

Department of Labor Issues Field Assistance Bulletin on Use of AI in the Workplace

July 15, 2024

The United States Department of Labor (“DOL”), Wage and Hour Division recently issued a **Field Assistance Bulletin** on Artificial Intelligence and Automated Systems in the Workplace under the Fair Labor Standards Act and Other Federal Labor Standards (the “FAB”). In light of employers’ increasing use of artificial intelligence (“AI”) and other automated systems in the workplace, the FAB provides guidance regarding the application of the Fair Labor Standards Act (“FLSA”), Family and Medical Leave Act (“FMLA”), nursing employee protections, and the Employee Polygraph Protection Act (“EPPA”).

Specifically, the DOL reminds employers to remain cautious in the following circumstances:

AI and the FLSA

The FAB explains that AI and the use of automated technologies for scheduling, timekeeping, and tracking employee location may undercount hours worked and reminds employers to use the appropriate human oversight to ensure they are paying employees for all hours worked. The guidance also reminds employers to exercise proper human oversight to ensure that such systems are accurately monitoring break time, documenting waiting time, paying employees the applicable minimum wage and calculating and paying an employee’s regular rate and overtime premium to avoid any violation of federal wage standards.

AI and the FMLA

The FAB further explains that employers must comply with the FMLA regardless of whether they use AI or other automated systems to track and manage the administration of federally protected leave. Violations of the FMLA include interfering with, restraining, or denying the exercise of rights provided by the FMLA, including failing to authorize or otherwise interfering with or restraining FMLA leave through an automated management tool. The guidance again reminds employers to use human oversight to avoid the risk of widespread violations of FMLA rights through the use of AI or automated technologies that may be reviewing requests for leave.

AI and other Federal Labor Standards

The FAB also addresses nursing employees’ protections, prohibited retaliation by employers and the EPPA. The DOL reminds employers that:

- Employers are responsible for ensuring that AI and other automated systems do not impose adverse actions on nursing employees for exercising their rights to pump at work.
- Employers using AI or automated systems technology in the workplace should avoid using such technology to retaliate against workers in violation of federal labor standards as they remain responsible for complying with all anti-retaliation laws.
- Employers’ use of AI or other technologies to gauge an individual’s truthfulness may be subject to the restrictions on lie detector tests provided under the EPPA.

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Key Takeaways

The FAB's important guidance reiterates to employers that without responsible human oversight, reliance on automated tools or AI technology may pose potential violations of federal labor standards. Employers should review this guidance as an effort to ensure compliance with all wage and hour laws and other federal labor standards.

If you have questions about how this development will impact your workplace, please contact your Miller Canfield attorney or one of the authors of this alert.