



# Proceptual

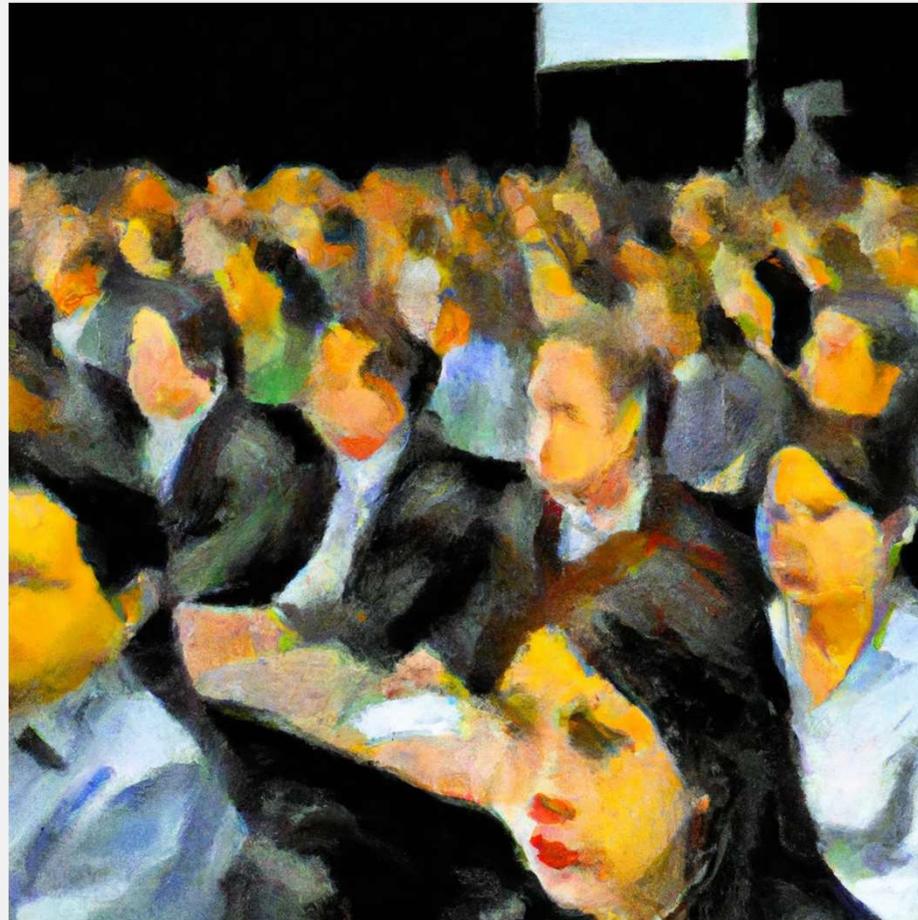
Your AI Compliance Ally

**Algorithmic Decision-Making and AI in Hiring:  
DEI Implications and Regulatory Concerns**



- Founder, Proceptual
- We help HR leaders, legal teams, and executives comply with emerging regulation of automated and AI-driven hiring systems
- 13 years experience in testing, psychometrics, and statistical analysis

“Create an impressionist painting of the audience of a HR webinar on AI”



# Today's Agenda

- What (common) HR tools use automated or AI-driven technology?
- What are the potential ethical and DEI considerations in the use of AI?
- Upcoming compliance requirements
- What should you do now???

“But we don’t use AI!”

A number of “standard toolkit” HR systems use predictive or automated hiring systems today

Resume Scanning and Sorting



Pre-Hire Assessment



Interview Tools



Performance Management



# Why is AI hot now?

Machine learning and AI have been used in HR applications for many years

The current wave includes “generative AI” – using AI to create an output rather than to make recommendations or sift data

These tools are available to anyone, free, and no longer require technical background

Expect several use cases in HR:

- Applicants will use AI to draft resumes and cover letters (they are doing this now)
- Applicant AI will in many cases be “talking” to employer AI
- Recruiters will use generative AI to:
  - Draft JDs
  - Identify AI-generated applicant materials
  - Streamline creation of onboarding materials



How can chatGPT be used by human resources professionals?



ChatGPT can be a valuable tool for human resources professionals in several ways, including:

1. **Recruitment:** ChatGPT can assist in the recruitment process by screening resumes, conducting initial interviews, and answering frequently asked questions from applicants. This can save time and increase the efficiency of the recruitment process.
2. **Onboarding:** ChatGPT can provide new employees with important information about the company, its policies, and procedures. This can help to ensure that new employees are fully informed and able to quickly get up to speed.
3. **Training:** ChatGPT can be used to provide training materials to employees and answer questions about training programs. This can help to ensure that employees are well-trained and have a clear understanding of their job responsibilities.
4. **Employee engagement:** ChatGPT can be used to gather feedback from employees and address any concerns they may have. This can help to increase employee engagement and satisfaction.
5. **Performance management:** ChatGPT can be used to provide employees with feedback on their performance and help to identify areas for improvement. This can help to ensure that employees are meeting their performance goals and objectives.

Overall, ChatGPT can be a powerful tool for human resources professionals, helping to increase efficiency, improve employee engagement and satisfaction, and ensure that employees are well-trained and performing at their best.

# This month's amazing revolution in civilization: Auto-GPT and automated AI "agents"

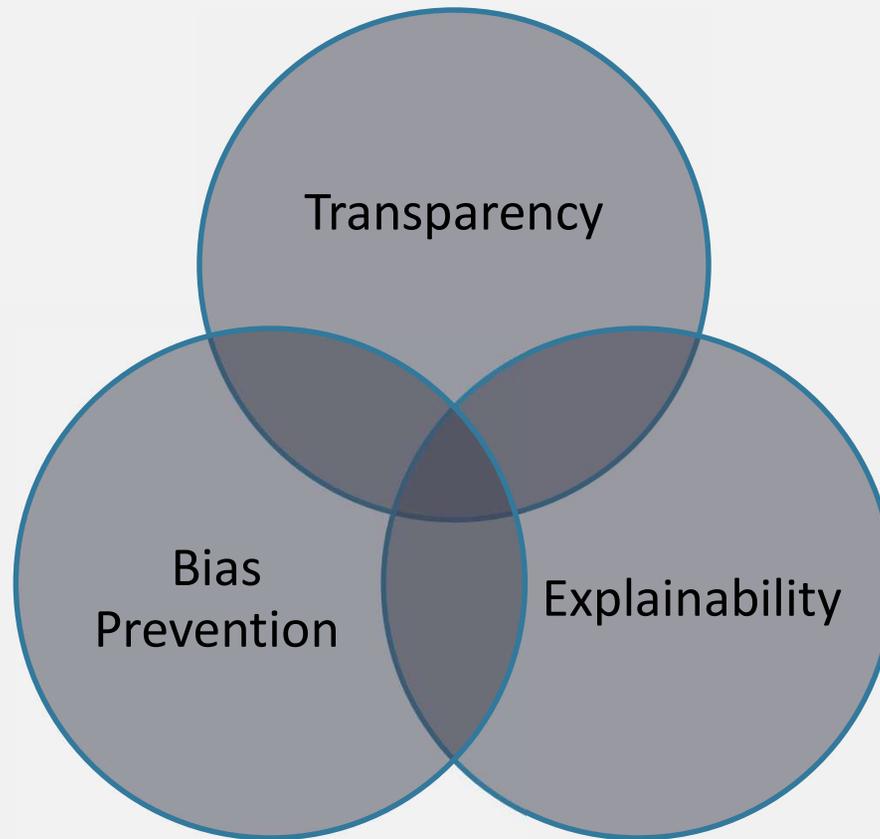
ChatGPT and "last month's tools can..."	But AI agents will very soon be able to...
Execute one prompt at a time	Be given a goal and <i>prompt itself</i> until goal completion
Access only the data it was trained on	Go online to find updated information
Recommend a human user take an action online	Actually go online and complete an action ("order me a pizza")
Draft a mediocre cover letter for a certain job	Draft 100+ cover letters, customized by role, and <i>actually apply to those jobs</i>

<https://twitter.com/yoheinakajima/status/1642881722495954945>



# Ethical Considerations

# The three key AI safety considerations align with the DEI commitments we have seen in most organizations



# Major Consideration: Transparency

Transparency refers to an applicant's ability to:

- Understand that an automated or AI-powered algorithm is being used
- Know what data is being used for both training and decision-making
- Generally, to opt out or request accommodation

Transparency requirements are a part of every upcoming regulation we have reviewed.

Post-regulation, expect your applicants to understand what tools are being used to judge their candidacy, and why.

# Major Consideration: Bias

Bias refers to the possibility of an automated or AI-driven system to misuse generally protected classifications (race, gender, etc) to make hiring and termination decisions

The biggest source of bias concern with HR tools is how the system is trained. AI systems have a high potential of replicating and reinforcing existing bias in hiring

Most AI bias is unintentional; the issue is not that nefarious vendors and employers are asking systems to misuse protected classifications, but that the misuse already exists in the data used to train the system

EEOC has made it clear you can't "blame the algorithm"

# Case Study: Hiring Bias



- In 2014, Amazon designed an algorithm to judge software engineering candidates based on the success of current employees
- Amazon's SWE workforce was dominated by men
- The algorithm systemically learned to prefer men, eliminating, for example, applicants who had attended a women's college
- The algorithm was edited to not consider explicit gender markers, but then learned to prefer candidates who used typically masculine language
- The experiment was discontinued

Training data that encodes current systemic bias will tend to replicate that bias

Source: <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scrap-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>

# Major Consideration: Explainability

Explainability refers to human users' ability to understand why an algorithm is making the decisions it's making – in part, to judge whether those decisions are legally and ethically justifiable

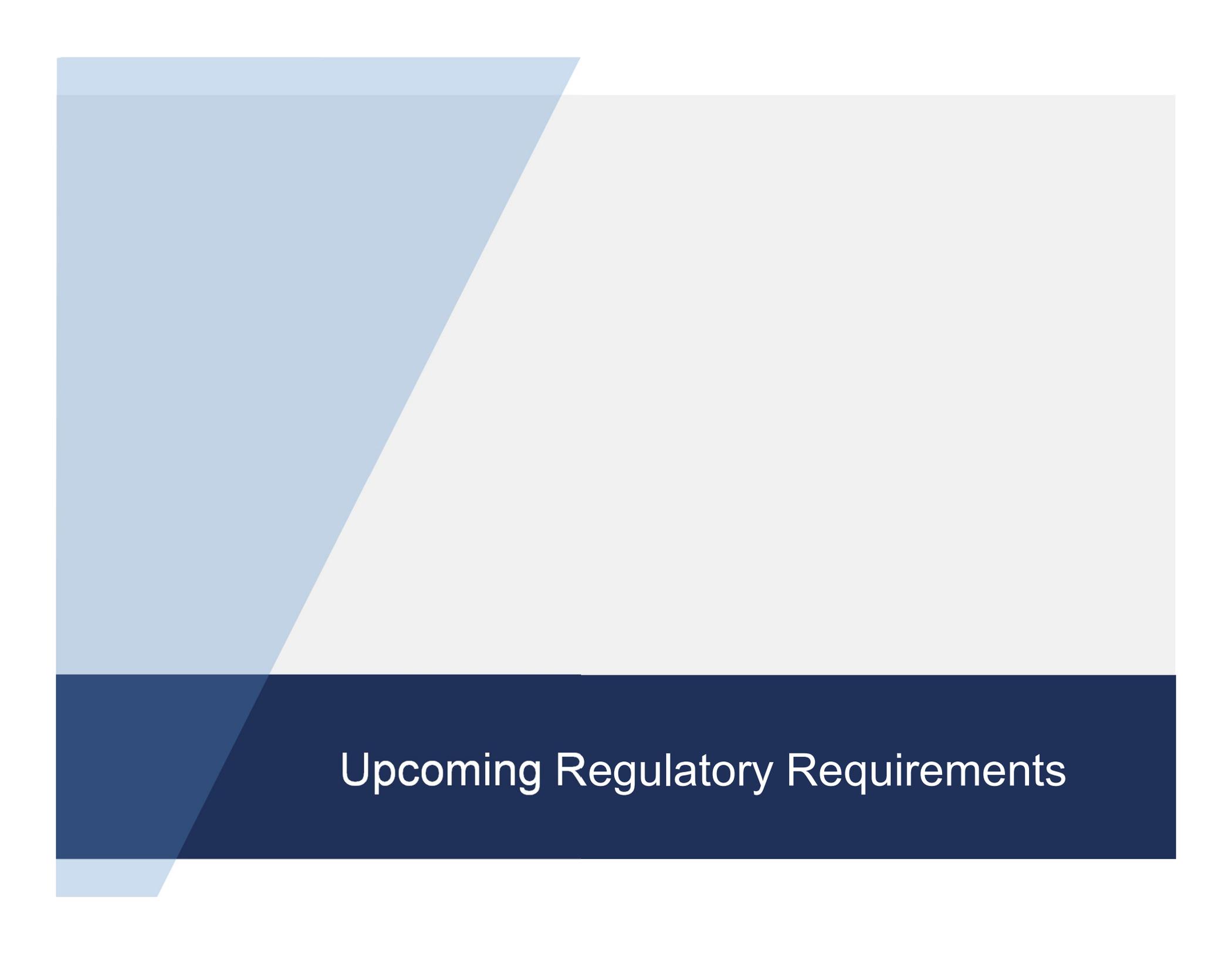
Monitored vs. Unmonitored algorithms

Case study:

- A company is vetting a resume screening tool
- Upon audit, it is revealed that the tool found 2 factors to be most predictive of job performance. Their name was \_\_\_\_\_ and they played \_\_\_\_\_ in high school

An explainable system enables the human user to edit or discontinue use of a system using indefensible qualifications

Source: <https://qz.com/1427621/companies-are-on-the-hook-if-their-hiring-algorithms-are-biased>



# Upcoming Regulatory Requirements

# Illinois was the first state to pass regulations around the use of AI in hiring with the Artificial Intelligence Video Interview Act

- Passed unanimously – AI regulations seem, for now, relatively non-partisan
- Facial recognition AI is so clearly bad that most companies don't do this (and the law therefore has been more preventative than punitive)
- Key provisions
  - Notification (transparency) and consent
  - Explainability
  - Data privacy – interviews are need to know and data must be destroyed on request

<https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/illinois-artificial-intelligence-video-interview-act.aspx>

In 2023, a wave of regulation is coming to automated hiring systems (including but not limited to AI-driven systems). The regulations are set to fall not only on vendors of AI systems, but on employers more broadly

### NYC Local Law 144

NYC has passed Local Law 144, requiring independent, 3rd-party audits of automated hiring systems for **any company hiring employees living in NYC**. Effective date: July 5, 2023

### Statewide Initiatives

Similar laws to NYC LL144 have been proposed and passed committee in New Jersey, California, New Hampshire, New York State, and Washington DC

If your organization hires across state lines, be prepared to learn about these laws

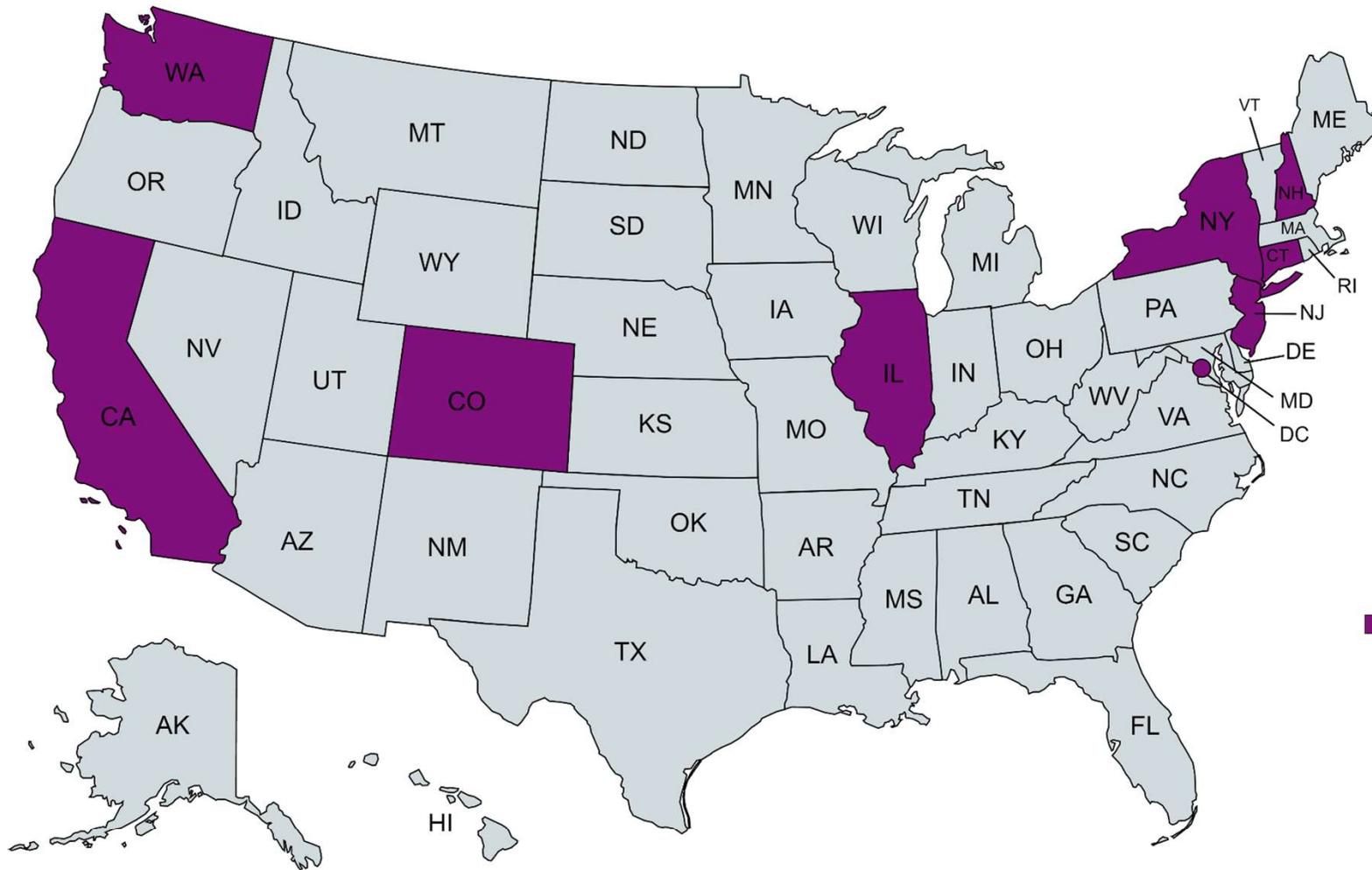
# State regulations are setting the table for impending national and international regulation



- EEOC has identified algorithmic hiring bias as one of its [3 focuses for regulatory action](#) over the next 5 years
- EEOC has already issued guidance related to use of automated tools and people with disabilities
- Expect federal regulation late 2023 or 2024
- White House AI Bill of Rights will guide federal regulations across agencies



- EU AI Act and Digital Services Act will heavily regulate the use of AI
- The contours of the law are already known and will require substantial action by companies selling into the economic zone
- There is a possibility that the first large international regulation will set the standard (the “Brussels Effect” seen with GDPR)



# Case Study: Workday Lawsuit (2023)



In February, Workday was sued in federal court in a class action

The plaintiff alleges that he applied for 100+ jobs through Workday over several years and didn't get any of them, therefore there must be discrimination based on his age

This is reminder that, regardless of what new AI legislation does or does not pass, Title VII, ADA, and other federal protections still apply to AI-driven tools

Remember: "You can't blame the algorithm," and existing regulations still apply to new tools!

# Case Study: New York Local Law 144

Intersectional Categories						
			# of Applicants	# Selected	Selection Rate	Impact Ratio
Hispanic or Latino		Male	205	90	43.9%	0.841
		Female	190	82	43.2%	0.827
Non/Hispanic or Latino	Male	White	412	215	52.2%	1.000
		Black or African American	226	95	42.0%	0.806
		Native Hawaiian or Pacific Islander	87	37	42.5%	0.815
		Asian	321	167	52.0%	0.997
		Native American or Alaska Native	24	11	45.8%	0.878
		Two or More Races	115	52	45.2%	0.866
	Female	White	385	197	51.2%	0.981
		Black or African American	164	75	45.7%	0.876
		Native Hawaiian or Pacific Islander	32	15	46.9%	0.898
		Asian	295	135	45.8%	0.877
		Native American or Alaska Native	17	7	41.2%	0.789
		Two or More Races	98	44	44.9%	0.860

Requires independent audit of the *outputs* of “automated decision-making tools” for racial and gender bias

Applies to companies hiring in NYC that use covered tools

Challenge: the required audits are *public* and may show disparate hiring impact

Challenge #2: this law is being “copycatted” by state legislatures in California, DC, NY (state), and others



## What should HR leaders do to prepare?

### Prepare Cross-Functional Discussions

Conduct a cross-functional analysis of the tools in use for HR. Someone in the organization must own an up-to-date list

Bring this list to legal and create an open dialogue between HR, legal, and senior management

### Understand / ask what your vendors have done

Reach out to vendors to understand their compliance plans

Make sure vendors can give you a validity study or be prepared to complete internally

Question any vendor that does not have a plan for compliance

### Start considering AI policy

Begin creating AI policies both for HR and throughout the organization

- How do we respond to applicant use of AI?
- How do we ensure proper guardrails on employee use of AI?

Additional resources:

- Copy of these slides
- NYC Local Law 144 applicability checklist
- Monthly regulatory updates
- Complimentary consultations

## Contact



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