



New Year, Same Bias?

A new California Federal action asserts that anti-discrimination statutes have been violated as a result of the use of AI screening tools to make early, outcome-determinative hiring decisions. A California Federal Court is allowing a plaintiff's case to proceed under Title VII, ADEA (age discrimination), and ADA (disability discrimination) on the theory that Workday (the AI screening company) may function as an employer's "agent" when its software filters which résumés advance to the next hiring stage.

The plaintiff in the suit is a disabled African American, who is over 40 years of age. He alleges Workday's system rejected his employment over 100 times since 2017. Further, given his applications were rejected near-instantly and during non-traditional hours, plaintiff asserts that the AI tool was driving the outcomes of his applications.

The case now enters discovery, where courts and companies may gain unprecedented visibility into how applicant-screening algorithms are configured, what criteria they apply, and the extent to which such tools autonomously select or exclude candidates.

With additional developments likely to come in 2026, the outcome of this case could reshape how employers source, evaluate, and document hiring decisions and how vendors design and deploy AI-enabled selection tools.

So what does this mean?

As a practical matter, employers are still free to use such job posting websites to source candidates as they have been, but employers need to be aware that using AI as part of the selection process (of determining which candidates to move on to the next stage) is fraught with risk. Employers using such AI may need to defend the actions by showing that the AI tools in question are not discriminating based upon a protected characteristic or producing a disparate impact with respect to such characteristics.

While AI-driven hiring is on the horizon, it is not without its flaws and potential risks. This case is yet another reminder to always keep a human in the loop.

For further information on these developments, please contact [Wesley Walker](#).