

EMPLOYER LAW BLOG

PRIVACY ALERT- Illinois Artificial Intelligence Video Interview Act

AUTHOR: TIMM SCHOWALTER

Effective January 1st, the Illinois Artificial Intelligence Video Interview Act will regulate Illinois employers' use of artificial intelligence (AI) in the interview and hiring process. The Act has similar privacy protections and processes as the Illinois Biometric Information Privacy Act that has spawned numerous class action lawsuits throughout Illinois. Thus, it is imperative for Illinois employers to understand this new Act's requirements to prevent being subject to a costly class action lawsuit.

Under the AI Video Interview Act, for job positions located in Illinois, employers that record video interviews and use AI technology to analyze applicants' suitability for employment must:

- *inform* applicants that AI technology may be used to evaluate their interviews;
- provide applicants with a *written explanation* of the technology's mechanics, including the traits that will be reviewed and analyzed by AI and the characteristics the AI program uses to evaluate applicants; and
- acquire applicants' *prior consent* to be assessed by AI technology.

Employers that conduct such interviews may not use the interviews or AI to evaluate applicants who have not consented to the use of artificial intelligence analysis may not distribute videos or interviews to other parties, except as necessary to obtain expert assistance in evaluating a candidate's fitness for a particular position. In addition, within *30 days* after receipt of an applicant's request, must delete an applicant's interviews and instruct any other persons who received copies of the applicant video interviews to also delete the videos, including all electronically generated backup copies. The Act fails is silent as to the form of the request or how long the applicant has to make such a request post-interview. Accordingly, the destruction provision is ripe for potential abuse and litigation exposure.

Employer Take Away. Employers that currently use (or plan to use) AI to analyze applicants should consider preparing the documentation (revise applications of employment and pre-interview documentation) and consents required by the AI Video Interview Act to ensure compliance. In addition, those employers should adopt a workplace policies may train necessary human resources employees who have the authority to hire or interview applicants, and implement processes to effectively handle an applicant's request to destroy interview data.

Lastly, as with all privacy related matters, employers with inadequate security precautions may be liable for the negligent distribution of interview videos. Accordingly, employers should remain vigilant and continue to evaluate their breach-detection processes and maintain industry-standard data security measures to prevent unauthorized access to confidential information.

For more information, about complying with federal and state privacy laws, please contact Timm Schowalter at tschowalter@sandbergohoenix.com, (314) 425-4910 or another member of Sandberg Phoenix & von Gontard, P.C.'s Cybersecurity and Privacy Management Team.