GROWING LEGAL THREAT

STUDY FINDS AI HIRING TOOLS MAY INCREASE BIAS RISKS

A NEW STUDY has found that artificial intelligence hiring tools can disproportionately screen out Black and Asian job applicants and may repeatedly reject the same candidates across multiple employers that use the same technology.

The findings raise new concerns for employers as AI increasingly becomes a fixture in recruiting. According to the World Economic Forum, about 90% of companies now use artificial intelligence to help vet job applicants.

Researchers at Stanford's Institute for Human-Centered Artificial Intelligence analyzed 4 million job applications submitted to more than 150 employers using the same third-party hiring platform. They found that 26% of Black applicants and 15% of Asian applicants applied for positions where the AI system produced outcomes that met the Equal Employment Opportunity Commission's standard for adverse impact.

That means about 40,000 applications by these applicants could have moved to the next stage of the hiring process.

The study's findings mean that employers need to be mindful of potential discriminatory results from using AI during the hiring process. The risks may be particularly acute in California, where regulations that took effect in 2025 require employers to ensure that AI and other automated decision systems used in hiring do not discriminate against protected classes.

Bias may be hidden

The study found that discriminatory outcomes can be difficult to spot because aggregate data often masks problems.

For example, an AI system might recommend Black applicants for one type of job but reject them for another. When all positions are combined, the disparities may disappear statistically even though significant differences exist for individual jobs.

That is an important distinction; courts typically analyze disparate-impact claims on a position-by-position basis.

Also, many employers rely on the same small third-party vendors to screen candidates. As a result, the same algorithms may influence hiring decisions across hundreds of companies.

The researchers found that applicants who applied to multiple jobs screened by the same AI platform were more likely to be rejected by every employer than would be expected if each company made decisions independently. One in 10 applicants who submitted four applications through the platform was rejected by all four employers.

Steps employers can take

Employers that use AI in recruiting may want to consider the following safeguards:

- Conduct adverse-impact analyses by individual job position.
- Require vendors to provide validation studies and bias-testing data.
- Maintain human review of applicants screened out by AI.
- Periodically audit hiring outcomes for potential disparities.
- Document how AI systems are selected, tested and monitored.
- Establish oversight teams that include HR, legal and technology personnel.
- Train managers on the limitations and risks of automated decision-making.
- Closely monitor evolving federal and state regulations governing AI in employment.

The takeaway

Employers remain responsible for the tools they use. Even when using systems from third-party vendors, courts are likely to hold employers accountable for discriminatory outcomes.

As a result, employers should treat AI governance as a central part of their compliance efforts and build in safeguards that can provide a solid defense if sued.

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