HR Technology: Risks & Rewards
Why Your Lawyer Doesn’t Sleep

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tHRive
LAW & CONSULTING
About Me

• Mommom to two boys – Quentin & Ozzi
• Suffer from law degree
• Human Resources Officer for the U.S. Department of State in Jerusalem & Zambia
• Got the fancy letters
• Fascinated by HR technology
• Started tHRive Law & Consulting
• Adjunct Professor of Mitchell Hamline’s HR Compliance Certificate Program
• Compliance doesn’t always mean no
What We’re Going to Cover...

• Technology that is out there
  • Chatbots
  • Analytics (including AI)
  • Organizational network analysis
  • Biometrics
  • All in the cloud

• Issues that keep employment lawyers up at night

• Tips to best protect your organization
HR Today & Tomorrow

• An OFCCP official: “You can’t comply without technology.”
• A DOL official: “Are you really using punch cards?”
• An EEOC official: “We have an electronic filing system now.”
• Technology is no longer a convenience – it’s a must have
Is HR Ready for Robots?
Chatbots?

Will We Need HR If We Have Bots?

By Marcus Mossberger  May 15, 2017

Chat with Bob for HR

Hi Hannah, I’m HR Bob and I’m here to help. If at any point, I’m not being as helpful as you need me to be, you can type “Ask a human.”

How much time is available to take a leave?

Absolutely, I can check your available PTO for you. Please give me a moment.

Hannah, you have 72 hours (9 days) of PTO remaining before 12/31/2017.
Spot

- Reporting harassment through chatbot
- Walks individual through series of questions to prepare her to report harassment
- Includes
  - Witnesses
  - Evidence
  - Contact information
- Can maintain anonymity
What If...?

- Fail to catch an FMLA issue?
- Fail to catch a reasonable accommodation issue?
- Fail to catch a harassment issue?
- Fail to catch any number of issues?
- Responsibility remains with the employer – not the chatbot vendor
People Analytics
People Analytics are Awesome

- Find the perfect candidate
- Reduce turnover
- Identify pockets of low morale
- Identify leaders
- Identify risks to organization
- Assist with investigations
- Design the perfect team
- Design the perfect schedule
- Reduce effect of bias
Analytics

• Dives into your data
  • Variety of sources
  • All of your data
  • De-identified information from other employer
  • Draw correlations that have an impact on employment decisions

• Dives into your employees
  • Biometrics
  • Communication

• Assist you in making decisions
Use of Analytics is Scary

- Discrimination
- Fair Credit Reporting Act
- Privacy
- Biometrics
- Data security
- Information governance
- Recordkeeping
Discrimination Conundrum

• How will we validate?
  • More than just statistics?
  • Strength of the statistics?
• What doctrine will apply?
  • Disparate treatment
  • Disparate impact
  • Classification bias (new)
• Will we be able to get at records?
  • Machine learning alters algorithm
  • Keep the algorithm at the time
• Do we even know what’s in the algorithm?
  • Trade secrets of vendor
  • Weight given to each factor
Ben Taylor [DeepLearning]
Chief AI Officer at ZIFF, Inc. #unrecruitable
12 d

I see people in HR analytics pushing back on the AI/automation efforts with talent screening. Here is a reminder of what humans do, this is the public “first impression interview” dataset. This is the first time anyone has done bias analysis on it (you’re welcome). Check out the adverse impact against black females. I strongly believe that AI is the ONLY way we can eliminate bias when it comes to hiring. With humans, the unconscious bias is a reality we will never escape.

#racistAI #datascience #automation #SIOP18 #SIOP

Kate Bischoff @k8bischHRLaw @EEOC @OuttenGolden
7 Dec 2016

The “it’s just math” that doesn’t have this info will not fly with @EEOC when a disparate impact exists @OuttenGolden

Talent Analytics @TalentAnalytics @k8bischHRLaw @eEOC @OuttenGolden
7 Dec 2016

Assessment data is not just MATH, it’s a key part of our predictive AI model, it learns not just computes

Kate Bischoff @k8bischHRLaw @EEOC @OuttenGolden
7 Dec 2016

Yep. When the model shows the best performers are all white, we know we have a problem in the data or model.

Talent Analytics @TalentAnalytics @k8bischHRLaw @OuttenGolden
7 Dec 2016

We don’t use age, race or gender so that would NEVER happen with us but YES, agree for SURE!! Not good!
EEOC Comes Knocking: Records

- EEOC is paying attention
- Validation documents
  - Job studies
  - Statistics
- Notice to employees or candidates
- Acceptance or acknowledgement from employees or candidates
- Algorithm itself – the beauty of machine learning
- Results or ratings
Organizational Network Analysis
Cubiks & Others Like It

• Integration with other software & apps
  • Google Apps & email
  • Office 365
  • Salesforce
  • Slack
  • Workday & other HCMs

• Some include outside sources like social media

• Using artificial intelligence to measure performance against goals
Employee Privacy & Decision-Making

• Integration
  • Including private information
  • Sharing with other employees
• Reading emails
• Reading social media
• How is the data used?
  • If assists with decision-making, like promotions & bonuses, must still explain how it works
Employee Privacy Again

- What level of privacy can employees reasonably expect?
  - Purses
  - Cars
  - Off-duty activities
  - Who we chat with at work?

- Myrna Arias v. Intermex
  - California woman sued
  - Supervisor made a stupid comment
  - “Happy”
Biometric Laws

• States (Washington, Illinois & others) have laws that require employers get permission to use biometric data
• Genetic Information Nondiscrimination Act
• Biometrics – beyond fingerprints – is health information
• Plugging the FitBit into the company computer
• Marrying biometrics with
Blockchain
Blockchain Risks

• With blockchain, data is in the ether
• No central location
• Data can’t be changed
• Allows for verification
• But what about...
  • Incorrect data
  • Verifying individuals with similar data
We’re Moving to the Cloud

• More & more applications are in the cloud
• 2017 Sierra-Cedar Report puts 50% of large corporations putting payroll in the cloud
• Nearly every vendor is there
• Number of enterprise-only options out there is dwindling
Mobile Apps are the Future

“We believe that by 2021, 65% of all U.S.-based companies will have launched their own employee app. When PCs became available in the 80s, there was a similar mindset and we know how the PC has revolutionized the entire business world.”

Amir Nehemia, CEO & co-founder of Connecteam
Data Security of Cloud HR Data

- Creates vulnerabilities for data
  - Not our security measures
  - Not our employees in the data

- Risk of a data breach
  - HR data
    - Employee PII
    - Our decision-making
  - Our trade secret & confidentiality
Data Security

• Debate on whether employers owe a duty to care for employee personally identifiable information
  • Pennsylvania says no
  • California says yes
• Where will Minnesota be?
HR Technology: My Pledge

I solemnly pledge I will not say no to implementing new technology, strategy, policy, or process with a legitimate return on investment. What I will say (& do) is help your organization put a metaphorical seat belt or airbag on the new stuff to better protect the organization should questions arise later. A safer policy, piece of technology, policy, or process is a better one.
Vetting a Vendor

• Within your organization, what is the role of compliance?
• How many HR professionals serve on the product development teams?
• How do you all remain on top of the laws?
• Are you willing to make modifications to processes & other items to help me remain compliant?
• Can you keep records & archive algorithms?
• What is your experience with job studies & validation?

KEEP CALM AND DUE DILIGENCE
Chatbot Safeguards

• How have you imported compliance?
  • Keywords?
  • Concepts?
• Transcripts of conversations?
  • Flagged for HR pros?
  • How are transcripts stored?
• What is the connection between chatbot & HR human?
Vendor Contracts – Analytics

- Require vendor to follow the law
- Explain how things work
- Explain the correlations being made
  - Regular validation
  - Regular reports when algorithm is altered
  - Employer direction
- Require access to data & algorithm, including historical algorithm use
  - Understanding of data
  - Recordkeeping requirements
- Vendor will provide training & direction to make adjustments
Records

• Notice to employees or candidates
• Acceptance or acknowledgement from employees or candidates
• Analytics - Algorithm itself
  • Validation documents
    • Job studies
    • Statistics
• Results or ratings
Questions?

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