Provided by Risk Strategy Solutions

RISK ADVISOR

October 2024

COMMERCIAL

Preventing Age Discrimination in the Workplace

Age discrimination, or ageism, in the workplace involves treating an applicant or employee unfavorably because of their age. The Age Discrimination in Employment Act (ADEA) prohibits age discrimination against those aged 40 or older in all aspects of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training and benefits. Some states also have laws to protect younger workers from age discrimination.

The U.S. Bureau of Labor Statistics projected that adults 65 and older will be 8.6% of the labor force in 2032, up from 6.6% in 2022. It also notes that the older workforce is nearly four times the size it was in the mid-1980s. With the workforce aging, employers need to be mindful of actions that constitute workplace age discrimination and take steps to prevent them from occurring.

The Cost of Age Discrimination

When experienced employees leave jobs due to a hostile work environment or are forced out, companies lose employees with institutional knowledge and expertise. This not only harms the company's reputation but also leads to the expensive process of recruiting and training new talent. Additionally, businesses may face the burden of legal and regulatory fees, as well as potential judgment or settlement payouts. The impact on remaining employees can be equally profound, as age discrimination can decrease employee morale, lower motivation, and negatively affect productivity and work quality.

How to Prevent Age Discrimination

Given the significant financial and reputational risks, organizational leaders must take steps to prevent age discrimination.

The following are suggestions for combating ageism:

- **Assess organizational practices and policies**. Organizations can work to eliminate outdated assumptions about older workers and foster a multigenerational culture that rejects age stereotypes by evaluating and improving their current practices and policies.
- **Examine recruitment practices**. Recruiters and interviewers should be trained to avoid ageist assumptions (e.g., the belief that an older candidate will retire soon). Applications should also eliminate requests for age-related information (e.g., date of birth and year of graduation), and interview panels should include people with a wide range of ages.
- **Train employees and encourage reporting**. Workforce training is critical to educating employees about ageism in the workplace. Since age discrimination often goes unreported, spreading awareness may increase the likelihood that employees who witness instances of ageism will report it.
- **Respond to claims immediately**. Ageism complaints should be taken seriously and addressed swiftly. Investigations should include interviews with all parties connected to the complaint and a review of all relevant evidence.
- **Secure employment practices liability (EPL) insurance**. EPL insurance provides essential coverage for employers when employees allege discrimination based on age.

As the workforce ages, business leaders should be proactive in recognizing and preventing age discrimination. Doing so can improve the workplace environment, protect the company's reputation and help it avoid related financial losses.

Contact us today for more risk management guidance.

Risk Strategy Solutions

This document is not intended to be an exhaustive source of information nor should any discussion or opinions be construed as legal advice. Readers should consult legal counsel or a licensed insurance professional for appropriate advice.
© 2024 Zywave, Inc. All rights reserved.

Balancing AI's Benefits and Risks in Employment Decisions

Organizations are increasingly utilizing artificial intelligence (AI) in employment-related decisions. Although AI can offer several benefits, it also presents many challenges. AI is currently used in multiple aspects of employment decision-making, including recruitment, candidate screening, hiring, onboarding and performance evaluation. Businesses need to be aware of this technology's benefits and risks before deciding to continue to utilize it.

Benefits and Risks of AI in Employment Decisions

Businesses implement AI in various ways. This tool offers several benefits, such as enhanced efficiency and time savings by automating repetitive tasks, improved objectivity by reducing bias through algorithms, and better decision-making through predictive insights from detailed reports. However, AI also presents risks, including biases and discrimination due to training on outdated or nondiverse data, lack of transparency in decision-making, and ethical concerns related to data utilization and storage.

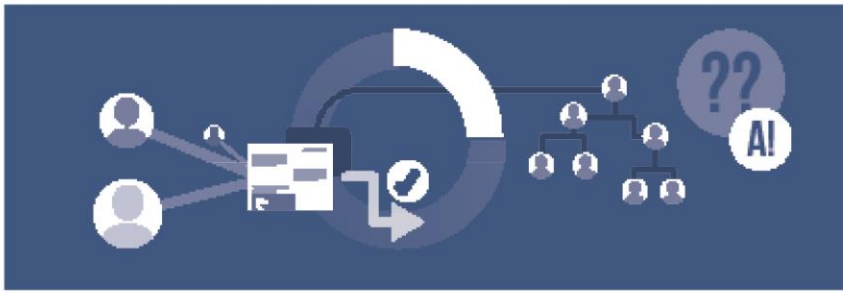
Furthermore, businesses must also consider numerous laws and regulations when implementing AI in employment decisions. While federal laws such as Title VII of The Civil Rights Act and the Americans with Disabilities Act do not specifically address AI, they apply when AI systems lead to discriminatory outcomes based on protected characteristics, such as race, gender or disability. In addition, various countries, states and cities have enacted laws regulating the use of AI in employment decisions; for instance, Illinois, Maryland and New York City have laws regarding its use, and other jurisdictions are considering similar legislation. The Equal Employment Opportunity Commission also stated it prioritizes the enforcement of federal antidiscrimination laws in relation to AI, emphasizing the need for businesses to ensure that their AI systems are fair, transparent and compliant with existing regulations.

Strategies Businesses Can Implement to Reduce AI Risks and Mitigate Liability

To mitigate potential liability and reduce risks associated with AI use, employers can implement the following strategies:

- **Follow applicable laws and regulations**. Businesses must ensure they are permissibly using AI in employment-related decisions. To do this, it's important to work with the AI vendor to understand its algorithm, consult with legal professionals about the applicable laws and regularly monitor the technology's outputs for discriminatory results with procedures in place to correct them.
- **Develop clear ethical guidelines**. Internal policies should address appropriate AI use, detail consent procedures for job candidates and employees, and emphasize transparency and explainability of AI algorithms.
- **Implement human oversight and intervention procedures**. Human involvement in decision-making processes is essential to ensure the legal and proper functioning of AI technology.
- **Ensure data quality to address biases**. Since AI can perpetuate unlawful biases, the data inputted into the system must be accurate, relevant, diverse and complete. This can help the system return stronger and more compliant results.
- **Audit and evaluate AI performance regularly**. Like other systems, AI needs to be audited regularly to analyze its outputs. Corrections and adjustments can then be made to enhance its performance.

AI utilization in employment decision-making is increasing, but it presents various benefits and risks. Employers must be aware of the positives, negatives and legal concerns when incorporating this technology into their operations.

For more risk management guidance, contact us today.

Around **25% of organizations** use AI for HR processes such as recruitment, hiring, performance evaluations and retention determinations, according to the Society for Human Resource Management.