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AI Bias Lawsuit Against Workday Reaches Next Stage as Court Grants Conditional Certification of ADEA Claim

Law and the Workplace on **June 11, 2025**

A closely watched class and collective action against the HR management services company Workday, Inc. reached a new milestone recently, when the Northern District of California conditionally certified Age Discrimination in Employment Act (ADEA) claims on behalf of a sprawling collective believed to include millions of job applicants. In *Mobley v. Workday, Inc.*, N.D. Cal. Case No. 23-cv-00770-RFL, the plaintiff alleges that Workday's popular artificial intelligence (AI)-based applicant recommendation system violated federal antidiscrimination laws because it had a disparate impact on job applicants based on race, age, and disability. Although Mobley does not allege that Workday itself was an "employer" (or prospective employer) of him or the putative class members, he alleges Workday may nonetheless be held liable as an "agent." In July 2024, the Court denied Workday's second motion to dismiss, allowing the claims to proceed.

Mobley's claims cleared a second hurdle on May 16, 2025, when the Court granted conditional certification of the ADEA claims. In seeking conditional certification, Mobley claimed that Workday's tools were "designed in a manner that reflects employer biases and relies on biased training data." The Court agreed this adequately "alleged the existence of a unified policy: the use of Workday's AI recommendation system to score, sort, rank, or screen applicants." The Court rejected Workday's argument that collective treatment was improper because the tools' impact could vary based on different employer-clients (for example, in the case of a Workday tool training itself on different employers' varying employee populations). It likewise found immaterial for certification purposes that the different class members' qualifications and experiences may vary, because the common injury was simply being "denied the right to compete on equal footing with other candidates."

As a result of the ruling, notice will be issued to the allegedly affected job applicants, in what could be one of the largest collectives ever certified. In filings, Workday represented that "1.1 billion applications were rejected" using its software tools during the relevant period, and so the collective could potentially include "hundreds of millions" of members.

In recent years, online platforms have increasingly reduced the friction of the job application process, and consequently the number of applications employers receive has dramatically increased, leading to greater demand for technological solutions to help sort, rank, and filter applicants. AI tools are increasingly being used to help address this issue, but, as with any new technology, the tools can lead to novel claims. As one of the first largescale tests of such solutions in the courts the *Mobley* case will undoubtedly continue to attract considerable attention from employers and practitioners alike. Regardless of the outcome, *Mobley* illustrates the legal risk associated with employing AI tools, and the need for employers to be thoughtful as they implement them.

We will continue to monitor this case and other developments as lawmakers, regulators, and courts grapple with the issues created by the use of AI in employment decisions.

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