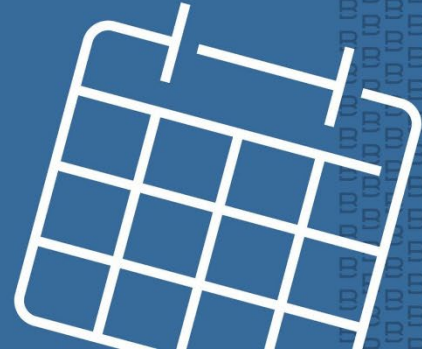


# The Work Week

News from the  
Bassford Remele  
Labor & Employment  
Practice Group



June 22, 2026

## AI Hiring Tools Continue to Face Increased Legal Scrutiny

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Artificial intelligence continues to reshape the hiring process, with employers increasingly relying on automated recruitment and applicant screening tools to manage high-volume hiring needs. At the same time, courts continue to grapple with this new technology and its consequences. A recent federal court development signals that vendors providing these technologies may face expanding legal exposure when those systems allegedly produce discriminatory outcomes.

In *Mobley v. Workday, Inc.*, an ongoing case that was filed in 2024, a federal judge in California recently indicated that discrimination claims against Workday under California's Fair Employment and Housing Act ("FEHA") will likely proceed, despite Workday's argument that it is not the actual employer making hiring decisions. The ruling could have significant implications for employers and technology vendors as courts continue to evaluate how existing anti-discrimination laws apply to AI-driven employment practices.

### Background of the Case

Workday is an on-demand, cloud-based, financial management, human capital management, and student information system software vendor and is used by several Fortune 500 companies.

The lawsuit was brought by a job applicant who alleged that Workday's automated applicant screening tools discriminatorily rejected him from more than 100 positions based on protected characteristics, including race, age, and disability. The plaintiff asserted claims under several federal anti-discrimination statutes, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, as well as California's FEHA.

According to the allegations, AI-driven recruiting systems may unintentionally replicate historical hiring biases by relying on data points that correlate with protected characteristics. For example, employment gaps, years of experience, educational background, or certain language patterns

may indirectly reveal information related to age, disability status, race, or caregiving responsibilities.

Workday argued that it should not be liable because it does not make final hiring decisions and therefore is not an “employer” under applicable employment statutes. However, the court previously allowed portions of the case to move forward based on allegations that Workday may function as an agent of employers through its screening technology.

More recently, the court signaled that California’s FEHA may apply even when applicants or employers are located outside California if the allegedly discriminatory conduct occurred through Workday’s California-based platform operations.

### **Why the Decision Matters**

Although the court has not yet issued a final ruling, the case represents one of the most significant legal challenges to AI-assisted recruiting systems to date. The decision suggests that vendors developing or operating AI hiring tools may not be insulated from liability simply because a human employer ultimately makes the final hiring decision.

The ruling also reflects a broader trend of increased regulatory and judicial scrutiny surrounding workplace AI systems. Federal agencies, including the Equal Employment Opportunity Commission, have repeatedly warned employers that automated employment decision tools remain subject to traditional anti-discrimination laws.

Finally, the case emphasizes a recurring concern with AI systems that even when protected characteristics are not directly requested or analyzed, algorithms may still generate discriminatory outcomes through proxy variables and historical data patterns.

### **Key Takeaways for Employers**

Employers utilizing AI-assisted recruiting or applicant tracking systems should carefully evaluate both the tools themselves and the processes surrounding their use. Practical considerations include:

- Maintaining meaningful human oversight over hiring decisions;
- Conducting periodic bias audits and validation testing;
- Learning and understanding how the screening system works;
- Reviewing vendor representations and contractual indemnification provisions;
- Evaluating whether screening criteria may disproportionately impact protected groups; and
- Documenting hiring processes and decision-making rationale.

Employers should also recognize that “human oversight” may provide limited protection if automated systems effectively eliminate candidates before meaningful human review occurs.

### **Looking Ahead**

As AI technologies continue to expand within human resources and recruiting functions, litigation and regulatory enforcement in this area are likely to increase. Courts appear increasingly willing to examine whether vendors, employers, or both may bear responsibility when AI-assisted systems allegedly produce discriminatory results.

The *Workday* litigation serves as another reminder that employers adopting AI-based workplace technologies should proactively assess compliance risks rather than treating these tools as purely administrative or neutral technologies.

The Bassford Remele Labor and Employment Group is closely monitoring developments involving AI-driven hiring and workplace technologies and can help advise employers as they evaluate and implement these evolving tools. Our attorneys work with employers to navigate compliance considerations and minimize risk under federal and state employment laws. Please reach out with any questions.

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