Government Says Artificial Intelligence Discriminated Against Older Job Applicants

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Artificial Intelligence (AI) is back in the news after the United States Equal Employment Opportunity Commission (EEOC) sued an online tutoring company for alleged discrimination in violation of the Age Discrimination in Employment Act (ADEA). According to the EEOC?s complaint, the employer programmed its job application software to automatically reject female applicants over the age of 55 and male applicants over the age of 60. The EEOC alleged that one of the class action plaintiffs applied for a tutor job and was ?immediately rejected because she was over the age of 55.? The complaint further stated that the next day, the applicant ?applied using a more recent date of birth and otherwise identical information and was offered an interview.? Of particular note, the EEOC alleged that the employer?s online application specifically ?solicited the birthdates of applicants,? which is not something that a company would normally require in a job application.

The employer and government watchdog ultimately entered into a consent decree, where the company agreed to pay $365,000 to ?certain tutor applicants? who were allegedly rejected because of their age. Once entered by the judge, this consent decree will conclude the first of what will likely be several more EEOC-initiated AI discrimination-in-hiring lawsuits. Employers can also expect private plaintiff?s firms to be on the prowl for such lawsuits, which could be brought on an individual or class action basis.

On July 14, 2023, we reported on the EEOC?s Guidance on Potential Discriminatory Impact of Artificial Intelligence, which we viewed as a strong indication that the EEOC is serious about its mission to hold employers accountable for their use of AI software in employment practices. Employers should consult an attorney who is knowledgeable on these issues prior to using AI in the workplace.

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