AI in the Workplace: Considerations for Use

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Artificial intelligence is not human intelligence. While there are many benefits and uses for artificial intelligence, it does not replace the soundness of judgment that people may possess.

This article discusses some of the many benefits and risks of artificial intelligence, as well as recommendations for using AI in the workplace.

Generative AI (referred to herein as "AI") works by using algorithms to recognize keywords, apply logic-based techniques that mimic human behavior, and identify or predict what the user needs in response to inquiries or commands. AI is based on information that is in a particular dataset. The dataset may be open and public, such as ChatGPT, or it may be a closed dataset based on selected materials, usually targeted to a particular industry or subject matter.

In principle, AI eliminates human error and the risk of mistakes. It is available 24/7. It tirelessly and without complaint performs repetitive jobs. It saves on costs, as algorithms perform tasks that humans were traditionally employed to perform. And, AI can process vast volumes of data in a very short period of time.

The risks of AI include that it sometimes makes up answers it predicts should be correct, but they are not. Another risk is discrimination, which has come to the forefront in various instances. For example, in *EEOC v. ITutorGroup, Inc., et al.,* No. 1:22-CV-2565 (E.D.N.Y. Aug. 9, 2023), the EEOC charged iTutorGroup with age discrimination, resulting in the payment of $365,000 and a Consent Decree. iTutorGroup is a company that hired tutors to provide English-language tutoring to adults and children in China.

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The sole qualification was a Bachelor's Degree. Unfortunately, the AI that was used automatically rejected female applicants over 55 years of age and male applicants over 60 years of age. This is but one example of where the dataset used to dictate the AI output was flawed – in this case, discriminatory.

The takeaway is that, even though AI may excel at coming up with a work product at a rapid rate, a low cost, and error-free based on the dataset for the AI, the work product is still based on a particular dataset. Datasets are created by humans at varying levels – humans who are not perfect and who may have conscious or unconscious biases. Accordingly, human oversight is an important part of businesses using AI.

Some recommendations for responsible use of AI in the workplace include:

- Businesses should have in place policies and procedures that govern their employees' use of AI. For example, employees only should be allowed to use AI tools approved by their employer and only for specific purposes.

- Where AI is used to process personal information of individuals, businesses should make sure that the AI is only using the personal information for the specified purpose intended and within a closed, non-public AI system.

- If businesses want to use AI in hiring or other decision-making having effects on individuals, they should provide notice – and, ideally, consent – to the use of AI to make decisions affecting individuals.

- Businesses should ensure that personal and other confidential information processed by AI is maintained securely and that it is deleted when it is no longer needed for the purpose collected.

- Businesses should be transparent with their clients and customers about their use of AI – when they use it, what they use it for, what types of information they may process through AI, and the like.

- Assessments should be conducted prior to the roll-out of AI tools within a company to identify whether the AI creates discriminatory or other undesirable results.

- One or more designated positions should be designated as responsible for the continuing oversight of AI tools. For example, these individuals should review whether the work product from AI meets the company's quality standards, whether there is employee misuse of AI within the company, whether the AI generates undesirable results, etc.

While businesses can use AI as a tool to help save money and time, there is no replacement for human intelligence, ethics, and creativity. AI and human intelligence are assets that should be used together to complement one another, not as replacements for each other.

If your business would like to discuss the use of AI in the workplace or policies and procedures regarding the potential existing use of AI, please contact Elizabeth B. Shirley, bshirley@burr.com, 205-458-5186, or any of our Cybersecurity & Data Privacy Team members.