Proskauer

What Will The Trump Administration Mean For The Regulation of Employer AI Tools?

Law and the Workplace on **November 22, 2024**

In the nearly four years since Joe Biden was sworn in as President in 2021, groundbreaking advances in artificial intelligence (AI) became widely available that offer the potential to revolutionize employment-related decisions and processes for recruiting, hiring, promotions, and employee evaluation. As the nation prepares for a second Trump Administration, and employers increasingly interested in adopting and using AI tools, one question on employers' minds is what can they expect with respect to federal regulation of AI?

The Biden Administration took a measured but deliberate approach to regulating AI in general and with respect to employment applications in particular, primarily by issuing non-binding guidance and articulating enforcement priorities with respect to laws already on the books, such as Title VII and the Americans with Disabilities Act. The lynchpin of this approach was an October 2023 Executive Order (Executive Order) that outlined the administration's "comprehensive strategy for responsible innovation." As relevant to employers and developers of AI tools for employers, that strategy included developing "principles and best practices to mitigate the harms and maximize the benefits of AI for workers," and "directing agencies to combat algorithmic discrimination."

Although it is difficult to predict precisely what the incoming Trump Administration will do in this space, there is an expectation it will unwind these efforts. The Republican Party platform promised to repeal the Executive Order, which it called "dangerous" because it "hinders AI Innovation and imposes Radical Leftwing ideas on the development of this technology." The platform also expressed support for "AI Development rooted in Free Speech and Human Flourishing," suggesting a more laissez-faire approach to AI regulation. With Republicans also winning control of the Senate and the House of Representatives, federal legislation regulating employer's use of AI tools appears unlikely.

If the Trump Administration takes a hands-off approach as expected, regulation of AI employment tools will likely continue (or even accelerate) at the state and local levels. Colorado, New York City, and Illinois have already passed legislation in recent years regulating the use of AI in employment decisions. The main features of these laws include disclosures about AI use (both to the public and to affected individuals) and audit requirements for automated decisionmaking tools aimed at identifying and mitigating algorithmic bias. Similar laws have been introduced in other state legislatures, and they may proliferate if it becomes clear that comprehensive federal regulations are not forthcoming and as lawmakers become more educated on AI issues.

We will monitor how the legal landscape evolves under the new Administration and continue to report on AI developments that affect employers.

View original.

Related Professionals

- **Guy Brenner**
  Partner
- **Jonathan P. Slowik**
  Partner