

Artificial Intelligence – Transformation of the Workplace

Artificial intelligence is having a seismic impact on the way we live our lives, both personally and professionally. At great pace, it is re-shaping modern businesses and transforming the workplace and traditional working practices.

There has been a dramatic increase in the use of AI technology for the recruitment and management of staff in recent years. This has the potential to create significant benefits and opportunities but it also carries both legal and operational risks.

The emergence of ChatGPT and other large language models has accelerated the introduction of generative AI tools into the workplace and looks set to revolutionise the way in which employees work. This is creating another set of legal risks and challenges from an employment perspective. In the absence of material changes to employment legislation to address this change, it is important for employers to consider at an early stage how the existing framework of employment laws and practice will apply to the use of such technologies in the workplace.



Workplace transformation

AI is set to deliver the ultimate change programme across multiple industries with some commentators describing it as Industrial Revolution 4.0.

Transformational change will impact the current composition of the workforce. Some existing roles will be replaced by AI, whilst others will have to evolve.

Employers will need to develop plans which take account of existing employment legislation across the jurisdictions in which they operate and align with legal frameworks and governance structures which are being developed locally and internationally in response to technological change.

This will involve consultation with relevant stakeholders, including trade unions, works councils and other employee representative bodies who are taking a keen interest in the evolution of technologies in the workplace.

Key considerations:

- When will consultation obligations be triggered?
- Legal and practical steps relating to redundancies, reorganisations and changes to working practices and contractual terms.
- Upskill and train employees to perform new roles.
- To what extent may unions, works councils and other employee representative bodies seek to influence the course of change?
- Identify and address ethical considerations, including concerns relating to transparency, fairness, bias, equality and autonomy.
- How will transformation impact on the culture and ethos of the organisation?



Recruitment, Management and Performance

Technology has transformed recruitment practices with employers and employment businesses turning to AI tools in order to improve efficiencies and support equality and diversity initiatives.

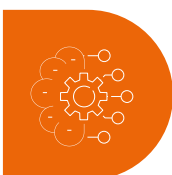
In a competitive labour market, AI tools can give employers an advantage, helping them to identify suitable candidates, screen applicants, assess video interview performance and create job descriptions which appeal to broader candidate groups. We are also seeing tools which support accommodations for disabled candidates and which purport to minimise human biases.

Similarly, AI can be used by employees in the performance of their roles as well as by employers to appraise/monitor performance and productivity. We saw explosive growth of algorithmic management during the Covid-19 pandemic and this has continued with automation of employer functions spreading from the gig economy right across the socio-economic spectrum.

As employee roles evolve alongside the increasing use of generative AI in the workplace, employers will need to adapt the way in which they measure performance and progress. Clear guidance and objectives will be vital along with pro-active and supportive management of employees who struggle to keep pace with the evolution of their role.

Key considerations:

- Risk of discrimination and bias arising from AI recruitment and performance – management tools – human oversight and equality impact assessments required.
- Loss of agency, both practical and moral leads to a lack of empathy in the workplace, alienation and dignity concerns.
- Loss of legal accountability.
- Impact on data privacy:
 - conduct of data protection impact assessments (DPIAs);
 - compliance with key data protection principles, such as transparency, lawfulness, accuracy, data minimisation and retention; and
 - questions around automated decision-making.
- Potential for algorithmic management platforms to impact on worker status.
- Vital to communicate evolving role expectations and performance objectives.



Generative AI Tools

Generative AI tools have the potential to touch on many aspects of the employment relationship. There is no doubt that they can be used to great effect by both employers and employees, but it is vital to have well-defined rules around permissible use.

The consequences of both deliberate and inadvertent misuse of generative AI tools by employees are potentially significant. Employers are vicariously liable for the actions of their employees and so will be at risk of legal claims and liabilities as well as reputational damage if an employee uses an AI tool in an unlawful or inappropriate manner.

A well-defined policy around the use of generative AI tools in the workplace is critical and should be aligned with existing policies (e.g. disciplinary, data privacy, acceptable use, IT security policies). Creating and implementing a clear policy will

help mitigate risks relating to infringement of IP rights, disclosure of confidential information and data privacy breaches.

Generative AI tools are known to “hallucinate” (i.e. generate fictional or irrelevant outcomes) and also have the potential to generate discriminatory outputs affecting employees, customers or other third-parties. Therefore, human oversight and regular assessments of their use along with training for employees will be necessary.

Key considerations:

- Appropriate steps to ensure employees are clear on permissible and impermissible uses of AI, including development of internal policy documents (Read our [Generative AI: Principles for employee and supplier policies](#) guide).
- Identify which AI tools are permissible.
- Supervision and monitoring of AI use.
- Process for identifying and reporting inaccurate, biased or discriminatory outcomes.
- Consequences of unauthorised use or misuse of AI tools by employees.
- Identify and control employee use of AI for ‘moonlighting’
- Impact on data privacy (as above).



Bias and Discrimination

AI has the potential to be used to great effect throughout the lifecycle of the employment relationship – recruitment, appraisals, promotion, performance management and redundancy exercises.

AI tools often purport to reduce unconscious bias that exists in humans. However, the neutrality of AI tools is open to challenge. AI systems are trained on, and process and use, data which has been pre-selected by humans for purposes devised by humans and so it is not realistic to expect the outcomes to be free from human bias. If the data used to ‘train’ AI is biased, the AI will perpetuate and potentially exacerbate that bias.

The ‘blackbox’ nature of AI tools makes it hard for employers to explain why a decision has been made or what factors have influenced an outcome. Adverse inferences will be drawn in the absence of a reasonable explanation. As a result, employers will find it difficult to defend discrimination claims and there is a real risk of class actions arising.

Key considerations:

- Diligence around data used to ‘train’ AI tools.
 - Ensure appropriate level of human oversight.
 - Equality impact assessments to identify potential adverse impacts.
 - ‘Train’ AI to address impacts identified.
 - Identify groups who may be disproportionately affected and assess proportionality of approach.
 - Impact on data privacy (as above).
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How can we help?

Our team of employment and data privacy experts can help you to identify the opportunities and risks arising from your existing or proposed plans for using AI in the workplace. We will work with you to develop a strategic plan which takes account of the various different legal, commercial and practical considerations. In particular, we can support with:

- Strategic planning
- AI workplace use policies
- In-house training
- Equality impact assessments
- Domestic and international transformation projects
- Redundancy exercises
- DEI Programmes
- Changing terms and conditions of employment
- Data protection impact assessments (DPIAs)
- Advising on the data protection implications of using/implementing specific AI tools.
- Intellectual property infringement advice
- Contracting with AI providers
- Employee privacy notices and handbook updates
- Vetting/due diligence of AI providers

Interested in seeing more of our AI work?

See Artificial Intelligence on [Bristows.com](https://www.bristows.com) for more on our AI corporate and commercial work – IP, data protection and regulatory advice, bespoke licensing, as well as strategic advice on how to structure AI-focussed collaborations, partnerships services arrangements.

Quick links:

- [Generative AI: Principles for employee and supplier policies](#)
- [Generative AI: Key issues when integrating AI into your products and services](#)
- [The Roadmap Podcast: An advisor's guide to digital transformation](#)

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