

## Gone but Not Forgotten: Federal Laws Still Apply Despite AI Guidance Disappearance Act

February 21, 2025

Seemingly overnight, several key artificial intelligence (AI) guidance documents from the US Equal Employment Opportunity Commission (EEOC) and US Department of Labor (DOL) regarding the use of AI in the workplace vanished from the agencies' websites. These documents were the result of a multiyear effort to provide employers with guidance on how to use AI tools in the employment life cycle without running afoul of employment laws. The removal of these documents followed the new administration's rollback of President Joe Biden's executive order and an effective halt being placed on any federal efforts seeking to prioritize "responsible AI" development and deployment. In this alert, we provide an overview of President Donald Trump's latest executive actions on AI, note the AI-related guidance that has been removed, and outline key implications for employers for the days ahead.

### Trump's AI executive actions

On inauguration day, Trump immediately [rescinded Biden's 2023 Executive Order No. 14110 on AI](#) (Biden AI order), which had, among other things, directed federal agencies to use regulatory and enforcement tools to address safety, privacy and discrimination concerns related to AI use. Days later, [Trump's Executive Order No. 14179](#) established a policy to "sustain and enhance America's global AI dominance," and required certain regulators to submit an "action plan" to achieve this policy. Agencies also were ordered to review any "policies, directives, regulations, orders, and other action" enacted under Biden's AI order and suspend them if inconsistent with the new "AI dominance" policy. A [January 23, 2025, White House fact sheet](#) reaffirmed the country's "leadership in AI" as the top priority, criticizing Biden's approach as overly restrictive and harmful to innovation.

These executive actions spurred the EEOC and DOL to remove certain guidance from the prior administration, outlined below.

### EEOC

After Commissioner Andrea Lucas became acting chair of the EEOC, the following documents were removed from the agency's website:

- The [May 2023 technical assistance document](#) on AI compliance issues under Title VII, advising employers to assess AI tools for potential adverse impacts on any group protected under Title VII.
- The May 2022 technical assistance document (and associated "Tips for Workers" document) on potential violations of the Americans with Disabilities Act (ADA) through AI use, including improper "screen outs" of individuals with disabilities by AI decision-making tools or impermissible inquiries about such disabilities.
- The December 2024 fact sheet, "Wearables in the Workplace: The Use of Wearables and Other Monitoring Technology Under Federal Employment Discrimination Laws," which warned that tracking technology embedded in wearable devices (e.g., tracking an employee's location, heart rate, electrical brain activity or fatigue) could violate the ADA.

Employers should note that the agency's Strategic Enforcement Plan for Fiscal Years 2024 –2028, which prioritizes regulating employers' use of technology (including AI and machine learning) through enforcement, remains in effect until a [quorum of](#)

[commissioners](#) can modify or revoke it.

## DOL

The DOL also has removed certain guidance documents from its website, including:

- An April 2024 Field Assistance Bulletin that outlined ways AI use can violate federal employment laws, such as the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), and even the Employee Polygraph Protection Act (EPPA).
- An October 2024 road map of best practices for developers and employers, including AI principles for worker well-being. This document emphasized employers' use of AI for the benefit of workers and encouraged responsible data use and job protection.

Similarly, the DOL's Office of Federal Contract Compliance (OFCCP) removed its April 2024 guidance, "Artificial Intelligence and Equal Employment Opportunity for Federal Contractors," from its website. This guidance alerted federal contractors to compliance obligations for using AI and the need to monitor whether AI and automated systems adversely impact protected groups.

## Next steps for employers

Despite the removal of AI guidance, employers should keep the following in mind:

### 1. Federal, state and local anti-discrimination laws still apply to AI use.

Employers must still comply with the myriad federal and state anti-discrimination laws governing the use of AI tools in the workplace, including Title VII, the Age Discrimination in Employment Act (ADEA) and the ADA. These laws prohibit discrimination, which can include not just overt discrimination, but also practices that result in disparate treatment of protected classes or in differing outcomes for protected classes (disparate impact). In addition, the FLSA and other employment laws continue to apply when AI tools are used for employee tracking or monitoring.

Many states and local jurisdictions have enacted more protective anti-discrimination laws and have implemented specific AI regulations. Notably, [Colorado's SB 24-205](#) and [Illinois' HB 3773](#), effective in 2026, impose requirements for any AI technology used in the workplace. Colorado's law (which applies to both developers of AI technologies and employers as "deployers" of such technologies) mandates that reasonable care be taken when using any high-risk AI system to make consequential decisions, which includes those that make or are a substantial factor in making employment decisions. Employers using these systems are required to conduct annual impact assessments and comply with certain transparency obligations designed to protect against algorithmic discrimination. Illinois' law amends the state's Human Rights Act to prohibit using AI tools in a way that results in discrimination, which can include using AI tools to exclude applicants from certain zip codes, a practice often referred to as digital redlining. Other jurisdictions, including [New York City](#) and Maryland, also have enacted AI governance laws impacting employers, which impose audit, transparency and consent requirements for AI use.

### 2. Watch for state and local jurisdiction legislation to fill the enforcement gap.

The recent executive orders signal a significant policy shift from the previous administration's focus on "responsible AI" use to the new administration's "AI dominance" policy. This federal shift to a more pro-innovation approach leaves states and local jurisdictions to fill the regulatory gap. The legislation pipeline is filled with bills seeking to regulate employers' use of AI tools. Several pending bills would impose audit/notice, policy, reporting and transparency requirements on employers using AI, with significant penalties for noncompliance. While most target algorithmic discrimination, some also address other anticipated impacts from using AI in the workforce, including worker displacement. For example, New York Gov. Kathy Hochul proposed a plan to "support workers displaced by AI," which includes a directive to the state's Department of Labor to require businesses submitting

notices of worker layoffs to its Worker Adjustment and Retraining Notification system to state whether a layoff is related to the business's use of AI.

Employers must remain vigilant given the proliferation of state and local AI laws.

### 3. Continue your AI compliance programs.

Given ongoing state and local efforts to regulate AI use, employers should continue to review and strengthen existing compliance programs. It is critical that employers establish processes for maintaining oversight over the AI tools that are implemented. Employees and leadership should be trained on appropriate use of AI technologies in the workplace. Maintaining human oversight of AI use will help to mitigate risk, prevent unintended consequences, and address distrust and employee morale issues stemming from use of (and possibly overreliance on) AI tools.

Employers with questions regarding the use of AI tools should contact their Cooley employment lawyer or one of the lawyers listed below.

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