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**Domo Arigato Mr. Roboto:
 An Examination of the
 Impact of Artificial
 Intelligence on the Workplace**

Presented by: **Katie G. Campbell**


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- *Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Katie Campbell, or another licensed attorney.

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Agenda template


What is AI?


How does it fit into the workplace?

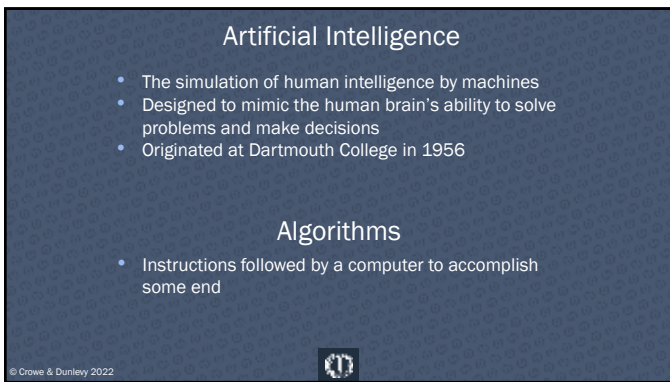

The EEOC's Response

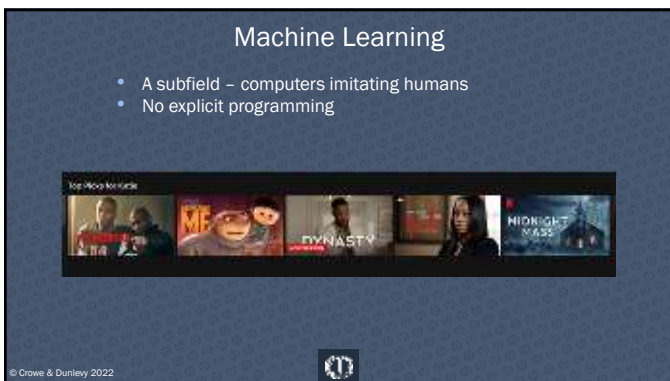

Emerging State Law


Practical Considerations

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Natural Language Processing

- Linguistics + computer science + artificial intelligence
- Understanding the words and the meaning of the words
- Processing human language

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AI in the Workplace

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Hiring

- Resume review
- Interviewing
- Video software evaluation
- Pre-employment testing
- “Job fit” scores or “cultural fit” scores

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Productivity

- Automation – operates to free up human workers to perform more complex tasks
 - Save time on “busy work”
 - Chatbots
- Providing Insight to Management
 - Keystroke monitoring
- Data Analytics



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Safety & Security

- Use of Drones
 - Bird's eye view of the worksite
- Equipment Testing
 - Hazard identification
- Surveillance
 - Crime detection
 - Security robots



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Specific Industries

- Healthcare
 - Precision medicine
 - Robot assisted surgeries
- Financial Services
 - Virtual advising via chatbots
 - Fraud detection

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The EEOC's Response

May 12, 2022 Guidance

- Focused on the intersection between the use of computer-based technologies and the ADA
- Concerned with disadvantaging disabled individuals
 - Could create legal liability
- Contemplates how the use of AI and algorithms could violate the ADA

Three Danger Zones for ADA Violations

- Failing to provide a reasonable accommodation
- Screening out individuals with disabilities, even if those individuals could perform the job with a reasonable accommodation
- The tool itself violates the prohibition against disability-related inquiries and medical examinations

The Need for Reasonable Accommodations

- Employers must promptly respond to requests for reasonable accommodations
 - Remember: people don't have to specifically use the words "reasonable accommodation"
- Medical information must be kept confidential
- Even if tests are administered by other entities, accommodations are a must
- Examples

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Screening Out

- When a job applicant or employee is prevented from meeting or exhibits a lower performance on a selection criteria and loses out on a job opportunity because of it
- Problematic when the individual could perform the functions of the job with an accommodation
- Examples
- Are there bias free tools?

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How to Prevent a "Screening Out" Issue

- Work closely with the vendor to determine whether the tool was developed with ADA considerations in mind
- Take disability-related issues under advisement if developing your own tool
- Consult experts such as psychologists
- Clearly indicate the availability of reasonable accommodations and procedures for requesting an accommodation
- Be transparent and provide as much information as possible
- Stick to tools that measure capabilities truly necessary for the job

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Prohibitions Against Disability-Related Inquiries

- Does the program ask questions likely to elicit information about a disability?
- Does the assessment ask for information related to physical or mental health or any potential impairments?
- Even if it does not violate the prohibition, watch out for other ADA violations

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Promising Practices – Reasonable Accommodations

- Adequate staff training on reasonable accommodation requests and processing of those requests
- Adequate staff training on alternative means of evaluating applicants when an issue arises
- Close coordination with an entity contracted to administer such tools to ensure accommodation requests are timely addressed

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Promising Practices – Tools that could Screen Out

- Utilize tools designed to be accessible to as many individuals as possible
- Make it clear that reasonable accommodations are available, and provide clear instructions on how to request an accommodation
- Clearly describe what the tool is designed to assess, how it will assess those traits, and the variables or factors that might affect a rating

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Promising Practices – Tools that Assign Poor Rankings to Certain Individuals

- Ensure that tools only measure things that are truly necessary for performance of the job functions
- Ensure those abilities that are truly necessary for the job are measured directly

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Department of Justice Guidance

- Issued guidance the same day as the EEOC
- More simplified, but the idea is the same:
 - Test skills needed for the job, not disabilities
 - Provide reasonable accommodations when appropriate

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State Law Response

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Illinois State Artificial Intelligence Video Interview Act

- Went into effect in 2020
- Applies to every employer who uses an artificial intelligence-based tool to analyze video interviews of applicants for roles in Illinois
- Notice and consent required
- Confidentiality
- Applicant's right to request deletion

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Maryland

- Restrictions on use of facial recognition software in pre-employment contexts
 - Facial templates
- Notice and consent
- Contents of consent

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Oklahoma

- Three pieces of failed legislation from this year related to AI
 - The Filter Bubble Transparency Act of 2022
 - Legislation concerning algorithms potentially harmful to human life
 - The Insurance Consumer Rights Act

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Practical Considerations

Things to Consider

- Is the tool truly benefitting the organization?
- Does use of the tool create a risk of discrimination?
- Should you conduct a bias audit?
- For employers with operations in many states, are there state law considerations to be concerned with?
- Lastly, is a human touch best?

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