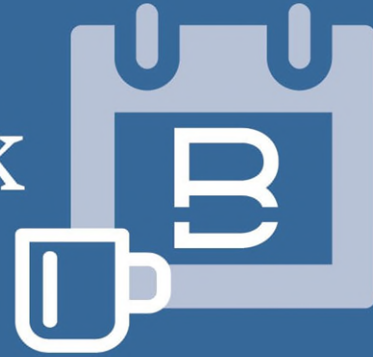


The Work Week

Bassford Remele Employment Practice Group



August 28, 2023

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

[Bassford Remele Employment Practice Group](#)

The EEOC Penalizes an Employer for Utilizing AI in the Application Process

[Shannon E. Eckman](#)

In an [earlier edition of *The Work Week*](#) this summer, we covered the some of the boom and bust effects of AI and the workforce. This past month, those busts became reality.

EEOC v. iTutorGroup, Inc., et al.

Equal Employment Opportunity Commission (“EEOC”) settled its first anti-discrimination case involving AI in the workplace. The EEOC had filed suit in the Eastern District of New York against iTutorGroup, an English-language online tutoring company that was using an AI-powered hiring selection tool.

The AI tool automatically rejected female applicants over the age of 55 and male applicants over the age of 60. This was discovered when an applicant, who was first rejected from iTutorGroup, resubmitted their resume with a younger birthdate. The EEOC filed suit alleging age and gender discrimination on behalf of over 200 applicants.

Not long after the filing, iTutorGroup denied the allegations but entered into a voluntary settlement with the EEOC. The settlement included a payment of \$365,000 to distribute among the applicants unlawfully rejected, and iTutorGroup agreed to adopt antidiscrimination policies and conduct employee trainings to assist in EEO compliance. The company must also reconsider all applicants who were rejected because of their age.

Lessons Learned for Employers Moving Forward

AI tools are often used for selecting candidates, done in a facially neutral automated system with respect to age, race, gender, and other protected classes. Even if an employer may not intend to exclude a protected class, there is still the risk of disparate impact claims. Beyond these claims, EEOC enforcement

actions will be applying existing legal frameworks to AI tools. Employers should audit these tools to ensure EEO compliance.

With the rise of AI technology and its implementation in the workplace, the EEOC recently launched the Artificial Intelligence and Algorithmic Fairness Initiative. EEOC Chair Charlotte A. Burrows made the following statement in a press release regarding the iTutorGroup settlement:

Age discrimination is unjust and unlawful. Even when technology automates the discrimination, the employer is still responsible. This case is an example of why the EEOC recently launched an Artificial Intelligence and Algorithmic Fairness Initiative. Workers facing discrimination from an employer's use of technology can count on the EEOC to seek remedies.

According to a survey by the Society for Human Resource Management, roughly 79% of employers use some form of AI in their recruitment and hiring process. Does this include you, too? Employers using AI in the hiring and recruitment process should be cautioned and ensure that the AI they utilize does not result in intentional or unintentional discrimination.

If your business needs assistance ensuring compliance with employment laws in the context of technology and AI implementation, contact an employment attorney. At Bassford Remele, our experienced employment law group can help your company with compliance issues and risk management to avoid legal and business pitfalls with the ever-changing landscape of technology and AI.

Women's Leadership Summit: *Reframing the Alpha Female*

Bassford Remele proudly announces its Second Women's Leadership Summit. Join us for an invigorating discussion with Minnesota women business leaders.

Our panelists will discuss what it means to be an "alpha female." Through this discussion, the panel will explore the conventional perceptions of women in leadership positions. What is working? What isn't? How can we dismantle the misconceptions, limitations, and often damaging tropes and stereotypes surrounding powerful women and reframe what it means to be an "alpha female?"

PANELISTS

- **Jessica Monson**, Chief Legal Officer, Caribou Coffee
- **Erikka Ryan**, Director of Equity, Inclusion and Foundations, Minnesota State Bar Association
- **Jennifer Thompson**, Regional General Counsel, Ames Construction
- **Lola Velazquez-Aguilu**, Vice President and Chief Legal Officer, Neuromodulation at Medtronic
- **Brook Mallak**, Claim Attorney, Minnesota Lawyers Mutual Insurance Company

1.50 CLE credits will be applied for in Minnesota and Wisconsin

DATE Tuesday, September 12, 2023 | Registration and Networking: 2:30-3:00 pm
Summit: 3:00 – 4:30 pm Networking: 4:30 – 5:30 pm

LOCATION The Grand 1858 at Minneapolis Event Centers, 212 Second Street SE, Minneapolis
(Complimentary Parking)

[RSVP HERE](#) or contact Janet Nelson, Marketing Director, summit@bassford.com or 612.376.1656

DRESS FOR SUCCESS Bassford will be hosting a donation drive for Dress for Success, which believes in empowering every woman through employment. Dress for Success offers high touch, high impact career and workplace skills development programs for low income women to help them achieve career advancement, career stability and economic stability. Donations can be brought to the summit.

LEARN MORE ABOUT OUR EMPLOYMENT PRACTICE » »

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