

# CLIENT ALERTS

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## Employer Responsibilities Under AI Executive Order and New DOL Principles

### Client Alert

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The Biden Administration's recent Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (AI) set forth a comprehensive framework aimed at guiding the development and deployment of AI technologies in the U.S., including in the workplace.

Yesterday, the U.S. Department of Labor (DOL) released eight companion principles to further guide employers and AI developers:

1. Empowering workers
2. Ethically developing AI
3. Establishing AI governance and human oversight
4. Ensuring transparency in AI use
5. Protecting labor and employment rights
6. Using AI to enable workers
7. Supporting workers impacted by AI
8. Ensuring responsible use of worker data

The executive order and the DOL principles together seek to strike a balance between innovation and the safeguarding of workers' rights, privacy, and safety. For employers, this means a new set of considerations surrounding the adoption and use of AI, summarized below.

### **Ensuring Worker Involvement and Transparency**

One of the primary responsibilities urged in the executive order and the DOL principles is the need for employers to actively involve workers in the AI development process. This includes:

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- Informing and Consulting Workers: Employers should ensure that workers are aware of and have input into the AI systems being developed and used in their workplaces. This transparency is crucial in building trust and ensuring that AI technologies are developed with the end-users in mind.
- Genuine Participation: Particularly for underserved communities, workers should have genuine opportunities to influence the design, testing, and deployment phases of AI systems. Employers must create avenues for feedback and incorporate this input meaningfully into their AI initiatives.

### **Ethical AI Development**

The executive order and DOL principles dictate that AI systems should be designed and developed ethically, which includes:

- Fair and Non-Discriminatory Practices: Employers must ensure that AI technologies do not perpetuate biases or discrimination. This involves rigorous testing and validation processes to identify and mitigate any potential biases in AI algorithms.
- Protecting Worker Rights: AI systems should be designed to uphold and respect labor rights, including the right to organize, health and safety protections, and anti-discrimination measures. Employers must ensure that AI is not used to undermine these rights.

### **Robust Governance and Oversight**

A critical component of the executive order and the DOL principles is the establishment of clear governance frameworks for AI:

- Establishing AI Governance Structures: Employers are tasked with setting up governance systems that include clear procedures for the oversight and evaluation of AI systems. This involves creating roles and responsibilities for AI governance within the organization.
- Human Oversight: Continuous human oversight is necessary to ensure AI systems are functioning as intended and are not causing harm. Employers must designate personnel to monitor AI operations and intervene when necessary.

### **Promoting Transparency and Accountability**

Transparency is a key theme of both the executive order and the DOL principles, including:

- Disclosure of AI Use: Employers should be transparent with both workers and job applicants about the AI tools in use, including their purposes and potential impacts. This includes clear communication about how AI decisions are made and how they affect employees.
- Accountability Mechanisms: Employers need to establish mechanisms to hold AI systems accountable. This includes auditing AI outcomes regularly and being prepared to address any adverse effects on workers.

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### **Data Privacy and Protection**

The executive order and DOL principles place a strong emphasis on the responsible handling of worker data:

- **Data Minimization**: Employers should limit the data collected by AI systems to what is strictly necessary for legitimate business purposes. Over-collection of data must be avoided to protect worker privacy.
- **Secure Data Handling**: Employers must ensure that all worker data used by AI systems is securely stored and processed. This includes implementing robust cybersecurity measures to prevent data breaches and unauthorized access.

### **Supporting Workforce Transitions**

As AI technologies continue to evolve, there will be shifts in job roles and functions. The executive order and principles both highlight the need for employers to:

- **Upskill and Reskill Workers**: Employers should provide training and development programs to help workers adapt to changes brought about by AI. This includes offering upskilling and reskilling opportunities to prepare employees for new roles.
- **Support During Transitions**: Employers should support workers during transitions caused by AI, ensuring they have the resources and assistance needed to navigate changes in their job functions.

In conclusion, the Biden Administration's executive order, along with the Department of Labor's newly issued principles, establishes a groundbreaking standard for AI in the workplace. Employers are now called upon to actively involve their workforce, ensure transparency in AI use, uphold ethical practices, safeguard data privacy, and support employees through technological transitions.

Although these guidelines are not technically mandatory, employers using AI should be prepared for increased scrutiny by the DOL and related agencies. Where the principles have been ignored, it is more likely that a legal violation will be asserted.

- The full Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence can be found by [clicking here](#).
- The principles developed by the Department of Labor, titled "Artificial Intelligence and Worker Well-Being: Principles for Developers and Employers," can be found by [clicking here](#).
- DOL guidance regarding AI in the context of the FLSA, FMLA, and other federal standards can be found by [clicking here](#).
- Federal contractors should also be aware of DOL guidance on Artificial Intelligence and Equal Employment Opportunity for Federal Contractors can be found by [clicking here](#).

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Butzel's Artificial Intelligence team and our Labor and Employment attorneys are here to guide you through the assessment and mitigation of legal risks, including those related to state and federal employment laws, regulations, and guidelines, as you evaluate AI solutions for your business.

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