



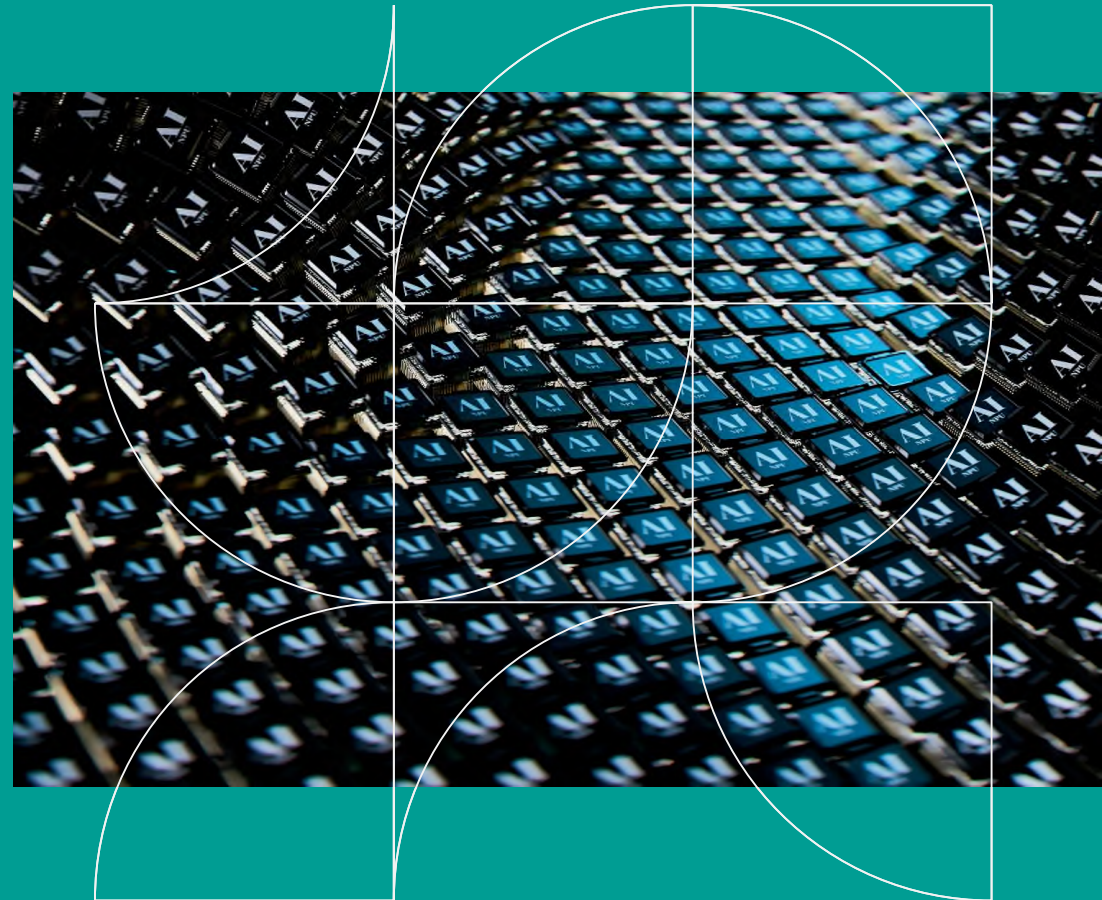
AI at Work: Practical Guidance that HR and Employment Leaders Need to Know Now

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May 20, 2026

Seyfarth Shaw LLP

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TODAY'S SPEAKERS



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**ALEX
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Associate



Agenda

- 1 | Brief Overview: HR Use
- 2 | Legal and Regulatory Landscape
- 3 | HR AI Use Cases: Lessons Learned
- 4 | AI Governance and Policy Considerations
- 5 | AI Use in Investigations

SHRM Survey Responses

How HR Uses Artificial Intelligence

*Question was select all that apply. Among those who indicated their organization uses AI to support HR-related activities.

TOP 3



64%

Recruiting, interviewing and/or hiring



43%

Learning and development



25%

Performance management



10%

Productivity monitoring



6%

Succession planning



1%

Layoff and/or firing decisions



1%

Promotion decisions



"Other" areas HR uses AI

- "Administrative tasks"
- "Policy writing and communications"
- "General communication (announcements, social media posts, company emails, etc.)"
- "Forms and resource writing"
- "Drafting documents, communications, messages, and tasks lists"
- "Internal communications, policy and procedure drafting"
- "Content generation for documents, presentations, and awards."
- "Answering FAQs"

Source: SHRM 2024 "Talent Trends" Survey

U.S. State and Local Developments

Jurisdiction	Effective Date & Key Requirements
Illinois AIVIA	Effective Jan 2020 - Applies to employers that ask applicants to record video interviews and use AI analysis of those videos to evaluate applicant fitness for positions based in Illinois.
Maryland HB 1202	Effective Oct 2020 - Applies to employers that ask applicants to record video interviews and use AI analysis of those videos to evaluate applicant fitness for positions based in Maryland. Applies to employers using a “facial recognition service” to create a “facial template” during an applicant’s interview. AWS1 employment.
NYC Local Law 144	Effective July 2023 – Requires bias audits for Automated Employment Decision Tools (AEDTs); public notice and disclosure obligations.
New Jersey Guidance	Issued Jan 2025 – NJLAD prohibits algorithmic discrimination; covers design flaws, training bias, and deployment misuse; employers remain liable even when using third-party tools.
California FEHA Amendments	Effective Oct 2025 – Clarifies that anti-discrimination laws apply to AI in employment decisions; record retention for 4 years; Pre-offer AI assessments that elicit disability info may constitute unlawful medical inquiry.
Illinois HB 3773	Effective Jan 2026 – Requires notice of AI use in employment decisions; affirms prohibition on discrimination under Illinois Human Rights Act.
Texas (TRAIGA)	Effective Jan 2026 – Intent-based liability standard; safe harbor for compliance with recognized risk frameworks (e.g., NIST AI RMF); enforcement by AG only; cure period for violations.
Colorado AI Act	Effective Jun 2026 – Applies to “high-risk” AI systems; mandates impact assessments; consumer disclosures; opt-out rights; enforcement by AG
California CPPA Amendments	Effective Jan 2027 – Requires pre-use notice to consumers, consumer access to information about use of tool, and risk assessments. Employment decisions exempt from opt-out requirements if certain conditions met.

Slide 6

AWS1 I would just change this to say Maryland, but want to make sure the rest of the information is accurate
Alex Simon, 2026-05-18T18:54:57.055

California: The California Privacy Protection Agency (“CPPA”)

- **Pre-use notice:** Clear, plain-language notice to the individual before the tool is used, explaining what data is used, what decision is being made, the role of the automation versus human review, and the individual's rights.
 - **Opt-out or human appeal:** The business must generally either (a) offer an opt-out of the automated process, or (b) provide a meaningful human appeal mechanism with authority to overturn the decision.
 - **Access rights:** Individuals can ask for information about how an ADMT made a decision about them, including the logic, key parameters, and the output.
 - **Risk assessments:** Before deploying ADMT for significant decisions, businesses must document a risk assessment covering purpose, data sources, potential harms (bias, security, privacy), operational details, and mitigations.
-

Colorado's AI Pivot: From Risk Regulation to ADMT Disclosure

SB 26-189 · Signed by Governor Polis May 14, 2026 · Effective January 1, 2027

BEFORE

SB 24-205

EU AI Act-aligned risk regulation

Regulates “**high-risk AI systems**”

Affirmative duty to avoid **algorithmic discrimination**

Mandatory **impact assessments + risk management programs**

Safe harbor for **NIST AI RMF / ISO 42001**; <50 full time employees small-business exemption

AFTER

SB 26-189

ADMT disclosure + consumer rights

Regulates “**covered ADMT**”

Trigger: ADMT must **materially influence** a consequential decision

Replaced by **documentation, notice, and consumer rights**

AG-only enforcement under **CCPA**; 60-day cure; no private right of action

KEY DATES

May 2024 SB 24-205 enacted

Aug 2025 Effective date delayed

May 14, 2026 SB 26-189 signed

Jan 1, 2027 Effective + AG rulemaking deadline

The New ADMT Compliance Framework

Three roles. Three sets of obligations. Effective January 1, 2027.

DEVELOPERS

Documentation

- Provide deployers with technical documentation: intended uses, training data categories, limitations, and instructions for human review
- Notify deployers of material updates within reasonable time
- Three-year recordkeeping; trade secrets and model weights protected

DEPLOYERS

Notice & Disclosure

- Clear, conspicuous pre-use notice at the point of interaction
- Within 30 days of an adverse outcome: plain-language description of the decision and the ADMT's role
- Three-year recordkeeping; accessibility for disabilities and limited English proficiency

CONSUMERS

Consumer Rights

- Access personal data used by the ADMT
- Correct factually inaccurate data — not opinions, predictions, or scores
- Request meaningful human review with authority to approve, modify, or override

SCOPE & ENFORCEMENT

Trigger: ADMT that materially influences a consequential decision in education, employment, housing, financial/lending, insurance, healthcare, or essential gov't services

Excluded: Advertising, content moderation, cybersecurity, fraud prevention, AML/sanctions compliance; calculators, databases, spreadsheets

Enforcement: Colorado AG only under Consumer Protection Act; 60-day right to cure (sunsets Jan 1, 2030); no private right of action; indemnification clauses void as against public policy

Old Laws Can Trigger Liability Too

Massachusetts Lie Detector Test Law

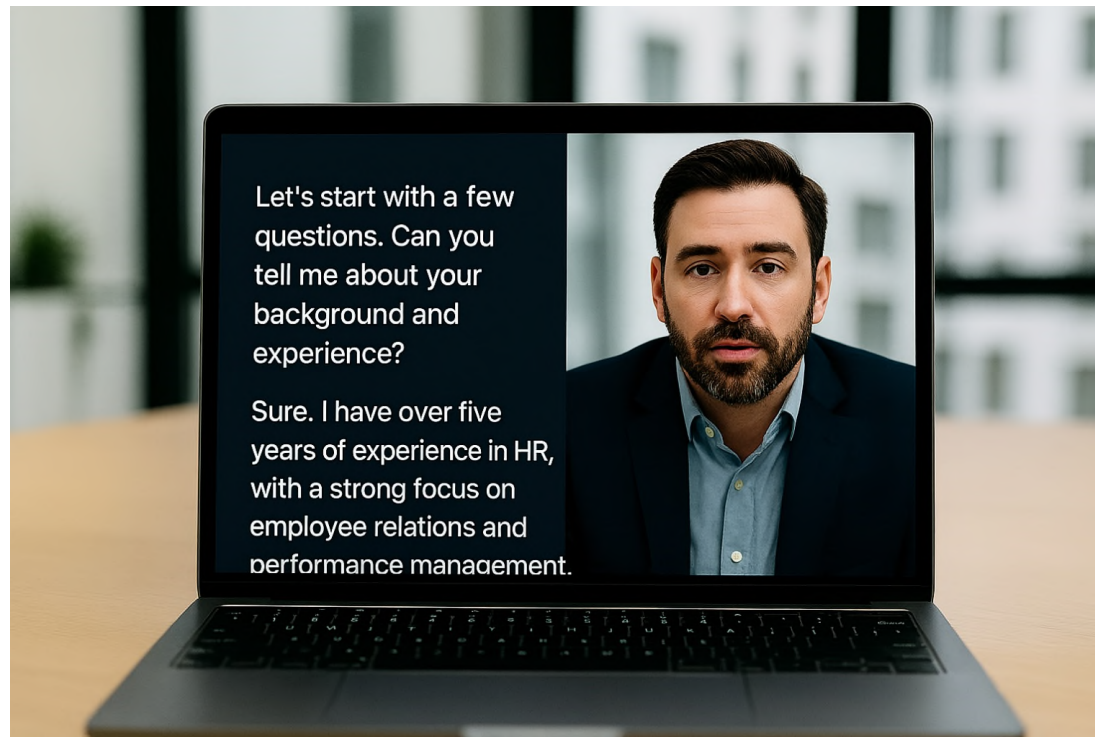
“Lie Detector Test” includes any test utilizing a polygraph **or any other device**, mechanism, instrument or written examination, which is operated, or the results of which are used or interpreted by an examiner for the purpose of purporting to **assist in** or enable the **detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an individual.**

G.L. c. 149, § 19B

Fair Credit Reporting Act

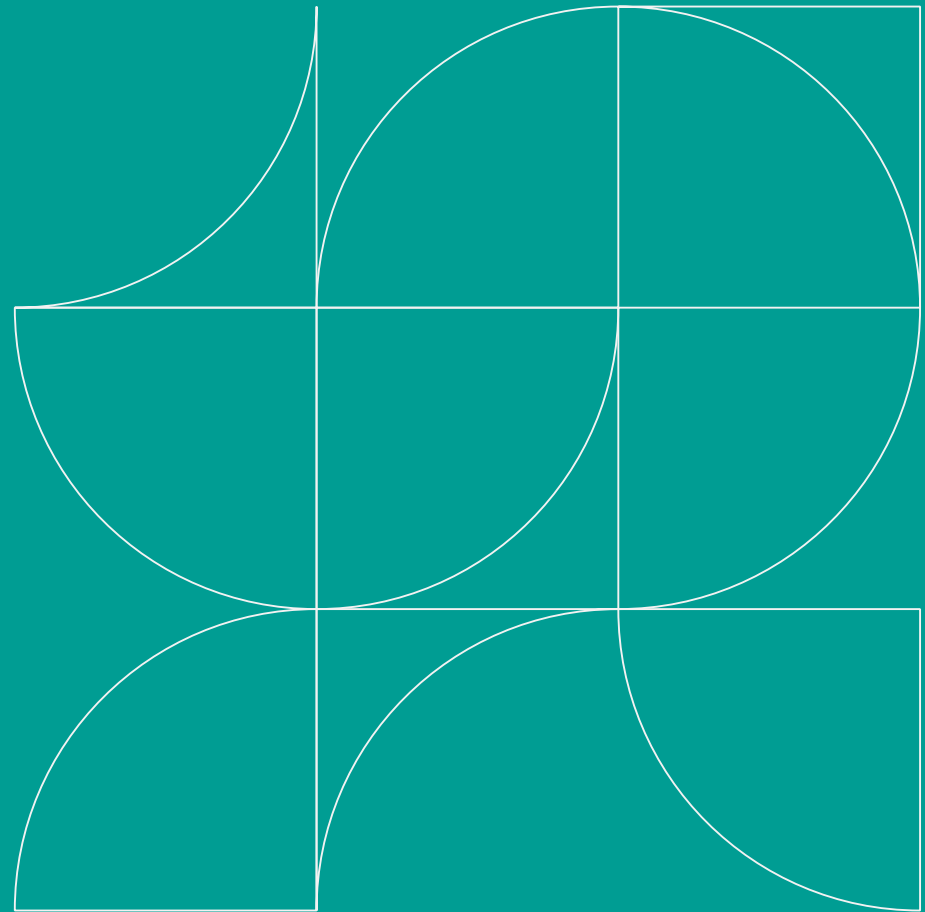
“Consumer report” is “any written, oral, or other communication of any information by a **consumer reporting agency** bearing on a consumer’s credit worthiness, credit standing, credit capacity, **character**, general reputation, **personal characteristics**, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for ... employment purposes”

Use of AI Transcription Software Within an Organization?

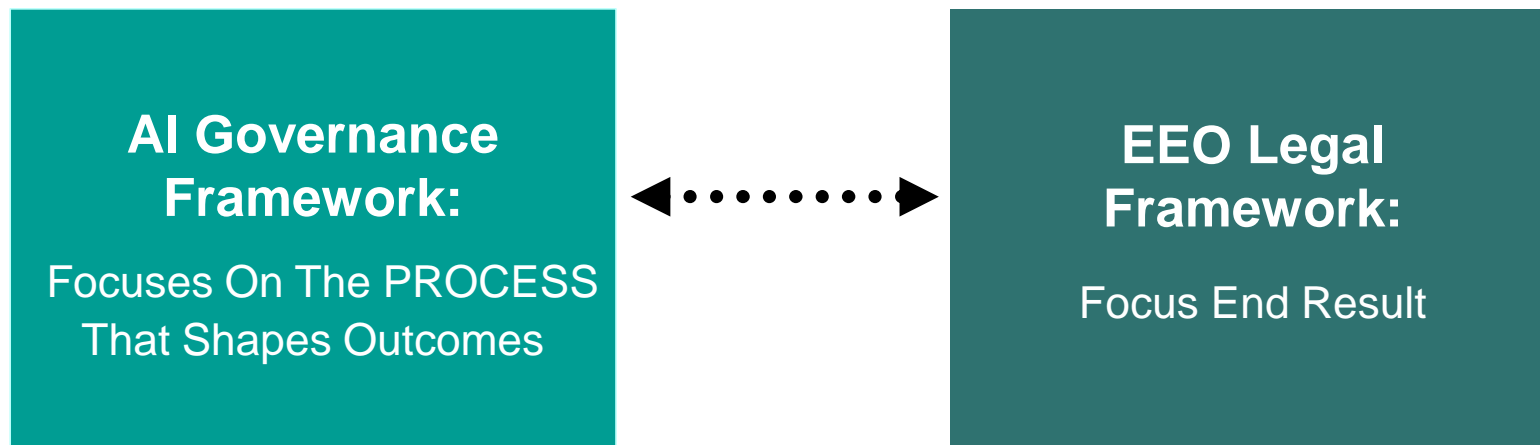


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AI Use Cases Triggering Lawsuits

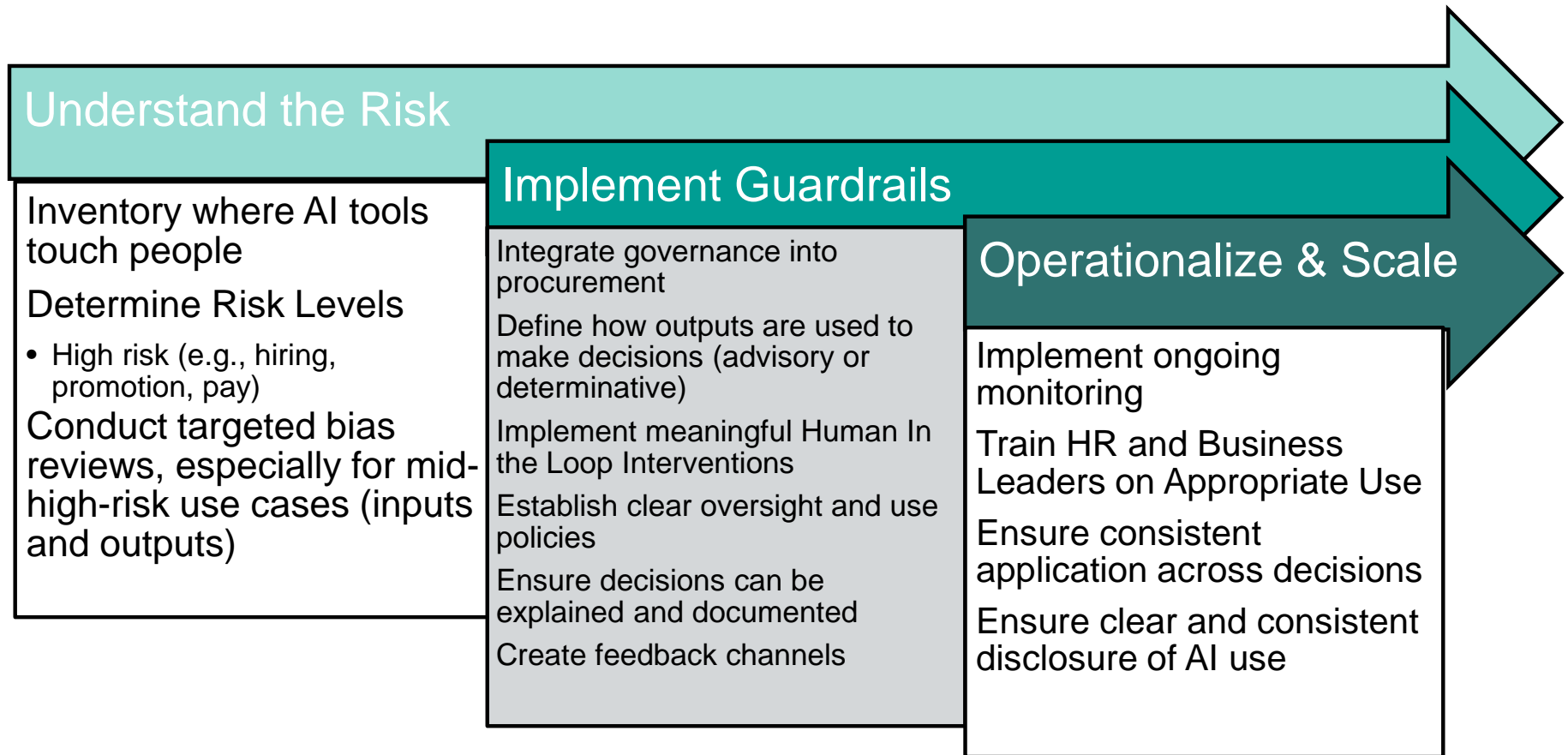


Leveraging the AI Risk Management Framework To Mitigate Employment Risk



*A strong governance framework helps mitigate risk,
but it does not create a legal safe harbor.*

A Practical Path to AI Governance for HR AI Tools



Legal Holds, Discoverability, and Privilege / Confidentiality

- **Why It Matters:**

- AI data is now subject to legal hold and discovery
- Courts treat AI chats as business records

- **Key Risks:**

- Legal Hold: AI prompts & outputs must be preserved
- Discoverability: Deleted chats may still be produced
- Privilege: AI use may waive attorney-client privilege

- **HR Exposure:**

- AI used in hiring, discipline, performance creates evidence
- Informal AI content may surface in litigation
- Employees may expose sensitive data

- **What to Do:**

- Implement AI governance policies & training
- Treat AI data as ESI
- Limit use of public AI tools
- Align HR, Legal, and IT

Bottom Line: If it's entered into AI, assume it is **discoverable** and **not privileged**.

HR Chatbots: Lower-Risk AI — *If the Conditions Are Met*

Decision-making tools carry the heaviest legal risk. Informational chatbots can be different — but only when deployed with discipline.

The Four Preconditions:

1. **Real Business Need.** Start with the problem, not the technology.
2. **Properly Programmed.** Current policies, correct jurisdiction, built-in escalation paths.
3. **Upfront About Limits.** The bot should tell users what it can't do — and when to talk to a human.
4. **Routinely QC'd.** Audit outputs, refresh the knowledge base, log everything.

Potential Benefits:

Benefits & open enrollment · Leave navigation · Policy FAQs · Onboarding · Accommodation intake & routing

Flexible deployment — in-house, HRIS-bundled, or vendor.

Key Risks if You Skip Preconditions

Hallucinations bind the company · Chats are notice · Chats are discoverable · ADA & language gaps · Vendor doesn't absorb liability

AI Use In Investigations

Where AI Helps

- Summarize interviews
- Organize data
- Build timelines
- Draft reports

Guardrails

- Not decision-maker
- Verify outputs
- Use approved tools
- Protect data

Key Risks

- Inaccurate outputs
- Bias
- Privilege exposure
- Discoverability

Best Practices

- Human oversight
- Document use
- Train HR
- Involve Legal



AI increases speed — human judgment ensures defensibility

**thank
you**

contact information

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