

Heather Bussing's Top Tips on AI, Legal Risk & Hiring

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1 Know the Legal Landscape

- **Hiring is classified high-risk** – the EU AI Act (now delayed to December 2027) treats hiring as a highly sensitive area requiring guardrails and a human in the loop before any decision.
- **It is not just an EU issue** – Colorado has adopted a similar framework and New York City bans AI in interviewing, with more states expected to follow.
- **You may be covered without knowing it** – if you recruit remotely or across borders, you can be subject to a jurisdiction's AI laws even if your company is based somewhere else entirely.
- **Risk rises with proximity to the decision** – the closer an AI tool sits to an actual employment decision, the risk goes up logarithmically.

2 Use AI as a Tool, Not a Decider

- **Drop the binary thinking** – this is not a checklist of allowed and forbidden uses; it is about how much weight AI carries in the final call.
- **Lower-risk ground** – using AI to help draft job descriptions, personalize outreach, and support candidate communications is generally safer territory.
- **Higher-risk ground** – pre-interview sorting and ranking is where employers are most exposed, since a tool cannot capture the nuance an experienced recruiter brings to a resume.
- **Never fully automate the human moments** – sending final rejections or decisions without a person behind them damages trust and adds legal exposure.

3 Build a Defensible Process

- **The employer is always on the hook** – no matter which tools you use, responsibility for the hiring decision stays with you.
- **Monitor your actual outcomes** – run regular bias audits on who your tools are hiring in practice, not just how they were designed to work.
- **Perfection is not the bar** – you cannot eliminate risk entirely, but you can show you tested for bias, investigated issues, and made changes over time.
- **Safe harbors reward effort** – frameworks like the EU Pay Transparency Act give employers time to investigate and correct a problem once it is found, rather than holding them liable outright.

4 Vet Your Vendors Like a Lawyer

- **Interrogate the training data** – ask what data a vendor's tool was built on, whether it was designed for hiring specifically, and how they tested for bias.
- **Ask what gets monitored** – understand what ongoing checks the vendor runs and how your own data feeds back into the system over time.
- **Track who decides, not just who applies** – most companies capture demographics on candidates but not on the humans making the calls; track both to spot where bias enters.
- **Speak each audience's language** – finance wants cost and performance, legal wants risk; come prepared with how the tool works, what is monitored, and what oversight it needs.

■ ■ You can use AI as a tool in your recruiting process. You cannot allow it to make decisions alone.

– Heather Bussing, Employment Attorney, California