

Businesses using automated-decision systems in hiring and other employment decisions face increased liability and litigation risks under new rules banning discriminatory technology in California workplaces

Lexology Pro
09.30.2025

In a conversation with *Lexology Pro*, Sheppard Mullin partner Douglas Yang discussed California's groundbreaking regulations banning discriminatory AI in employment decision-making. Yang emphasized that the state's Civil Rights Council (CRC), the legislature, and the California Privacy Protection Agency (CPPA) are advancing parallel but distinct tracks to workplace AI oversight. He noted that the CRC's definition of "automated-decision system" (ADS) is extremely broad, capturing any computer-assisted ranking or assessment tool, which could especially impact smaller employers who may not even realize their systems qualify as regulated ADS. Yang warned that many businesses risk enforcement actions simply due to a lack of awareness about the scope of their tools.

Yang further commented on the regulatory approach, highlighting that the CRC's stance on AI bias is not entirely new but extends liability to third-party vendors and agents, making vendor management a critical compliance issue. He advised employers to secure indemnity defenses and contribution rights in contracts with AI vendors to mitigate prospective litigation risks as the regulations introduce expanded obligations and record-retention requirements. Regarding anti-bias testing, Yang acknowledged the lack of clear guidance from regulators and suggested that any standards will likely evolve over time, driven by industry best practices. Until further clarity emerges, he stressed the importance of establishing internal protocols for vetting, piloting, and auditing AI tools to adjust proactively to the rapidly changing regulatory landscape.

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