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Another Legal Challenge to an AI Interviewing Tool

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In the latest lawsuit of its kind, the American Civil Liberties Union recently filed a complaint with the Colorado Civil Rights Division and the Equal Employment Opportunity Commission ("EEOC") alleging an AI interviewing tool discriminated against a deaf and Indigenous employee at Intuit seeking a promotion.

According to the complaint, when the employee applied for a promotion, Intuit used a HireVue video interviewing platform that scored each candidate on their performance. The complaint alleges that some audible portions of HireVue's platform lacked subtitles, and the employee's request for human-generated captioning as an accommodation was denied. The employee was rejected for the promotion, and allegedly received AI-generated feedback from HireVue recommending, among other things, that she "practice active listening. The ACLU alleges this evidence shows the applicant's hearing disability disadvantaged her in the process. The complaint also alleges "upon information and belief" that the interviewing platform had a disparate impact based on race.

The ACLU's complaint against Intuit is not the first lawsuit to allege that AI interviewing software ran afoul of statutes intended to protect employees or job applicants. In 2023, an applicant for a job with CVS alleged the company's use of a video interviewing platform that scored applicants on various competencies including "reliability, honesty, and integrity" violated a Massachusetts statute prohibiting employers from subjecting applicants to lie detector tests as a condition of employment. *Baker v. CVS Health Corp.*, 717 F. Supp. 3d 188 (D. Mass. 2024). After the plaintiff survived a motion to dismiss, the parties reached an individual settlement. In recent months, several other plaintiffs have filed lawsuits bringing similar claims under the Massachusetts statute.

As similar AI solutions gain traction among employers, it is possible that lawsuits such as these will continue to proliferate. We will continue to monitor and report on these developments.

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