

BOTS, BIAS, AND BOUNDARIES: 10 WORKPLACE AI REALITIES INHOUSE COUNSEL CAN'T IGNORE



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WORKPLACE REALITY #1: AI IS HERE...ARE YOU READY?

Study finds:

48% of respondents use AI daily at work

20% are secretly using AI at work, even when their employers haven't formally approved it

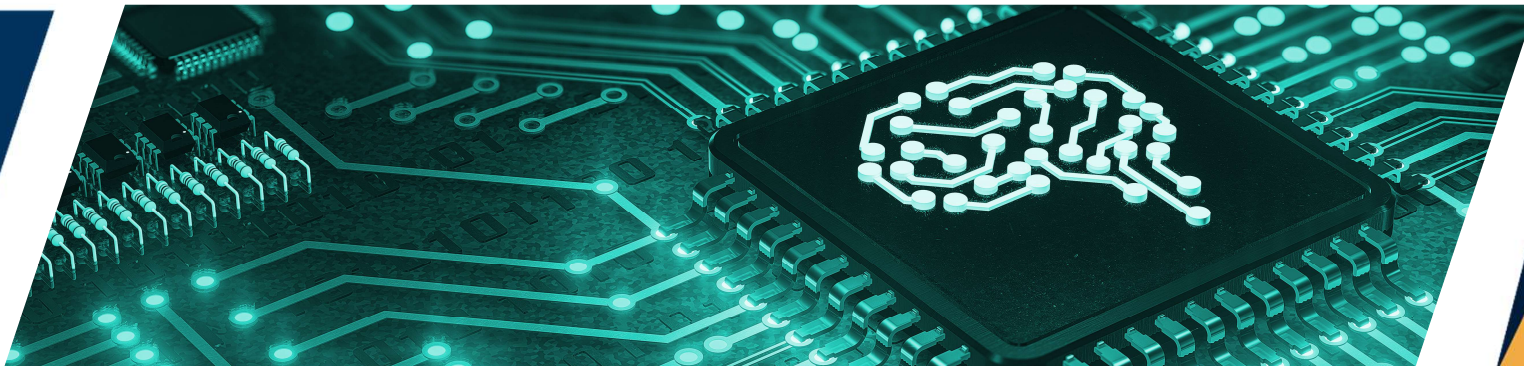
77% feel more confident in the quality of their work when they use AI tools

21% fear AI could replace their jobs

19% believe customers might lose trust if they found out AI was being used

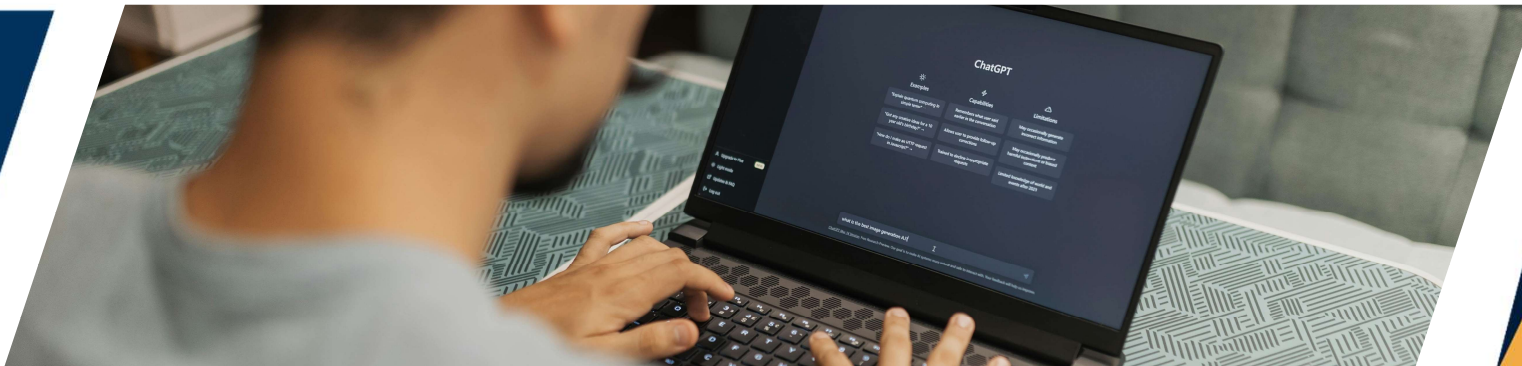
GET UP TO SPEED: GenAI AND LLMs

- Algorithms generate text, images, and other content in response to a user's prompt
- Trained on large dataset of existing content to reveal underlying patterns and structure of data
- Results are word ordering with the highest probability of responding to a prompt successfully



RISKS OF USING AI GENERALLY

- Hallucinations
- Sycophancy
- Lack of Accountability



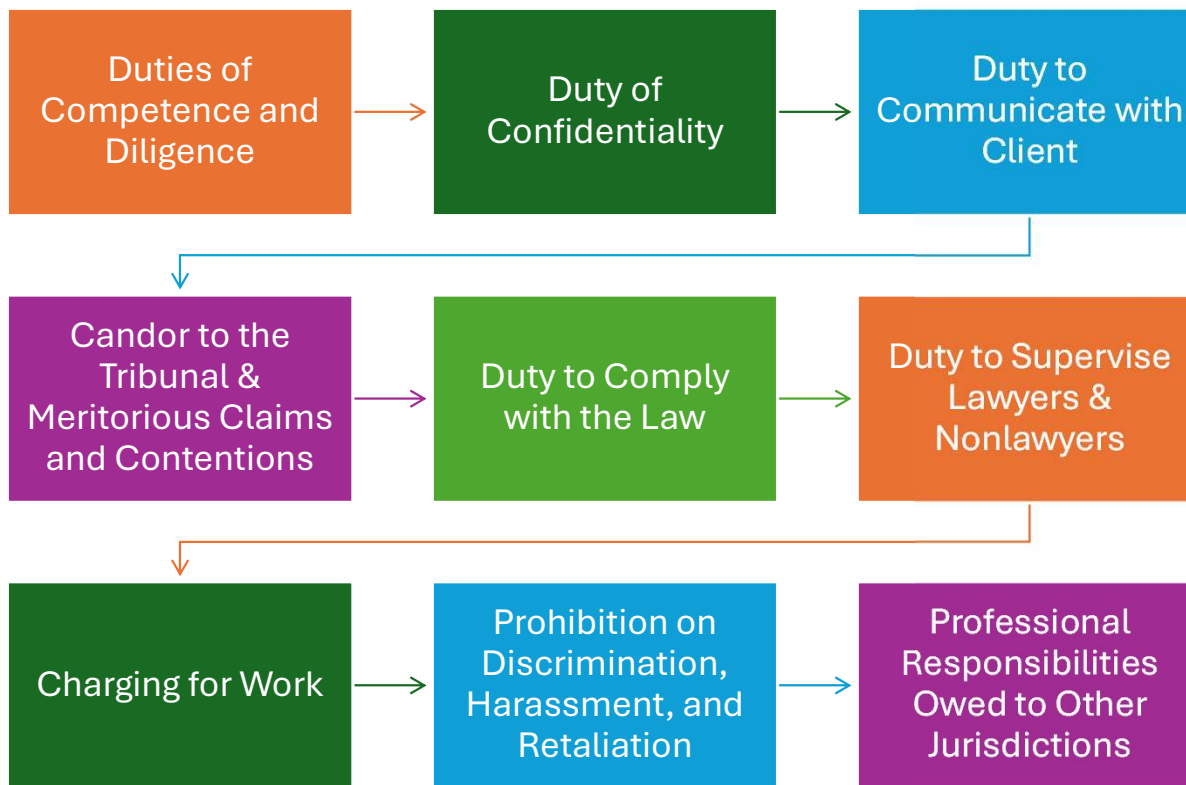
WORKPLACE REALITY #1: AI IS HERE...

ARTIFICIAL INTELLIGENCE RELATED HARMS ACT (Civil Code § 1714.46)

- Eliminates “AI acted autonomously” defense in civil litigation
- Companies remain liable for harm caused by their AI systems
- Applies to developers, modifiers, and users of AI



Key message: You chose to use AI, you're responsible for what it does



Ethical Duties Implicated by the Use of GenAI

- State Bar of California, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law
 - <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>
- ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 512 – General Artificial Intelligence Tools:
 - https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf

WORKPLACE REALITY #2: DATA INSECURITY



Where is the data?



Who can see it?



What can we do?

WORKPLACE REALITY #3: ALGORITHMIC BIAS IN EMPLOYMENT PRACTICES

- GenAI perpetuates patterns absent careful steering
- *Mobley v. Workday*
- Anticipate increased legal scrutiny



CIVIL RIGHTS DEPARTMENT'S (CRD) ARTIFICIAL INTELLIGENCE REGULATIONS

- Effective October 1, 2025 and apply to **ALL** CA employers
- Regulate Automated Decision Systems (ADS) in workplace
 - Broadly defined as **any** computational process that makes or helps make employment decisions
 - Examples: Resume screening, skills testing, job ad targeting, interview analysis
 - Includes basic algorithms and statistics not just advanced AI
 - *Excludes* basic software unless making employment decisions
 - **Simple test**: If it helps decide hiring, promotion, or discipline decisions, it's likely covered

CRD'S ARTIFICIAL INTELLIGENCE REGULATIONS, CONT.

- Cannot use ADS to discriminate based on FEHA-protected characteristics (race, gender, age, etc.)
- “Proxies” prohibited - indirect discrimination
 - Examples:
 - Zip code screening → race
 - Accent analysis → national origin
 - Appearance-based ratings → gender/race
- Anti-bias testing **not** mandatory but strongly encouraged
 - Courts will examine whether employers tested systems for bias, quality of that testing, and employer response

CRD'S ARTIFICIAL INTELLIGENCE REGULATIONS, CONT.

Pre-Employment Practice Prohibitions

Employers are prohibited from using assessment systems that:

- Rank or screen job candidates by schedule availability
 - Unless job-related, required by business necessity and accompanied by clear accommodation process
- Measure skills, dexterity, or reaction time
 - Must offer reasonable accommodations
- Analyze tone of voice, facial expressions or physical characteristics during interviews
- Prompt unlawful pre-employment inquiries

Additionally, some assessment systems may qualify as medical/psychological examinations making them subject to strict legal standards

CRD'S ARTIFICIAL INTELLIGENCE REGULATIONS, CONT.

Recordkeeping Requirements

- **ALL employers:** Keep employment records **4 years** (up from 2 years)
 - Applies to ALL employment records, not just AI-related
- **ADS users:** Must preserve all automated decision system data
 - Includes individual data, employment decisions, and system customization data

Third Party Liability

- Regulations broadly define "agent" to include anyone performing HR functions
 - AI vendors may qualify as "agents" and thus "employers" under the FEHA
- Creates shared liability – both employer and AI vendor can be sued for discrimination
- Employers remain liable even when discrimination comes from vendor's system
- Vendors prohibited from aiding or abetting discrimination through AI tools



WORKPLACE REALITY #4: AI AND REASONABLE ACCOMMODATIONS

- AI can empower and disadvantage individuals with disabilities
- Think critically about disparate impacts of AI use, a two-way street
- Make individualized inquiries on a case-by-case basis



WORKPLACE REALITY #5: AI AND SUBSTITUTE “JUDGMENT”

- “Specific performance” by humans
 - Employment decisions
 - Legal advice
 - Business strategy. See *Fortis Advisors, LLC v. Krafton, Inc.* (Del. Ch., Mar. 16, 2026, No. 2025-0805-LWW) 2026 WL 730977)

WORKPLACE REALITY #6: SURVEILLANCE, PRIVACY, AND MORALE

- Legal and ethical challenges
 - California Consumer Privacy Act (CCPA)
 - California Constitution
- Cornell Study



California Consumer Privacy Act (CCPA) Regulations regarding AI

- Covered Employers must be in compliance no later than January 1, 2027
 - \$25m+ gross revenue, handling data of 100,000+ consumers or deriving 50% revenue from selling data
- If you are going to use AI “to make a significant decision”:
 - Pre-use notice
 - Employee right to access information
 - In some instances, employee right to opt-out
 - Requirements regarding requests to delete
- Must conduct a risk assessment in certain situations
- Penalties per violation

WORKPLACE REALITY #7: AI PERFORMANCE MANAGEMENT

BENEFITS



- Real-time feedback in depth
- Potential objective insights, human bias reduction

RISKS



- Biased prompts
- Inaccurate data



Solution: human oversight of bots

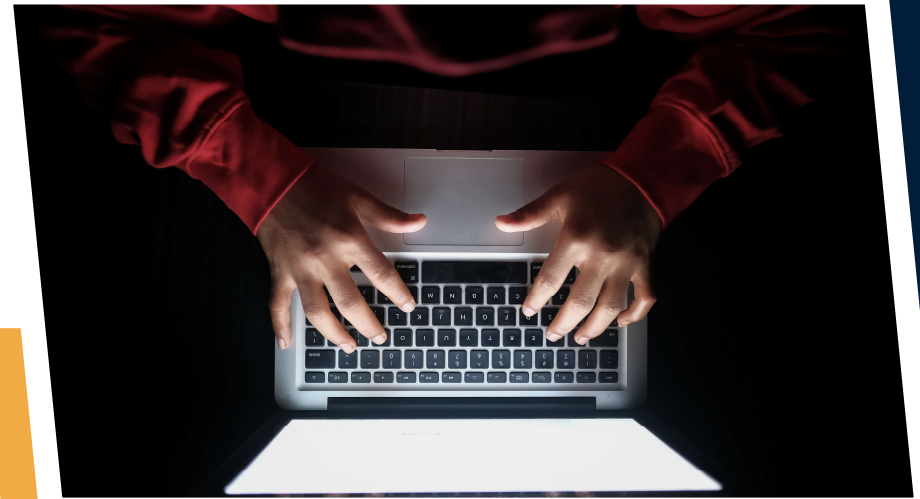
WORKPLACE REALITY #8: AI AND PAY EQUITY

- The California Equal Pay Act prohibits employers from paying employees less than their counterparts for "substantially similar work" based on protected characteristics
- AI-driven compensation systems, if not properly audited, can embed historical pay disparities, creating a new legal risk
- AI can help ensure parity, if used wisely



WORKPLACE REALITY #9: TURBOCHARGED HARASSMENT

- Sexually explicit or humiliating images or videos of employees can lead to a hostile work environment and legal action under the FEHA
- California's SB 926 (2024) made it a crime to create and distribute sexually explicit deepfakes intended to cause emotional distress, and this law applies to conduct in the workplace
- ***CARRANZA V. CITY OF LOS ANGELES (2025) 111 Cal.App.5th 388***



WORKPLACE REALITY #10: AUTOMATION AND JOB DISPLACEMENT OBLIGATIONS FOR EMPLOYERS



Update job descriptions



Objective selection criteria



Check for protected activity



Calculate notice provision:

- WARN & Cal-WARN
- OWWBPA



Retain (human) staff for oversight of functions

Evaluation Form for CA MCLE: 10
Workplace AI Realities March 24,
2026



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A photograph of a city skyline at dusk, with buildings reflected in the water. The sky is a mix of blue and orange, and the water is calm, showing clear reflections of the buildings. A large, dark blue, 3D-style arrow points from the top left towards the bottom right, framing the skyline. The text "THANK YOU!" is overlaid in the center of the skyline.

THANK YOU!

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