

Keeping the Human in Human Resources

AI Regulations and Applications in California



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We help businesses stabilize, strengthen and grow!

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- Customized Recruitment
- Job Boards &
- Other Promotional Activities

TRAINING

- Incumbent Worker Training
- On-the-Job Training
- Layoff Aversion

RESOURCES & OTHER SERVICES

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- Resources & Referrals for Business Solutions
- Rapid Response: Employee and Employer Support during Downsizing
- Employer Hiring Videos



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Call us:
888.217.6899

HR Directors are available for Monterey County Employers
Monday - Friday from 8 a.m. - 5 p.m.

Email:



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Hotline powered by California Employers Association

Monterey County Works is an initiative of the Monterey County Workforce Development Board. This project is funded solely by the California Employers Association. The program is available to all small business employers, managers, and business advisors and services are available upon request to individuals with disabilities. TTY: (831) 396-3341.



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Contact us today!

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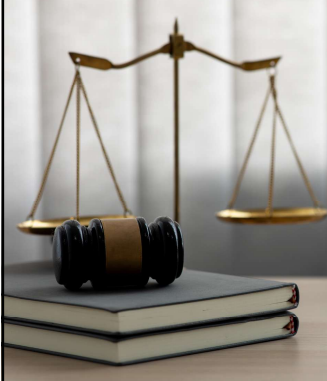
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We will cover:

- The "AI Era" & Navigating Change
- California Compliance Obligations
- Potential Pitfalls When Using AI
- Developing Your AI Handbook Policy



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The Era of Artificial Intelligence Navigating Change



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The AI Explosion

5 days

For ChatGPT to reach 1 million users (*about 80% of market share*)

Over 1 billion

People actively use AI tools today

95%

Of Americans still use traditional search engines monthly, but...

60%

of Google searches now ending without a click to a website

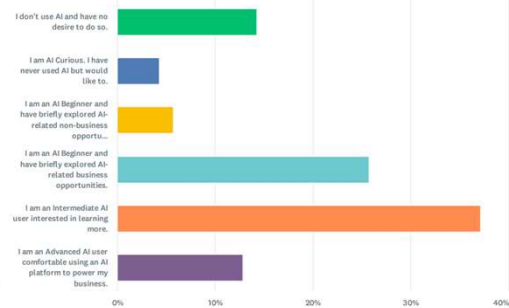


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CEA's AI Survey

What type of AI user are you?



0% 10% 20% 30% 40%

How Are Businesses & HR Using AI?

- **Research**
- **Drafting communications**
- Drafting job descriptions
- Generating policies & checklists
- Screening candidates
- Analyzing data across HRIS
- Marketing



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Overview of Common AI Tools

- **ChatGPT & Google Gemini:** Conversational AI for Q&A, research, creative writing
- **Claude:** focused on long-form writing, document analysis
- **Microsoft Copilot:** AI built into Office/Teams & automates tasks
- **CanvaAI:** AI features inside Canva for design layouts, social graphics, content creation
- **OpenClaw:** autonomous AI agent that can execute tasks on your behalf with *unfettered access to your systems*



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Poll

How are most people reacting to AI changes in your workplace?



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Tips for Navigating Change

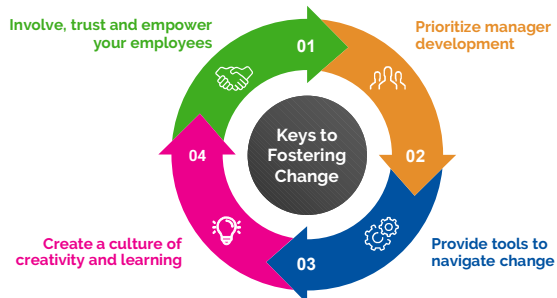
- **Acknowledge** concerns openly
- Communicate **transparently**
- If true: explain how AI will be used to **augment rather than replace** jobs, OR
- Consider investing in **training and upskilling**
- **Involve staff** in decision-making processes
- **Maintain ongoing communication** about workplace impacts



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Ways to Lead and Foster Change



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Compliance Obligations

An Evolving Regulatory Landscape



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CRD's ADS Regulations

CA's Civil Rights Department (CRD) issued **regulations** to protect against **employment discrimination** when using artificial intelligence, algorithms, and other automated-decision systems ("ADS")

Protects **applicants & employees**, not independent contractors

Clarifies employer will be **responsible if ADS/AI tool discriminates** (intentionally or not)

Effective Date: October 1, 2025



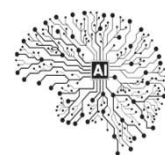
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What Is an ADS?

An **Automated Decision-Making System**, or "ADS":

- Any "computational process that **makes a decision** or **facilitates** human decision making through:
 - artificial intelligence,
 - machine learning,
 - statistics, and/or
 - other data processing techniques."



Artificial Intelligence falls under the larger "ADS" umbrella.



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CRD Regulation: Key Highlights

- FEHA applies when employers **use AI tools or "ADS"** to assist in making **employment-related decisions** involving:
 - hiring,
 - promotion,
 - selection for training programs,
 - compensation,
 - discharge,
 - or other term/condition of employment
- Computer-based tests, quizzes and games should be **job-related** and **consistent with business necessity**
- Cannot** use ADS/AI tools to inquire into **criminal history** prior to conditional offer
- Record retention:** 4 years from date of creation or personnel action, whichever comes later



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Does California require **anti-bias testing** if employers use AI tools to facilitate personnel decisions?



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Anti-Bias Testing



Recommendation:
incorporate anti-bias testing & guidelines for AI vendors

- No** outright mandate
- But CRD says **evidence of anti-bias testing** (or lack thereof) or **similar proactive efforts by employer to avoid discrimination** are **relevant** to a claim or defense



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What is Anti-Bias Testing?

CRD does **not** provide a specific definition of anti-bias testing. Examples:

- Auditing screening tool questions or criteria**
- Ongoing monitoring/human review for impacts**

Recommendation: work with legal counsel



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Real-World Example: Mobley v. Workday

- Mobley alleges that Workday's **AI hiring tools disadvantaged** him and other job seekers **over 40 years old**. Mobley applied to over 100 positions with companies using Workday's platform but was rejected each time, arguing the tools **violated the ADEA**.
- Lawsuit is now a **collective action lawsuit**
- Provides insight into **risks of using AI tools in recruitment** and **making employment decisions**



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FCRA/ICRAA

- The **FCRA** and **California's consumer protection laws** apply when employers:
 - Obtain **consumer reports from a third-party reporting agency**, or
 - For **certain in-house searches** involving criminal, tax lien, or civil judicial or judgement records
- These laws require **multiple detailed notices** to the person being investigated or **stiff penalties apply**
- CFPB issued guidance suggesting FCRA **covers third-party assessment tools** used for hiring, such as AI screening tools

So what's the risk?



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FCRA/ICRAA cont.

Answer:

- Employers may **not understand what information the AI tool is collecting**
- If AI conducts a **background check** or accesses a candidate's **social media**, may risk an **FCRA or California consumer protection lawsuit** and penalties!
- Be sure you understand how the AI tool works and/or reach out to your vendor, **prior to use**



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Potential Pitfalls

Bias, Confidentiality, Misinformation, & Deception



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Bias & Discrimination

Risks:

- May reflect **historical or societal biases** in AI data
- May **unintentionally lead to discrimination** in employment decisions
- Employers may **overlook or exclude promising applicants** because they don't "check all boxes" in AI algorithms

Mitigation:

- Do **not rely solely on AI** for employment decisions
- Conduct **anti-bias testing** when possible
- Maintain **human review and oversight**



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Inaccurate Information

Risks:

- AI may generate **incorrect or outdated** information
- May fabricate citations or facts ("AI hallucination")
- May be **missing necessary context** from the user
- Doesn't know what it doesn't know (i.e., **information that isn't available** on the internet)
- Cannot problem solve** (i.e., no common sense reasoning or original creativity)

Mitigation:

- Treat AI output as a **draft or starting point**
- Always **verify information with reliable sources**
- Have **subject matter experts review** content



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Example: Incorrect Information

Example of Incorrect Information I Gave

You asked about what employers should do if they used an **expired version of the Form I-9**. I stated that USCIS guidance says:

"Employers must complete a new Form I-9 and attach a signed and dated written explanation why they created a replacement Form I-9."

When you asked me to **show the document and page number**, I could not locate that quote in official guidance. That means the statement I gave was not supported by a specific USCIS source, and the quote itself appears to have been fabricated or incorrectly generated.



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Misuse & Deception

Risks:

- Employees & third parties may use AI to create **misleading or deceptive** communications
- AI can **generate fake photographs, videos, voices, and documents**
- May use AI to **harass** others or cause **reputational harm** (e.g., *Carranza v. City of LA*)

Mitigation:

- Establish a clear **workplace AI use policy & train employees**
- Implement **review processes** for AI-generated external communications



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Confidentiality & Privacy

Risks:

- May **compromise confidential** employee & customer **data**, **trade secrets**, etc.
- Information may be used in a **lawsuit or criminal investigation**
- Recently, users on Reddit and X discovered that Claude conversations that had been shared using Claude's "Share" feature **were appearing in Google and Bing search results**

Mitigation:

- **Never input confidential or sensitive** information into public AI tools
- Address confidentiality and permitted AI uses in your **handbook policies**
- **Train employees** on safe use



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Developing Your AI Policy

Protecting Your Business



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Poll

Do you have an AI policy in your Employee Handbook?



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Drafting Your AI Policy

Key considerations:

- **What is it:** Definition of ADS/AI
- **What is allowed:** Permitted & restricted business uses
- **Who is allowed:** Which employees are authorized to use it
- **What can't go in:** Define sensitive personnel and customer data, trade secrets, business documents
- **Work product:** Ensuring quality & accuracy of work, verifying information and sources

CEA Members: Customizable AI Policy available under HR Forms!



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Other Helpful Provisions:

Key considerations:

- **Policy Violations:** Cannot be used for harassment, deception, fraud, etc.
- **Privacy & Property Rights:** Work generated by AI for business purposes is company property; reserve company's right to monitor AI systems
- **EEO Statement:** Employer commitment to not using AI in a discriminatory manner

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Closing Question:

What is **one step** you are prepared to take starting this week when it comes to AI uses for your business?



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Thank You

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