2025 YEAR-TO-DATE REVIEW OF AI AND EMPLOYMENT LAW IN CALIFORNIA

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California started 2025 with significant activity around artificial intelligence (AI) in the workplace. Legislators and state agencies introduced new bills and regulations to regulate AI-driven hiring and management tools, and a high-profile lawsuit is testing the boundaries of liability for AI vendors.

LEGISLATIVE DEVELOPMENTS IN 2025

State lawmakers unveiled proposals to address the use of AI in employment decisions. Notable bills introduced in early 2025 include:

SB 7–"No Robo Bosses Act"

Senate Bill (SB) 7 aims to strictly regulate employers' use of "automated decision systems" (ADS) in hiring, promotions, discipline, or termination. Key provisions of SB 7 would:

- Require employers to give at least 30 days' prior written notice to employees, applicants, and contractors before using an ADS and disclose all such tools in use.
- Mandate human oversight by prohibiting reliance primarily on AI for employment decisions such as hiring or firing. Employers would need to involve a human in final decisions.
- Ban certain AI practices, including tools that infer protected characteristics, perform predictive behavioral analysis on employees, retaliate against workers for exercising legal rights, or set pay based on individualized data in a discriminatory way.
- Give workers rights to access and correct data used by an ADS and to appeal AI-driven decisions to a human reviewer. SB 7 also includes anti-retaliation clauses and enforcement provisions.

AB 1018–Automated Decisions Safety Act

Assembly Bill (AB) 1018 would broadly regulate development and deployment of AI/ADS in "consequential" decisions, including employment, and possibly allow employees to opt out of the use of a covered ADS. This bill places comprehensive compliance obligations on both employers and AI vendors—requiring bias audits, data retention policies, and detailed impact assessments before using AI-driven hiring tools. It aims to prevent algorithmic bias across all business sectors.

AB 1221 and AB 1331–Workplace Surveillance Limits

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Both AB 1221 and AB 1331 target electronic monitoring and surveillance technologies in the workplace. AB 1221 would obligate employers to provide 30 days' notice to employees who will be monitored by workplace surveillance tools. These tools include facial, gait, or emotion recognition technology, all of which typically rely on AI algorithms. AB 1221 also describes procedures and requirements for any analyzing vendor's storage and usage of data collected by such a tool. AB 1331 more broadly restricts employers' use of tracking tools—from video/audio recording and keystroke monitoring to GPS and biometric trackers—particularly during off-duty hours or in private areas.

AGENCY AND REGULATORY GUIDANCE

CRD–Final Regulations on Automated Decision Systems

On 21 March 2025, California's Civil Rights Council (part of the Civil Rights Department (CRD)) adopted final regulations titled “Employment Regulations Regarding Automated-Decision Systems.” These rules, which could take effect as early as 1 July 2025, once approved by the Office of Administrative Law, explicitly apply existing anti-discrimination law (the Fair Employment and Housing Act (FEHA)) to AI tools.

Key requirements in the new CRD regulations include:

Bias Testing and Record-Keeping

Employers using automated tools may bear a higher burden to demonstrate they have tested for and mitigated bias. A lack of evidence of such efforts can be held against the employer. Employers must also retain records of their AI-driven decisions and data (e.g., job applications, ADS data) for at least four years.

Third-Party Liability

The definition of “employer's agent” under FEHA now explicitly encompasses third-party AI vendors or software providers if they perform functions on behalf of the employer. This means an AI vendor's actions (screening or ranking applicants, for example) can legally be attributed to the employer—a critical point aligning with recent caselaw (see Mobley lawsuit below).

Job-Related Criteria

If an employer uses AI to screen candidates, the criteria must be job-related and consistent with business necessity, and no less-discriminatory alternative can exist. This mirrors disparate-impact legal tests, applied now to algorithms.

Broad Coverage of Tools

The regulations define “Automated-Decision System” expansively to include any computational process that assists or replaces human decision-making about employment benefits, which covers resume-scanning software, video interview analytics, predictive performance tools, etc.

Once in effect, California will be among the first jurisdictions with detailed rules governing AI in hiring and employment. The CRD's move signals that using AI is not a legal shield and that employers remain responsible for outcomes and must ensure their AI tools are fair and compliant.

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AI LITIGATION

Mobley v. Workday, Inc., currently pending in the US District Court for the Northern District of California, illustrates the litigation risks of using AI in hiring. In *Mobley*, a job applicant alleged that Workday's AI-driven recruitment screening tools disproportionately rejected older, Black, and disabled applicants, including himself, in violation of anti-discrimination laws. In late 2024, Judge Rita Lin allowed the lawsuit to proceed, finding the plaintiff stated a plausible disparate impact claim and that Workday could potentially be held liable as an "agent" of its client employers. This ruling suggests that an AI vendor might be directly liable for discrimination if its algorithm, acting as a delegated hiring function, unlawfully screens out protected groups.

On 6 February 2025, the plaintiff moved to expand the lawsuit into a nationwide class action on behalf of millions of job seekers over age 40 who applied through Workday's systems since 2020 and were never hired. The amended complaint added several additional named plaintiffs (all over 40) who claim that after collectively submitting thousands of applications via Workday-powered hiring portals, they were rejected—sometimes within minutes and at odd hours, suggestive of automated processing. They argue that a class of older applicants were uniformly impacted by the same algorithmic practices. On 16 May 2025, Judge Lin preliminarily certified a nationwide class of over-40 applicants under the Age Discrimination in Employment Act, a ruling that highlights the expansive exposure these tools could create if applied unlawfully. *Mobley* marks one of the first major legal tests of algorithmic bias in employment and remains the nation's most high-profile challenge of AI-driven employment decisions.

CONCLUSION

California is moving toward a comprehensive framework where automated hiring and management tools are held to the same standards as human decision-makers. Employers in California should closely track these developments: pending bills could soon impose new duties (notice, audits, bias mitigation) if enacted, and the CRD's regulations will make algorithmic bias expressly unlawful under FEHA. Meanwhile, real-world litigation is already underway, warning that both employers and AI vendors can be held accountable when technology produces discriminatory outcomes.

The tone of regulatory guidance is clear that embracing innovation must not sacrifice fairness and compliance. Legal professionals, human resources leaders, and in-house counsel should proactively assess any AI tools used in recruitment or workforce management. This includes consulting the new CRD rules, conducting bias audits, and ensuring there is a "human in the loop" for important decisions. California's 2025 developments signal that the intersection of AI and employment law will only grow in importance, with the state continuing to refine how centuries-old workplace protections apply to cutting-edge technology.

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