

Employers Beware: The Illinois Artificial Intelligence Video Interview Act Is Now in Effect

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On January 1, 2020, the [Artificial Intelligence Video Interview Act](#) went into effect in Illinois. This is the first state law regulating the use of AI for employee interviews.

Illinois' law reflects increasing scrutiny in the United States and globally of biometrics practices. The law is consistent with U.S. policymakers' focus on addressing significant concrete harm (e.g., employment decisions) in connection with the use of AI and data analytics.

Here is what you need to know if you use AI to interview employees for positions based in Illinois:

- The law applies to videos recorded by employers of interviews with applicants.
- It requires employers to:
 - Notify applicants in writing before the interview that AI may be used to analyze the applicants facial expressions and consider their fitness for a position;
 - Provide applicants with information explaining how the AI works and what general types of characteristics it uses to evaluate them;
 - Obtain applicants' consent to use the AI program, as described in the notice, before the interview.
- The law is silent on enforcement, remedies, and penalties for violations.

The law does not define "artificial intelligence," nor does it provide specific guidance about what the employer's explanation of AI used in connection with video interviews should contain.

The law also provides employees with certain rights in connection with video recordings of the interviews:

- The law prohibits employers from disclosing the videos beyond recipients with whose expertise

or technology is necessary to evaluate the employee's fitness for a position.

- Applicants may request destruction of their video interviews. Employers must delete videos within 30-days of such requests and instruct others who received the videos to delete them.

The use of AI in connection with hiring and employment has been under broader scrutiny. For example, in November 2019, the Electronic Privacy Information Center ("EPIC") submitted a complaint to the Federal Trade Commission ("FTC") against HireVue (a company that provides AI-based interviewing assessment technology to companies). EPIC alleged that HireVue violated the FTC Act by denying that it uses facial recognition technology. EPIC further alleged that HireVue's use of facial recognition technology, biometric data, and AI systems is unfair under the FTC Act, unethical, and violates OECD principles on AI. The FTC has not taken action pursuing this complaint.

Even if you are not hiring in Illinois but using AI to make hiring decisions, take a comprehensive and practical view of the technology and how you use it.

- State biometric data laws and anti-discrimination laws likely apply to the use of this technology during the hiring process.
- Be informed about the data these AI technologies use to make hiring decisions on your behalf.
- Establish policies to address compliance with privacy and other relevant laws.

Illinois is the first state, but may not be the last, to enact laws regulating AI in the employment context. We will be monitoring and updating you with any new developments.