



# Webinar Series: AI Under the Legal Lens

## Session 1: AI in the Workplace

*July 8, 2026*

**Seyfarth Shaw LLP**

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## Today's Presenters

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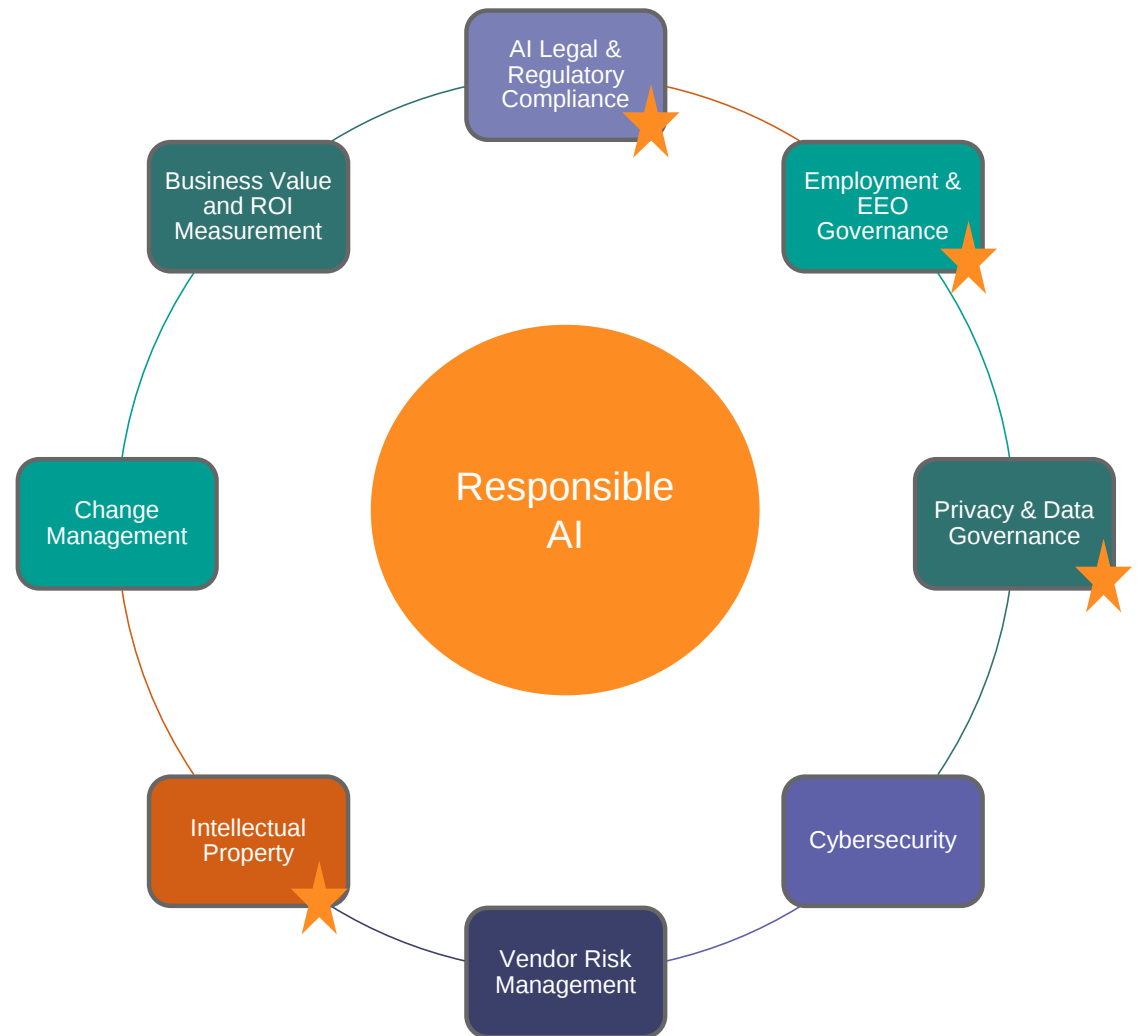
**Jason Priebe**  
Partner  
Seyfarth Shaw, Atlanta



## **AGENDA**

- 1) Introduction: Overview of Unified Governance Framework
- 2) Legal and Regulatory Landscape: Employment & AI
- 3) Legal and Regulatory Landscape: Intellectual Property
- 4) Risk Management Strategies for HR Team

# Unified AI Governance Framework



# 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

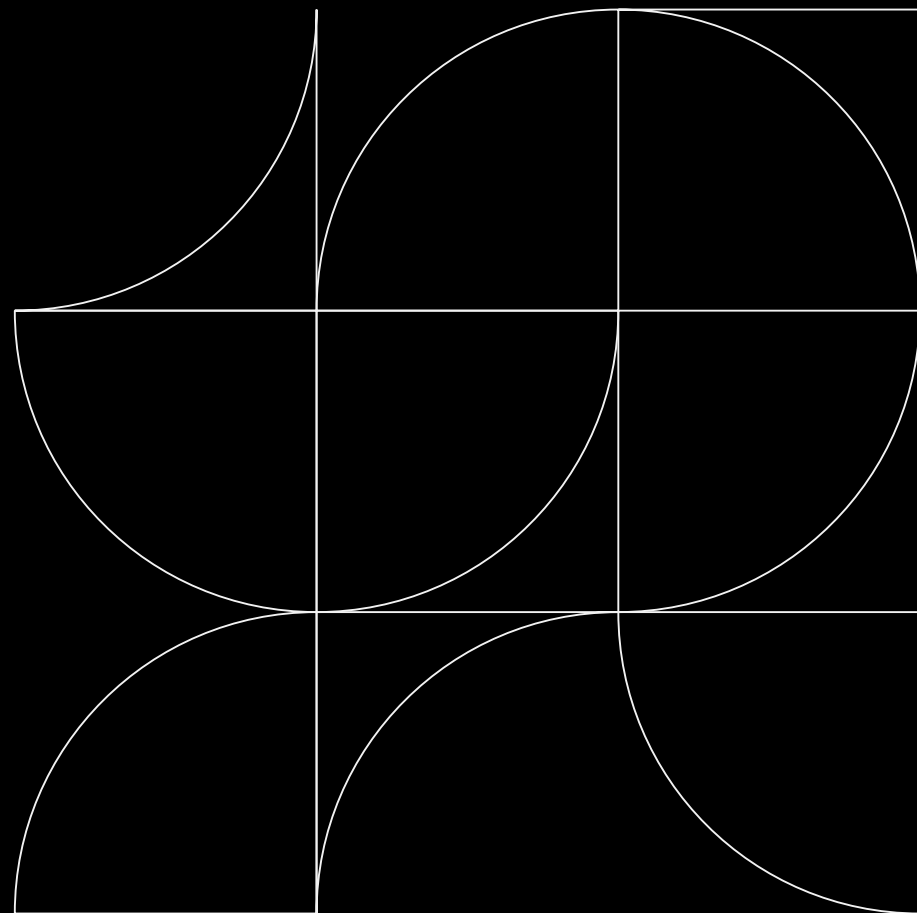
- "Administrative tasks"
- "Policy writing and communications"
- "General communication (announcements, social media posts, company emails, etc.)"
- "Forms and resource writing"
- "Drafting documents, communications, messages, and tasks lists"
- "Internal communications, policy and procedure drafting"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



## Why AI Governance Matters Now

- Rapid adoption of AI across industries
  - legal, compliance, reputational risks
- Enforcement/litigation momentum
  - Existing laws being applied to AI use cases
- Bias/fairness, discrimination, and transparency concerns at the center of existing and proposed legislation
- EU AI and “California effect”
  - Strictest laws often become baseline

# Legal & Regulatory Landscape



## Comparison – U.S. vs. EU Approaches

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### United States

- No federal law, but federal pre-emption still being pursued
- Fragmented state-led
- Limited agency guidance, with shifting administrative priorities
- Existing anti-discrimination laws apply



### European Union

- Centralized (harmonized across EU)
- Risk-based (prohibited, high, limited, minimal)
- Processes + Substantive Requirements (FRIA, human oversight, data quality and some bans)
- Extraterritorial (if outputs used in EU)
- High obligations & fines (€35M or 7%)

***Observation:*** U.S. companies often adopt EU standards globally to streamline compliance

# Where We Are Headed: Shifting AI Regulation and Enforcement: From End Result to Process + Results

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## Traditional EEO AI Framework: Look At The End Result

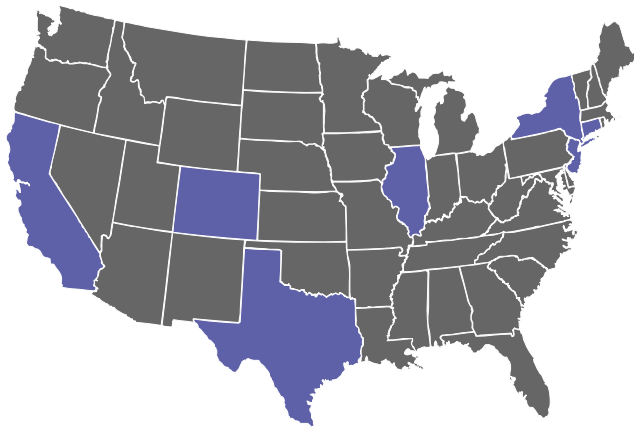
- 1) Is there evidence of disparate treatment?
- 2) Is there evidence of disparate impact?
  - If so, validation is required



## Shifting Framework:

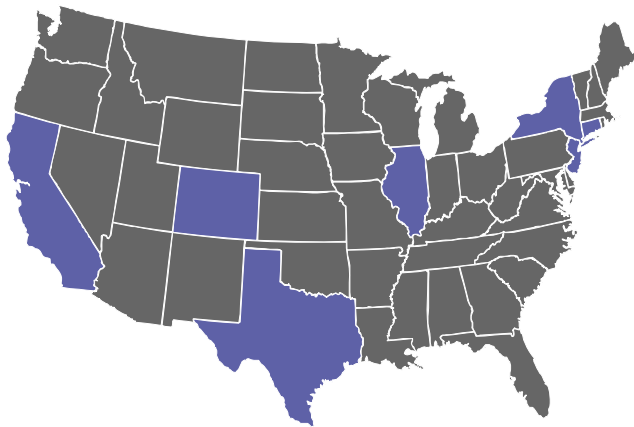
Transparency  
Opt-Out or Appeal  
Distinct obligations for developers and deployers  
Meaningful human review  
Documentation and recordkeeping

## State and Local Developments



| Jurisdiction                      | Enacted & In Effect (2020-2026)                                                                                                                                                                                                      |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Illinois AIVIA</b>             | <b>Effective Jan 2020</b> – 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.                                   |
| <b>Maryland HB 1202</b>           | <b>Effective Oct 2020</b> – Applies to employers using a "facial recognition service" to create a "facial template" during an applicant's interview for employment.                                                                  |
| <b>NYC Local Law 144</b>          | <b>Effective July 2023</b> – Requires bias audits for Automated Employment Decision Tools (AEDTs); public notice and disclosure obligations.                                                                                         |
| <b>New Jersey Guidance</b>        | <b>Issued Jan 2025</b> – NJLAD prohibits algorithmic discrimination; covers design flaws, training bias, and deployment misuse; employers remain liable even when using third-party tools.                                           |
| <b>California FEHA Amendments</b> | <b>Effective Oct 2025</b> – 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. |
| <b>Illinois HB 3773</b>           | <b>Effective Jan 2026</b> – Requires notice of AI use in employment decisions; affirms prohibition on discrimination under Illinois Human Rights Act.                                                                                |
| <b>Texas (TRAIGA)</b>             | <b>Effective Jan 2026</b> – 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.                                     |

## State and Local Developments



| Jurisdiction                                   | Enacted & Effective Late 2026 and 2027                                                                                                                                                                                                                                                                              |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Connecticut<br/>SB 5</b>                    | <b>Effective Oct 2026 (disclosure obligations Oct 2027)</b> – Applies to developers and deployers of automated employment-related decision technology; requires pre-use written notice and disclosure; AI use is not a defense to discrimination; new WARN Act reporting for AI-related layoffs; enforcement by AG. |
| <b>California<br/>CCPA ADMT<br/>Amendments</b> | <b>Effective Jan 2027</b> – 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.                                                                                          |
| <b>Colorado<br/>SB 26-189</b>                  | <b>Effective Jan 2027</b> – Replaces prior AI law; applies to developers and deployers of ADMT in consequential employment decisions; requires pre-use notice, post-adverse action disclosures, and human review process; enforcement by AG.                                                                        |

# Artificial Intelligence:

Key Themes in State Legislation (including Proposed Legislation)

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Coverage

Notice &  
Transparency

Opt-Out &  
Appeals

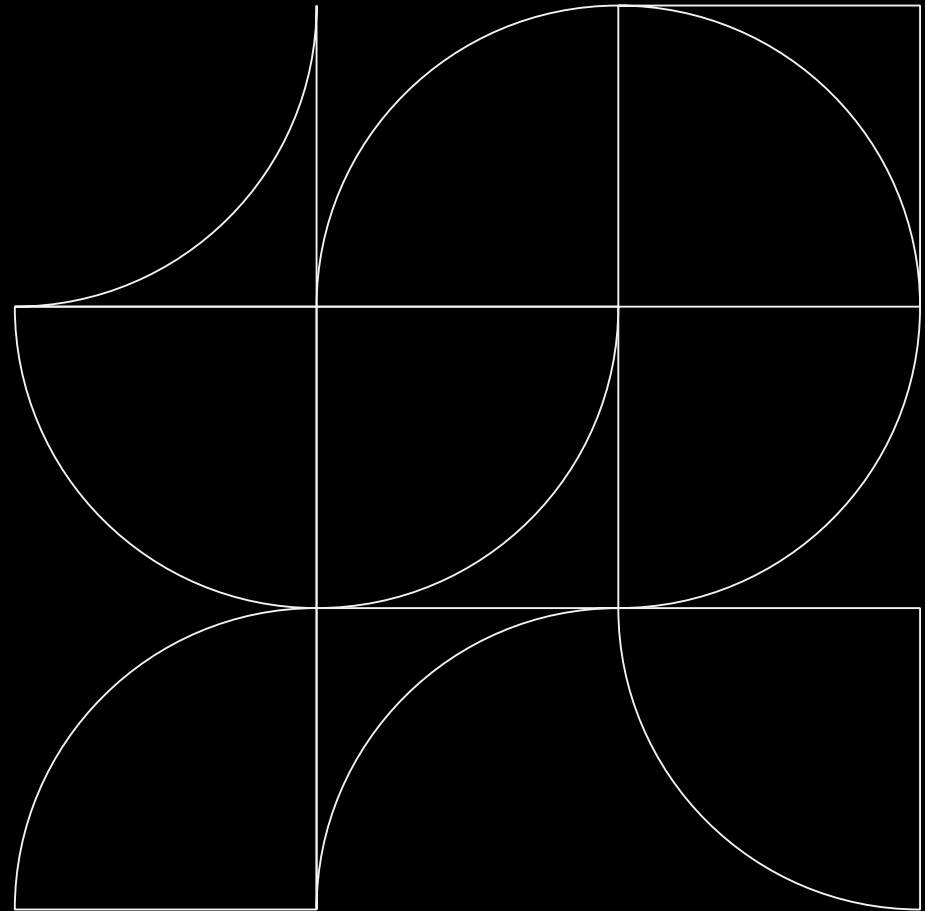
Risk  
Assessment

Bias  
Assessments

Record  
Retention

| US AI Law      | Coverage                                  | Notice           | Opt-Out           | Appeal                    | Bias Assessment                                  | Risk Assessment | Reporting |
|----------------|-------------------------------------------|------------------|-------------------|---------------------------|--------------------------------------------------|-----------------|-----------|
| CA CCPA ADMT   | Automated Decision-Making Tool            | ✓                | ✓<br>(or appeal+) | ✓<br>(or opt-out)         | Not required, but there are FEHA implications    | ✓               | ✓         |
| Colorado       | Automated Decision-Making Technology      | ✓<br>(+ Post)    | ✗                 | ✓<br>(+ right to correct) | ✗                                                | ✗               | ✗         |
| Connecticut    | Artificial Intelligence Technology        | ✓                | ✗                 | ✗                         | Not required, but may be relevant upon challenge | ✗               | ✗         |
| Illinois       | Artificial Intelligence (including GenAI) | ✓                | ✗                 | ✗                         | ✗                                                | ✗               | ✗         |
| Illinois AIVIA | Video Interview                           | ✓<br>(+ consent) | ✓                 | ✗                         | ✗                                                | ✗               | ✗         |
| Maryland       | Video Interview                           | ✓<br>(+ consent) | ✓                 | ✗                         | ✗                                                | ✗               | ✗         |
| NYC            | Automated Employment Decision Tools       | ✓                | ✗                 | ✗                         | ✓                                                | ✗               | ✓         |

# Legal & Regulatory Landscape: Intellectual Property Implications





## IP Issues Arising in the Workplace

Employees routinely paste contracts, articles, software code, marketing materials, and other content purchased under subscription licenses into an LLM

- Do they have proper permission for upload to avoid infringement liability?
- Is the content they are generating creating additional infringement liability?
- Who owns the AI-generated content?

## Lack of Clear Guidance

- Application of longstanding statutory schemes to new technology
  - Patent Act
  - Copyright Act
  - Lanham Act (trademarks / false advertising)
  - State NIL laws
- No significant movement toward codifying AI-related modifications to federal IP law
  - White House Legislative Framework: Let courts resolve the issue
- Case-by-case, fact-specific analysis developing slowly
  - Mostly in the context of lawsuits against large tech companies as opposed to individual users
  - Opinions regarding ownership of IP leave open questions

# Employers Should Incorporate IP Considerations Into Governance Frameworks

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- **Just because the employee can access certain material does not mean they can lawfully feed it into an LLM**
  - Digital upload = copyright infringement
  - Potential statutory damages of up to \$150,000 per work (for intentional infringement)
- **Questions you should be asking:**
  - Is the material copyrighted?
  - Is it being uploaded to a public model?
  - Does a vendor agreement prohibit AI training or ingestion?
  - Does the action violate a subscription or license agreement?
  - Do you otherwise have permission to use this material?

## Slide 18

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**TA1** can we change this title to ERs Should Incorporate IP Considerations Into Governance Frameworks  
Tyman, Annette, 2026-07-08T11:30:40.561

**LLG1 0** This works for me!  
Leipold, Lauren Gregory, 2026-07-08T13:49:54.276

## Assessing Risk in the Current Environment

### Lower Risk Uses

- Drafting internal emails, letters, memos, and presentations
- Brainstorming
- Conducting research (with fact-checking!)
- Careful oversight and human involvement

vs.

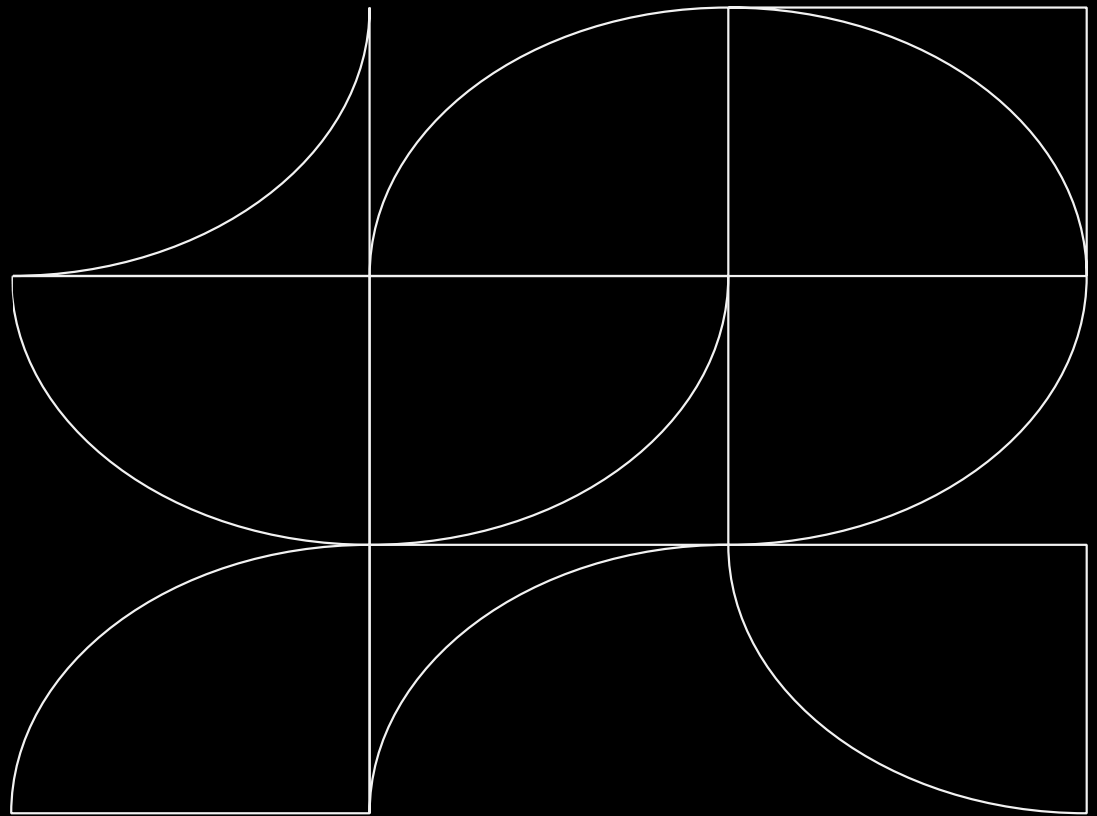
### Higher Risk Uses

- Requesting content in the style of a particular creator
- Attempting to recreate a particular work
- Generating code
- Generating images that resemble existing copyrighted works or particular individuals
- Designing consumer-facing advertising, packaging, website content, social media posts, or other creative assets

## Ownership Issues

- Human author required under both patent and copyright law
  - If purely AI-generated, falls into public domain
- Some room for protection where human involvement is documented and AI contributions are disclaimed
  - Must be more than “de minimis”
- Is there another way to protect the asset?
  - Trademark or trade dress law?
- IP assignment agreements likely drafted before generative AI existed

# **Risk Management for HR AI Tools**



## Key Litigation Impacting the Use of AI Tools in Employment

- ***Mobley v. Workday*** (N.D. Cal.): Alleges Workday's AI applicant-screening tools have a disparate impact on job applicants based on race, age, and disability
  - Case is moving forward under the theory the AI vendor can be liable as an “agent” of employers under Title VII, the ADEA, and the ADA.
- ***Harper v. Sirius XM Radio*** (E.D. Mich.): Alleges a third-party AI screening platform systemically screens out African-American applicants using data points that serve as proxies for race
  - Disparate treatment and disparate impact claims under Title VII and Section 1981.
- ***Kistler v. Eightfold AI*** (N.D. Cal.): Alleges Eightfold's AI hiring tool builds hidden applicant “profiles” from outside data applicants cannot see or correct
  - Tests whether AI hiring platforms are consumer reporting agencies subject to the FCRA and California's ICRAA.

## Enterprise AI Governance is essential, but not sufficient:

For HR tools, approval to deploy should be followed by employment-specific controls over use, oversight, outcomes, and legal risk.

***Enterprise governance asks whether the tool can be used. Employment governance asks how it may be used in actual HR decisions.***

### Enterprise AI governance

- Approves or rejects AI systems for enterprise deployment
- Enterprise-wide, technology and risk focused
- Addresses security, privacy, procurement, data, and vendor risk
- Oversees model and operational risk at the platform level
- Often owned by a central AI governance body

### Employment AI governance

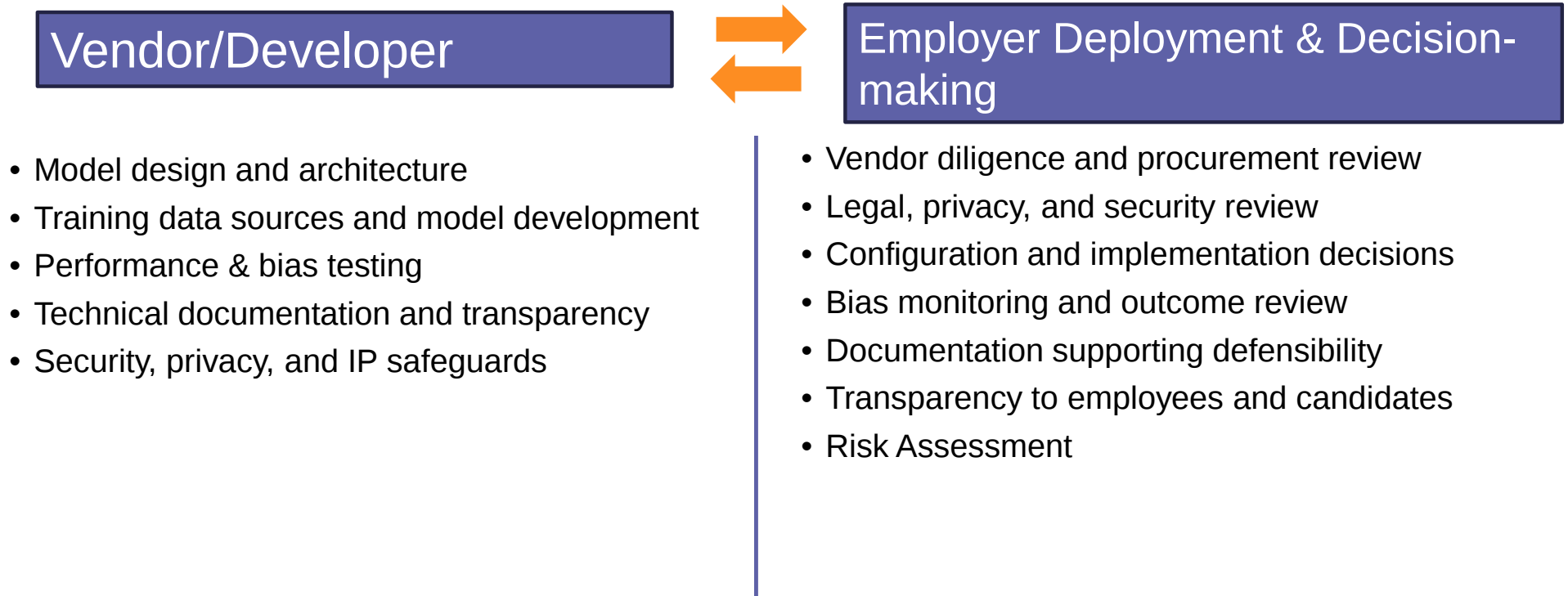
- Governs use in hiring, promotion, performance, pay, and other HR workflows
- Employment-specific and decision-making focused
- Defines who may use the tool, for what purpose, and with what human oversight
- Monitors fairness, accuracy, drift, job fit, notice, and legal compliance
- Often owned jointly by HR, employment legal, compliance, and business leaders

## 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.*

# Shared Responsibility Across the AI Supply Chain

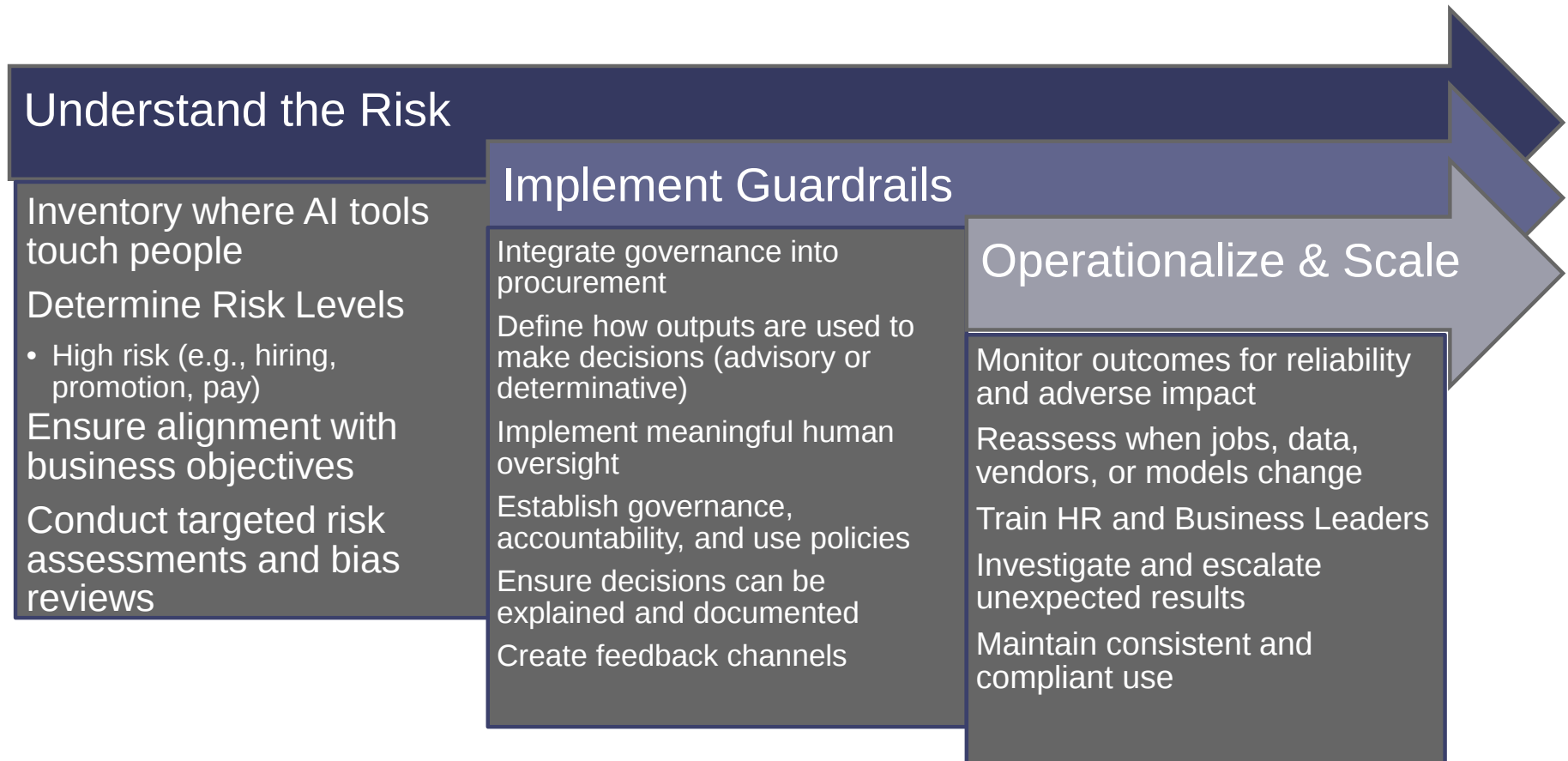


*Liability under employment laws may apply to both developers and deployers (i.e., employer)*

# Managing AI Hiring Risk: Before and During Use

| Risk Area           | Before Implementation                                                                                                                | Ongoing Oversight                                                                                                                        |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Reliability</b>  | “Validation” study; confirm the tool evaluates the skills, qualifications, and characteristics relevant to employer’s roles          | Monitor whether candidates are being matched to the right roles and reassess as jobs, postings, and workforce needs change.              |
| <b>Fairness</b>     | Review bias-testing results and understand known limitations.                                                                        | Monitor hiring outcomes for disparities; investigate unexpected results and reassess when model performance or outcomes drift over time. |
| <b>Transparency</b> | Understand the tool's inputs, outputs, limitations, and intended use.                                                                | Maintain the ability to explain how AI informed employment decisions; monitor for inappropriate reliance on outputs.                     |
| <b>Compliance</b>   | Identify applicable notice, consent, opt-out, audit, assessment, and recordkeeping requirements by jurisdiction                      | Maintain required notices, assessments, audits, and documentation as obligations evolve or covered jurisdictions change                  |
| <b>Governance</b>   | Define decision-makers, review processes, and accountability structures; establish oversight procedures and meaningful human review. | Monitor performance, manage vendor or model changes, and escalate concerns when results appear unreliable, biased, or inconsistent.      |

# A Practical Governance Framework for HR AI Tools





## Case Study: Sample Pre- Launch Controls for a Resume Matching Tool

1. Define Appropriate Use
  - Tool should be advisory (no auto-rejection or score-based cutoffs)
  - Define how and where match scores may be used in process
2. Align Inputs to Job Requirements
  - Confirm job requisition criteria and skill tags are current
  - Limit potential proxies that (e.g., school, zip code)
3. Validate Tool Performance
  - Pilot tool against parallel process to compare outcomes
  - Conduct bias testing on sample outputs
  - Confirm match scoring is reasonable for the role
4. Establish Human Review Expectations
  - Require recruiters to independently assess candidate qualifications
  - Reinforce that match scores are one input—not the decision
5. Train & Communicate
  - Train recruiters and managers on appropriate use and nondiscrimination principles
  - Update applicant-facing disclosures: AI notice, privacy, consent, opt-out requirements



## Case Study: Sample Post- Launch Controls for a Resume Matching Tool

### 1. Monitor Use in Practice

- Track how match categories are used (e.g., % of hires from “Strong” category)
- Identify patterns suggesting over-reliance or de facto cutoffs
- Monitor variation in how recruiters apply scores

### 2. Monitor Outcomes

- Conduct periodic disparate impact analyses
- Assess outcomes across roles, levels, and groups

### 3. Address Issues & Feedback

- Review candidate complaints and recruiter feedback
- Investigate and document corrective actions

### 4. Reinforce Training

- Provide ongoing training for recruiters and hiring managers
- Refresh training following tool updates or identified issues



## **The Path Ahead – From Principles to Practice**

- Establish an AI Oversight Framework
  - Consider NIST RMF, AI, Privacy and EEO requirements
- Implement Policies for All Tools
  - Don't forget about GenAI tools and Chat tools
- Create a cross-functional AI Governance Committee
  - Legal, Privacy, HR, IT, DEI, Data Analytics
- Develop an AI Inventory
  - Identify tools
  - Adopt a tiered risk model
  - Implement pre-launch and post launch controls
  - Document decision logic, data sources, controls, and human oversight protocols, opt-out and transparency considerations



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