

ChatGPT, Biometrics, and AI? Oh My!

ACC Golf Spa Event

Forest Park Golf Course

Friday, August 25, 2023

Presented by:

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About the Firm

Ogletree Deakins is one of the largest labor and employment law firms representing management in all types of employment-related legal matters.

The firm has more than 900 attorneys located in 53 offices across the United States and in Europe, Canada, and Mexico.

We represent a diverse range of clients, from small businesses to Fortune 50 companies.

The logo for Ogletree Deakins, featuring the company name in a blue, serif font. The logo is positioned on the right side of the slide, overlaid on a white, angular shape that resembles a stylized building or a large window pane. The background of the slide is a low-angle, upward-looking view of a modern skyscraper's glass and steel facade, with a dark green rectangular block in the bottom right corner.

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Welcome to the TECHPLACE™

Through our Technology Practice Group, we support clients in the exploration, invention, and/or implementation of new and evolving technologies to navigate the unique and emerging labor and employment issues present in the workplace.

Artificial Intelligence (AI)



AI and Large Language Models

- What are they?
 - Chat GPT, Jasper, Bard, Writesonic
- How do they work
- Why should we care?



Let's Check It Out

ChatGPT



Examples

"Explain quantum computing in simple terms" →

"Got any creative ideas for a 10 year old's birthday?" →

"How do I make an HTTP request in Javascript?" →



Capabilities

Remembers what user said earlier in the conversation

Allows user to provide follow-up corrections

Trained to decline inappropriate requests



Limitations

May occasionally generate incorrect information

May occasionally produce harmful instructions or biased content

Limited knowledge of world and events after 2021

ChatGPT



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Write a poem about working as Human Resources representative



ChatGPT Mar 14 Version. Free Research Preview. Our goal is to make AI systems more natural and safe to interact with. Your feedback will help us improve.

As a Human Resources representative, I reign supreme
My job is to ensure the workforce is strong
To keep the company running all day long

I greet new hires with a smile and a chat
Showing them where they can hang their hat
I explain the rules and company culture
And provide guidance on how to nurture

The potential within each employee
So they can achieve their goals with glee
I review resumes and conduct interviews
To find the best fit for the job, without a ruse

I handle disputes and conflicts with care
Finding resolutions that are fair and square
I'm a listener, a problem solver, a friend
To the staff from the start to the very end

My work is never done, but it's worth it all
When I see employees grow and stand tall
As they flourish in their role day by day
I know my job is important in every way

So here's to the Human Resources team
We may not be in the spotlight, but we're a vital beam
Supporting the company and its staff with pride
Ensuring that everyone can thrive and glide.

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Ensuring that everyone can thrive and glide.

 Regenerate response

add empathy to the poem



As a Human Resources representative, empathy is key
I understand the struggles of each employee
Whether they're dealing with personal strife
Or facing challenges in their work-life

I listen with care and without judgment
Finding solutions that are fair and abundant
I know that life is not always easy
And sometimes we all feel a bit queasy

But with empathy, I can help ease the pain
And guide each employee towards a gain
It's not just about policies and procedures
It's about connecting with people on a deeper level, for sure

With empathy, I can build trust and respect
And create a workplace that is truly perfect
Where everyone is valued and understood
And each person's contribution is celebrated and good

So here's to the power of empathy in HR
It's a quality that can take us very far
Helping to create a workplace that's kind and fair
And a team that is happy, productive, and dare!

D write a poem about being a human resource representative

CS As a human resource representative,
I am the bridge between management and staff.
My role is to ensure that all are objective,
And that everyone's opinion is heard, not just a half.

From hiring to firing, I handle it all,
Resolving conflicts and promoting teamwork,
I make sure that the company's policies stand tall,
And that the employees' satisfaction is no mere daydream.

I am the one who listens to the grievances,
And works to find a fair and just solution,
I strive to create a workplace with conveniences,
And to foster a culture of inclusion.

Being a human resource representative is no easy feat,
But it's a role that I embrace with pride,
For I am the advocate for those who work hard to compete,
And ensure that their rights are never denied.

Include latest Google data: ⓘ

↻ Regenerate Response

Enable Memory:

Current personality: **General AI** ▾

+ New prompt ⓘ Charge: 2 * output words

🎤 Write a Facebook ad for ChatSonic.

[View Features List](#)

0 / 4000

D write a poem about being a human resource representative

CS As a human resource rep, my days are filled with tasks,
From hiring new talent to resolving workplace clashes.
I am the frontline of the company, the face of HR,
Guiding employees through their journey, near and far.

I am the listener, the mediator, the problem-solver,
Working tirelessly to create a culture that's evolved.
I engage with staff, building relationships that last,
Ensuring they feel valued, appreciated, and amassed.

I'm the one to turn to when things become unclear,
To navigate policies, procedures, and career.
I am the advocate of the team, the voice of the staff,
Empowering them to succeed, helping them to laugh.

Being an HR rep is more than just a job,
It's a passion, a calling, a role we all should applaud.
For it takes a certain heart, a certain drive,
To be the one who helps others thrive.

So if you're looking for a career that's fulfilling and true,
Consider HR, where your skills can shine through.
For being a human resource representative is not just a role,
It's a chance to make a difference, to touch many souls.

Include latest Google data: ⓘ

↻ Regenerate Response

Current personality: **General AI** ▾

🎤 Write a Facebook ad for ChatSonic.

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D

draw a picture of a person working at a desk

CS



Include latest Google data: ⓘ

[↻ Regenerate Response](#)

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Status of AI in the World

Stanford's 2022 AI Index Report

- AI is here to stay – private investment soars and concentrates
- AI collaboration is global
- AI is affordable and higher performing
- AI models are more capable than ever, but also potentially more biased
- AI ethics emerging everywhere
- Private data has been key to top results
- More global legislation on AI than ever

D

Describe the uses of AI in the workplace

CS

AI, or artificial intelligence, has several useful applications in the workplace, including:

1. **Recruitment and Onboarding:** AI can be used to streamline the recruitment process and automate tasks such as resume screening and scheduling interviews, making it more efficient and cost-effective.
2. **Increased Productivity:** AI-powered tools can help employees work more efficiently by automating repetitive tasks such as data entry, scheduling, and email management.
3. **Learning and Training:** AI can be used to create personalized learning plans for employees, allowing them to acquire new skills and knowledge more quickly and effectively.
4. **Robotics:** AI-powered robots can be used to perform a variety of tasks in the workplace, from manufacturing and assembly to delivery and inventory management.
5. **Chatbots:** AI-powered chatbots can provide 24/7 support to customers and employees, answering questions and resolving issues quickly and efficiently.
6. **Surveillance:** AI can be used to monitor employee behavior and analyze data to identify areas for improvement.

Overall, AI has the potential to revolutionize the workplace, making it more efficient, productive, and cost-effective.

Regulations Are Coming!

NLRB, FTC, DOJ
other agencies
in the mix . . .

Whitehouse Blueprint for an AI Bill of Rights

Safe/effective, non-discriminatory, data privacy protections,
notice/explanation, human alternatives

EEOC ADA AI Guidances & SEP

(1) Prohibits disability discrimination/requires employers to reasonably accommodate when using AI decision-making tools; increasing focus on enforcement; (2) focuses on disparate impact and responsibility of employers regardless of vendor representations

California

Would prohibit AI discrimination in hiring; imposes privacy reqs.

Illinois

Requires notice when AI used in video interview

Maryland

Restricts AI “facial template” absent applicant consent/waiver

NYC

Prohibits unaudited AI tools to screen candidate/employee

D.C.

Would prohibit AI discrimination/require service providers compliance

Other states

Forming Commissions

International

EU Regulations

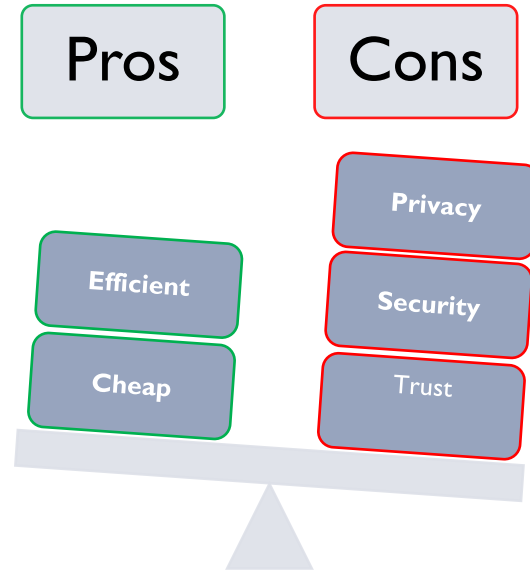
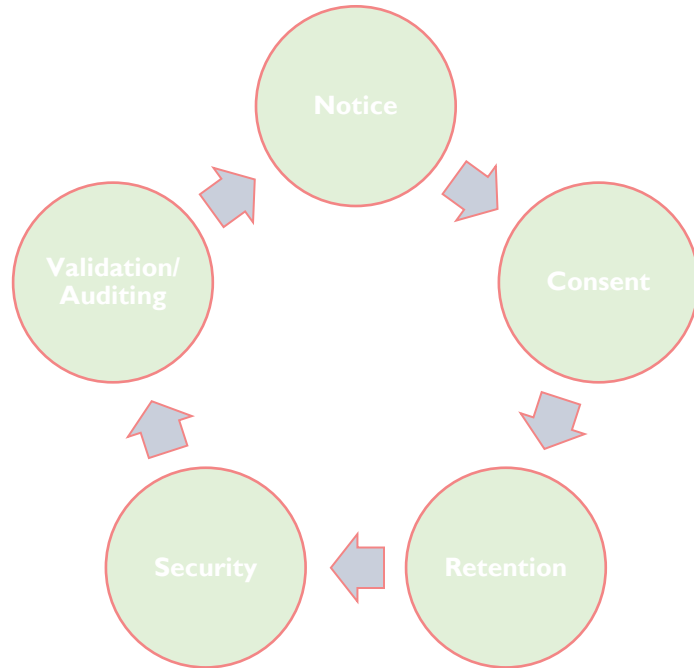
Tech Leaders Warn About AI



Pause Giant AI Experiments: An Open Letter

We call on all AI labs to immediately pause for at least 6 months the training of AI systems more powerful than GPT-4.

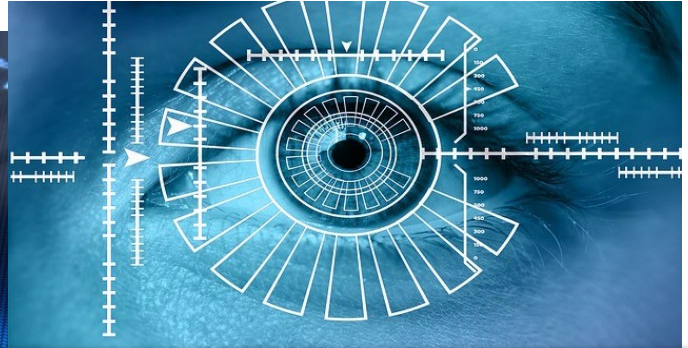
Employer Policy Development



AI Checklist

- ✓ Develop multi-disciplinary innovation teams to assess AI tools
- ✓ Define the problem you're trying to solve with AI
- ✓ Make sure AI doesn't make job more complicated
- ✓ Assess how well AI integrates with your current software
- ✓ Link the ROI of the AI with a business outcome
- ✓ Continue human review of AI-assisted decision-making
- ✓ Impose tight controls on data access
- ✓ Engage in careful external vendor contract reviews
- ✓ Work with vendors that take an inclusive approach to design

What Are Biometrics?

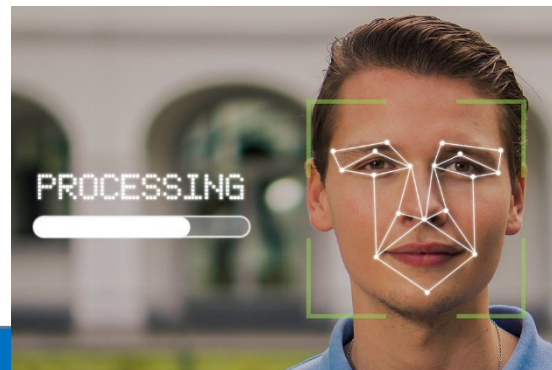


Fingerprint
Retinal Scan
Scan of Facial Geometry



What Are Biometric Identifiers?

- Bio (biology)
- Metrics (to measure)

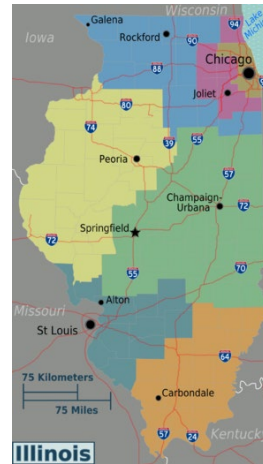


A set of biology-based measurements (“biometric”) used to identify a person (“identifier”)

What Is Biometric Information?



Current State Laws Regulating Biometrics



Pending Biometric Legislation

- Arizona
- Hawaii
- Maryland
- Massachusetts
- Minnesota
- New York
- Tennessee
- Vermont
- And more ...



Why?

- Unlike a password, biometrics are biologically unique to each person and cannot be changed
- Heightened risk of identity theft
- Laws to protect privacy and secrecy interests

Privacy Laws Regulating Biometrics as a Form of “Sensitive Information”

- CA Consumer Privacy Act (CCPA)
- CA Privacy Rights Act (CPRA)
- CO Privacy Act (CPA)
- CT Data Privacy Act (CTDPA)
- Utah Consumer Privacy Act (UCPA)
- VA Consumer Data Protection Act (VCDPA)



Extension of BIPA to AI Technologies

- **DashCam devices** – MV+AI technology; camera allegedly scans drivers' facial geometry
- **“Talkman” Headsets** – MV+AI technology used to pick orders; allegedly collects voiceprints
- **Security cameras** – allegedly scan facial geometry



Decisions of Note

• 2023 Illinois Supreme Court Rulings

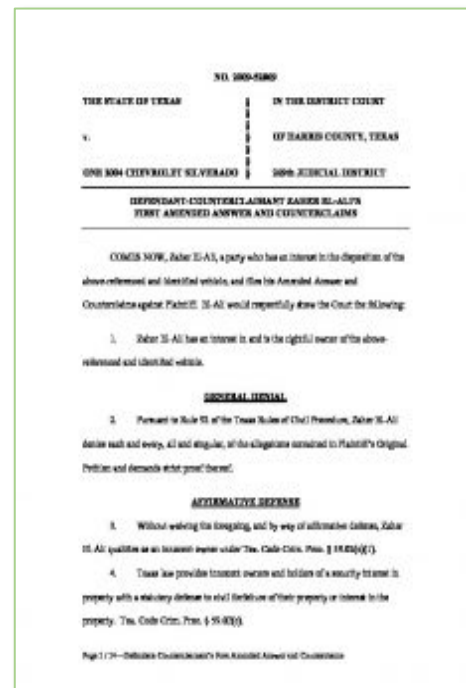
- *Tims* case – Applied 5-year SOL to BIPA claims.
- *Cothron v. White Castle Sys., Inc.* – Section 15(b) and (d) claims “accrue” with each scan or disclosure. Each scan counts.

• Other Decisions

- *BNSF Railway* – New trial ordered on \$228 million award; BIPA damages are discretionary.
- *Guszkiewicz v. Beelman Truck Co.* – Developer insulated from BIPA liability.

• Don’t Sleep on the NLRB

- General Counsel focused on electronic monitoring of all types, including dash cams



Best Practices to Mitigate Risk

- ✓ Carefully vet new technology and devices for biometric capability, including whether litigation is underway
- ✓ Ensure new vendors are well-established and negotiate indemnification and hold harmless clauses in vendor contracts
- ✓ Stay abreast of new biometric or privacy laws in jurisdictions where you do business
- ✓ Review new decisions under BIPA, CUBI, WA Biometric Privacy Law, or CPRA
- ✓ Roll out arbitration agreements with class action waivers

QUESTIONS?



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