

# 2020: AN HR ODYSSEY – ILLINOIS ENACTS THE ARTIFICIAL INTELLIGENCE VIDEO INTERVIEW ACT

## Labor & Employment Law Update

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In Stanley Kubrick's 1968 epic *2001: A Space Odyssey*, HAL 9000, a fictional artificial intelligence machine, helps guide a space mission to Jupiter, but through the course of the film is revealed to be a villainous presence. Fast forward 50 years and, although artificial intelligence (AI) has yet to lead a crew of astronauts to Jupiter, AI now pervades our lives in many seen and unseen ways, including employment recruiting. For example, AI commonly helps companies sort through voluminous resumes to identify qualified candidates. By some estimates, roughly 40 percent of employers have included AI in the hiring process.

Most recently, AI “interview bots” have become a popular tool in HR departments. They utilize different algorithms and methods to evaluate a candidate's facial expressions, body language, word choice and tone among other factors to create a candidate profile or provide feedback to the employer. While HAL has not reached the workplace just yet, AI interview bots have raised some concerns particularly in Illinois.

Effective January 1, 2020, Illinois will regulate AI interviewing programs through the first-of-its-kind Artificial Intelligence Video Interview Act, 820 ILCS 42/5. An employer that asks applicants to record video interviews and uses AI analysis when considering applicants for positions based in Illinois must take steps before asking applicants to submit to the video interviews. The employer must:

- (1) Notify each applicant before the interview that AI may be used to analyze the applicant's video interview and consider the applicant's fitness for the position.
- (2) Provide each applicant with information before the interview explaining how the AI works and what general types of characteristics it uses to evaluate applicants.
- (3) Obtain, before the interview, consent from the applicant to be evaluated by the AI program.

An employer may not use AI to evaluate applicants who have not consented to the use of AI analysis and may only share a video interview with persons whose expertise or technology are necessary to assess the applicant's fitness for a position. The video interview also must be destroyed within 30 days upon request of the applicant. However, the new law leaves some questions unanswered, including what exactly qualifies as AI and what are the specific consequences for a violation.

Illinois has emerged as something of a leader in workplace technology laws, now regulating both AI and the use of employee biometric information. It is perhaps appropriate given HAL's fictional creation at the University of Illinois. Illinois employers that utilize these technologies in the workplace need to stay attuned to the recent regulatory developments before they create very real legal headaches.

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