

CLIENT ALERT

EEOC Joins the List of Executive Branch Agencies Launching Initiatives on Artificial Intelligence

November 17, 2021

On October 28, 2021, U.S. Equal Employment Opportunity Commission (EEOC) Chair Charlotte Burrows announced that the EEOC is launching an initiative to ensure that artificial intelligence (AI) and other emerging tools used in hiring and other employment decisions comply with federal civil rights laws that the EEOC enforces. In her announcement, Chair Burrows explained the initiative will examine how technology is changing the way employment decisions are made, and aims to guide applicants, employees, employers, and technology vendors in ensuring that these technologies are used fairly in accordance with the law. More specifically, through the initiative, EEOC plans to: (1) establish an internal working group to coordinate the agency's work on the initiative; (2) launch a series of listening sessions with key stakeholders about algorithmic tools and their employment ramifications; (3) gather information about the adoption, design, and impact of hiring and other employment-related technologies; (4) identify promising practices; and (5) issue technical assistance to provide guidance on algorithmic fairness and the use of AI in employment decisions. This initiative highlights the EEOC's renewed focus on AI and builds on prior efforts undertaken by the Agency to understand the far-reaching impacts of AI in the employment context. It also highlights the challenges associated with applying the Uniform Guidelines on Employee Selection Procedures (UGESP), promulgated decades before the advent of AI, to the modern workplace.

The EEOC's initiative is consistent with a flurry of recent efforts by other Executive Branch agencies to promote trustworthiness, accountability, and fairness in these powerful AI technologies, including the following:

On October 27, 2021, the U.S. Food and Drug Administration, in collaboration with Health Canada, and the UK's Medicines and Healthcare products Regulatory Agency, published Guiding Principles for the use of AI/ML in medical devices;

On October 22, 2021, the White House Office of Science and Technology Policy announced that it intended to work with partners and experts across the federal government, academia, civil society, the private sector, and communities all over the country to develop an AI bill of rights to clarify the rights and freedoms expected from data-driven AI technologies;

On August 27, 2021, the Securities and Exchange Commission (SEC) issued a request for information concerning, among other things, market participants' increasing use of AI to create investment strategies and drive customers to higher-revenue products. The SEC's action followed a request for information from a group of federal financial regulators that closed earlier this summer concerning potentially new AI standards for financial institutions;

Also in August, the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) announced a preliminary evaluation to look at the safety of AI to steer vehicles. NHTSA is reviewing the causes of 11 Tesla crashes that have happened since the start of 2018, in which Tesla vehicles crashed at scenes where first responders were active, often in the dark, with either Autopilot or Traffic Aware Cruise Control engaged; and

In July, the Commerce Department’s National Institute of Standards and Technology (NIST) issued a [request for information](#) to help develop a voluntary AI risk-management framework.

Crowell & Moring continues to monitor developments in AI.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Kate M. Growley, CIPP/G, CIPP/US

Partner – Washington, D.C.
Phone: +1.202.624.2698
Email: kgrowley@crowell.com

Adelicia R. Cliffe

Partner – Washington, D.C.
Phone: +1.202.624.2816
Email: acliffe@crowell.com

Michael K. Atkinson

Partner – Washington, D.C.
Phone: +1.202.624.2540
Email: matkinson@crowell.com

Kris D. Meade

Partner – Washington, D.C.
Phone: +1.202.624.2854
Email: kmeade@crowell.com

Trina Fairley Barlow

Partner – Washington, D.C.
Phone: +1.202.624.2830
Email: tbarlow@crowell.com

Laura J. Mitchell Baker

Counsel – Washington, D.C.
Phone: +1.202.624.2581
Email: lbaker@crowell.com

Michelle D. Coleman

Counsel – Washington, D.C.
Phone: +1.202.654.6708
Email: mcoleman@crowell.com