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New IL job 'interview bot' A.I. law could boost lawsuit risks for employers

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By **John Breslin** | Aug 1, 2019



CHICAGO – Illinois has jumped out ahead of the rest of the country on regulating the use of artificial intelligence in job interviews, and that could open employers up to new legal problems, as well, an attorney with expertise on technology law said.

The Illinois General Assembly recently passed the **Artificial Intelligence Video Interview Act**, which introduces disclosure and consent rules for employers using A.I. in the hiring process. Under the legislation, not yet signed by Gov. J.B Pritzker, employers must tell applicants that A.I. video technology may be used to select candidates, explain how A.I. works and obtain consent..

Some businesses, mostly large corporations, are introducing A.I. technology in the interview process or evaluating whether it can produce efficiencies and come up with better results, Peter Gillespie, a lawyer with Chicago-based Laner Muchin law firm, said, adding that its use is far from widespread.

While it is laudable that Illinois is getting out ahead on artificial intelligence and, more generally, generating discussion, the act, both its



Peter Gillespie | Laner Muchin

provision and how it is written, could create issues for employers, Gillespie said.

"My concern has been that, while I certainly appreciate that Springfield is being forward looking technically, in getting this legislation out there the state may be acting in an isolated manner," Gillespie told the *Cook County Record*.

Employers could open themselves up to lawsuits because they do not know of the legislation or are not clear about its provisions, Gillespie said, noting that national vendors of the technology may be unaware of the statute and not issue advice on the regulations when delivering the service.

The consent provisions also raise issues, including whether an employer can end the interview process if an applicant refuses to take part. The legislation, as written, does not address whether the employer is protected in this scenario, Gillespie said.

More generally, when parsing the new act, employers are likely to take note of the avalanche of lawsuits that has followed the **Illinois Biometric Information Privacy Act** (BIPA), particularly following a recent Illinois Supreme Court ruling that found plaintiffs don't have to prove they were actually harmed by a technical violation of the BIPA law to win their lawsuit. The BIPA law regulates the collection and storage of biometric information, and has led to a cavalcade of class actions against a host of companies, including against employers of all sizes who require employees to verify their identities by scanning their fingerprints when punching in and out of work shifts.

How the new A.I. law intersects with BIPA raises interesting questions, Gillespie said. These include whether courts will find facial recognition used in A.I. technology may fall foul of BIPA's identification provisions and those that order deletion of information.

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But the latter may, in turn, run up against federal and state laws requiring the retention of job applications for a year, Gillespie said.

Overall, there is potential for lawsuits, particularly as A.I. technology takes hold in more corners of society, and under this act the number of potential claimants could be exponentially higher as it includes all applicants, not just employees, as is the case under BIPA, Gillespie said.



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