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AI in the Boardroom: The Risk and Opportunity of
Artificial Intelligence in Workforce Management

Late last month, the U.S. Equal Employment Opportunity Commission published its quadrennial [Strategic Enforcement Plan](#). This year's plan put employers on notice that employment bias associated with "artificial intelligence and machine learning" will be a top enforcement priority. The EEOC action marks only the latest in a wave of regulatory and legislative initiatives targeting discrimination and privacy concerns arising from the use of AI to monitor and evaluate employees. While increasingly sophisticated AI tools promise a new era of efficiency in workplace management, companies and directors must weigh this opportunity against the risk of potential regulatory enforcement, private litigation, and attendant reputational impact.

The past year has seen a rush of new, AI-infused software designed to assist in evaluating job candidates, tracking performance, and monitoring compliance. Employers may be tempted to regard such technology as a solution to the risk of workplace discrimination — a neutral resource operating free of conscious or unconscious bias. Unfortunately, recent academic studies suggest that despite the best intentions of developers, the realities of AI training and design can have the effect of introducing human prejudice. Spurred by that research and broader concerns about workplace privacy, [state and local](#) governments across the country have enacted legislation regulating the use of automated tools in the workplace. Private litigants, meanwhile, have begun to invoke both these new statutes and other longstanding regulation in lawsuits against employers, alleging AI-driven discrimination and invasion of privacy (including through the automated review of [biometric information](#)).

The technology is new, but it presents a familiar boardroom challenge. Directors must calibrate board-level oversight of key enterprise risks to the shifting business and regulatory landscape, consistent with their duties under the *Caremark* standard (as previously discussed [here](#)). Although appropriate governance will vary by company and industry, we expect that most every board will be confronted with the difficult task of balancing the incredible potential of fast-evolving AI software against the countervailing risk.

William Savitt
Mark F. Veblen
Noah B. Yavitz
Courtney D. Hauck

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