AI on the Job: How to Stay Ahead of Employment and Data Privacy Risks

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Today's Presenters

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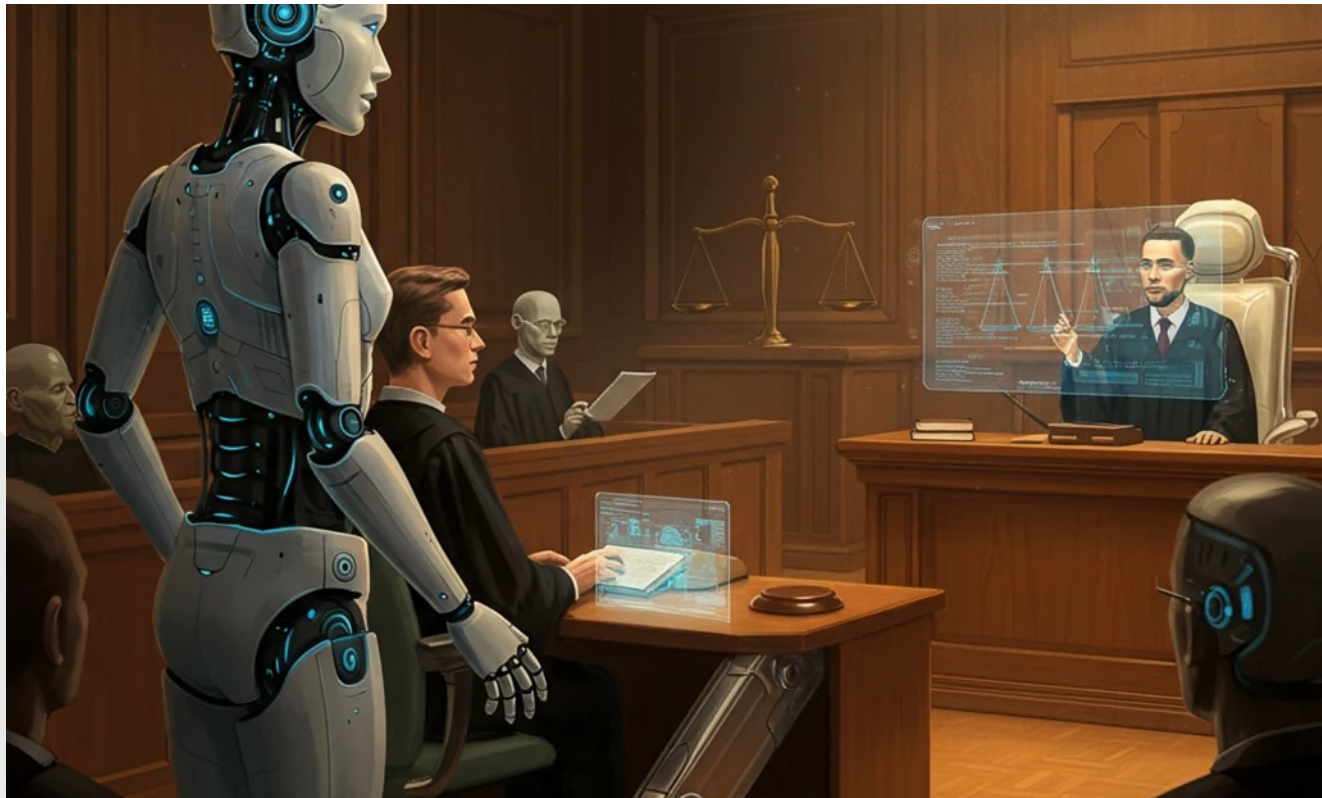
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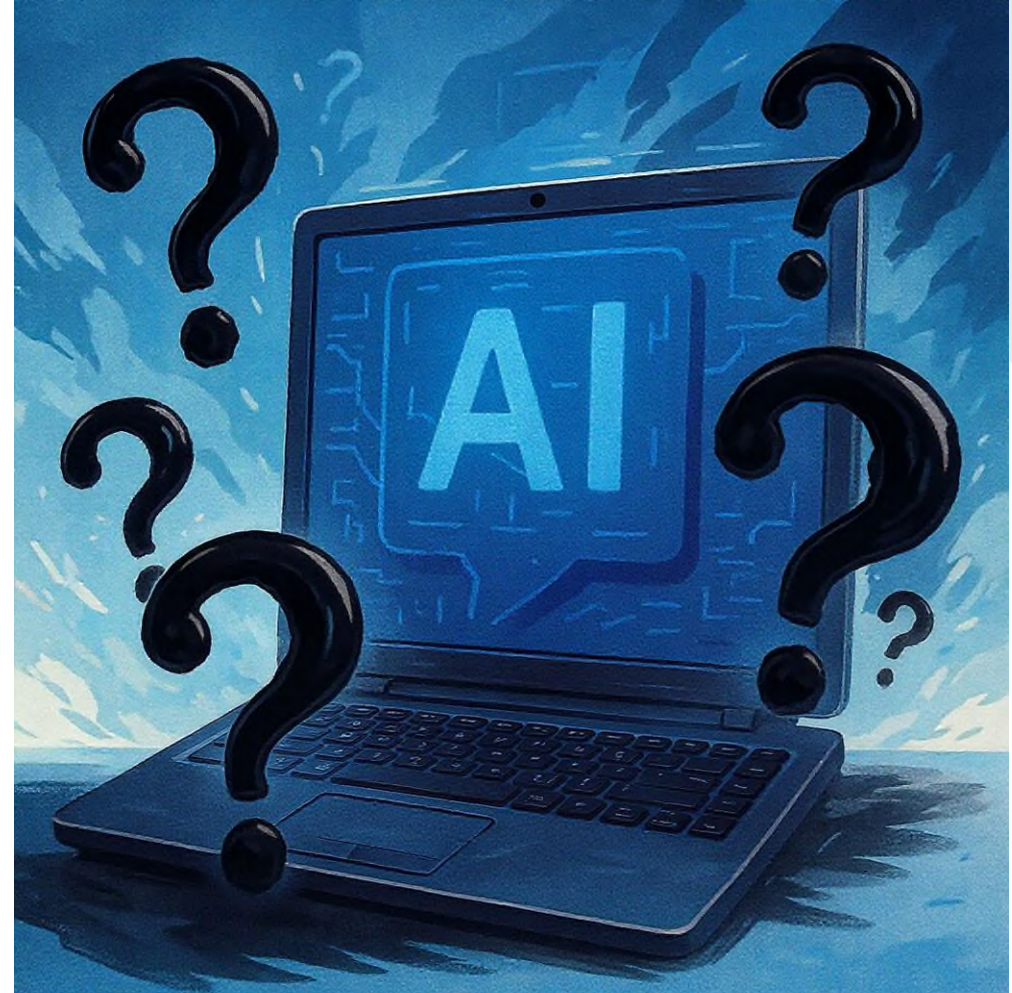**Partner, AI Practice Group Co-Chair**

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Agenda

Primer: AI

What is AI?

The term "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.

Understanding AI

Machine Learning

Simple Supervised Learning

A → Algorithm → B

E.g., Realtime deposition reporting.
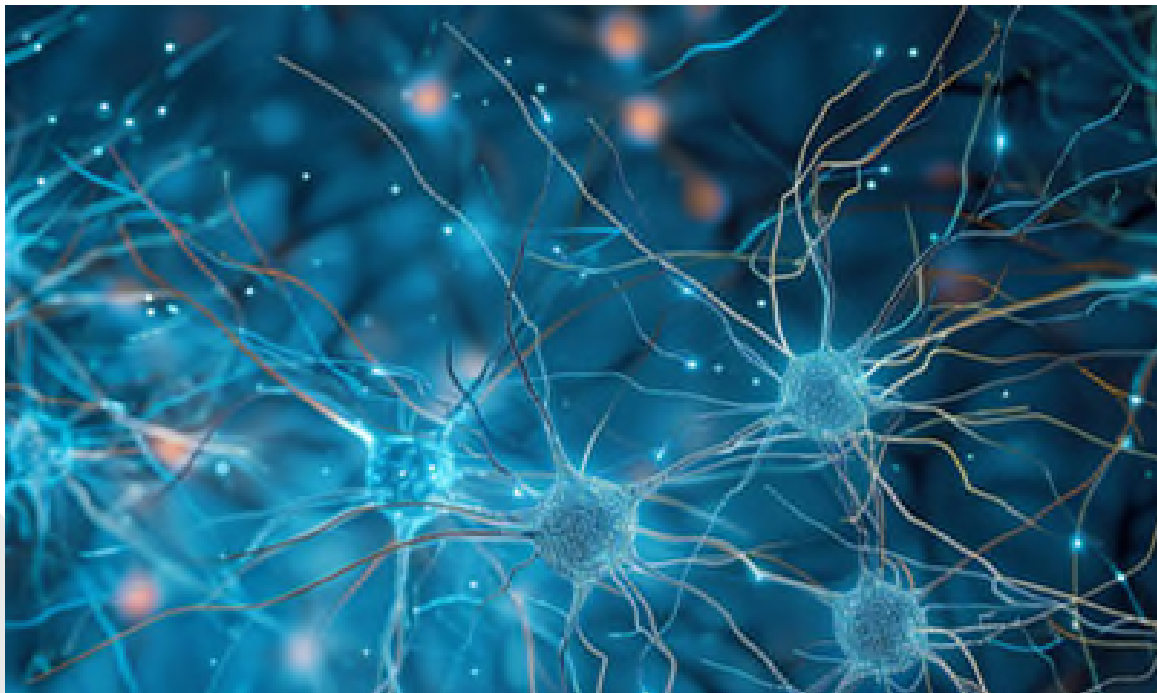

Deep Learning

A → Neural Network → B

E.g., ChatGPT

Deep Learning

Mimicking the human brain

"Deep learning allows computational models that are composed of multiple processing layers to learn representations of data with multiple levels of abstraction. . . . Deep learning discovers intricate structure in large data sets by using the backpropagation algorithm to indicate how a machine should change its internal parameters that are used to compute the representation in each layer from the representation in the previous layer."

Common AI/Deep Learning Terms

- **Generative AI**
- **Hallucinations**
- **Large Language Models**
- **LLM Bias**
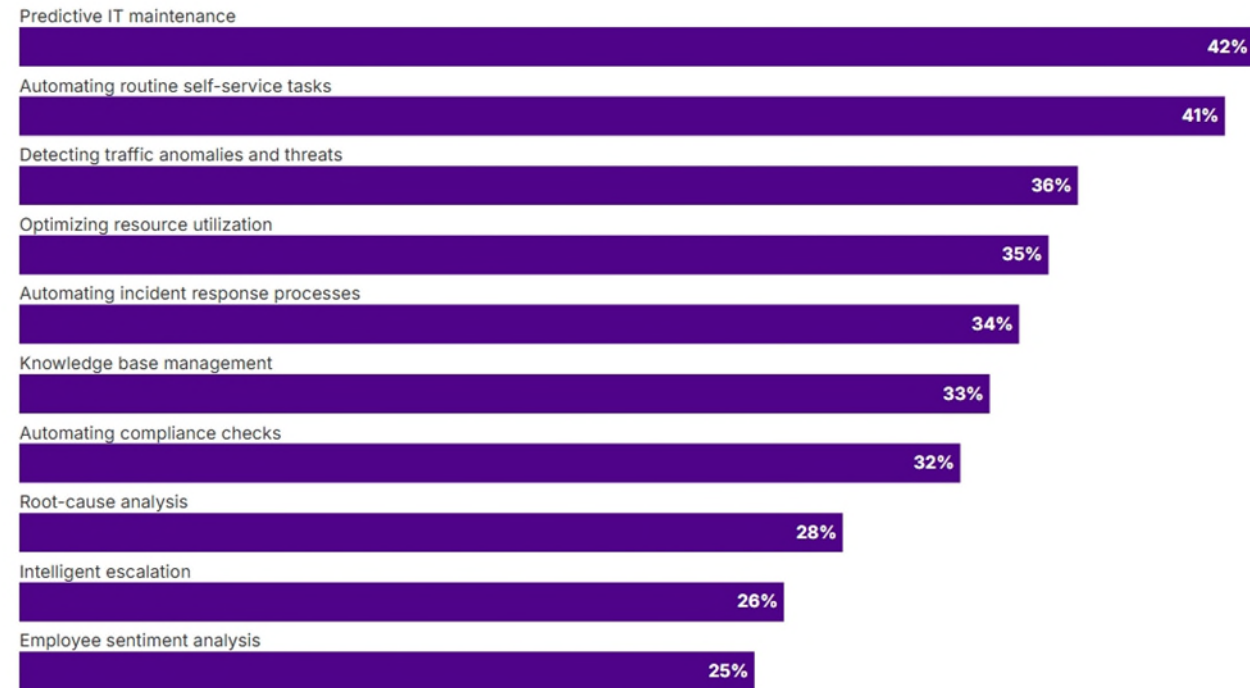- **Robotics/Automation**
- **Use Case**

What Are Companies Using AI For?

AI and automation use in IT is still uneven

Q: In which of these areas does your organization use AI and / or automations?

| Area	Percentage
Predictive IT maintenance	42%
Automating routine self-service tasks	41%
Detecting traffic anomalies and threats	36%
Optimizing resource utilization	35%
Automating incident response processes	34%
Knowledge base management	33%
Automating compliance checks	32%
Root-cause analysis	28%
Intelligent escalation	26%
Employee sentiment analysis	25%

2025 Technology at Work Report | Ivanti • Respondents could select multiple options.
Responses from IT professionals (n = 1,251).

2023 LexisNexis Study

Top 5 Reasons to Use AI
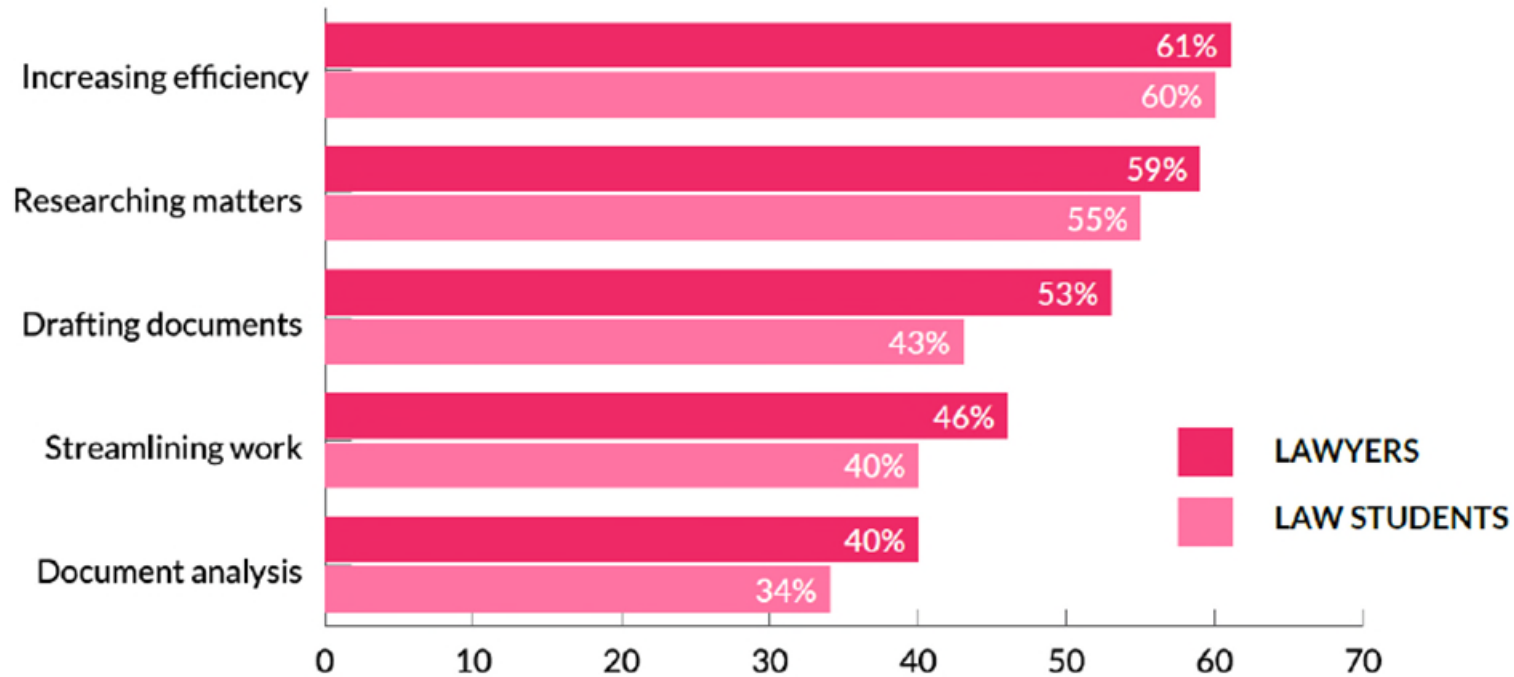
What do you believe are the biggest benefits of using AI in the workplace?

AI: Use Cases

Role of AI in HR and Employment Decisions

Resume Screening and Candidate Selection

Performance Monitoring and Predictive Analytics

Employee Engagement, Onboarding, Training

Automated Decision-Making in Employment Actions

Role of AI in Legal Departments

- **Review and Manage Contracts**
- **Summarization of Documents**
- **Legal Research**
- **Drafting Policies**
- **Conducting Investigations**
- **Litigation Support**

CoCounsel
Part of Thomson Reuters

Harvey

Benefits of Using AI in HR and Legal Departments

- **Increased Efficiency and Productivity**
- **Cost Savings**
- **Tailored / Personalized Content**
- **Data-Driven Insights**
- **Faster Innovation and Enhanced Creativity**
- **Improved Decision-Making**

What is your department using or thinking of using?

AI Risks for Employers

Risks of Using AI

- **Overreliance on AI**
- **Security and Privacy Concerns**
- **Erosion of Human Creativity**
- **Incorrect Results**
- **Ethical Risks**
- **Legal Concerns**
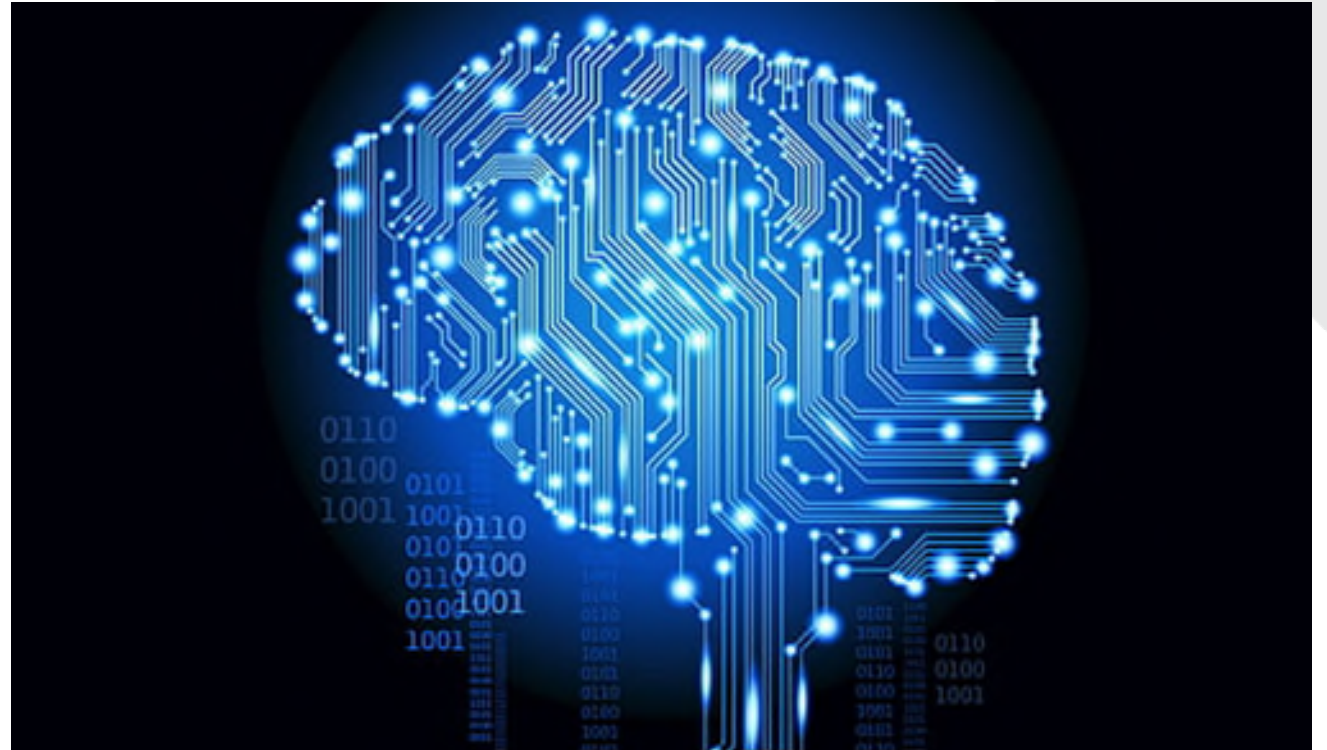
Data Security and Privacy Concerns
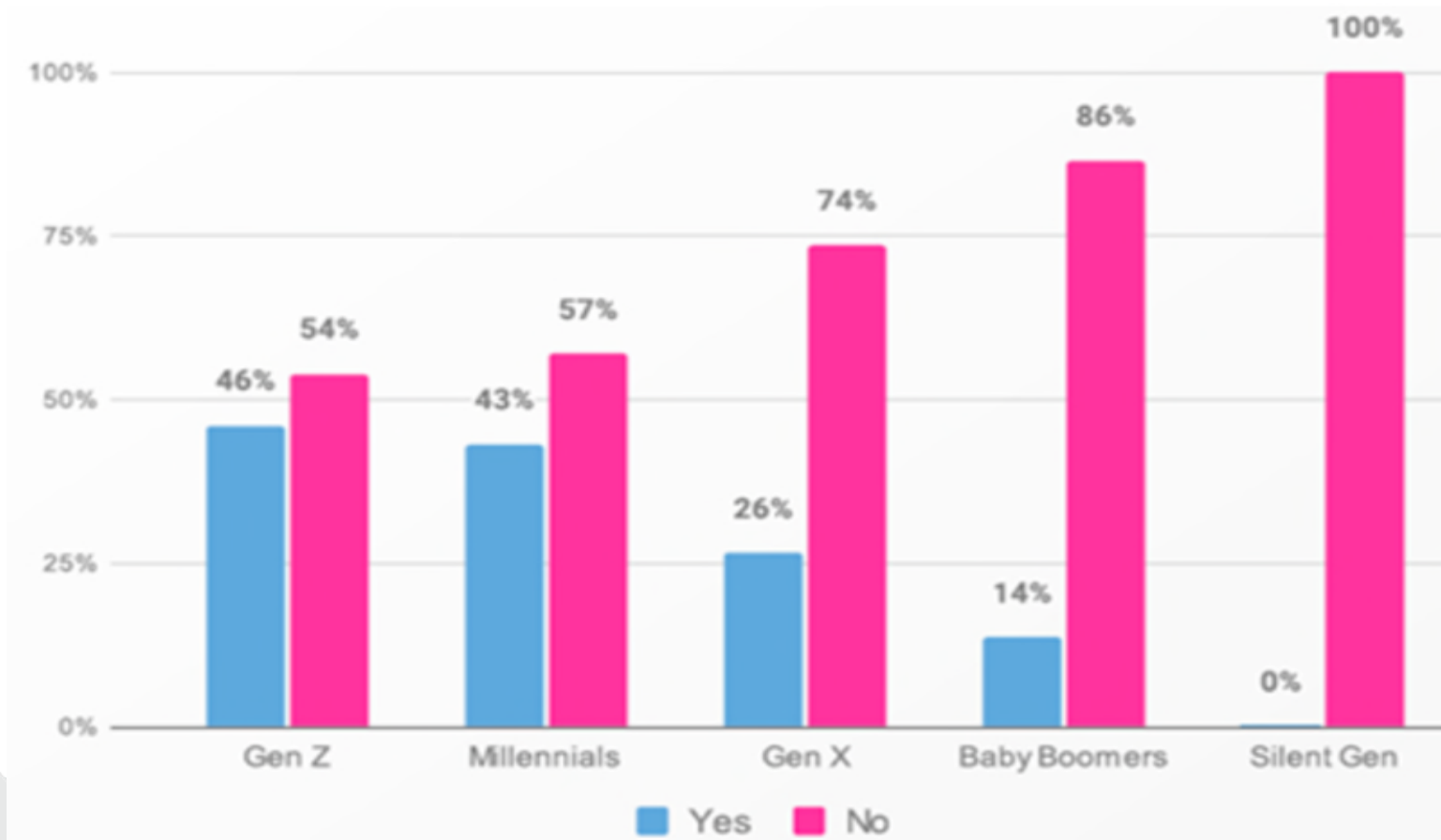
Employees that share work information with AI tools without their employer's permission by generation. Source: CybSafe

Data Security and Privacy Concerns

Personal Information = GDPR, CCPA, HIPAA

Confidential or Proprietary Business Information

AI Tools Retaining Data to Train AI Tool

Employee Profiling

Ethical Concerns: Bias

- March 7, 2024 UNESCO study: LLMs and Gender Bias

- August 28, 2024 Nature study: LLMs and Dialect Preferences

- July 10, 2020 Brookings Institute study: AI financial tools highlight socioeconomic inequalities

EEOC Guidance on AI Usage

- Is the tool job-related and consistent with business necessity?

- Is the interface accessible and are reasonable accommodations available?

- Are materials presented to job applicants / employees in alternative formats?

- Did the vendor attempt to determine whether its algorithm disadvantages certain individuals?

Bias in AI Decision-Making and Legal Risks

EEOC v. iTutorGroup, Inc. – **Complaint alleged hiring software automatically rejected older job applicants violating ADEA**

- Settled for $365,000 with injunctive relief

Mobley, et al. v. Workday – **Complaint alleges AI-based applicant screening tools, including personality and cognitive tests, are biased on the basis of race, age, and disability**

- Collective Action pending

What are your biggest concerns regarding risks of AI?

AI: Regulatory Landscape

Overview: Regulatory Landscape

U.S. States:
CA, CO, UT

NYC Local
Law 144

EU:
Artificial Intelligence Act

International
AI Frameworks

U.S. Federal
Beautiful Bill Moratorium

Overview: U.S. States
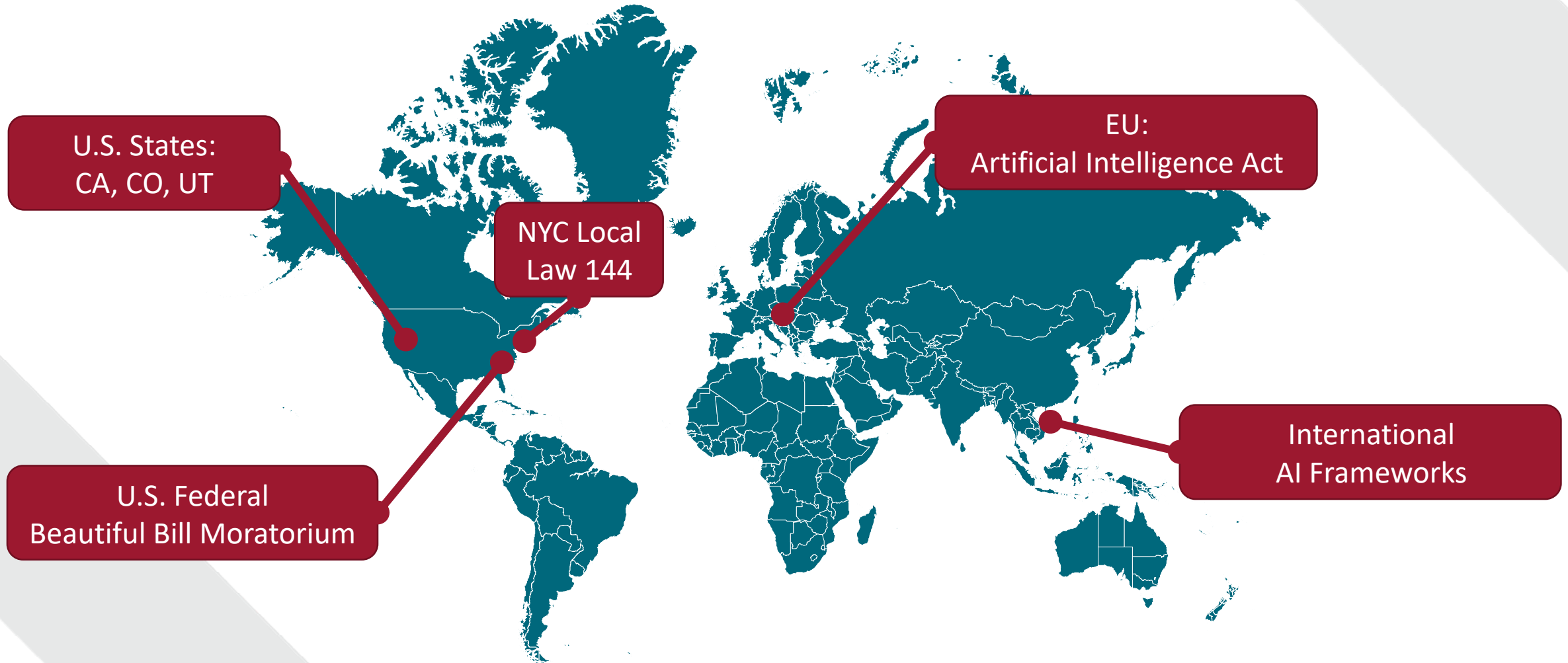
Key:
- ■ Enacted AI laws
- ■ Active AI bills
- ■ Failed / Inactive AI bills
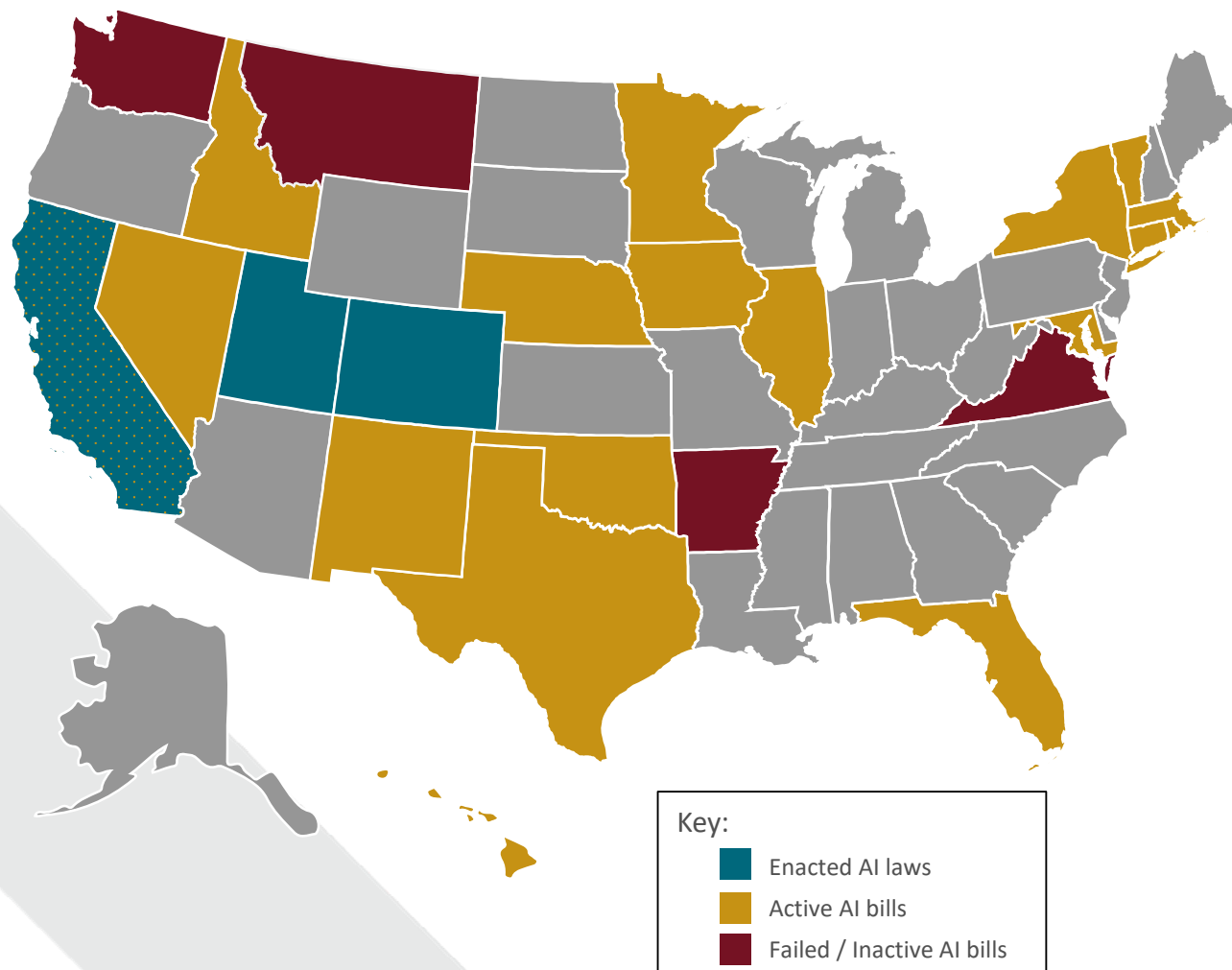
- Use of AI for hiring and in employment contexts
- Consumer protections
- Education and Training
- Health and Insurance
- Deceptive media (elections) and criminal uses (e.g., "deepfake" impersonation)
- Studies and AI Task Forces

State-Level Legislation

California
- More focused on social media types of AI uses
- AI "watermarks" and detection tools
- Unpacking the "black box"—AI developers accountable for disclosing training dataset information

Colorado
- Most omnibus-type of AI-specific law to-date
- Regulate "high-risk" AI systems that make "consequential decisions"
- Many requirements around disclosures of AI, and conducting risk-assessments

Utah
- Very active in AI regulation
- Requirements to provide prominent disclosures during "high-risk AI interaction"
- SB226 create statutory safe harbor for disclosure of AI

Virginia
- HB 2094 many similarities to CO
- Vetoed by Governor: *"[T]here are many laws currently in place that protect consumers and place responsibilities on companies relating to discriminatory practices, privacy, data use, libel, and more."*

Developments in State-Level AI Legislation

Laws regarding AI hiring tools

- **NYC Local Law 144:** Prohibits using automated employment decision tool unless subject public bias audit, and notice provided to candidates

- **Maryland HB 1202:** prohibits employers from using facial recognition technology during pre-employment job interviews without the applicant's consent

- **Illinois HB 3773**: Must ensure use of AI in hiring does not cause discrimination; and must notify employees of AI use in connection with employment decisions

Other issues to watch
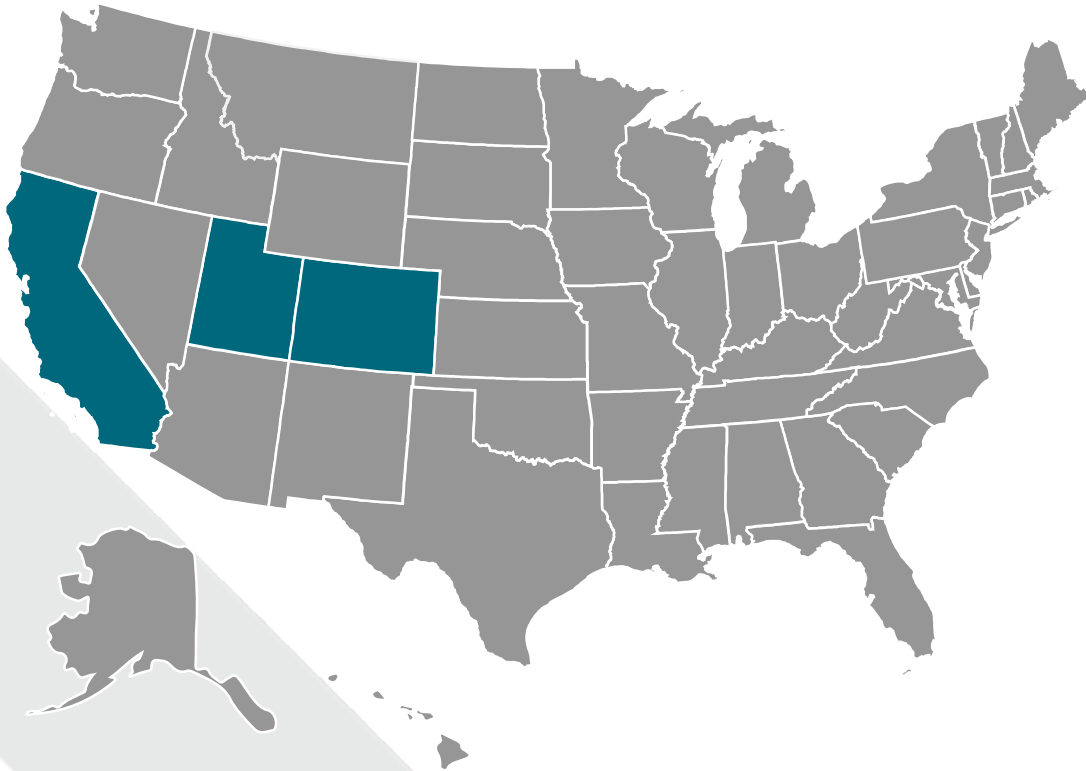
- **Interplay with data privacy laws:** e.g., the California Privacy Protection Agency rulemaking on ADMT, cybersecurity audit, risk assessment regulations

- **AI regulatory sandboxes:** inspired by models to test financial regulations, growing use worldwide in AI space; Utah law created Office of AI Policy, to create an "Artificial Intelligence Learning Laboratory Program" (AI Lab)
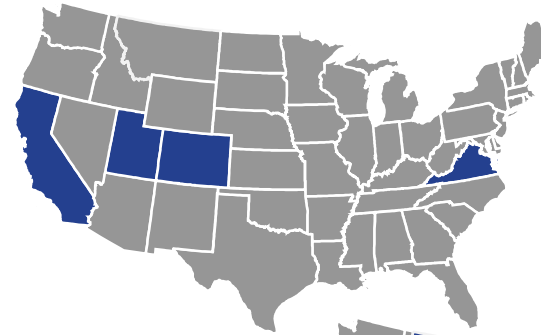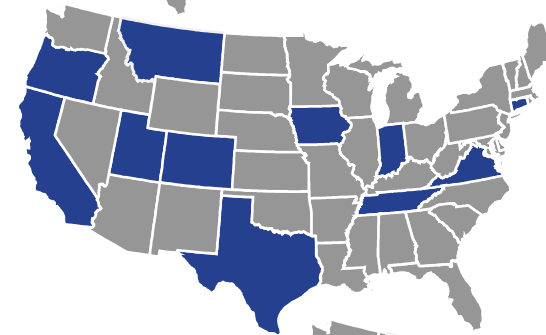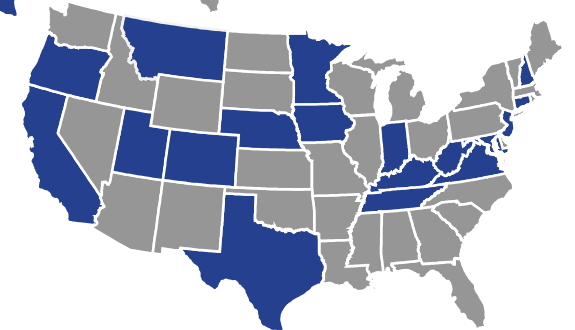
Employee Privacy Protections

Adapting to new AI considerations

Personal Information

Use of automated screening tools

Employment Records

Performance evaluation

Legal Conduct On and Off Duty

Varies by Location and Type of Business

Health and Genetic Information

Workplace Surveillance

Monitoring activity and productivity

Biometric Information
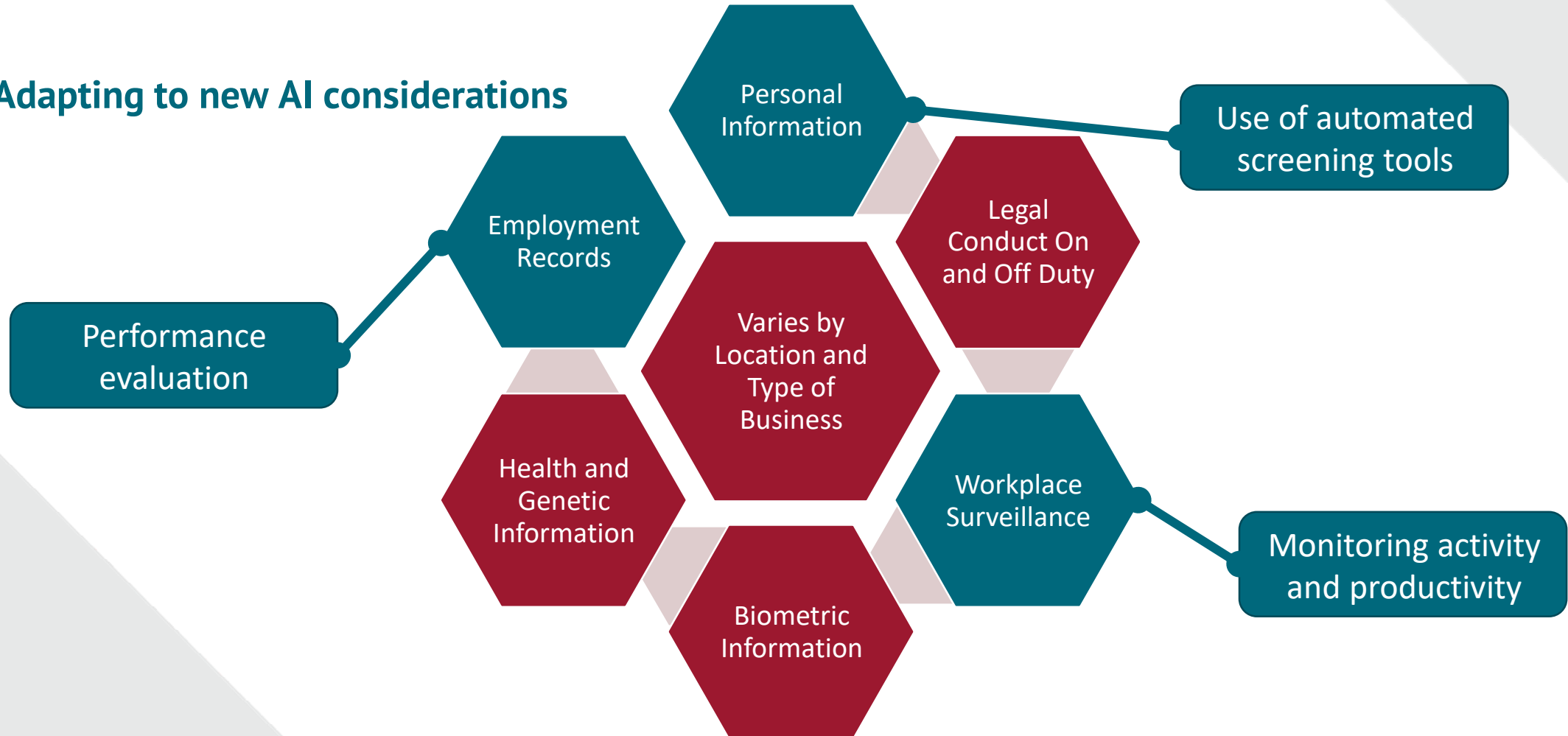
AI and Data Privacy

Examples

Bias and Discrimination

Using AI to screen resumes for experiences appropriate to role:

Derek L. Moblry v. Workday Inc. (U.S.D.C / N.D.C.A.), Feb. 2023

Screening tool allegedly disproportionately disqualified African American individuals over 40 w/ disabilities.

Employee Monitoring

Delaware Code Title 19

- Notify beforehand; obtain acknowledgement

Connecticut Law

- Also requires prior written notice for electronic monitoring

- Prohibits employers from surveillance in areas designated for health or personal comfort

Social Media

- Prohibition on employers from requesting usernames, passwords, and other credentials for accessing personal social media accounts

- Most states have some form of this prohibition

- AI enable ability to unilaterally screen and analyze accounts without permission

U.S. Federal AI Regulation

Congress

- Same with AI as Data Privacy: little consensus, unlikely to pass (only ~30 AI bills this session)
- The big focus right now is on **the Moratorium** in the "One Big Beautiful Bill Act"
  - House included provision to preempt all states from enforcing AI for 10 years
  - Passed and now under consideration in Senate; but many challenges ahead

Trump Executive Order

"Removing Barriers to American Leadership in Artificial Intelligence"

- Streamline AI governance and reduce federal oversight ("flexible" regulatory environment)
- Shift in how "bias" "disinformation" and "national security" are defined
- Unilateral approach without commitments to international cooperation

U.S. Federal AI Regulation

Agency-driven for foreseeable future

EEOC — Equal Employment Opportunity Commission

- Has started to bring enforcement actions under nondiscrimination laws when AI tools—either deliberately or inadvertently—reject candidates based on protected characteristics
- iTutorGroup settlement for allegedly programming its recruitment tool to auto-reject older applicants

FTC — Federal Trade Commission

- Focus largely on the AI developers – claims about AI, its effectiveness, whether it can be misused for fraud and whether you've mitigated risks
- However, same considerations apply to businesses that use AI tools—employees must know how to properly use tools

CFPB — Consumer Financial Protection Bureau

- Anti-discrimination law requires companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse actions
- Heightened focus on use of AI and that "black-box model" does not absolve companies of responsibilities

Other Information and Looking Ahead

International

- **EU AI Act** classifies AI use in employment as high-risk, requiring particular care when AI systems used for making decisions about candidates and personnel (was first part of rolling out the Act from 2025 to 2027)
- **Internationally** many countries are forming cooperative groups and coalitions to align on the safe development and use of AI

What to watch for

Primary use cases remain in focus
- Hiring and screening
- Monitoring
- Personnel management

Key practices to have in place
- Transparency
- Risk Assessments
- Human Oversight
- Data Management
- Workers' Representatives

How is your company dealing with ever-expanding regulatory landscape?

Implementing AI in the Workplace

How Does My Company Get Started with AI?

- **Create a Governance Committee**
- **Draft an AI Policy**
- **Identify Use Cases**
- **Create a Risk Assessment Process**
- **Train Your Employees**

Your Employees Are Probably Already Using AI (2025 Ivanti Study)

Nearly 1 in 3 workers keep AI use a secret

Q: Do you keep your use of certain AI productivity tools at work a secret from your employer?

👤 = 1% 👤 Yes 👤 No
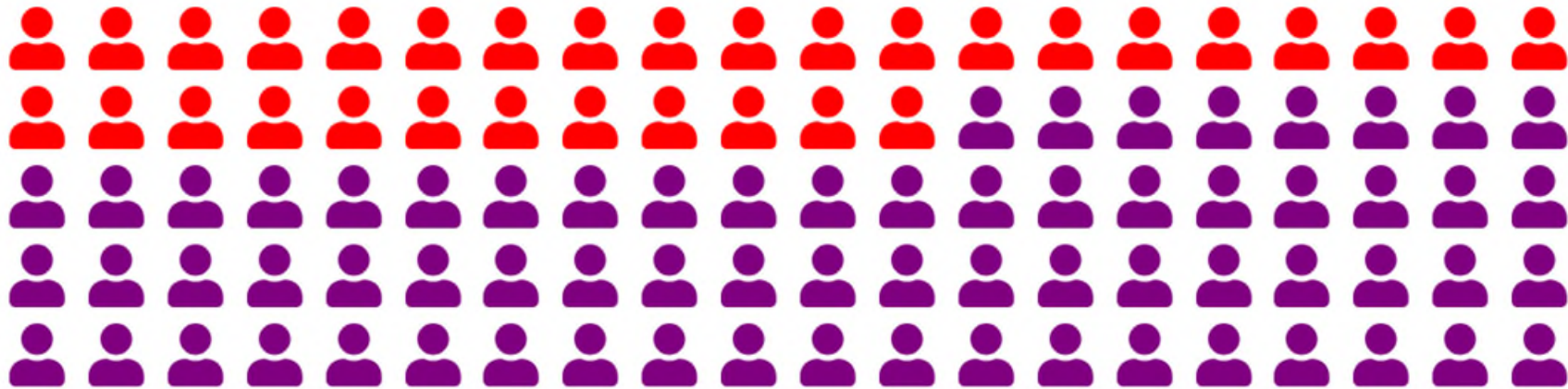
2025 Technology at Work Report | Ivanti • N = 3,449

Create a Governance Committee

Goals

- Centralize AI governance

- Responsible not only for ensuring AI remains within legal bounds, but also within organization's own parameters for what is acceptable (e.g., risk tolerances)

- Cross-functional group that is representative of entire organization (Legal, IT, HR, etc.)

Draft an AI Policy

Topics

- Acceptable use
- Data privacy and security
- Ethical and legal considerations
- Human monitoring of AI-generated work product
- Enforcement

Identify Use Cases

Focus

- What problems are you trying to solve?
- Vendor evaluation (cost!)
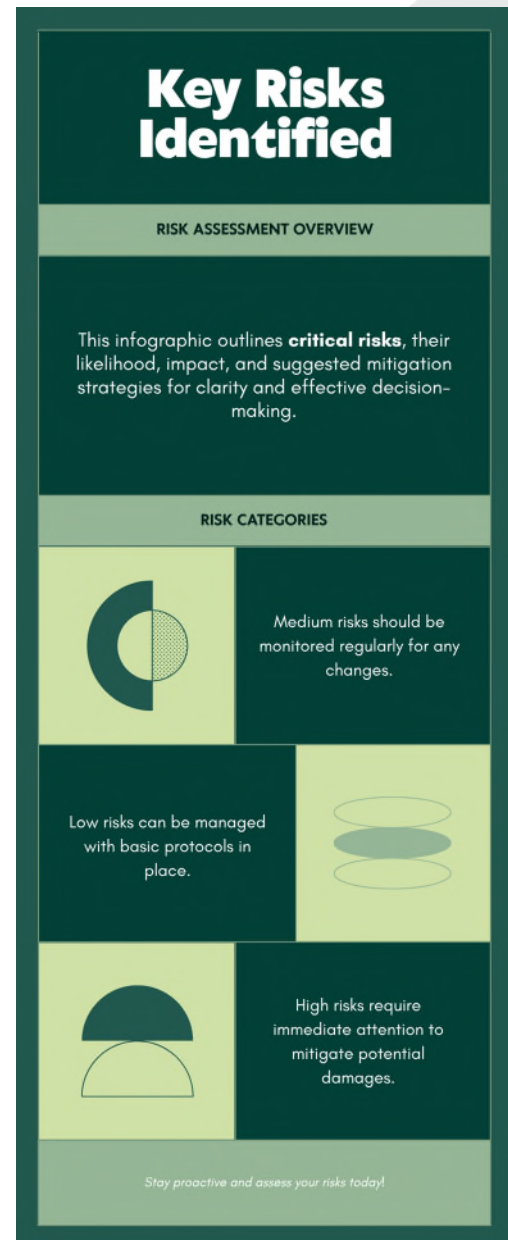- Contractual obligations (indemnification?)

Establish a Risk Assessment Process

Framework

- Process for consistently evaluating systems / use cases

- **Pre-deployment:** before a tool is implemented, conduct thorough risk assessment

- **During deployment:** use small group to pilot test the AI tool

- **After deployment:** periodically assess the tool after it is implemented to make sure it is functioning correctly

- **Spotlight:** Bias

  1. Train to identify potential bias

  2. Analyze data quality/variety

  3. Identify diverse datasets to meet goals

  4. Ensure human oversight

Key Risks Identified

RISK ASSESSMENT OVERVIEW

This infographic outlines **critical risks**, their likelihood, impact, and suggested mitigation strategies for clarity and effective decision-making.

RISK CATEGORIES

Medium risks should be monitored regularly for any changes.

Low risks can be managed with basic protocols in place.

High risks require immediate attention to mitigate potential damages.

Stay proactive and assess your risks today!

Training

Purpose

- Ensure employees understand the AI policy
- Train the employee on the AI tool
- Make sure employees understand risk and utility of tool
- Emphasize that the AI tool is an aid – not a replacement – for human work product

Is your organization using other practices or processes for implementing AI?

AI: Future Trends

What Should We Expect Moving Forward?

- **AI continues to evolve; organizations must keep up.** New developments such as push for "agentic AI" mean companies need to proactively understand implications for implementation and associated compliance / legal risks

- **Regulatory landscape is going to become more complex.** More AI regulation is coming, but will be more of a mix rather than comprehensive — too many issues under the umbrella term of "AI", too much interplay with existing law, too little consensus across policymakers

- **Organizations will need to be even more proactive.** Not only will organizations need to adopt AI to remain competitive, they need to get ahead of potential governance and compliance risks by identifying and mitigating both legal and ethical issues

- **Avoiding legal issues in AI rests on strong fundamentals.** Regardless of whether an organization is an "early adopter" or a "cautious skeptic" any adoption of AI tools and technologies needs to be defined, consistent, accessible, and accountable

About Constangy's AI Practice

We "ADD" to our clients' AI competence by organizing our services around three pillars – **Advise, Design, Defend (ADD)** – to provide adaptability and scalability for our client's needs.

- ✓ **Advise:** We stay on top of changing laws, help clients assess risks like algorithmic bias, and guide them on how to stay compliant.

- ✓ **Design:** We help clients build smart, practical AI policies tailored to their business, cyber, and employment-law needs, with a focus on governance, employee rights, and responsible use.

- ✓ **Defend:** We assist clients facing regulatory audits or government investigations tied to their AI use—helping them respond clearly and confidently. When needed, we defend AI developers and users in legal disputes in the employment and cyber space.

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For additional news and analysis visit

www.constangy.com/practices-AI

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For further questions or comments visit our
website or contact one of our AI practice group co-chairs.