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The Rise of Robots: AI (Artificial Intelligence) In The Workplace



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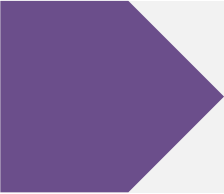
Agenda



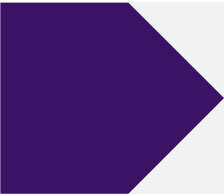
Introduction



AI and its applications in the workplace



Emerging legal and ethical principles affecting development and deployment



Policy consideration for AI tools, including generative AI



Questions

AI

...a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.

OECD, Recommendation of the Council on Artificial Intelligence

<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>

The Employment Lifecycle

Recruiting

**Onboarding/
Training**

Performance

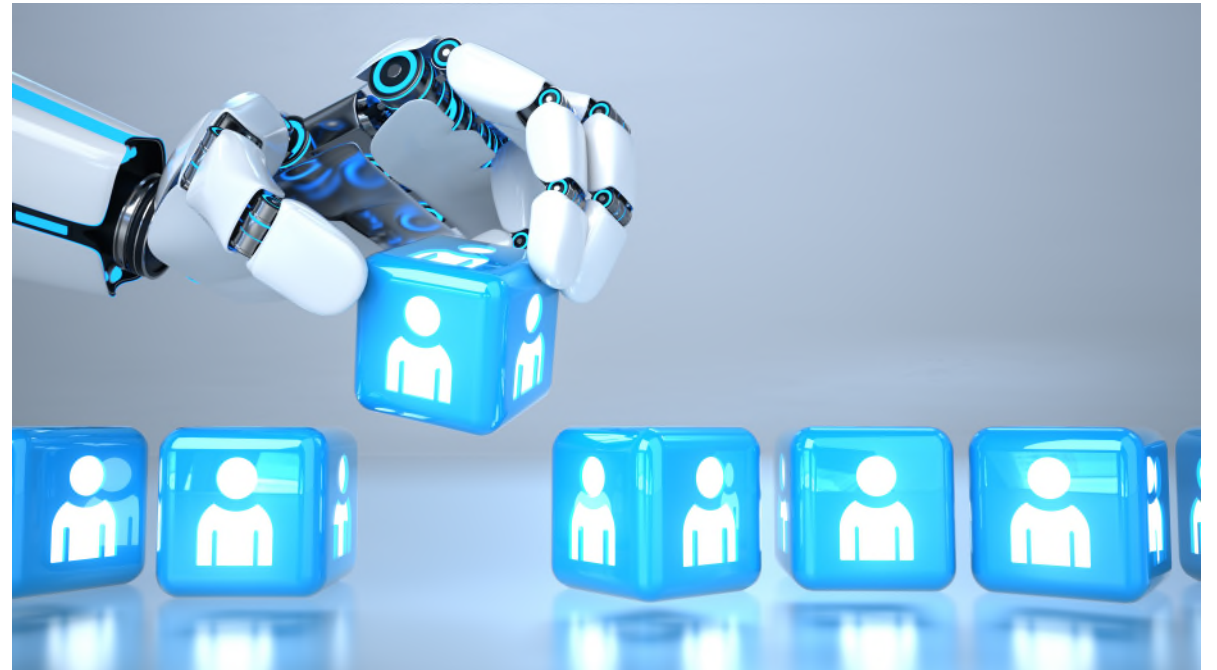
Safety

Evaluation

Termination

AI in Recruiting

- Sourcing candidates
- Deciding who to interview
- Making the selection
- What to offer



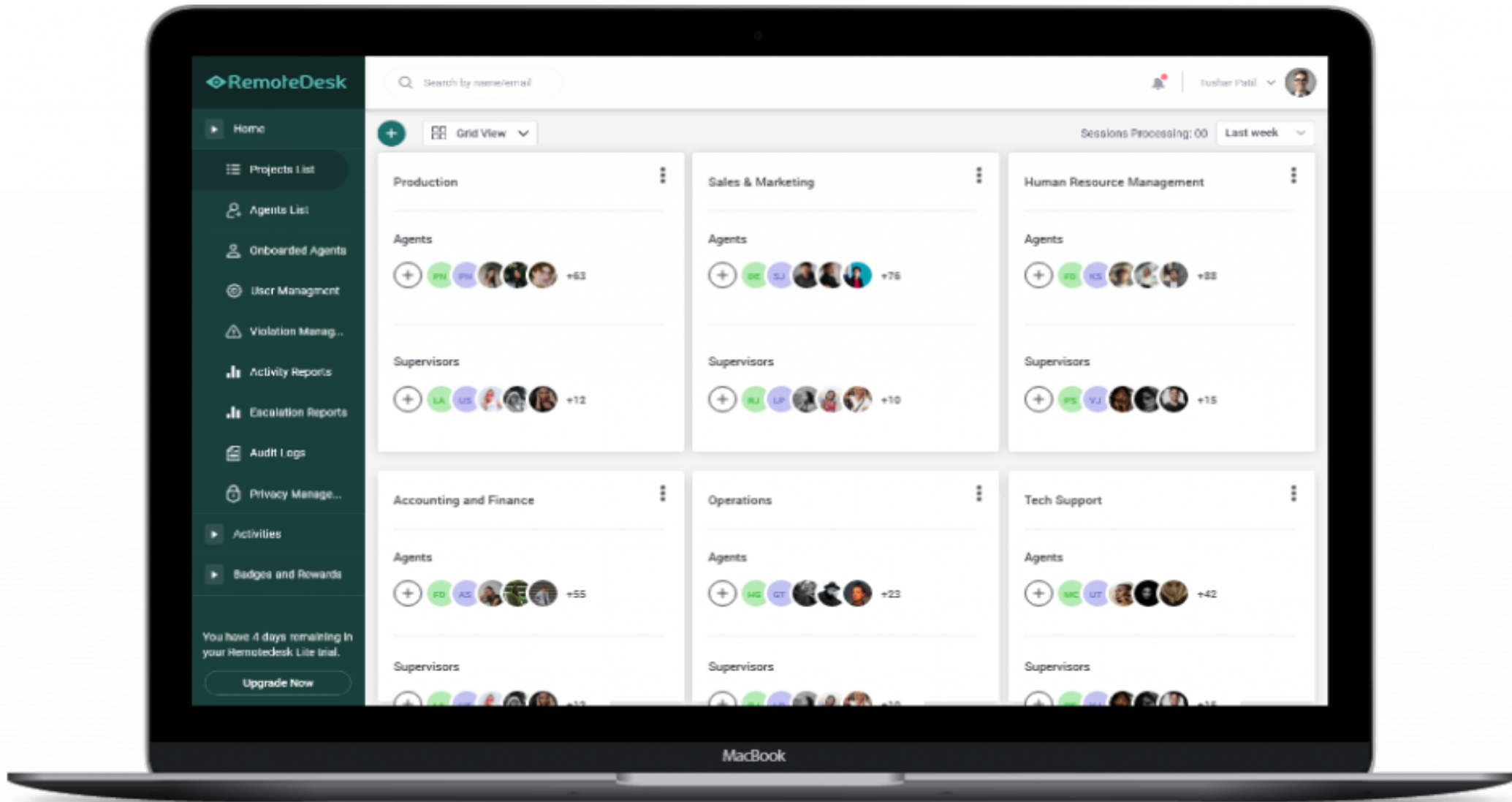


Photo: RemoteDesk

ChatGPT:

As an AI language model, ChatGPT can be a valuable tool for corporate legal departments and their employees in various ways. With its natural language processing capabilities, ChatGPT can assist employees with tasks such as contract review, legal research, and policy inquiries, saving time and increasing efficiency. Additionally, ChatGPT can provide legal departments with insights into the most common employee inquiries and concerns, allowing for more targeted and effective legal guidance. However, it is important to recognize the limitations of AI and ensure that employees understand that ChatGPT is a tool and not a replacement for human legal expertise.

Me:

In one paragraph, what should I say to Association of Corporate Counsel lawyers about ChatGPT and use in the workplace with employees?

Benefit Plan Administration

Do-It-Yourself



Robo Advisor



Financial Advisor



AI on the Job: Fleet Management

Cameras detect head tilt, eye line not straight ahead, increased blink rate has increased, eye redness, anger/calm.

System can intervene: provide audio alert to driver, switch cruise control off, alert fleet manager, etc.



Safety, Surveillance or Both



Photo: Chinese Academy of Sciences

OECD AI Principles

- Organization for Economic Cooperation and Development (“OECD”) adopted Principles on Artificial Intelligence in 2019.
- AI actors should:
 - “respect the rule of law, human rights and democratic values, throughout the AI system lifecycle. These include freedom, dignity, and autonomy, privacy and data protection, nondiscrimination and equality, diversity, fairness, social justice, and internationally recognized labour rights.”
 - “provide meaningful information... (i) to foster a general understanding of AI systems, (ii) to make stakeholders aware of their interactions with AI systems, including in the workplace, (iii) to enable those affected...to understand the outcome, and (iv) to enable those adversely affected... to challenge its outcome”

<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>

Ethics and Privacy in AI

Surveillance
and
monitoring

Bias and
discrimination

Balancing
benefits and
risks

Data
collection

Technical
robustness
and safety



Expanding On Discrimination and Bias Issues

- **EEOC’s first Technical Assistance Document (“TAD”)**: The ADA and Use of Software, Algorithms, and AI to Assess Job Applicants and Employees [May 12, 2022]
 - Focuses on the three “most common ways that an employer’s use of algorithmic decision-making tools could violate the ADA[.]”
 - Provides “promising practices” for employers that may minimize the risk of claims.
- **EEOC’s second TAD**: Assessing Adverse Impact in Software, Algorithms, and AI Used in Employment Selection Procedures Under Title VII [May 18, 2023]
 - Focuses on disparate impact effects AI may impose on employment selection procedures (i.e., hiring, promotion, separation, etc.).
 - Disparate impact can occur if AI-driven tool causes individuals of a particular group to be selected at substantially lower selection rate as compared to individuals of another group.
 - Reiterates that employer can be liable for violations of Title VII when using AI decision-making tools designed or administered by a third party.

Examples of AI-Related Guidance and Regulation

Jurisdiction	Status	Title/Agency	Summary
Federal	Guidance	EEOC Technical Assistance Document	How to avoid disability discrimination when using algorithmic decision making
California	Proposed regulations	DFEH	Updating existing law to address automated decision systems
California	Statute	California Consumer Privacy Act	Privacy and security protections for personal data collection when using AI
Illinois	Statute	Artificial Intelligence Video Interview Act	Regulates use of AI analysis of video interviews
Illinois	Statute	Biometric Information Nondiscrimination Act	Protections for use of biometric information in connection with AI tools
Maryland	Statute	Use of Facial Recognition Services	Protections for use of machine interpretable facial patterns
New York City	Local Law	Automated Employment Decision Tools	Regulates the use of AI for screening candidates and employment decisions

NYC's Automated Employment Decision Tools Law

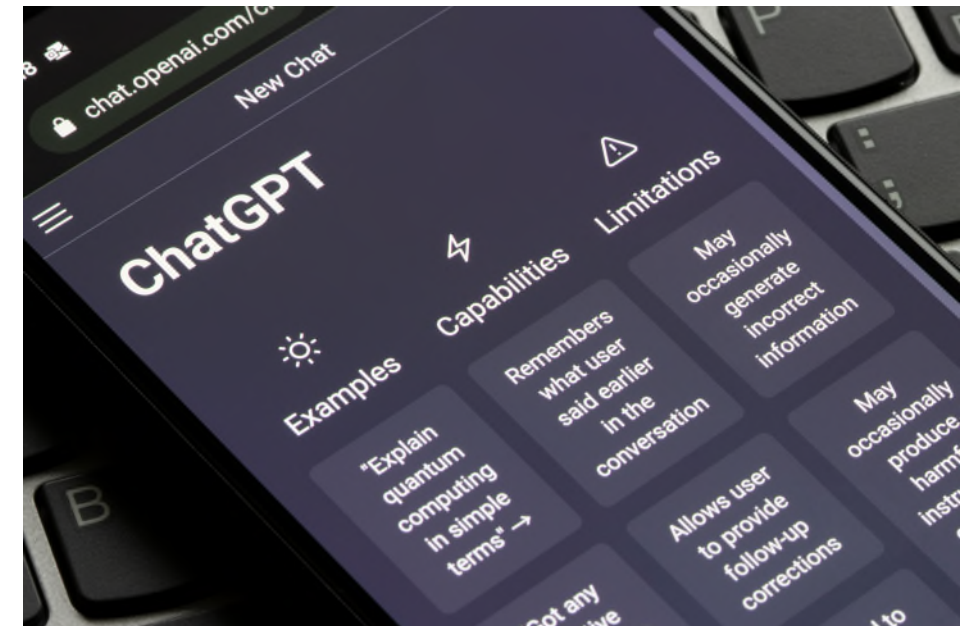
- **Enforcement date: July 5, 2023**
- AEDT defined as, “Any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons...”
- **Does not include:** a tool that does not automate, support, substantially assist or replace discretionary decision-making processes and that does not materially impact natural persons, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set or other compilation of data.”
 - AEDTs are subject to a “bias audit” and more

EEOC Settlement of AI-Related Claims

- May 5, 2023, EEOC filed suit against “iTutorGroup.”
 - Group of entities offering tutoring services to students in China.
 - Company hired tutors based on applications submitted through iTutorGroup’s website.
- Website requested date of birth of each applicant, but EEOC alleged iTutorGroup had programmed application software to automatically reject female applicants age 55 and older and male applicants age 60 and older.
 - EEOC alleged charging party’s initial application, which indicated she was older than 55, was rejected, but she was offered an interview after re-submitting her same application with a more recent date of birth as the only change.
- August 9, 2023, parties filed a joint notice of settlement and request for execution of consent decree in federal court (E.D.N.Y.).
 - \$365,000 settlement with corrective action items to be addressed by defendants.

Embracing ChatGPT?

- Approval process?
- It is a “chat” right...are we disclosing personal or confidential information?
- Are the results accurate? Do we need a fact checking process?
- Is the platform up to date? Do employees know that?
- Could the results and use of those results violate IP rights?
- Monitoring employee use? Only use on company systems for business purposes?
- Are there contract limitations?
- What about other generative AI technologies – photos and videos?



Embracing AI Tools?

- Understand the use case – e.g., internal operation, recruiting, performance monitoring, performance improvement, customer facing.
- Emerging laws, guidance and established frameworks (OECD, NIST, White House)
 - Consider key principles – Notice, informed consent, transparency, privacy and security, fairness, nondiscrimination, ability to understand and challenge outcome
 - Promising Practices
- Oversight from procurement through implementation
 - Internal and external
- Careful review of vendor service agreements
- Record retention obligations
- Insurance issues



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Thank **you.**