

Algorithms and Artificial Intelligence (AI)

Algorithms and artificial intelligence are utilized in several hiring technologies.

- An **Algorithm** is a series of instructions followed by a computer to accomplish a result. For example, a keyword search of certain terms when scanning resumes.
- **Artificial Intelligence** means a computer that makes decisions or performs a task that is usually performed by a human. For example, evaluating facial expressions or speech patterns during a virtual interview.

AI in the Workplace

Hiring

- Scanning resumes to prioritize applications
- Making decisions about whether an applicant is qualified
- Evaluating facial expressions or speech patterns during a virtual interview
- Administering tests to provide a "job fit" score

Employment

Monitoring and tracking:

- Keystrokes and mouse clicks
- Usage of desktop apps and web browsing
- Email and chat messages through virtual platforms
- Biometric information (e.g., eye movement and facial expressions)
- Movement about onsite and offsite work locations

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Recruiting and Hiring Using AI

AI in the recruitment and hiring phases of employment can result in treating individuals with disabilities unfairly when:

- Bias in AI tools exists because the data used to inform them include human decisions that were biased,
- The data being used to inform the AI tool does not fully represent all individuals, and
- AI is being used to measure things like skills, aptitudes, and other factors indirectly.

Employers can use the awareness of how AI can lead to unfair treatment of individuals with disabilities to self-evaluate current AI being used or to investigate new AI technologies being considered for purchase.

Employers contracting with employment agents or staffing agencies who use AI and are providing services to support the employers' hiring and employment processes, are still responsible for these services to be provided in a way that does not unfairly treat individuals with disabilities.

Testing and Screening Out Candidates with Disabilities

Screening out means a person loses a job opportunity. While AI may have its benefits, it can also come with the risk of rejecting qualified candidates with disabilities. An algorithmic decision-making tool can screen out a candidate or an employee from a job opportunity or promotion based on a disability when because of a disability, the individual scores too low on an assessment or below the employer's acceptable level.

EEOC guidance states that this is unlawful when the person who has been screened out can perform the job's essential functions with a reasonable accommodation, if one is legally required.

By asking some key questions about the AI tool's accessibility, alternative formats, and whether the tool puts certain disability groups at a disadvantage, employers can ensure the use of AI in the hiring process is inclusive of individuals with disabilities.

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Questions and Exams

As a best practice, employers should examine the AI tools being used in the hiring process or at work to ensure they are not asking disability-related questions or administering tests that seek information about health and impairments when these are not permitted.

Hiring Process Solutions

1. Having awareness of the potential barriers created by using AI can help employers **know what questions to ask vendors related to accessibility**.
2. Remember to include **a reasonable accommodation statement** with the online application and in invitations to interviews and testing that provides instruction and contact information for making a request.
3. Employers can also **disable features** in current software that can cause people with disabilities to be unfairly screened out.
4. Be prepared to provide for candidates with disabilities to **participate in the hiring process in alternative ways** through providing a reasonable accommodation.
5. Ensure the AI decision-making tools being used for measuring qualifications and abilities are **directly measuring those that are necessary and essential to the job**.

AI in the Management of Employees

AI is being used in employment to make decisions about performance, conduct, advancement, and termination through monitoring or tracking. Examples can include:

- Conducting performance evaluations and making recommendations on promotions,
- Personalizing training and making recommendations on training needs, and
- Providing information on benefits through chatbots instead of a live HR associate.

Ohio Opportunities for Ohioans with Disabilities

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Reasonable Accommodations for AI

Accessibility touches all aspects of employment, including the use of AI, and covered employers are required to provide reasonable accommodations for all aspects of employment, including when AI is used.

A best practice is to inform applicants and employees of when and how AI is being used in the hiring process and at work, so they know whether they need an accommodation.

Include a description about the AI tools being used with the statement that informs candidates and employees of what to expect, like describing:

- What skills or attributes the AI-decision making tool is designed to assess,
- How these are tested, and
- Any variables or factors that could impact the rating.

AI as a Reasonable Accommodation

Reasonable accommodations come in a variety of types, including modifying policies, providing flexible schedules, and providing equipment and services, which can include providing AI. The effective solution is always determined on a case-by-case basis through the interactive process.

Examples of using AI as a reasonable accommodation include:

- Apps for wayfinding
- Apps that can describe people, objects, and text for individuals with visual disabilities
- Speech-to-text apps that convert the spoken word into a text format and display on a screen for individuals who are deaf or hard of hearing
- Tools that use eye control to operate a computer for individuals with physical disabilities
- Text processing systems that can convert complex content in a document into plain language
- Smart glasses that help individuals to interpret emotions and social cues to help individuals who are neurodivergent to understand and express emotions and make eye contact.

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AI and Disability Inclusion

Employers should plan for accessibility and inclusion from the start, including planning for the AI being used. When employers take this step to make sure their technologies are accessible, not only are they prepared to follow their responsibilities under the ADA, but they are also greatly impacting their efforts to create disability inclusive workplace cultures.

Resources

Other Resources

ADA.gov. Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring

Department of Justice. Employers' Use of Artificial Intelligence Tools Can Violate the Americans with Disabilities Act

LinkedIn. Artificial Intelligence, In Simple Terms

Southeast ADA Center. Business Sense: Automated Worker Surveillance Tools – Inclusive Employers Exercise Caution

For more information, contact
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The information included is for educational purposes, is not an exhaustive list, and is not intended as legal advice.

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