

HR Insights

What Biden's Executive Order on AI Means for Employers

On Oct. 30, 2023, President Joe Biden signed an executive order (EO) to establish artificial intelligence (AI) safety and security standards, protect privacy, advance equity and civil rights, and advocate for consumers and workers. With this new order, President Biden called upon employers to minimize harm and maximize the benefit of AI for workers regarding workplace equity, health safety, data collection, job displacement and labor standards. This is the first EO from the federal government that directly regulates the use of AI. As such, many organizations wonder how the new order may impact them. This article provides an overview of the recent EO and how it will likely impact employers.

Biden's Executive Order

Biden's recent EO seeks to build upon his administration's existing actions, including obtaining voluntary commitments from 15 leading companies, to drive safe, secure and trustworthy AI developments. The EO directs the following actions:

- Require influential AI developers to share their safety test results and other critical information with the U.S. government.
- Develop standards, tools and tests regarding AI's safety, security and trustworthiness.
- Protect against the risks of using AI to engineer dangerous biological materials.
- Protect against AI-enabled fraud and deception by establishing standards and best practices for detecting AI-generated content and authenticating official content.
- Establish an advanced cybersecurity program to find and fix critical software vulnerabilities.
- Order the development of a National Security Memorandum on AI use and security.

The EO also calls for bipartisan data protection legislation and action; provides clear guidance to address algorithmic discrimination; directs action to promote a fair, open and competitive AI ecosystem; and issues guidance for agencies' use of AI.

The Impact on Employers

The Biden administration's recent EO calls upon organizations to address potential job displacement caused by AI and urges them to take proactive measures to reduce the dangers of increased workplace surveillance and bias. It also compels organizations to support workers' ability to collectively bargain and invest in the training and development individuals need to prepare for the future workplace. Moreover, the EO directs the Department of Justice and other federal agencies to develop procedures for investigating and prosecuting AI-related civil rights violations. Therefore, employers who use AI for employment-related decisions may experience an increased compliance burden and litigation risks.

Employers may struggle to keep pace with new AI innovations as they rapidly evolve and disrupt the workforce. Additionally, employers may have to prioritize reskilling employees to ensure their workforce has the necessary capabilities to work alongside rapidly advancing AI innovations.

Many large organizations, such as Google and Meta, have already been preparing for increased regulation, so they are unlikely to experience significant changes due to this order. However, the recent EO may increase scrutiny and regulatory pressure for small and midsize organizations. As such, organizations should begin evaluating and adopting best practices for the use of AI in preparation for increased investigation and scrutiny of AI practices. Employers can consider the following best practices for AI policies in the workplace:

- Obtain employee consent.
- Have human oversight of employer decisions involving AI (e.g., hiring and recruiting).
- Create companywide AI guidelines.
- Conduct frequent bias audits.

- Educate employees about the risks of using AI.
- Notify employees before using AI for recruiting, onboarding, employee monitoring or other HR functions.

Although there are currently no federal regulations on using AI in the workplace, a handful of states and cities have issued legislation prohibiting certain practices (e.g., Maryland's Facial Recognition Technology Law prohibits employers from using certain facial recognition services). Thus, employers should stay current on any new or evolving legislation in their areas to ensure compliant AI practices.

Conclusion

Biden's recent EO is the first order to regulate employers' use of AI, likely setting the foundation for more future regulation. Savvy employers will proactively evaluate their AI practices in preparation for increased scrutiny and legislation in the long term.

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