

# Insights

## Executive Order on Artificial Intelligence and its Implications for Employers

December 7, 2023

By: Elizabeth M. Roberson and Virginia A. Talley

As discussed in our past alert, **President Biden Issues Executive Order on Artificial Intelligence**, President Biden issued an **Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence** (“Executive Order”) on October 30, 2023. The Executive Order requires various federal agencies to address the implications and risks of Artificial Intelligence (“AI”) in their respective areas of administration, and this broad-reaching Executive Order will affect employers. Specifically, the Executive Order requires the Secretary of Labor to develop and publish principles and best practices for employers to mitigate AI’s potential harm to employees and to maximize AI’s benefits, covering the following areas of importance: worker displacement, wage and hour compliance, and federal contracting.

### A. Supporting Workers Who Could be Displaced

The Executive Order and the **Fact Sheet** explain that while AI offers the promise of productivity, it also comes with dangers of increased workplace surveillance, bias, and job displacement. To mitigate these risks, the Executive Order sets forth that:

- The Chairman of the Council of Economic Advisers shall prepare and submit a report on the labor market effects of AI by April 27, 2024.
- The Secretary of Labor shall prepare and submit a report analyzing how agencies can support workers displaced by the adoption of AI by April 27, 2024. This report must address how current and federal programs, including unemployment insurance, could respond to AI-related disruptions and identify options to strengthen or develop more support for displaced workers, such as expanding education and training to provide pathways to occupations related to AI.
- The Secretary of Labor shall develop and publish guidance and best practices for employers to mitigate potential harm AI could cause on employees by April 27, 2024. This guidance shall at a minimum cover: (a) job-displacement risks and career opportunities related to AI; (b) labor standards and job quality including equity, protected activity, compensation, health, and safety implications of AI in the workplace; and (c) implications for workers as it relates to AI’s collection and use of data about them including transparency, engagement, management, and activity protected under worker-protection laws.

The reports and guidance to be developed will help employers in both following federal laws and in promoting innovation and the safe introduction of AI into employers’ workplaces. AI is likely to impact most workplaces, and employers should be on the lookout for more guidance from the Department of Labor on this issue.

## **B. Wage and Hour Compliance**

The Executive Order suggests that AI will soon track and monitor wage and hour compliance. In this vein, the Executive Order requires the Secretary of Labor to issue guidance to clarify that employers that use AI to track or augment employees' work must continue to follow the Fair Labor Standards Act ("FLSA"), including making sure workers are compensated for their hours worked.

This guidance will provide employers an additional resource in interpreting and complying with the FLSA. While the Executive Order does not identify a deadline for issuing this guidance, it will likely be released sometime next year.

## **C. Guidance for Federal Contractors**

The Executive Order contemplates that AI will likely be used by federal contractors in the hiring process. The Executive Order requires the Secretary of Labor to publish guidance by October 29, 2024, for federal contractors regarding nondiscrimination in hiring that might involve AI or other technology-based hiring systems.

This guidance will outline best practices for use of AI in hiring practices to ensure the use of technology and AI does not have discriminatory impacts.

\*\*\*

This Executive Order highlights AI's potential impacts on employers and the workplace in the coming months and years. Employers should continue to be innovative in this area and brainstorm ways that AI could benefit its workplace and workers, although employers must also be vigilant in protecting workers' rights and complying with state and federal laws. The results of these various reports and guidance will aid employers in this task.

Krieg DeVault LLP attorneys will continue to monitor developments related to this Executive Order. If you would like to discuss the opportunities and risks presented to your organization by AI, please contact **Elizabeth M. Roberson, Virginia A. Talley** or any member of Krieg DeVault's **AI Task Force**.

*Disclaimer: The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.*