



Workforce Realignment & Reductions in Force

Part 4: Using AI/Technology in RIFs

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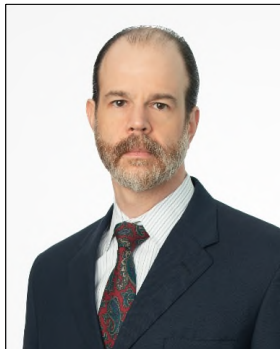
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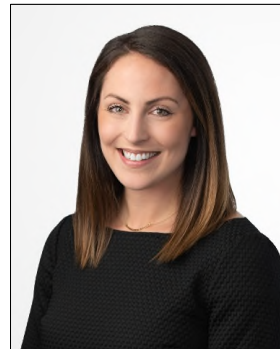
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Speakers



Barry Miller
Partner
BOSTON

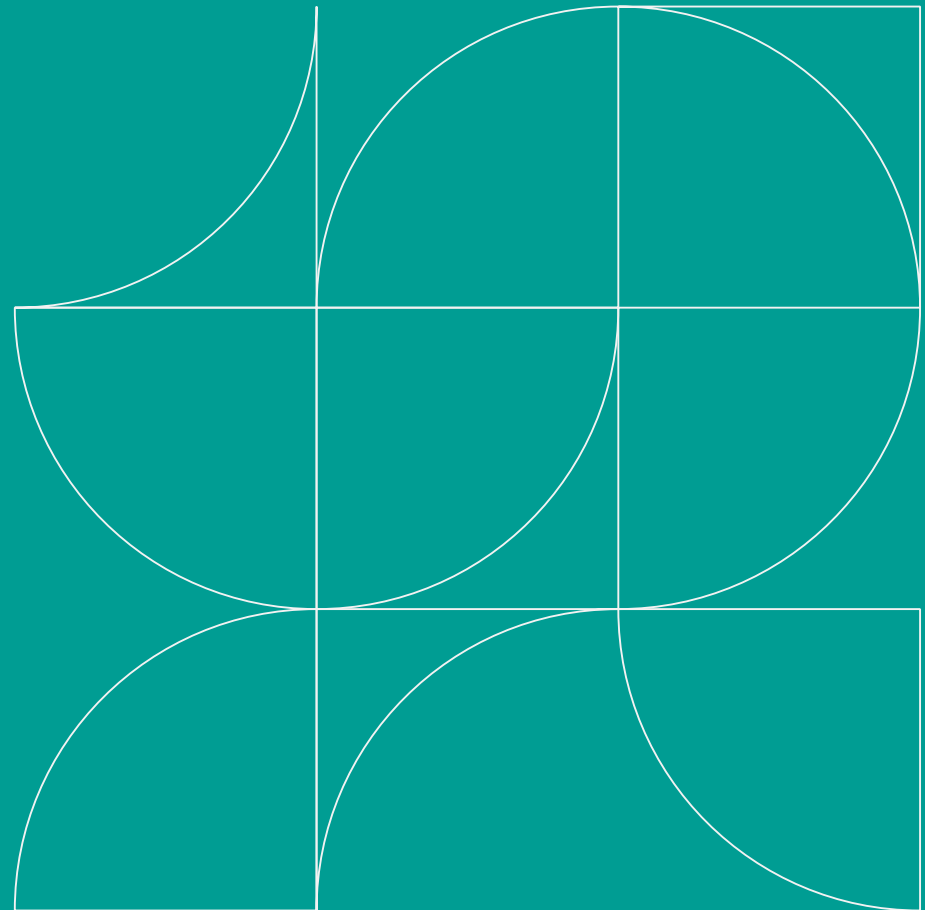


Molly Mooney
Associate
BOSTON

Agenda

- 01** Introduction to Artificial Intelligence in the Employment Context
- 02** Potential Benefits of Use of AI in RIFs
- 03** Risk Factors
- 04** Legal Considerations and Legislation

Introduction to Artificial Intelligence in the Employment Context



Artificial Intelligence in the Employment Context

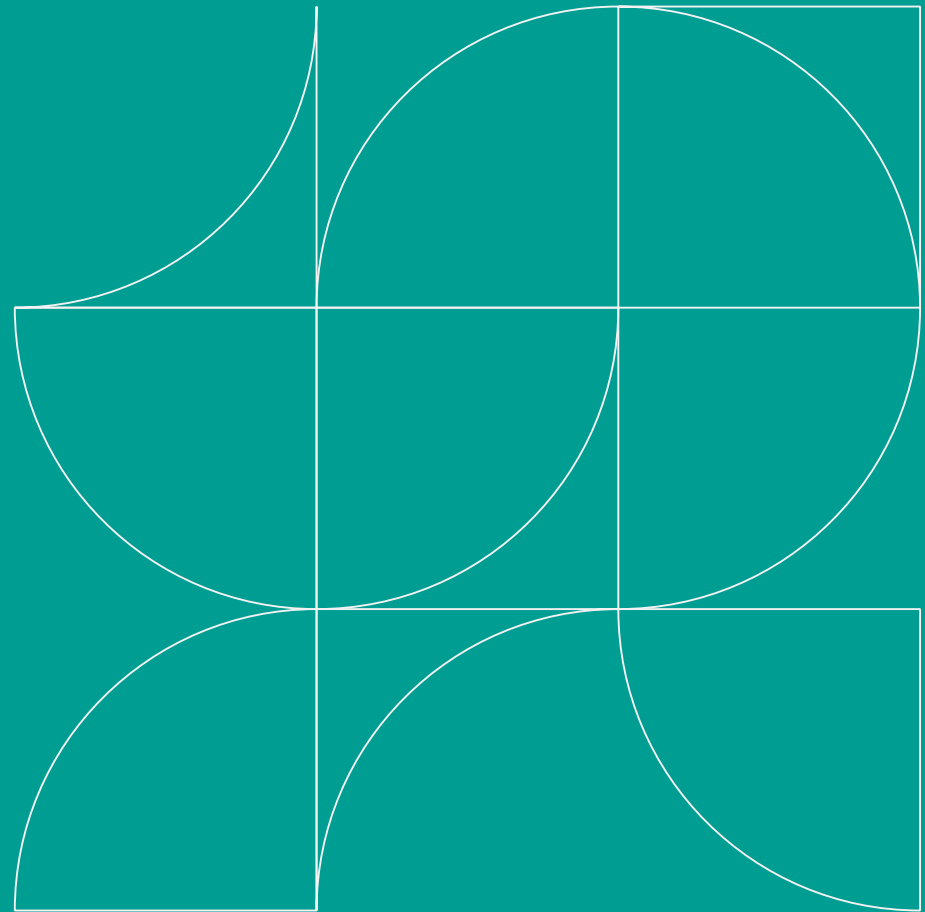
- Use of machines to aid in decision making
 - Algorithms
 - Generative AI
- EEOC settlement with iTutorGroup



Reductions in Force

- Decision-making in a RIF:
 - Business justification for RIF
 - Departments/groups/businesses impacted
 - Employees impacted (and selection criteria)
 - Alternative roles/skill matching
 - Communication
- Traditional methods versus use of AI

Potential Benefits of Use of AI in RIFs



Objectivity

- Objective, data-driven decision-making
 - Can aid analysis and selection of businesses impacted
 - Streamlined, objective selection of employees/departments impacted
 - Can analyze any data available



Reduced Implicit Bias

- Using AI can potentially reduce implicit bias in decision-making
 - Define objective selection criteria
 - Criteria objectively applied
 - Consistency across large pools of employees
 - Can program AI/algorithm to exclude protected characteristics in selection process

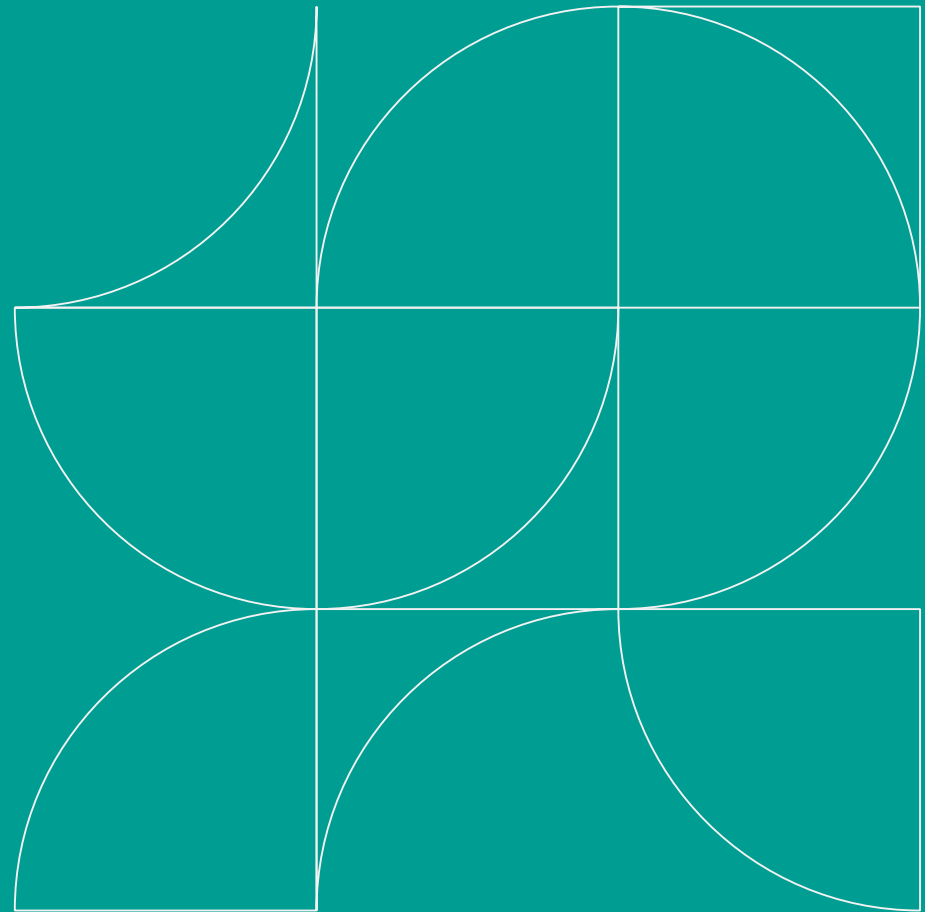


Additional Benefits of Use of AI



- **Efficiency**
 - Ability to analyze large data sets quickly
- **Ability to handle large-scale RIFs**
- **Skill matching**
 - Ability to identify new positions for impacted employees based on employees' skill sets
- **Potential Cost Savings**
 - Document automation

Risk Factors



Disparate Impact

- Criteria used to determine positions eliminated must be business-related and applied in a **fair, non-discriminatory manner**.
- Data might not show full performance picture
- Data might be biased and AI could exacerbate bias



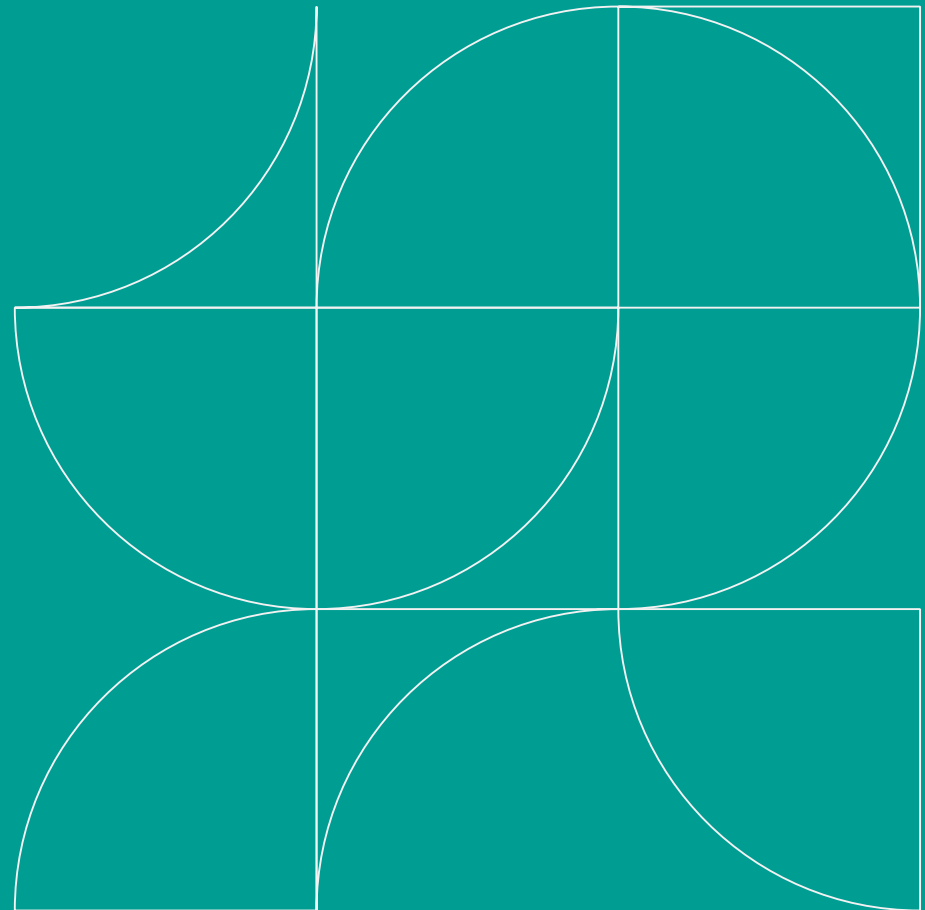
The Problem of Opacity

- Algorithms/AI can be dense and difficult to explain
 - Can impact morale – sense of unfairness when decisions are not understood
 - Complexity of decision-making can make it difficult to address errors or issues
- Can be difficult or impossible to explain if litigation arises
- Prospect of liability for bias caused by use of third-party's software

Other Considerations

- Could be time intensive to collect data
- Data Privacy
- Unintended consequences (for example, cost savings over retaining key players)
- Still requires ample oversight and spot-checking

Legal Considerations and Legislation



US Civil Rights Laws Apply to the Use of Artificial Intelligence

In April 2023, the leaders of the EEOC, Department of Justice Civil Rights Division, the CFPB, and the FTC issued a "Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems" reasserting, "Existing legal authorities apply to the use of automated systems and innovative new technologies just as they apply to other practices."



EEOC's AI and Algorithmic Fairness Initiative

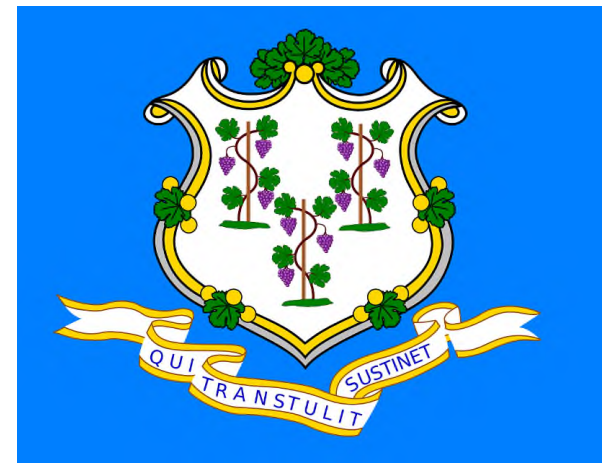
- Issued Technical Assistance on the use of software, algorithms, and artificial intelligence in employment decision in May 2023
 - Covers **any** software, algorithm, AI, or automated tool that is used to make “selection decisions” (hiring, promotion, terminations) – must be used consistent with EEO statutes
 - **EEOC expects employers to assess algorithmic decision-making tools for adverse impact**
 - Employers are responsible for tools designed and administered by others, including vendors
 - Compliance with the “four-fifths rule” may not be sufficient for an employer to demonstrate the absence of disparate impact

New York City Local Law 144

- The Law prohibits employers and employment agencies from using an automated employment decision tool (AEDT) in New York City unless they ensure a bias audit was done and provide required notices.
 - Enacted 2021, took effect January 1, 2023, enforcement began **July 5, 2023**
- Applies to positions in New York City or remote positions reporting into NYC
- Law requires bias audit and notice to employees that employer uses an AEDT
- Employers in violation will be liable for a civil penalty of up to \$500 for a first-time violation and between \$500 and \$1,500 for successive violations.

Additional Legislation

- **Connecticut** SB 1103 (An Act Concerning Artificial Intelligence, Automated Decision-Making, and Personal Data Privacy)
 - Signed into law in June
 - Primarily focused on CT's use of AI, but establishes Office of Artificial Intelligence and a task force to study AI and develop an AI bill of rights
- **Illinois** Artificial Intelligence Video Interview Act
 - Prohibits use of AI to evaluate applicants who have not consented to the use of AI analysis



Proposed Legislation

- A number of states have proposed legislation regarding the use of AI in employment decisions
 - **Massachusetts** (an Act Preventing a Dystopian Work Environment)
 - Would require an employer to notify workers if the employer will implement an automated decision system and/or an electronic productivity system, and would also prohibit an employer from relying solely on output from an ADS to make a hiring, promotion, termination, or disciplinary decision.
 - **Rhode Island** (HB 6286)
 - Would require any company using AI to ensure it is not used to engage in discrimination based on any protected characteristic
 - There is similar proposed legislation in a number of other states: California, Illinois, New York, New Jersey, Maryland, Vermont, Washington

Thank You

For more information please contact:

Barry Miller
Email: bmiller@seyfarth.com

Molly Mooney
Email: mmooney@seyfarth.com