Navigating the New Landscape: Workplace AI Regulation in 2026

What Employers Need to Know – and Do – Right Now

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If you have been tracking the regulation of workplace AI, the first quarter of 2026 has been eventful but not in a way that simplifies compliance. Several new state laws took effect on January 1, 2026, and states continue to propose new legislation. The federal government, however, continues to push to preempt state regulation of AI, but that effort is slow-moving and faces legal and political headwinds.

This week brought a significant development in Colorado. On April 27, 2026, in *xAI v. Weiser*, a federal court enjoined enforcement of Colorado's landmark AI Act pending the submission of and decision on a preliminary injunction to be submitted jointly by xAI, the U.S. Department of Justice, and the Colorado Attorney General. Simultaneously, the Colorado legislature is considering a bill to repeal and replace the AI Act before the close of the legislative session on May 13, 2026.

The bottom line for employers: the patchwork of legislation remains, may continue to grow, and is constantly changing.

This alert summarizes the key developments since January 1, 2026 and closes with a practical action list for employers in affected jurisdictions.

I. The Regulatory Landscape: Recent and Forthcoming Changes

A. **Colorado:** The Colorado Artificial Intelligence Act (CAIA)

As originally passed, Colorado's CAIA[1] would impose multiple obligations on employers that use AI for employment decision-making, including exercising "reasonable care" to protect applicants and employees from known or reasonably foreseeable risks of algorithmic discrimination, conduct risk assessments of such high-risk AI systems, provide notice to consumers (including employees) when the high-risk AI system will be used to make a "consequential decision" such as a hiring or termination decision.

The CAIA has had a winding road to enforcement. Originally scheduled to go into effect on February 1, 2026, last August 2025, the Colorado legislature delayed the law's effective date to June 30, 2026.[2] A state AI policy working group released a draft bill that would overhaul the law and delay the law again to January 1, 2027.[3]

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[1] Colo. SB24-205.

[2] Colo. SB25B-004.

[3] Colo. AI Policy Working Group, *Proposed Bill Concerning the Use of Automated Decision Making Technology in Consequential Decisions* (Mar. 2026), *available at* https://drive.google.com/file/d/1L2plsS3q1vzCrI8LuHj-5SNFjAoYoA_d/view (last visited Apr. 29, 2026); *see also* Colo. Gov. Jared Polis, *Colorado Artificial Intelligence*

Since then, litigation has delayed the impact of the CAIA. On April 9, 2026, Elon Musk's xAI filed a federal lawsuit in the U.S. District Court for the District of Colorado seeking to enjoin the CAIA before it takes effect.[4] The suit alleges the CAIA violates the First Amendment, Commerce Clause, Fourteenth Amendment, and Equal Protection Clause and argues that requiring AI systems to avoid "differential treatment or impact" on protected groups effectively compels speech and embeds the state's ideological preferences into private AI systems. On April 24, in a striking alignment of interests, xAI, the U.S. Department of Justice (intervening as a plaintiff for the first time in a state AI case), and Colorado Attorney General Phil Weiser filed a joint motion to suspend proceedings, pointing to the possibility that the Colorado legislature would replace or amend the law before its June 30 effective date.[5] On April 27, 2026, Chief Judge Daniel D. Domenico granted the motion.[6] The court's order (1) stays enforcement of the CAIA pending a ruling on xAI's forthcoming motion for a preliminary injunction; (2) cancels the June 16 scheduling conference and suspends all case deadlines; and (3) requires xAI to file its preliminary injunction motion within 28 days after either the Colorado AG issues final implementing regulations or the legislature passes replacement legislation. AG Weiser agreed separately not to initiate any enforcement action or investigation for CAIA violations until at least 14 days after the court rules on the forthcoming preliminary injunction motion.

The Colorado legislature's session is scheduled to adjourn May 13, 2026. The legislature, however, has not formally introduced a replacement bill. Employers should monitor both the legislative calendar and the *xAI* docket closely. While the enforcement freeze provides near-term relief for Colorado-specific compliance concerns, the CAIA remains on the books, and enforcement could resume on short notice if the legislature adjourns without acting and the court later denies a preliminary injunction.

B. California

1. CPPA Automated Decision-Making Regulations

In 2025, the California Privacy Protection Agency (CPPA) finalized regulations that govern businesses' use of automated decision-making technology (ADMT)[7] in significant decisions, including employment decisions such as hiring, termination, compensation, and other material terms of employment. The ADMT regulations take effect January 1, 2027, but because of the tight compliance timeline, employers should begin preparing now to comply.

Policy Workgroup Delivers Unanimous Support for Revised Policy Framework (Mar. 17, 2026), *available at* https://governorsoffice.colorado.gov/governor/news/colorado-artificial-intelligence-policy-workgroup-delivers-unanimous-support-revised-policy (last visited Apr. 29, 2026).

[4] *X.AI LLC v. Weiser*, No. 1:26-cv-01515, Compl. for Declaratory & Injunctive Relief (D. Colo. Apr. 9, 2026).

[5] *X.AI LLC v. Weiser*, No. 1:26-cv-01515, Joint Mot. to Vacate Scheduling Conf. & Suspend Case Deadlines & Stip. to Temporarily Stay Enforcement (D. Colo. Apr. 24, 2026).

[6] *X.AI LLC v. Weiser*, No. 1:26-cv-01515, Minute Order (D. Colo. Apr. 27, 2026).

[7] Cal. Privacy Protection Agency, 11 CCR §§ 7001-7300, *available at* https://cppa.ca.gov/regulations/pdf/ccpa_updates_cyber_risk_admt_appr_text.pdf (last visited Apr. 29, 2026).

In addition, recent modifications to California's FEHA regulations[8] provide that, in investigating or adjudicating AI-related discrimination complaints, agencies may consider evidence of anti-bias testing, or the absence of such testing, as part of the determination of any discrimination allegations.

2. "No Robo Bosses Act" (SB 947)

California is once again considering passage of the "No Robo Bosses Act."[9] In October 2025, Governor Gavin Newsom vetoed SB 7 – the original bill – citing overly broad restrictions and notification requirements. On February 2, 2026, State Senator Jerry McNerney reintroduced the No Robo Bosses Act as SB 947 with revisions addressing the Governor's concerns. The new bill would:

- bar employers from relying solely on automated decision systems (ADS) to fire or discipline workers;
- require human oversight and independent verification for termination and disciplinary decisions;
- prohibit the use of ADS for predictive behavior analysis of workers;
- require post-use notice to workers when ADS is used in termination or disciplinary decisions; and
- apply to independent contractors as well as employees.

The bill would create a private action for workers, and violations would carry a $500 civil penalty per violation, plus the opportunity for plaintiffs to recover punitive damages and attorneys' fees. California employers, particularly those with large workforces and existing AI-driven performance management tools, should treat this as a near-term operational risk in the event SB 947 passes.

C. Illinois: Amendments to the Illinois Human Rights Act

Effective January 1, 2026, Illinois H.B. 3773 amended the Illinois Human Rights Act (IHRA) to address AI-driven employment decisions directly. The amendment clarifies that the IHRA's anti-discrimination protections are triggered when discrimination flows from an employer's use of AI in decisions about hiring, firing, discipline, tenure, and training. Importantly, the law imposes an affirmative notification obligation: employers must inform employees and applicants when using AI to make any of those decisions. Failure to provide notice, even absent a discriminatory outcome, constitutes a compliance gap that plaintiffs' counsel may seek to exploit.

[8] Cal. Civ. Rights Council, *Modifications to Employment Regulations Regarding Automated-Decision Systems*, 2 CCR § 11008 *et seq.*, *available at* https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2025/06/Final-Text-regulations-automated-employment-decision-systems.pdf (last visited Apr. 29, 2026).

[9] Cal. SB 947.

D. Texas: The Responsible Artificial Intelligence Governance Act (TRAIGA)

Also effective January 1, 2026, TRAIGA[10] prohibits Texas employers from using AI tools in employment decisions with the intent to discriminate against members of protected classes. Unlike Illinois and Colorado, however, TRAIGA does not impose liability based solely on disparate impact or unintentional discrimination; a plaintiff must show discriminatory intent. This meaningful distinction could affect how employers in Texas approach AI governance documentation and vendor due diligence.

II. The Federal Counterweight: Executive Order 14365 and the National Policy Framework

The federal picture has been active, but its practical impact on employers remains limited, for now.

On December 11, 2025, President Trump signed Executive Order (EO) 14365, "Ensuring a National Policy Framework for Artificial Intelligence."[11] The EO identified "excessive state regulation" as an obstacle to U.S. AI leadership and set in motion a multi-agency effort to challenge, preempt, or defund state AI laws this administration views as burdensome. On January 9, 2026, the U.S. Attorney General formally established an AI Litigation Task Force; but as of the date of this alert, the Task Force has not initiated litigation against any state AI law.

On March 20, 2026, the White House released its National Policy Framework for Artificial Intelligence[12] — a four-page set of legislative recommendations to Congress. The Framework is not binding law. The central policy objective seeks broad federal preemption of state AI laws that "impose undue burdens," while preserving certain baseline state powers (consumer protection, child safety, generally applicable laws). The Framework covers seven policy pillars, including child protection, free speech, innovation, AI infrastructure, intellectual property, workforce preparation, and preemption. The administration has signaled it wants Congress to act in 2026, but near-term comprehensive federal legislation remains uncertain, if not unlikely.

In practice, employers must recognize that the federal government remains committed to deregulating in the AI space, but its efforts have not significantly impacted the state legal and regulatory landscape. Until Congress acts or courts strike down specific state statutes, existing state obligations remain in force. Employers that delay compliance in anticipation of federal preemption may face consequences at the state or local level.

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[10] Tex. HB 149.

[11] Fed. Reg., Vol. 90, No. 239, at 58499 (Dec. 16, 2025).

[12] White House, *National Policy Framework for Artificial Intelligence* (Mar. 2026), *available at* https://www.whitehouse.gov/wp-content/uploads/2026/03/03.20.26-National-Policy-Framework-for-Artificial-Intelligence-Legislative-Recommendations.pdf (last visited Apr. 29, 2026).

III. Key Litigation Update

A. *Mobley v. Workday, Inc.*, No. 3:23-cv-00770 (N.D. Cal.)

This flagship AI hiring bias case has continued to generate significant rulings in early 2026. Filed in February 2023 in the U.S. District Court for the Northern District of California, the plaintiff in Mobley alleges that Workday's AI-powered applicant screening tools discriminate against job applicants on the basis of race, age, and disability in violation of Title VII, the ADEA, and the ADA. The central theory — that Workday itself is directly liable as an "agent" of the employers using its tools, rather than merely a software provider — survived a motion to dismiss in July 2024.[13] The practical stakes are substantial: Workday serves more than 11,500 global clients, including more than 60% of the Fortune 500.

In May 2025, Judge Rita Lin granted preliminary certification of a nationwide collective action on the age discrimination claim, opening the opt-in period for similarly situated applicants.[14] The case then moved to the next major legal dispute: whether the ADEA's disparate impact protections extend to job applicants at all. On March 6, 2026, Judge Lin rejected Workday's argument that the ADEA's disparate impact prohibitions do not extend to job applicants.[15] Workday had contended that Congress's unsuccessful attempts to amend the ADEA to expressly cover applicants meant the statute did not reach them and that the Supreme Court's *Loper Bright* decision eliminating *Chevron* deference meant the EEOC's contrary interpretation no longer carried weight. Judge Lin rejected both arguments. She did, however, grant Workday's motion as to certain California state law claims and one individual plaintiff's disability discrimination claim. Plaintiffs filed an amended complaint on March 30, 2026, reasserting those claims with additional factual allegations to cure the identified deficiencies.

The parties are now engaging in discovery. But the employer-facing lesson from the court's decisions in the case so far is clear: any AI tool that scores, ranks, or filters applicants — rather than merely implementing rote, employer-defined knockout criteria — may expose both the vendor and the employer-deployer to discrimination liability under federal civil rights statutes.

B. *Kistler, et al. v. Eightfold AI Inc.*, No. 3:26-cv-01768 (N.D. Cal.)

Filed January 20, 2026, *Kistler* raises a different and novel theory of AI hiring liability — one that does not depend on proving algorithmic bias. The plaintiffs allege that Eightfold acts as a consumer reporting agency (CRA) and, therefore, must comply with the Fair Credit Reporting Act (FCRA).

Two California-based job applicants, Erin Kistler and Sruti Bhaumik, allege that Eightfold's hiring platform secretly assembled extensive personal data on applicants — including social media profiles, location data, internet and device activity — and used it to generate a "likelihood of success" score on a 0-to-5 scale for employer-clients. The suit alleges that this process constitutes the operation of an

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[13] *Mobley v. Workday, Inc.*, 740 F. Supp. 3d 796 (N.D. Cal. 2024).

[14] *Mobley v. Workday, Inc.*, No. 23-cv-770, 2025 WL 1424347 (N.D. Cal. May 16, 2025).

[15] *Mobley v. Workday, Inc.*, No. 23-cv-770, 2026 WL 636719 (N.D. Cal. Mar. 6, 2026).

unregistered CRA in violation of the FCRA and California's Investigative Consumer Reporting Agencies Act (ICRAA). The case was brought by former EEOC Chair Jenny Yang, now at Outten & Golden, and the nonprofit Towards Justice.

The plaintiffs' FCRA theory is notable because it sidesteps the discrimination framework entirely. It requires only a showing that Eightfold compiled "consumer reports" without following the FCRA's mandatory disclosure, authorization, adverse action notice, and dispute-correction procedures, obligations that have applied to consumer reporting agencies since 1970. The threshold legal questions the court will need to resolve are: (1) whether Eightfold qualifies as a "consumer reporting agency" under the statute; (2) whether its AI-generated scores constitute "consumer reports" subject to FCRA coverage; and (3) whether the FCRA's exemption for information "solely as to transactions or experiences between the consumer and the person making the report" applies.

The Consumer Financial Protection Bureau (CFPB) issued guidance in 2024 stating that the FCRA covers algorithmic employment scores,[16] but the Trump administration rescinded that guidance in 2025.[17] Rescinding guidance, however, does not change the statute, and the case will turn on the court's interpretation of the FCRA.

Initially filed in Contra Costa County Superior Court, Eightfold removed the case to the Northern District of California. Eightfold denies the allegations, stating its platform "operates on data intentionally shared by candidates or provided by our customers." Employers whose vendor agreements cap liability to subscription fees while disclaiming compliance warranties should pay close attention: while the current lawsuit targets only Eightfold, employer-users of its platform may be drawn in as the litigation develops, particularly if the court holds that FCRA obligations were triggered by Eightfold's scoring of candidates for those employers' job openings.

IV. Practical Action List for Employers

Against this backdrop, we recommend that employers – both those operating in regulated jurisdictions today and those preparing for legislation elsewhere – consider the below steps:

1. **Conduct an AI tool inventory.** Identify every AI or automated decision-making system currently used in employment-related decisions — hiring, screening, compensation, performance management, discipline, and termination. Map each tool to the jurisdictions in which the company uses it. Do not overlook vendor-supplied tools embedded in HR platforms; the laws apply to both developers and deployers.

[16] CFPB, *Background Dossiers and Algorithmic Scores for Hiring, Promotion, and Other Employment Decisions*, Circular 2024-06 (Oct. 24, 2024), *available at* https://files.consumerfinance.gov/f/documents/cfpb_Background-Dossiers-and-Algorithmic-Scores-circular_2024-10.pdf (last visited Apr. 29, 2026).

[17] CFPB, *Withdrawal of Bureau Guidance, Interpretive Rules, Policy Statements, and Advisory Opinions* (May 12, 2025), *available at* https://public-inspection.federalregister.gov/2025-08286.pdf?utm_campaign=pi+subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov (last visited Apr. 29, 2026).

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2. **Conduct a jurisdictional compliance gap analysis.** For each AI tool identified, assess what obligations apply: e.g., Illinois (notification + anti-discrimination), Texas (intent-focused anti-discrimination), Colorado (reasonable care + impact assessments + notices, effective June 30), NYC Local Law 144 (bias audits for AEDTs in hiring/promotion), and California ADMT regulations (risk assessment + notice). Flag any compliance gaps and prioritize remediation.

3. **Develop and implement employee/applicant notification protocols.** New York City and Illinois, for instance, require notice when AI is used in covered employment decisions. Develop template notices for each jurisdiction, integrate them into your hiring workflows and HR processes, and train HR personnel on when and how notices must be delivered. This is not merely a legal formality; documented, timely notice is likely to be among the first items a regulator or plaintiff's counsel requests.

4. **Conduct or update algorithmic impact assessments.** If it becomes effective, Colorado's CAIA will require deployers of high-risk AI systems to conduct documented impact assessments. Even where not yet legally required, impact assessments are the foundation of a defensible AI governance posture. Assess each high-risk tool for potential disparate impact on protected classes and document the methodology and findings.

5. **Review and update vendor contracts.** Many employers deploy AI through third-party HR technology vendors. Review vendor agreements to confirm: (a) what representations the vendor makes about bias testing and compliance; (b) whether the vendor agrees to cooperate with bias audits; (c) what data the vendor retains and for how long; and (d) how liability for discriminatory outcomes is allocated. Silence in vendor contracts is itself a compliance risk.

6. **Preserve human decision-making checkpoints.** California's SB 947, if enacted, and the emerging federal proposals would all require meaningful human involvement in AI-assisted termination and disciplinary decisions. Begin now to ensure that your AI-assisted decision processes include human review checkpoints and that those reviews are documented. Do not allow AI recommendations to become rubber stamps.

7. **Address remote hiring exposure.** Employers recruiting and hiring in Illinois, Colorado, New York City, or California – even if they are not physically located there – may be subject to those jurisdictions' AI laws. Audit your recruiting footprint and ensure compliance in every jurisdiction in which candidates reside.

8. **Prepare for California's CPPA automated decision-making rules.** The CPPA regulations, effective January 1, 2027, will require opt-out rights (or documented reasons for exception) and enhanced disclosures when automated technologies replace human decision-making in employment decisions. Begin preparing for the January 2027 deadline well in advance.

9. **Monitor *xAI v. Weiser* and the Colorado legislative session — and the broader federal preemption landscape.** As described above, a federal court enjoined CAIA enforcement on April 27, 2026, and the Colorado legislature has until May 13, 2026, to pass amended or replacement legislation. If legislators adjourn without acting, the CAIA (as amended) would remain the governing law, and the court would proceed to rule on xAI's preliminary injunction motion. Employers located or recruiting in Colorado should continue compliance preparation in order to move quickly if the injunction is denied or the legislature enacts a revised law. More broadly, the DOJ's intervention in this case represents the Trump administration's first litigation step to limit state AI regulation, and the outcome could influence the trajectory of AI employment law across many other states. Build flexibility into your AI governance framework.

10. **Build and maintain an AI governance policy.** All organizations should adopt a formal, written AI governance policy covering what tools may be used in employment decisions, how those tools must be vetted and monitored, what documentation must be maintained, and who is accountable. The policy should be reviewed at least annually and any time a new AI tool is deployed or a relevant law takes effect.

V. CONCLUSION

The available tools and the regulatory landscape for workplace AI continue to rapidly change, and the tension between an assertive state-law patchwork and a federal deregulatory push likely will not resolve in the near term. Employers who build robust, documented AI governance programs now will be better positioned to adapt as the landscape evolves and better positioned to defend against the discrimination claims, regulatory investigations, and litigation that will inevitably follow in this space.

Members of EBG's AI cross-practice working group are available to assist clients with compliance assessments, vendor contract review, impact assessment design, and governance policy development. Please do not hesitate to contact our team.