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## Workers with disabilities vulnerable to AI biases, Justice Department and EEOC warn

The agencies outlined ways artificial intelligence can introduce discrimination into the hiring process.

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“Employers must take steps to ensure that when they’re choosing to use such technologies, they are not discriminating against people with disabilities in violation of the ADA,” the DOJ’s Assistant Attorney General Kristen Clarke said. | Kevin Dietsch/Getty Images

The Equal Employment Opportunity Commission and the Justice Department’s Civil Rights Division [each released guidance](#) for employers and workers warning how artificial intelligence and other technologies used in the hiring process can discriminate against people with disabilities.

“Employers may turn to these tools for thinking that algorithms or AI can prevent discrimination by removing potential biases that humans may bring to the decision-making process, but in fact, they’re using such technology in ways that may actually lead to discriminatory hiring decisions,” the DOJ’s Assistant Attorney General Kristen Clarke said during a joint virtual media event with EEOC Chair Charlotte A. Burrows on Thursday.

“Employers must take steps to ensure that when they're choosing to use such technologies, they are not discriminating against people with disabilities in violation of the ADA.”

**Background:** According to [the Bureau of Labor Statistics](#), the unemployment rate for people with disabilities in 2021 was 10.1 percent — twice the rate of people without disabilities.

Recognizing that an increased number of employers are using AI and other technology for hiring purposes, the EEOC [launched an initiative](#) in October of 2021 to make sure such practices abide by federal civil rights laws. The agency also held [a listening session](#) in February specifically on how this technology can discriminate against applicants with disabilities.

**How AI can be discriminatory:** AI has been known to cause hiring problems in the past. In 2018, [Amazon was found](#) to have used a recruiting engine that was disqualifying women when scanning resumes. The system had taught itself that male candidates were preferred because the majority of the resumes over the past 10 years came from men, so that’s the pattern it observed.

The [EEOC guidance](#) explains that different forms of technology can inadvertently discriminate against employees and job applicants with a variety of disabilities.

Examples include resume scanners searching for keywords; software monitoring keystrokes or other measurements of efficiency; bots that ask candidates about their qualifications and reject those who don’t have certain predefined requirements; and video interviewing software focusing on facial expressions and speech patterns. It also cites testing software that scores people on their “personalities, aptitudes, cognitive skills, or perceived ‘cultural fit’ based on their performance on a game or on a more traditional test.”

**Legal issues:** The use of algorithmic decision-making tools also has the potential of violating the Americans with Disabilities Act if employers fail to provide reasonable accommodations to applicants or rely on algorithms to intentionally or unintentionally screen out people who would qualify for the job with reasonable accommodations. The

ADA could also be violated if the hiring technology makes disability-related inquiries or asks about medical history during the hiring process.

**Solutions:** Both Clarke and Burrows emphasized the need for employers to be transparent with employees and applicants about when online assessments and other technologies are being used to evaluate performances. Employers should take a hard look at the vendors they use who provide AI and algorithmic tools, Burrows said.

“Understanding what's under the hood — the employer that wants to purchase an AI tool needs to be asking, ‘Well, what are you considering in this algorithm? What are the decisions based on and what kinds of questions are being asked?’” said Burrows.

Employers are responsible under the ADA if they used outsourced hiring technology that was found to be discriminatory, even if the tools are designed or administered by another entity.

**Resources for workers and applicants:** According to [the DOJ guidance](#), people who feel they have been discriminated against can file a “charge of discrimination” with the EEOC. Another option is to file a complaint with the DOJ if a person believes they or someone they know was discriminated against based on a disability “because of a state or local government employer’s use of a hiring technology.”

The EEOC has also drawn up [a tipsheet for workers and applicants](#) so they know what to do if, for example, they can’t take a computerized assessment or they feel they’re being screened out of the job they’re pursuing.

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