The Use and Legal Ramifications of Artificial Intelligence Entering the Workforce

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Fifty years ago, auto manufacturing plants were filled with thousands of people on large assembly lines. Flash forward to today and these same plants are filled with robots working alongside individuals, and in some cases, entirely replacing human workers.

In recent years, much of this change has been spurred by improvements in the availability and ease of implementation for artificial intelligence ("AI"), machine learning, and other related technologies. While some automation can be performed using static, rules-based procedures to perform certain tasks, AI processes can now gather and analyze enormous amounts of data in real-time, including images and metrics, and adapt their behavior on the fly.

As a result, AI is rapidly changing the labor market and will continue to do so in the future. This change is becoming more prevalent in our day-to-day lives. For example, the service industry has already been greatly impacted by automation. Instead of having servers at restaurants, we can now just order our meal from a device on the table. Similarly, cashiers at grocery stores and retail chains are becoming a thing of the past because of apps that allow you to scan items and pay as you go. As AI allows such automation systems to more seamlessly react and adapt to unexpected or unpredictable scenarios encountered during a "job," the spread of automation to more complex roles will surely increase.

AI in the Healthcare Industry

One of the many benefits of AI is that it may be implemented to enhance the precision of repetitive functions performed by humans, without requiring the development of complex, statically configured decision engines. In no other industry is precision more critical than the healthcare industry. As an example, an AI process could observe

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a human surgeon and identify a potentially dangerous movement of a surgical instrument, even where the characteristics of that movement were not predicted by the surgeon, the developer of the AI process, or any other person as being dangerous. Below are just a few of the areas in which the healthcare industry has been impacted by automation, AI, or both.

- **Surgery.** Robots are now assisting surgeons with surgical procedures. This allows for a much less invasive procedure and can even provide faster recovery times, reducing the length of a patient's hospital stay. Patients enjoy the robot assistance because smaller incisions are needed which is less painful and minimizes scarring. Because the incisions are smaller, there is less risk for post-surgery infections. Reports have shown that robot assistance in surgery results in fewer complications.
- **Diagnosis.** AI is also becoming the norm with respect to diagnosis. Doctors and developers have developed AI to recognize and identify certain patterns and symptoms that are common to a number of diseases. Researchers developed algorithms for AI systems to detect diseases and store this information so that over time there is a wealth of data to enhance the accuracy of diagnosis. AI is even being used to diagnose some types of cancer at an extremely accurate rate.
- **Medical Records.** Most healthcare organizations have electronic medical records. Using these records, however, can be difficult due to the large volume. But AI is making these medical records more useful because machines can now read the records and extract relevant medical information so that it can be presented to a doctor, integrated into an AI's set of personal "learned experiences," or both. AI is allowing doctors to search through this data to find meaningful information at a much faster pace. This is especially important given that the time required to diagnose and treat an ailment can have a profound impact on patient outcomes.

AI Employment Related Issues

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While AI in healthcare and other industries has many benefits, and is certainly going to develop more in the future, there are some employment risks associated with automation and AI. Implementing AI can change the wages, hours, and other terms and conditions of employment – whether it be layoffs or simply restructuring job duties. Under the National Labor Relations Act, employers with unionized employees have to bargain over the terms and conditions of employment. If an employer decides to use automation or AI, then it will have to go through the collective bargaining process with the union before making these changes to the terms and conditions of employment.

But even non-union employers still face employment law issues when shifting to AI. One of the realities of AI is that it can eliminate the need for people to perform certain tasks. This could potentially result in the layoff of employees. The Worker Adjustment and Retraining Notification Act ("WARN") may be triggered by layoffs. If certain requirements are met, the WARN act mandates that employers provide employees with written notice of the layoff. Employers who violate the WARN act may be liable for back pay and attorneys' fees.

The Occupational Safety and Health Act ("OSHA") sets certain requirements that employers must follow to maintain a safe working environment. The OSHA, in fact, has specific regulations for employers regarding the use of robotics in the workplace. Introducing automation or AI into the workplace will trigger these new requirements, which employers must meet to comply with the OSHA.

Employers are using AI in the hiring and recruiting process. AI allows employers and HR personnel to set certain standards and qualifications that can be used to screen applicants, as opposed to having an individual sort through hundreds or thousands of resumes. This speeds up the hiring process, especially for employers receiving a large volume of resumes. However, the standards used to set the algorithms for AI systems can contain biases that have a disparate impact, exposing employers to potential lawsuits.

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Conclusion

Automation, whether driven by AI or not, is becoming more widespread in all labor industries. This trend is changing our everyday lives and starting to revolutionize the way employers do business. The growing AI phenomenon either touches every labor industry or will in the future. The benefits of AI in the workplace are considerable, but there are certain employment law risks associated with the benefits. Eliminating jobs or changing the terms and conditions of employment have legal consequences, regardless of whether the employer is in a bargaining relationship with a union. More importantly, AI used in the hiring and recruiting process may contain implicit biases, leaving employers susceptible to a discrimination lawsuit. Before implementing AI in the workplace, it is important to keep these employment law issues in mind.

If you have questions about any of the issues raised above, you can contact Brice Smallwood, Doug Gastright, or any member of Frost Brown Todd's Technology group.

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