



Illinois Employers Will Need To Obtain Informed Consent To Use “Interview Bots”

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Artificial intelligence (AI) solutions have been touted as a way for employers to make better hiring decisions than a conventional interview process, because, among other considerations, the software will not take into account whether it “wants to have a beer” with the applicant (or other possibly irrelevant factors).

Nevertheless, concerns about possible unanticipated biases in these solutions remain a concern. An increasingly popular use of AI in the hiring process is the “interview bot,” which provides recommendations based on factors that may include an applicant’s facial expressions, body language, word choice, or vocal tone.

As part of a recent flurry of activity, the Illinois General Assembly passed a first-of-its-kind measure, known as the Artificial Intelligence Video Interview Act (Act). The Act (which we anticipate will be signed shortly) creates a disclosure and informed consent rule for employers, requiring the following:

1. advance notice to applicants for Illinois-based positions of that their video interviews will be analyzed electronically;
2. the notice must provide an explanation to the applicants about how the technology works and what characteristics will be evaluated; and
3. obtain the applicants’ consent to the use of the technology in a manner consistent with the notice.

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Employers considering these solutions should keep in mind that Illinois has recently become a hot bed for class action litigation claims surrounding employee biometric information, and should carefully assess the requirements of this Act. In particular, we can expect there to be challenges as to whether job applicants were adequately informed about how the program “works” and what factors it considers, as well as whether the “interview bot” creates obligations under the Illinois Biometric Information Privacy Act. Employers should also evaluate whether these solutions may inadvertently provide biased recommendations.