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New Illinois Law Addresses Use of Artificial Intelligence in Hiring



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Illinois Gov. J.B. Pritzker recently signed into law the Artificial Intelligence Video Interview Act that makes Illinois the first state to address the use of artificial intelligence (AI) in hiring.

The new law, effective Jan. 1, 2020, will require employers to provide notice to and obtain consent from job applicants whose recorded video interviews are analyzed using AI.

Technology is ever changing, and many analytical tasks can now be performed using AI. In hiring, some employers use AI programs to measure an applicant's facial expression, word choice, body language and vocal tone, among other factors.

In response to this increasing use of technology, the new law sets requirements for how employers can and cannot use AI as part of a recorded video interview process.

First, the act requires employers to notify applicants that AI may be used to analyze their interview videos and to provide applicants with an explanation how the AI program works, including what general types of characteristics it uses to evaluate applicants. Furthermore, before the interview, employers must obtain applicants' consent to be evaluated by AI.

If an applicant does not consent, employers cannot use AI, but nothing in the new law requires an employer to further consider a non-consenting applicant. Employers can only share the videos with people or technology with expertise needed to evaluate the applicant, and the employer must destroy all copies of the video if an applicant requests (with a 30 days limit).

Surprisingly, the new law does not define the term "artificial intelligence," nor does it provide specific guidance on what type of notice or explanation must be provided to applicants. It also does not prescribe any penalties for violation or what remedies are available.

While formal regulations and guidance may yet be forthcoming, employers using this technology should consult with appropriate counsel regarding best practices based on existing laws, including those prohibiting unlawful discrimination.