

EEOC Deal In AI Suit May Be Tip Of Enforcement Iceberg

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Michael Schmidt was quoted in *Law360* discussing the EEOC's interest in artificial intelligence when used for hiring. Recently, a tutoring service company was accused of using AI software to screen out older jobseekers, resulting in a \$3650,000 settlement between the EEOC and the company. On August 9, 2023, the U.S. Equal Employment Opportunity Commission and iTutorGroup, an English-language learning platform, presented the proposed consent decree to a federal court in New York for endorsement. If approved, this agreement would end the commission's lawsuit, which asserts that the China-based tutoring provider, in violation of the Age Discrimination in Employment Act, wrongfully utilized artificial intelligence technology to turn down older job applicants unjustly. "The actions the EEOC have taken make it clear that AI will be a priority in line with a broader trend taking place across the federal government and on the state level to scrutinize the use of AI in different contexts. The EEOC has signaled pretty clearly that it's going to be focused for the next few years on AI and the use of AI as it relates to Title VII and the statutes that it enforces. And I think this settlement, which I believe is the first settlement [and] the first enforcement proceeding in the AI area, is a message to confirm that," said Mike. He sees similarities with AI in the workplace to the early days of social media use and noted, "they are both examples of existing laws being asserted to fit the use of new technologies." "The important takeaway is that we are applying the old rules to new platforms and to new modes of communication. It's very much the same kind of mindset here, from the EEOC perspective: 'We're not changing Title VII, we're not changing what the rules are. We're just applying those rules to this new application [and] to this new mode ... of decision-making, which is AI,'" he said.

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