans operating them. In order for this to be possible, the decision-making processes should be explicable.[36] Furthermore, hiring from diverse backgrounds, cultures and disciplines can ensure diversity of opinions and should be encouraged, while informing, consulting and negotiating with employees and their representatives will help employers better assess whether AI systems function adequately or not. Lastly, AI systems, such as certification or specialised auditing, will also be crucial in combating discriminatory applications of AI in the employment context.

33 See footnote 19.
34 ibid.
35 See footnote 29.
36 See footnote 19.

Employee privacy

'Data is the oxygen of AI.'[37] AI requires data to train algorithms and increase accuracy and overall functionality. Huge amounts of data are necessary not only for AI to achieve its full potential, but also to guard against bias or error of AI-driven decision-making processes. The fact that the effectiveness and fairness of AI tools depends on the quality and quantity of data they receive puts employees' fundamental right to protection of personal data and private life in jeopardy.

At the same time, new technologies have made monitoring employees and collecting data from them much more easy, inexpensive, and comprehensive.[38] Employers can track employee movements and follow their activities on the web, while AI-enabled devices have the potential to gather more data than is expected or to use such data in algorithms that are not transparent. Examples include wearable devices that measure if employees are gathering together, algorithms that use employee data to affect their ratings and pay, and health-monitoring wearable devices that can also be used to consider the number of hours worked, rest breaks taken and activity levels.[39] Employees have differing levels of comprehension and may find it challenging to understand the complex techniques involved in AI decision-making processes.

Data protection laws can thus effectively establish boundaries, providing an essential framework to mitigate the negative consequences of AI at work. At European level, the General Data Protection Regulation (GDPR)'s principles of lawfulness, fairness, transparency, purpose limitation, data minimisation and accuracy can significantly mitigate the risk that harmful AI systems are elaborated and implemented in the workplace.[40] The GDPR applies to processing of personal data, including personal data being processed in the employment context. The employer must ensure that employee data are processed

37 Hunton Andrews Kurth LLP, Centre for Information Policy Leadership, 'Artificial Intelligence and Data Protection: Delivering Sustainable AI Accountability in Practice, First Report: Artificial Intelligence and Data Protection in Tension', October 2018.

38 See footnote 29.

39 See footnote 5.

40 ibid.

for specified and legitimate purposes that are proportionate and necessary, while making sure that the data are adequate, relevant, and not excessive for such legitimate purposes. In addition, the employer shall be transparent with employees about the use and purposes of monitoring technologies, providing employees with transparent, intelligible and easily accessible information about the processing of their personal data and meaningful information about the logic involved, as well as the significance and envisaged consequences for the data subject Furthermore, the employer must enable the exercise of data subject rights, keep the data accurate, and retain them no longer than necessary as well as take all necessary measures to protect the data against unauthorised access and ensure that staff are sufficiently aware of data protection obligations.[41]

In addition, where a type of processing, in particular using new technologies, is likely to result in a high risk to the rights and freedoms of employees, the employer shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.[42] A data protection impact assessment (DPIA) is in particular required in the case of systematic and extensive evaluation of personal aspects relating to employees which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the employees or similarly significantly affect the employees.[43]

Apart from that, employees have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning them or similarly significantly affects them,[44] meaning that human oversight is required, and the employer must ensure that any oversight of the decision is meaningful and the human has the authority and competence to change the decision.[45]

41 Article 29 Data Protection Working Party, Opinion 2/2017 on Data Processing at Work, 17/EN WP 249.

42 Article 35 paragraph 1 GDPR.

43 Article 35 paragraph 3(a) GDPR.

44 Article 22 GDPR.

45 Article 29 Data Protection Working Party, Guidelines on Automated Individual Decision-making and Profiling for the Purposes of Regulation 2016/679,

Given that there are advantages to retaining data in the case of AI-driven decision-making processes, since there will be more data for the algorithm to learn from, the biggest challenge for any data privacy legislation is to find a balance between the conflicting interests of innovation and privacy.[46] Employers will have to determine when the purpose of data processing ends in relation to an AI application.

The proposed EU regulatory framework for AI

The European Commission, proposing the first-ever legal framework on AI (the Draft AI Act), has followed a risk-based regulatory approach, according to which AI systems are regulated based on their risk level. This means that as risk increases, stricter rules apply. In this context, AI systems used in employment, employee management and access to self-employment, notably for the recruitment and selection of persons, for making decisions on promotion and termination and for task allocation, monitoring or evaluation of persons in work-related contractual relationships, are classified as high-risk, and so subject to specific safeguards, since such systems may appreciably impact future career prospects and livelihoods of employees or applicants. The Draft AI Act recognises that throughout the recruitment process and in the evaluation, promotion, or retention of persons in work-related contractual relationships, such systems may perpetuate historical patterns of discrimination, for example against women, certain age groups, persons with disabilities, or persons of certain racial or ethnic origins or sexual orientation.

The Draft AI Act, part of the European Commission's AI package, aims at making the EU a world-class hub for AI and ensuring that AI is human-centric and trustworthy. High-risk AI systems must:

- be developed on the basis of high-quality of training, validation and testing data sets, in order to minimise errors and discriminatory outcomes;

17/EN WP 251rev.01, adopted on 3 October 2017. Last revised and adopted on 6 February 2018.

46 See footnote 18.

- before they are placed on the market or put into service, be accompanied with technical documentation describing the AI system, its elements and process for development;
- be designed and developed so as to ensure traceability of the system's functioning throughout its lifecycle;
- provide necessary information to enable users to interpret the system's output and use it appropriately;
- be designed in a way that they can be overseen, so that humans may prevent or minimise potential risks to fundamental rights generated by the systems; and
- achieve an appropriate level of accuracy, robustness and security and perform consistently in these respects throughout their lifecycle.

The implementation of AI technologies in the employment context is at the crossroads of labour, data protection and anti-discrimination laws. The current Draft AI Act would issue an all-encompassing framework meant to determine what AI is trustworthy, after which such 'trustworthy' AI receives almost free reign to enter the workplace, thus weakening the capacity of various existing laws. Therefore, it is vital to put the Draft AI Act at the service of, rather than above, the other laws that could govern the introduction and use of AI and algorithmic management systems in the work environment. The Draft AI Act might succeed in regulating AI as such, however, the governance of AI at work must draw on many more areas of law.[47]

Conclusion

The spread of AI in the workplace is inevitable. Employers and employees will increasingly be confronted with AI tools that interfere with labour relations and impact working conditions. There is no doubt that the use AI in the workplace has significant benefits. 'AI is promising for the world of work, but it is not a silver bullet.'[48] We must comprehend the profound disadvantages AI may bring in the workplace, jeopardising candidates' and employees' fundamental

47 See footnote 5.

48 ibid.

rights. It requires a lot of effort for AI to be implemented successfully without producing excessive adverse effects that, among other things, are also highly detrimental to employees. In order to mitigate the adverse effects in the workplace, the response to AI at work needs to be based on established fundamental and human rights. Legislators need to keep up with the new technology and simultaneously protect employees, facing the challenge of ensuring that the introduction and operation of AI in the workplace is not carried out at the expense of employees. On the basis of existing European legislation, governing AI at work is not unfeasible, provided that the rules are adequately adapted to the challenges AI poses. However, without the necessary regulatory changes into effective enforcement mechanisms in various areas, AI may well get out of control at work.[49] The existing European legislation could be revisited to be adequately adapted to the challenges AI poses, considering anti-discrimination, data protection, and other labour and employment rights when designing AI systems. In this context, it is vital to put the Draft AI Act at the service rather than above the other laws that could govern the introduction and use of AI and algorithmic management systems in the work environment, which will require material amendments to the current draft.[50] To regulate AI at work adequately, a coherent set of measures across different fields of law is required with a focus on human dignity, taking into account that AI is not able to fully replace the human factor.

Grace Katsoulis
Ballas Pelecanos Law

Grace Katsoulis is a partner at Ballas Pelecanos Law, heading the company and employment law and real estate law group practices of the firm.

49 ibid.
50 ibid.

Read this article on Lexology

Ms Katsoulis has been a member of the Athens Bar Association since 1992 and entitled to argue cases before the Supreme Courts and all lower courts. A graduate of the University of Athens Law School (LLB), Grace earned a Master of Laws degree (LLM) from Exeter University, where she studied International Business Law. She has also successfully completed the Hellenic Productivity Center's Tax Law course.

Ms Katsoulis advises the firm's clients on all company law, labour law, tax and real estate matters, including company formation and regulation, corporate maintenance, mergers, joint ventures and acquisitions, shareholder agreements and disputes, individual and collective labour law, immigration law, trade union law and workers associations, general corporate tax law, double taxation avoidance treaties, permanent establishment and transfer pricing.

Ms Katsoulis teaches Employment and Social Security Law at the Education and Lifelong Learning Center (KEDIVIM), which is a Unit of the Athens University of Economics and Business (AUEB) that safeguards the coordination and the multidisciplinary cooperation in the development of educational lifelong learning programmes. At the same time, she is an active member of ICC WOMEN HELLAS.

Read more from this author on Lexology

Zoe Provata
Ballas Pelecanos Law

Zoe Provata is a senior associate at Ballas Pelecanos Law and a member of the IT/CT and data privacy practice group. She is an LLB and LLM graduate of the School of Law of the National and Kapodistrian University of Athens and a Certified Information Privacy Professional (CIPP/E), admitted before the Court of Appeals.

Ms Provata has experience in providing legal advice to top-tier clients on a broad range of data protection, new technologies, AI, cybersecurity and innovative

Read this article on Lexology

projects combining law and IT. She advises international and domestic clients in navigating the rapidly changing regulatory landscape of data protection and new technologies law. Her practice covers a wide range of data privacy issues, including direct marketing, compliance programmes, employment data protection issues, and the operation of e-shops and smart apps. She is regularly involved in due diligence exercises, while her daily work covers the drafting of complex data processing and data sharing and outsourcing agreements. Ms Provata has experience in a variety of industry sectors including energy, healthcare, retail and media and technology.

Read more from this author on Lexology

Nikolaos Papadopoulos
Ballas Pelecanos Law

Nikolaos A Papadopoulos is an associate at Ballas Pelecanos Law and a member of the IP, IT and CT, the company, tax and employment and the consumer rights practice groups of the firm. Nikolaos graduated from Democritus University of Thrace Law School (LLB) and subsequently earned an Advanced Master of Laws degree (LLM) from Leiden Universiteit, Netherlands, in Law and Digital Technologies. He is a lawyer before the Court of First Instance and was admitted in the Athens Bar Association in 2017.

Mr Papadopoulos advises top-tier clients on all aspects of electronic communications, information technology, media, telecommunications and e-commerce law, with particular focus on data protection issues. He was recently selected to join the pool of experts of the European Data Protection Board for new technologies and information security.

Read more from this author on Lexology

Read this article on Lexology

Ballas Pelecanos Law

10 Solonos Street
Kolonaki
106 73 Athens
Greece
Tel: +30 210 36 25 943
grace.katsoulis@balpel.gr
zoe.provatas@balpel.gr
nikolaos.papadopoulos@balpel.gr
www.ballas-pelecanos.com

Read more from this firm on Lexology

Read this article on Lexology

MORE PRACTICE GUIDES AVAILABLE AT LEXOLOGY.COM/GTDT/GUIDES

CHINA M&A

Contributing editor
Richard Pu
Tencent

DIVERSITY AND INCLUSION

Contributing editor
Timothy Chow
Diageo plc

FRANCHISE

Contributing editor
Philip F Zeidman
DLA Piper

GERMANY M&A

Contributing editor
Alexander Steinbrecher
Getir

INDIA M&A

Contributing editor
PM Devaiah
Everstone Capital

JAPAN M&A

Contributing editor
Tatsuya Morita
Sojitz Corporation

MINING

Contributing editor
Ciaran Boyle
First Quantum Minerals Ltd

NORDIC M&A

SWISS M&A

Contributing editors
Ueli Studer, Kelsang Tsün and Joanna Long
UBS AG

LEXOLOGY
Getting the Deal Through

RETURN TO START