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California's AI Hiring Rules Are Now in Effect—and New Lawsuits Expand Employer Risk

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Artificial intelligence and automated decision systems (“ADS”) have become common features of modern recruiting and hiring. As we previously discussed in *California's New AI Employment Rules and the Workday Lawsuit: What HR Needs to Know* and *New AI Hiring Rules and Lawsuits Put Employers on Notice: What HR Needs to Know*, California regulators and courts have increasingly focused on how employers use AI tools in employment decisions—and the legal risks that follow.

Since those articles were published, two developments are particularly important for employers in 2026:

> (1) California's ADS regulations under the Fair Employment and Housing Act (“FEHA”) are now in effect, and
> (2) new litigation is expanding AI-related employment risk beyond traditional discrimination theories.

California's ADS Regulations Are Now in Effect

As anticipated in our prior guidance, California's Civil Rights Council amended FEHA regulations to make clear that the use of ADS—including AI-driven tools used in recruiting, hiring, promotion, discipline, and other employment decisions—is subject to California's anti-discrimination laws. Those regulations took effect on October 1, 2025.

The regulations do not prohibit the use of AI or ADS, but they reinforce several core principles employers should already be incorporating into their compliance programs, including:

- Employers remain responsible for discriminatory outcomes resulting from AI-assisted decisions, even when tools are developed or administered by third-party vendors
- ADS-driven decisions must be job-related and consistent with business necessity if they result in a disparate impact on protected groups
- Documentation, testing, and record retention matter—particularly where employers may later need to explain how automated tools influenced employment decisions
- Vendors may be treated as agents under FEHA, increasing the importance of vendor diligence and contract governance

These themes formed the backbone of our earlier discussion of *Mobley v.*

Workday and continue to define the core anti-discrimination risks associated with AI-enabled hiring.

A New Theory of Liability for AI Hiring Tools: The Eightfold AI Consumer Reporting Lawsuit

A recently filed class action against Eightfold AI highlights a different—and potentially complementary—area of exposure for employers using AI hiring tools.

In January 2026, job applicants filed a proposed class action in California state court alleging that Eightfold's AI-generated applicant scores and rankings function as "consumer reports" under the federal Fair Credit Reporting Act ("FCRA") and California's Investigative Consumer Reporting Agencies Act ("ICRAA"). Unlike the *Workday* litigation and similar cases, which focus on discriminatory outcomes, the Eightfold lawsuit centers on process and transparency.

According to the complaint, Eightfold's platform assembles and evaluates applicant information—including data beyond the application itself—and provides employers with numerical scores or rankings that influence hiring decisions. The plaintiffs allege that applicants were not provided with disclosures, did not authorize the creation of such reports, and were not given access to or an opportunity to dispute the information before adverse hiring decisions were made.

If courts accept this theory, the implications could extend well beyond Eightfold. Any third-party AI tool that assembles applicant data and produces evaluative outputs used in employment decisions could potentially implicate consumer-reporting obligations—regardless of whether the employer believes it is primarily managing discrimination risk.

This development reinforces a theme from our prior articles: AI compliance is not limited to avoiding biased outcomes. Increasingly, courts and regulators are scrutinizing how AI-driven decisions are made, documented, and communicated to applicants.

What This Means for Employers in 2026

Taken together, California's ADS regulations, the *Workday* litigation, and the *Eightfold* lawsuit illustrate that AI-related employment risk now spans multiple legal frameworks, including:

- Anti-discrimination law (FEHA and federal civil rights statutes)
- Consumer-reporting statutes focused on notice, authorization, and dispute rights
- Broader transparency and documentation expectations tied to automated decision-making

For employers, this means that AI governance should be both outcome-focused and process-focused. In practical terms, employers should consider:

- Inventorying AI and ADS tools used at any stage of the hiring process
- Understanding what data those tools collect, evaluate, or infer
- Evaluating whether AI outputs could be characterized as reports or scores that materially influence employment decisions
- Reviewing vendor agreements, disclosures, and internal workflows to ensure alignment with both anti-discrimination and procedural compliance obligations

Bottom Line

AI-enabled hiring tools remain permissible and valuable, but the legal landscape governing their use continues to evolve. California's ADS regulations confirm that AI is squarely within the scope of employment discrimination law, while emerging litigation like the Eightfold case signals that procedural compliance and transparency may be the next major frontier of AI-related employment risk.

Employers that treat AI governance as a holistic compliance issue—rather than a narrow technology concern—will be best positioned to manage these overlapping risks in 2026 and beyond.
