

Regulating the Machine: Colorado's AI Law and the Limits of the State Experiment

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Last year, we introduced readers to *Mobley v. Workday*, 3:23-CV-00770 (N.D. Cal.), the closely watched federal case out of California set to test whether an employer's AI hiring vendor could be held liable for discriminatory screening outcomes. Since that time, *Mobley* has survived multiple attempts at dismissal and endured a grueling discovery dispute over the guts of Workday's algorithms.

This year, the big story around AI in the workplace wasn't in the courtroom, but in the statehouse. What happened there is instructive for employers and the lawyers who advise them.

In 2024, Colorado did something no other state had done. It passed a comprehensive law governing the use of artificial intelligence, the Colorado Artificial Intelligence Act, Senate Bill 24-205, codified at Colo. Rev. Stat. § 6-1-1701 et seq. Borrowing a risk-based structure loosely modeled on the European Union's approach, the Act took aim at what it called "high-risk" AI systems, meaning any system that makes, or is a substantial factor in making, a "consequential decision." Employment decisions—hiring, firing, promotion and compensation—sat squarely within that definition. At the core of the legislation was a duty of reasonable care to protect applicants and employees from "algorithmic discrimination." Colorado, in short, was positioning itself to become the template the rest of the country would copy.

The obligations were substantial. As originally enacted, an employer using a covered system would have been required to complete annual impact assessments, maintain a written risk management program, notify individuals when AI was used to make a consequential decision about them, provide an opportunity to correct inaccurate data and, in some circumstances, appeal to a human reviewer and report any discovered algorithmic discrimination to the Colorado Attorney General. Enforcement belonged exclusively to the Attorney General and was categorized an "unfair or deceptive trade practice," akin to a violation of Colorado's consumer protection act. For a multistate employer, this was a meaningful new compliance regime that could easily be adopted by other jurisdictions.

Then Colorado blinked. As the effective date approached, an unusual coalition of business groups, the technology industry and even some of the law's initial legislative sponsors concluded that the Act as written was unworkable. Before it could take effect, the Legislature substantially rewrote it in 2026. The amended law strips most of the front-end compliance machinery

and removes the mandatory impact assessments and risk management program requirement. And, in an abrupt about-face, the amendments remove all *references* to algorithmic discrimination. The effective date, already delayed once, was pushed again to January 1, 2027.

What survived was a slimmer, transparency-focused framework built around three duties for those who, like employers, deploy automated decision-making technology in consequential decisions. First, employers and other deployers must give clear and conspicuous notice before deploying automated decision-making technology that will materially influence a decision. Second, when an adverse decision is influenced by that technology, employers and other deployers must, within 30 days, provide a plain-language explanation, identify the technology and its developer and the data used, offer a right to human review "to the extent commercially reasonable," and give the individual a chance to correct inaccurate personal data. Third, the employer or other deployer must retain compliance records for three years. Although the law does not create a new private right of action, violations enforced by the Attorney General will incur civil penalties of up to \$20,000 per violation (subject to a 60-day cure period).

The retreat unfolded against a national political climate critical of state AI mandates, *see* Executive Order 14365, "Ensuring A National Policy Framework for Artificial Intelligence," December 11, 2025, and the pullback created alignment with the White House. Although Colorado failed at becoming the leading laboratory in AI regulation, it did leave us with a cautionary tale. There is no comprehensive state framework in the country to serve as a template, and there is nothing comparable at the federal level. What remains is a patchwork of narrower measures, including laws like the ones in Illinois and California, which require employers to do things like disclose their use of AI in hiring. *See* Ill. Pub. Act 103-0804 (H.B. 3773) (amending the Illinois Human Rights Act, 775 Ill. Comp. Stat. 5/2-102, eff. Jan. 1, 2026) (making discriminatory AI use a civil rights violation and requiring employee notice); Cal. Gov't Code § 12940 et seq. (Fair Employment and Housing Act), as implemented by Cal. Code Regs. tit. 2, § 11008.1 et seq. (Civil Rights Council automated-decision-systems regulations, eff. Oct. 1, 2025). Until and unless *Mobley* sets precedent on this new frontier, parties will have to address discriminatory AI use under existing state and federal anti-discrimination laws.

What is the takeaway for a Louisville prac-

itioner? Kentucky shows no signs that it is fast approaching a comprehensive AI regulatory statute. Although KRS 42.720 et seq. became effective last year, its purpose is to establish a risk-based AI governance framework to protect citizens, foster innovation in state government and address concerns related to AI-generated misinformation in campaigns and elections. It does not apply to private employers.

Meanwhile, Colorado's legislative back-track suggests that a workable AI law may take more stakeholder input and definitional agreement, regardless of the state crafting it. For now, cases like *Mobley* suggest that the old tools—Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act and the Kentucky Civil Rights Act—may already reach a discriminatory outcome produced by an AI hiring tool, whether or not any statute mentions the technology by name. Recall that the *Mobley* court dismissed *Mobley's* argument that Workday was a covered entity because it was acting as an employment agency. But *Mobley's* claim survived based on the court's reasoning that the statutory language under Title VII, the ADA and the ADEA clearly extend to "any agent" of an employer and Workday was acting as an agent of the putative employers—a novel theory that was supported by a brief filed by the EEOC as amicus.

Kentucky's statute may be well suited to that theory. The Kentucky Civil Rights Act defines a covered "employer" to include "an agent of" a person with eight or more employees, KRS 344.030(2), language that mirrors the "any agent" hook in Title VII on which the *Mobley* court relied. And because the chapter exists "to provide for execution within the state of the policies embodied in" Title VII, the ADEA and the ADA, KRS 344.020(1)(a), Kentucky courts

construe it consistently with those federal statutes. *See, e.g., Williams v. Wal-Mart Stores, Inc.*, 184 S.W.3d 492 (Ky. 2005).

For Kentucky employers, the practical lesson is to continue following existing law, and to not wait around for a Kentucky version of the Colorado act to provide instructions on how to monitor AI vendors or address complaints about their screening procedures. Exposure already exists under the statutes already on the books, and Colorado just demonstrated that you cannot count on a purpose-built AI law to arrive and define your duties. The key, as with all AI, is ongoing meaningful human oversight of algorithmic hiring tools, careful documentation of how those tools are used, and vetted, transparency with applicants and employees and hard scrutiny of the indemnification and liability terms in your vendor contracts.

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