AI, Automation, & Wearable Technology: Modern Tools in the Modern Workplace

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Artificial Intelligence in the Workplace

Do we need to be mindful of bias?

What is Artificial Intelligence?

- A computer system that is developed to perform tasks that normally require human intelligence

- Aim is to improve human well-being by increasing the level of objectivity in human decision-making

- The program/algorithm is fed huge amounts of data to help the AI make decisions

How is AI Used in the Employment Context?

- Hiring
- Performance Tracking
- Promotion

Artificial Intelligence Concerns

- Ethical Challenges
- Problems with the Data
  - Is it fully and completely representative of all social groups?
  - Intentional & Unintentional Results
    - Who controls the data provided and what are their biases?
- Amazon's dilemma (caught during testing phase):
  - AI intended to ensure impartiality in recruitment procedures
  - System trained to screen job applicants by observing patterns in old resumes
    - Problem: most of the old resumes had been submitted by men
  - System taught itself to value and appreciate traits more commonly found in male applicants, thus refusing most female candidates

Minimizing the Concerns Related to AI

- Do not blindly embrace the tool
- Constantly question, audit and revise the process to make sure that the use of technology has a beneficial (not detrimental) impact
  - How? Training of Users to Analyze AI System's Performance
  - Practical Issues? The automation makes it difficult to understand why certain decisions are being made by the software
- Compliance with Laws
  - European Commission – Ethics Guidelines for Trustworthy AI (April 2019)

European Commission's Guidelines

- Transparency
- Extensive Testing
- Auditing
- Implementation of Codes of Conduct
- Diverse and Inclusive Design Teams

Automation: Biometric Data

Should we collect it and what are our
obligations once we have it?

What are Biometrics?

- Used generally to refer to "measurable human biological and behavioral characteristics that can be used for identification"
- This includes:
  - Iris and retina templates
  - Voice prints/Voice recognition
  - Two or three-dimensional facial structure maps
  - Hand or finger geometry maps
  - Vein recognition templates
  - Gait recognition algorithms

What is Not Biometric Data?

- Written signatures
- Biological samples used for testing
- Demographic data
- Physical descriptions
- Films or images of human anatomy (x-rays or MRIs)

How is it Being Used in the Workplace?

- Fingerprints or hand scans to punch in and out on biometric time clocks

- Retina scans, facial recognition, or fingerprint technology to access physical premises, computer systems and other devices

- Used in wellness programs or initiatives

What are the Risks?

- Theft/exploitation
  - Unique biometric markers, once compromised, cannot be restored to their original owner
- United States does not have significant legal guidance as to obligations around biometric data
  - No federal statute
  - GDPR in Europe (comprehensive security framework for processing biometric data)
  - Illinois Biometric Information Privacy Act (BIPA) 740 ILCS 14/15(b)

What Does BIPA Provide?

- Applies to all private entities
- Prohibits employers from collecting and using biometric information without certain disclosures
- Requires obtaining a written release
- Employers must develop a written policy governing the retention and destruction of data
- Data cannot be sold or otherwise create a profit from customer or employee biometric data
- Limitation on ability to disclose or share biometric data
- Remedies: Private right of action, liquidated damages, actual damages, attorneys' fees, injunctive relief

What Does the Future Hold?

- Texas and Washington
  - Biometric privacy laws
  - No private right of action
- California
  - Enhanced protection for personal information (including biometric data)

Automation: Blockchain

What is blockchain and how is it relevant to Human Resources?

What is Blockchain?

- An encrypted, digital ledger of public records that are organized into groups of data, known as "blocks" and then distributed over networks
- It then allows everyone in a "chain" to see and verify the details of every record
- Data cannot be deleted or changed, only added to
  - Everyone connected to each block must agree before new information can be added to a chain

How Can Blockchain Technology Affect HR?

- Payroll Distribution
  - More efficient payment to global employees
  - Decrease delays caused by intermediary banks and third parties
- Recruiting
  - Verify the credentials of job candidates
    - Confirm education
    - Confirm certification
    - Confirm work experience
  - Example: Recruiter wants to know if candidate really has a certain certification. Candidate releases access to a blockchain entry that is signed by the entity that issued the certification.

Wearable Wellness

Does the use of fitness trackers increase my organization's liability?

Verrill

Why Does it Matter?

- Types of Wearables Available:
  - Activity Trackers (Fitbit, Jawbone, FitLinxx)
  - Devices that measure blood glucose
  - Devices that measure heart health
  - Devices that measure brain activity (Muse)
  - Devices that track sleep
- Tied to online wellness platforms
  - CafeWell – Includes step results, personalized health itineraries, educational resources, support from a health coach
- Goal to Ultimately Decrease Health Care Costs or Adverse Effects
  - Brain Activity measurement - Settle overactive minds and improve focus

What are the Risks?

- Company must ensure that all aspects of the wellness program are designed to comply with HIPAA and the ADA
- HIPAA
  - Nondiscrimination Provision – Employers must provide alternatives to employees who are not able to use activity trackers.
    - Must waive the requirement and offer the same reward; or
    - Provide an alternative means of participating
- ADA
  - Prohibits medical exams except in narrow circumstances
  - Is the use of a tracker a medical exam?
    - EEOC position
  - Maintenance of Confidentiality

What Role (if any) Does OSHA Play?

- OSHA (Occupational Safety and Health Administration) Position:
  - Distracted Driving
    - *OSHA's Distracted Driving Initiative,* Occ. Safety & Health Admin.
      - *Available at:* https://www.osha.gov/distractide-driving/initiative.html
    - OSHA will investigate and issue citations and penalties in cases in which it receives a credible complaint that the employer requires texting while driving OR organizes work so that texting is a practical necessity