AI in the Workplace

A Littler Survey Report

SEPTEMBER 2023

Littler®

Executive Summary

Employers are increasingly looking to reap benefits from both generative and predictive artificial intelligence (AI) technologies, including in human resources (HR) functions. Yet an evolving patchwork of AI regulation and the rampant pace of technological change place many at a crossroads. How will the growing use of AI impact workforce decisions and expose new vulnerabilities?

To answer this and other critical questions, Littler surveyed nearly 400 in-house lawyers, HR professionals and other business leaders across the U.S. who play a significant role in how AI is used in HR functions at their organizations. Representing a range of industries and company sizes, the survey provides a window into how employers are implementing AI-powered tools and perceiving and managing risks, as well as their perspectives on nascent legislation.

AS AI USAGE MOUNTS, POLICIES AND GUIDANCE LAG

While the use of AI tools among employers may be widespread, their policies and guidelines on proper implementation are still taking shape.

Fewer than half of respondents (45%) say they limit AI usage to approved tools and uses, while an even smaller percentage (37%) report that they provide policies or guidance to employees on the proper use of AI tools in the workplace. Only about one in five engaged in more sophisticated management practices, such as testing AI tools for potential bias, compliance and other risk factors (21%) or mapping AI use across the organization (20%). Seventeen percent said they were taking no actions at all.

On the positive side, many organizations appear to be engaging in cross-departmental cooperation in managing these tools. Respondents report that their information technology, HR and legal/compliance departments share a relatively equal degree of responsibility for managing AI-driven HR tools — at least 70% of respondents who chose one of these options selected more than one department from the list. This collaboration may lead to better implementation of policies and guidelines in the future as AI tools mature.

RISK ASSESSMENTS UNDERUTILIZE OUTSIDE PERSPECTIVES

AI tools come with a variety of risks, from new cybersecurity vulnerabilities to discrimination and bias, privacy issues and more. Yet many employers are not drawing on outside resources to assess these issues.

The majority of respondents (59%) are relying on internal assessments of AI tools used in HR to evaluate risk, with only about one third turning to law firms (with whom employers can benefit from the protection of attorney-client privilege). Notably, only 23% are utilizing the insights of those most likely to understand how tools work: the AI vendors or developers who built them. And perhaps underscoring the confusion and novelty of the tools, a substantial portion of respondents (22%) say their organizations are not assessing the risks of AI-driven HR tools at all.

EMPLOYERS SEEK REGULATORY GUIDANCE

Despite ongoing regulatory uncertainty, most surveyed organizations (61%) have not changed their AI usage, although the vast majority of those respondents say they are monitoring regulatory developments and evaluating their use of such tools as a result. That only 10% of respondents have halted usage altogether or decreased use in jurisdictions with proposed or enacted legislation is a sign that employers are willing to take on a certain level of risk and uncertainty in exchange for the benefits these tools bring.

While several U.S. states are proposing or developing legislation, only New York City currently has a law in place specifically governing the use of AI in employment-related situations. Despite this, the majority of respondents recognize that California will have the greatest impact on the regulatory landscape, with New York City ranking *second* among the jurisdictions that represent concerns for respondents' organizations.

In what follows, we'll take a closer look at how AI is reshaping the HR landscape and what employers should consider as they aim to leverage these technologies.

Responses to some questions do not add up to 100% due to rounding, and some exceed 100% because respondents were invited to select more than one answer. For the full survey methodology and a breakdown of respondent demographics, see page 15.

AI in HR Functions

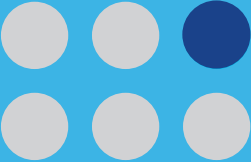## BENEFITS AND USES OF PREDICTIVE AI TOOLS

Predictive AI tools can be deployed for a range of HR-related tasks and employment processes. It's therefore unsurprising that these tools have become popular among employers, with Equal Employment Opportunity Commission (EEOC) Chair Charlotte A. Burrows stating that as many as 83% of employers — and up to 99% of Fortune 500 companies — now use automated tools to screen or rank candidates for hire.

A large number of employers are already seeing real value in the use of AI tools that make predictions or assessments. In the 2023 Littler® Annual Employer Survey, for example, 82% of respondents saw at least some benefit, with speeding up processes (63%) and reducing HR workloads and/or improving cost-efficiency (59%) selected as the top advantages. Nearly a third (30%) also see the potential to reduce bias in decision-making with AI tools.

Predictive AI:
AI tools that analyze existing data or make predictions in employment processes (e.g., recruiting and hiring, assessing employee productivity and performance).

Generative AI:
Technologies (such as ChatGPT and DALL-E) that can be used to create new content or data.
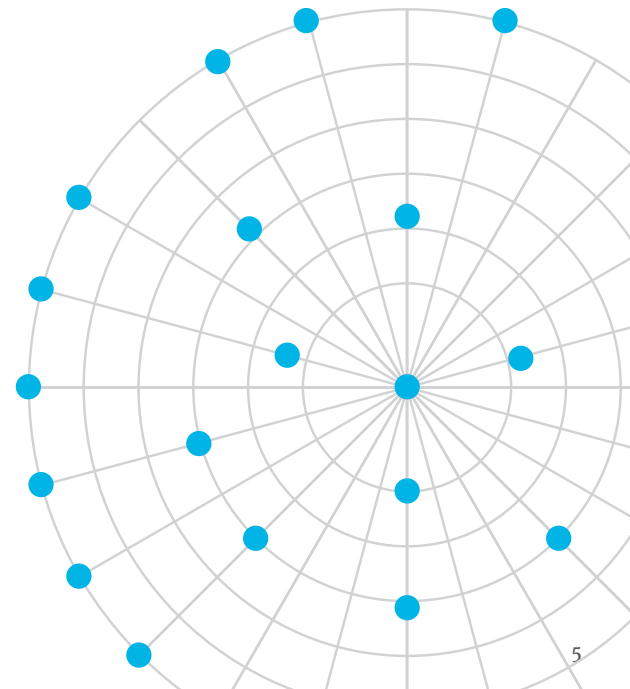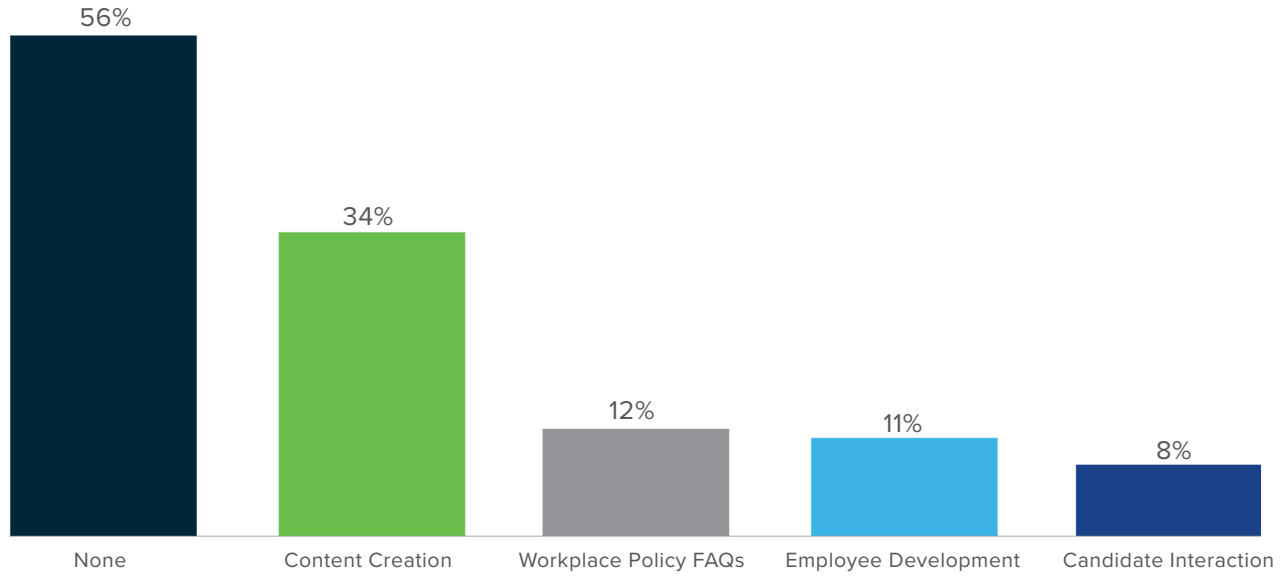
NOTE: The survey data analyzed on pages 5-6 refers to generative AI, whereas for the remainder of the survey, respondents were asked to answer based on use of predictive AI tools.

GENERATIVE AI USES

Though generative AI technologies have received a lot of attention over the past 12 months, they have not yet penetrated HR departments as deeply as predictive AI. When asked specifically about their organizations' use of generative AI tools, more than half of respondents (56%) say their organizations do not use them in any HR capacity.

In which of the following ways has your organization used generative AI to assist with HR processes? (Select all that apply)

None	Content Creation	Workplace Policy FAQs	Employee Development	Candidate Interaction
56%	34%	12%	11%	8%

Of those who do utilize generative AI, most (34%) do so for content creation purposes, including job descriptions, onboarding materials and employee communications. Just 12% use the technology for workplace policy FAQs — such as chatbots for internal questions — while 11% do so for employee development, including on–demand resources or personalized trainings. Only 8% use it for candidate interaction, be it conducting personalized outreach or automated interviews.

As outlined in Littler's comprehensive report on generative AI released this May, the technology has the potential to create employment law issues when used in the workplace. Generative AI suffers from many of the same discrimination and bias concerns as predictive AI, along with several others, including potential defamation, consumer protection, liability, privacy, intellectual property, ethics, and regulatory compliance issues.

That said, unlike predictive AI tools supplied by vendors, which typically involve expensive multi–year contracts and extensive stakeholder vetting, many generative AI platforms are currently free and accessible online. This means individual employees may be using them for HR processes more than our data reflects, especially in the absence of organizations having policies and guidelines in place.
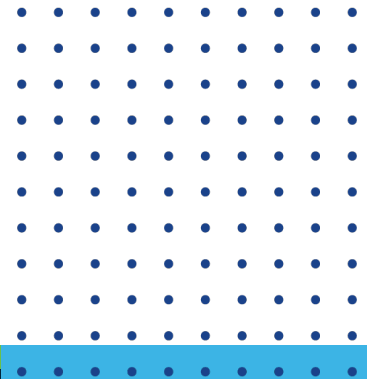
"Generative AI holds great promise for employers by automating repetitive and time-consuming tasks, as well as improving start-up times for content creation activities.
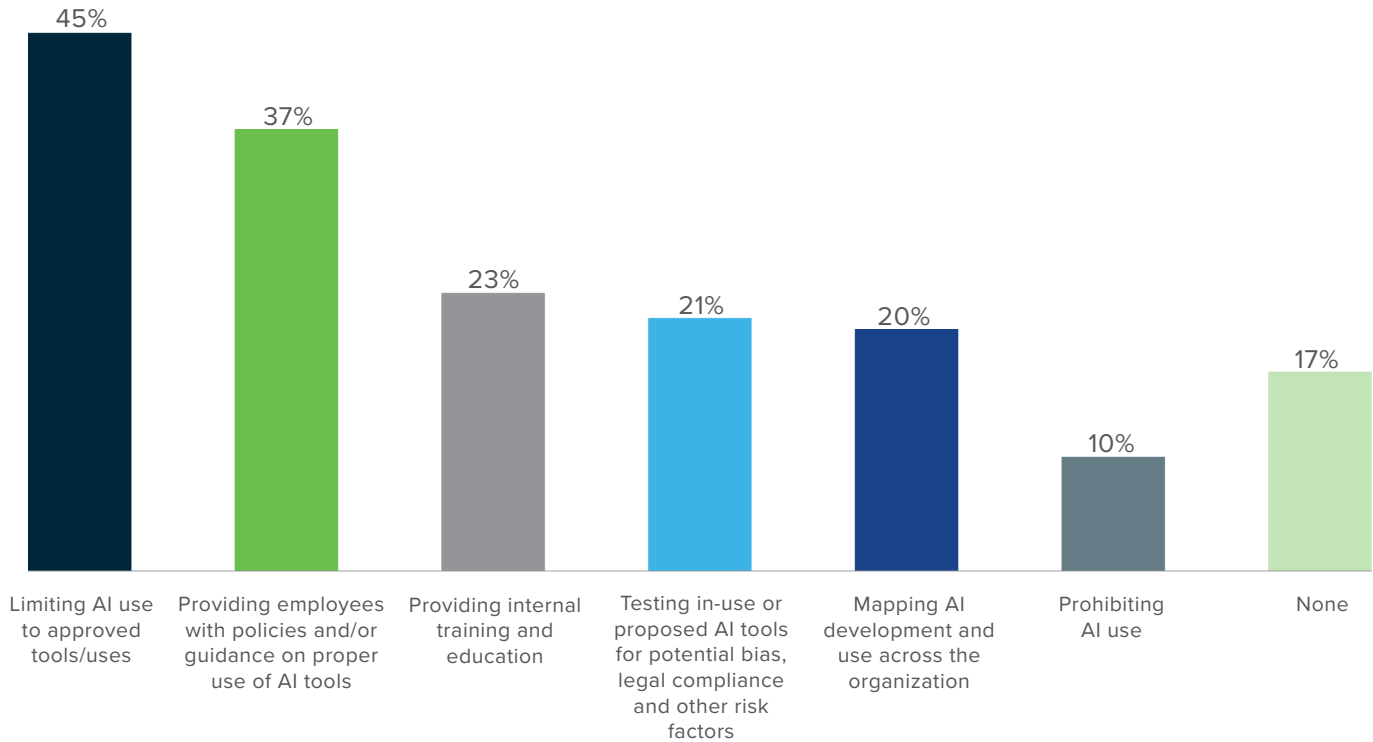While we're likely to see a sharp uptick in the number of employers using generative AI in HR in the near-term, it's encouraging that employers appear to be taking their time implementing it organization-wide given that the technology is still developing and that its impact on workforces is increasingly complex."

Niloy Ray, **Littler shareholder and member of the firm's** AI in Human Resource Decisions **practice**
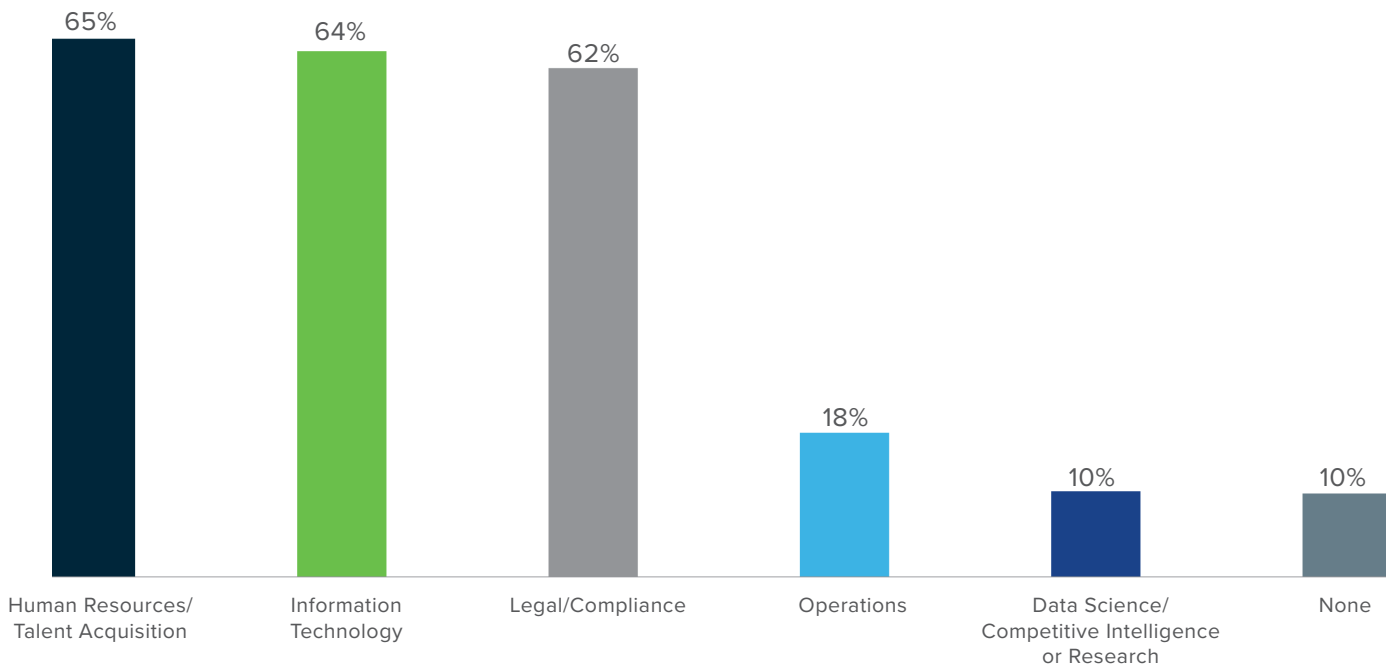
Managing AI Tools

Which of the following steps is your organization taking to manage the use of AI-driven tools for HR functions? (Select all that apply)

45%	Limiting AI use to approved tools/uses
37%	Providing employees with policies and/or guidance on proper use of AI tools
23%	Providing internal training and education
21%	Testing in-use or proposed AI tools for potential bias, legal compliance and other risk factors
20%	Mapping AI development and use across the organization
10%	Prohibiting AI use
17%	None

Which of the following departments within your organization are involved in managing the use of AI-driven tools in HR? (Select all that apply)

|	
65%	Human Resources/ Talent Acquisition
64%	Information Technology
62%	Legal/Compliance
18%	Operations
10%	Data Science/ Competitive Intelligence or Research
10%	None

As the use of AI tools in HR continues to grow, the policies and guidelines on proper usage within organizations appear to still be taking shape. The most common step respondents are taking to manage AI is to limit deployment in HR functions to approved tools and uses (45%). While it is a valuable first step to define the purposes for which AI tools can be used, fewer respondents are taking additional measures to manage the process, with, notably, 17% saying they are not taking any action at all.

Just 37% are providing policies and/or guidance to employees on the proper use of AI tools in the workplace. While this percentage is higher among large organizations with more than 5,000 employees (51%) — and the proportion taking no action falls to 8% for this group — there is still a substantial share of employers that do not impose such guardrails. Furthermore, only 23% of all respondents — and 33% of large employers — provide training and education to their employees.

Roughly one in five respondents report implementing more sophisticated measures to manage AI use. Those include testing in-use or proposed AI tools for potential bias, legal compliance and other risk factors (21%), as well as mapping AI development and use across the organization (20%). These figures rise to 40% and 38%, respectively, for large employers.

When it comes to the departments tasked with managing AI-driven HR tools, the responses suggest a high degree of cross-organizational cooperation. HR/talent acquisition, information technology and legal/compliance appear to share a relatively equal share of responsibility, as reported by 65%, 64% and 62% of respondents, respectively. What's more, at least 70% of respondents who chose one of these options also selected one of the other two. In addition, all three percentages were higher for large organizations and technology industry respondents, particularly for legal/compliance, at 88% and 85%, respectively.

Surprisingly, just 18% named operations as a department tasked with AI management, even though these departments are likely to be involved in the procurement and implementation of AI tools. This highlights potential information siloes that could generate compliance risks.
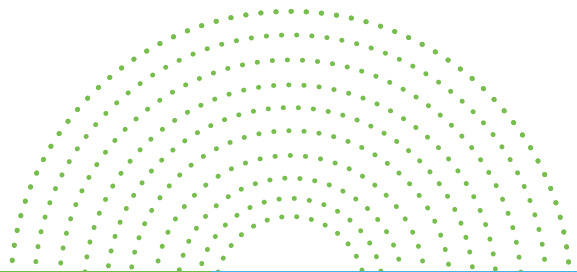
"Updating policies, procedures and trainings around AI in accordance with the rapid pace of technological change is a challenge for employers. Many companies are finding considerable value in AI faster than expected — which is a testament to its power — but this also creates pressure to adopt tools quickly, sometimes before the appropriate compliance mechanisms to manage them are in place. That said, the high degree of collaboration we're seeing among departments is a promising sign that strong policies and guidelines will emerge as AI tools mature."
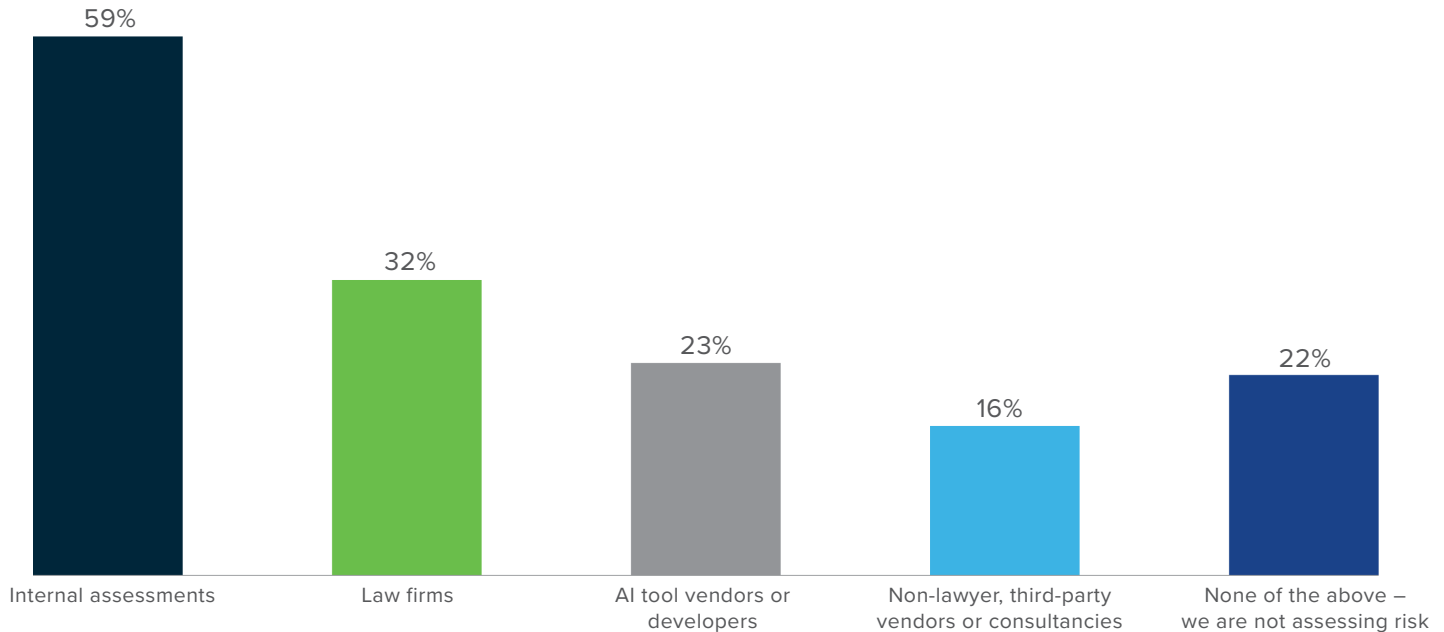
Marko Mrkonich,
Littler shareholder and member of the firm's
AI in Human Resource Decisions **practice**

Assessing the Risks of AI

Which of the following does your organization rely upon to assess risks associated with the use of AI-driven tools in HR? (Select all that apply)

Internal assessments	Law firms	AI tool vendors or developers	Non-lawyer, third-party vendors or consultancies	None of the above – we are not assessing risk
59%	32%	23%	16%	22%

Alongside AI's many benefits comes a range of widely noted risks related to cybersecurity, privacy, accessibility and discrimination, among others. For organizations to mitigate risks and reap the most value out of their investment in AI, it is important that they adopt these tools with purpose and compliance top of mind.

Yet roughly one in five respondents (22%) report that their organizations are not assessing the risks of AI-driven HR tools at all. Those who are evaluating possible pitfalls are most commonly doing so through internal assessments (59%). While assessing risk within the organization is a logical step, such assessments are not protected by attorney–client privilege unless performed in conjunction with a law firm — potentially opening organizations up to liability in subsequent privacy or discrimination lawsuits.

Still, just 32% of respondents say their organizations rely on law firms for AI risk assessments, though that figure rises to 53% for organizations with more than 5,000 employees and to 46% for technology industry respondents.
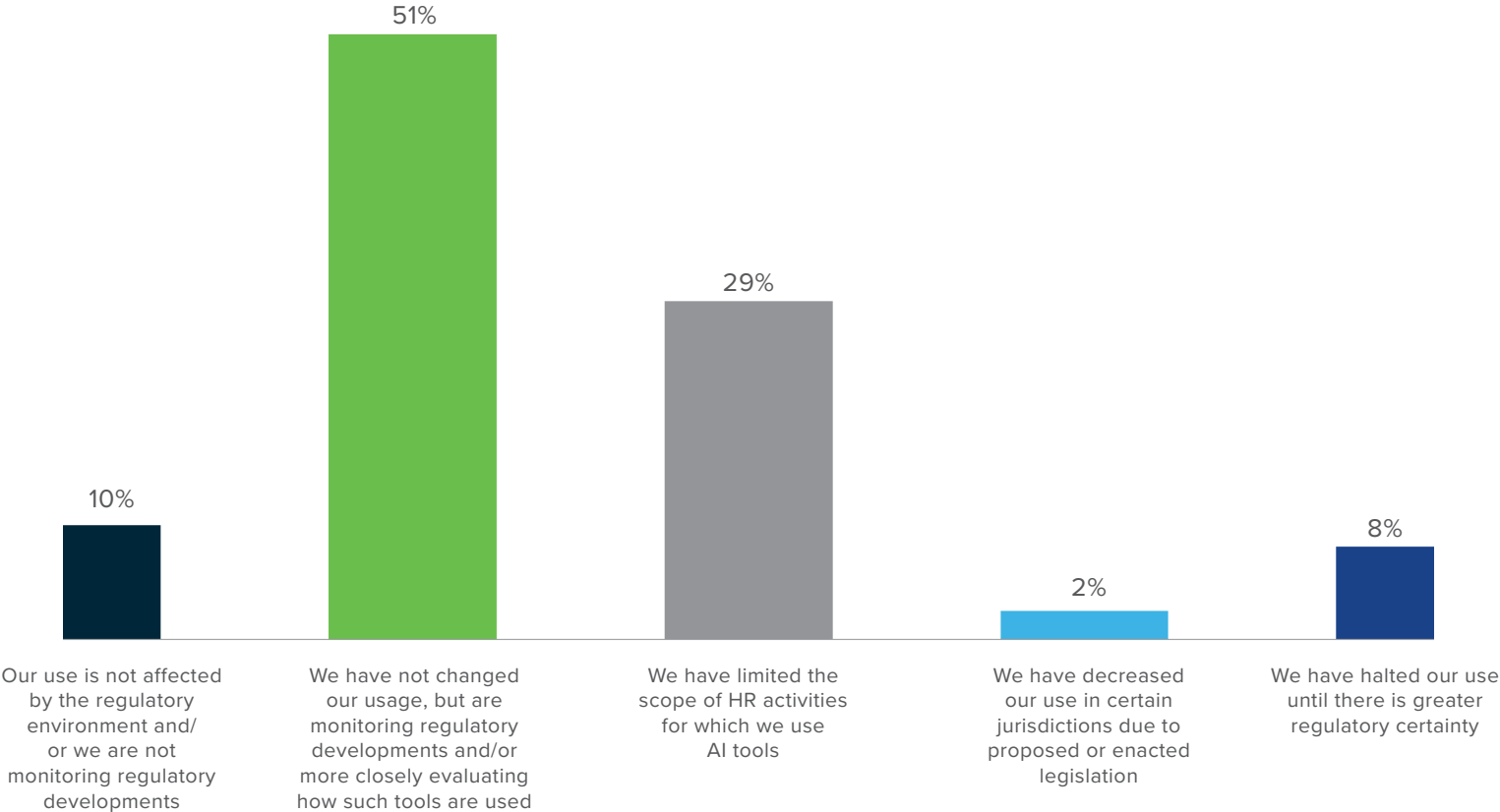
Many organizations also appear to be underutilizing AI tool vendors and developers, with just 23% relying on them to assess potential risks. While employers should take a "skeptical reliance" approach to vendor data and assessments, evaluating the information for gaps and potential issues, vendors are uniquely positioned to help protect their customers from liabilities. Not only do developers have the best understanding of how their AI tools work and learn, they also — particularly in the HR context — should have conducted their own analysis and testing around privacy, bias and accessibility issues that could help inform the risk assessments of their users.

"With new technologies like AI, there's often a 'shiny object' appeal that can mask whether or not the tool adds real value to an organization," says Ray. "Organizations should take care not only to focus on legal compliance, but also to assess AI's effectiveness in meeting business goals and providing additional benefits beyond those offered by tried-and-true solutions. Otherwise, they may be using an expensive tool that can introduce new exposures without generating much distinct value."
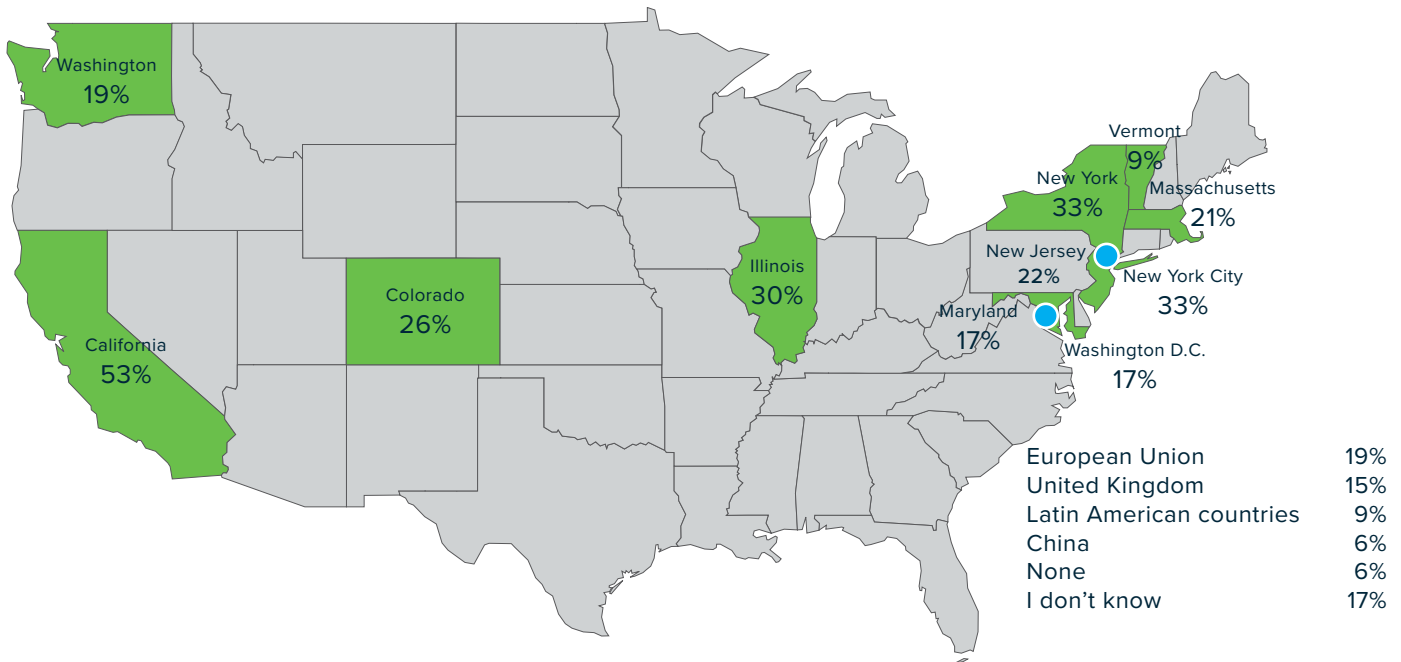
Regulatory Challenges and Uncertainties

NEW OR PROPOSED LEGISLATION ON AI IN HR

Which of the following best describes how the emergence of varying laws and policies governing the use of AI in HR, and/or general regulatory uncertainty, has affected your organization's use of these technologies for employment-related decisions?

Our use is not affected by the regulatory environment and/or we are not monitoring regulatory developments	We have not changed our usage, but are monitoring regulatory developments and/or more closely evaluating how such tools are used	We have limited the scope of HR activities for which we use AI tools	We have decreased our use in certain jurisdictions due to proposed or enacted legislation	We have halted our use until there is greater regulatory certainty
10%	51%	29%	2%	8%

Which of the following jurisdictions that have proposed or enacted legislation related to the use of AI in HR represent a concern for your organization? (Select all that apply)

Washington 19%

Vermont 9%

New York 33%

Massachusetts 21%

New Jersey 22%

New York City 33%

Illinois 30%

Maryland 17%

Washington D.C. 17%

Colorado 26%

California 53%

European Union	19%
United Kingdom	15%
Latin American countries	9%
China	6%
None	6%
I don't know	17%

In the face of regulatory uncertainty surrounding the use of AI in HR, many employers are proceeding cautiously.

The plurality of respondents (51%) says their organizations have not changed their AI usage, but nevertheless are closely monitoring regulatory developments and are evaluating how such tools are used. Another 29% are taking a similar proceed-with-caution approach by limiting the scope of HR activities for which AI tools are deployed as the legal landscape develops.

A minority of others were on the extreme ends of the spectrum, either proceeding without regard for regulatory developments (10%) or halting AI use entirely until there is greater regulatory certainty (8%). Most organizations appear to be balancing their use of AI tools with the potential for future regulation — a testament to the utility and popularity of the technology.

Indeed, much of the legislation specifically tailored to the use of AI in HR remains hypothetical, outlined in proposals but not yet enacted. To date, New York City is the only jurisdiction with regulations in place — NYC Local Law 144 of 2021 — to govern Automated Employment Decision Tools (AEDTs) used in hiring and promotions. The law, which began being enforced on July 5, 2023, requires employers covered under the provisions to commission and publish independent bias audits, notify applicants and employees of its use, and allow affected individuals to request accommodation or alternative selection processes.

Even so, respondents rank New York City *second* among the jurisdictions that represent a concern for their organizations when it comes to proposed or enacted AI in HR legislation. Just one third (33%) express concern about New York City, while more than half (53%) are concerned about California. Those figures rise to 56% and 72%, respectively, for technology industry respondents.

"New York City may be first, but California will set the standard for the regulation of AI in HR. The state's size and influence on the rest of the country, in the absence of federal regulation, is going to affect a much larger segment of employers than New York City and will likely provide a blueprint for other states around the country."

- Niloy Ray

California has considered legislation on AI issues ranging from data privacy and management, the intended use and benefit of an automated decision-making system, and mitigating the risk of inaccurate, discriminatory and biased results. Additional proposed legislation includes bills requiring the state government to conduct a comprehensive inventory of all high-risk automated decision systems and resolutions urging the U.S. government to impose an immediate moratorium on the training of more sophisticated AI systems until governance frameworks can be developed.

Despite these proposals, some employers are unsure of where the regulatory landscape is headed and how it might impact them, especially given the patchwork of initiatives being considered. Seventeen percent of respondents say they don't know which jurisdictions with proposed or enacted legislation represent a concern for their organizations.

"The development of AI products and tools is moving quickly, while the ability of the regulatory system to adapt to these new technologies is proceeding more deliberately, which could be beneficial if it produces effective, well-reasoned frameworks," said Mrkonich. "While companies are looking to build their compliance strategies now, they also want thoughtful guidance that's clear, definite and develops at a pace that reflects practical and market developments in the field of AI."

## THE EEOC AND EXISTING LAWS EXTENDING TO AI USE

To what extent has the EEOC's guidance on AI and hiring created more concern for your organization with regard to use of AI for hiring or other workplace decisions?

- To a large extent
- To a moderate extent
- To a small extent
- Not at all

11%
33%
30%
27%
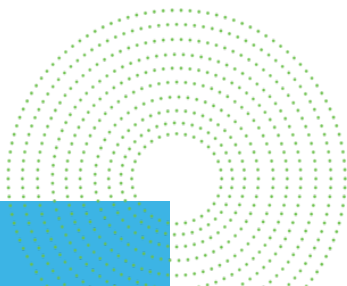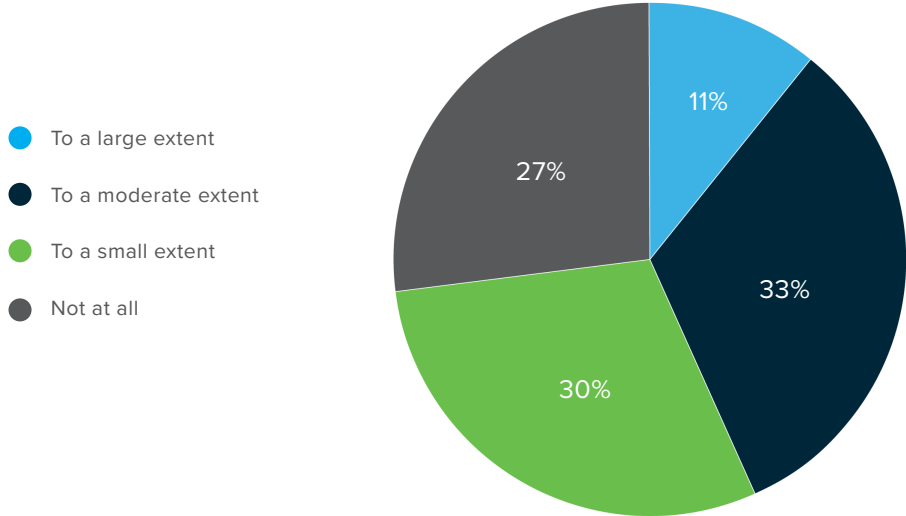
The absence of laws specifically addressing the use of AI in HR does not mean these tools are wholly unregulated. Existing rules and regulations governing bias and discrimination in the workplace still apply, even when machines have replaced humans in parts of the decision-making process.

Earlier this year, the EEOC released a technical assistance document notifying employers that AI tools can create disparate or adverse impacts that violate Title VII of the Civil Rights Act by discriminating against employees and job candidates. Employers can be held liable for biased effects stemming from using these tools in workplace selection procedures, even when third party vendors develop or administer them.

Though the guidance did not create new policy, per se, employers have taken note. Nearly three quarters of respondents (73%) express some degree of concern about their organizations' use of AI for hiring or other workplace decisions in light of the EEOC's notice. Twenty-seven percent said the newly released guidance did not create more concern regarding AI use, though this could be because they have already accounted for legal risks or because they already limit or prohibit the use of AI.
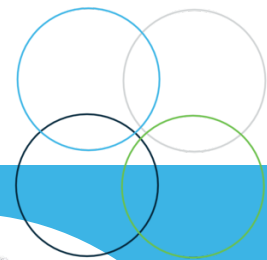
"The promise of AI to reduce subjectivity and bias in decision making makes it tempting for employers to forget that, in essence, these tools operate under the same legal framework as does any other tool they may use to recruit, screen or select candidates. The EEOC guidance was a reminder that implementing AI-driven employment selection tools cannot be a 'set it and forget it' process. With respect to these or any other selection tool, employers should be mindful of a statistically significant adverse impact that may result from the tool's use."

James A. Paretti, Jr., **Littler shareholder and member of the** Workplace Policy Institute **(Littler's government relations and public policy arm)**

Conclusion

2023 is the year of AI — and employers are front-line participants in almost every new development. As tools deliver new functionalities and improve performance, their HR use cases will advance in tandem.

Yet the ways organizations implement and govern the use of these tools is also rapidly evolving — and coming regulatory guidelines will redraw the landscape and likely change the ways employers are engaging with these tools.

It makes sense, then, that at present most organizations are both eager and uncertain. On one hand, they're looking to be proactive in integrating both predictive and generative AI into their operations; on the other hand, they're often doing so without useful guardrails in place.

Without the clarity of tailored regulatory mandates or years of testing data, employers are hoping to balance the benefits of AI with compliance and litigation risks that are emerging at the local, state, federal and global levels.
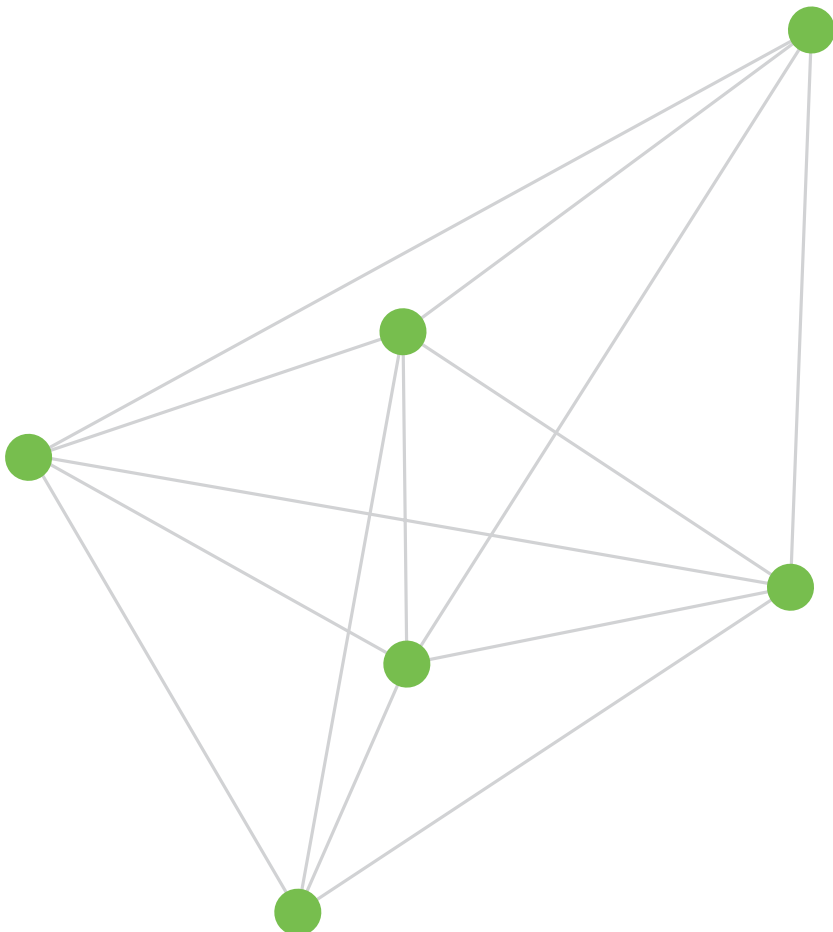
Methodology and Demographics

In July 2023, 399 professionals from a variety of industries completed Littler's survey via an online survey tool. Respondents all indicated playing leading or supporting roles with regard to the use of AI within their workplaces and/or for HR-related activities.

Respondents included:

- HR / Talent Acquisition Leader or Professional (43%)
- In-House Counsel (43%)
- Business Owner / Member of Executive Leadership Team (6%)
- Operations / Compliance Leader or Professional (5%)
- Other Professional (2%)
- Data Scientist / IO Psychologist (1%)

Companies represented were of a variety of sizes:

- More than 5,000 employees (28%)
- 1,001 to 5,000 employees (26%)
- 501 to 1,000 employees (11%)
- 101 to 500 employees (27%)
- 1 to 100 employees (8%)

The vast majority of respondents (96%) are headquartered in the U.S. Respondents were invited to select all that apply in indicating the jurisdictions in which their organizations operate, which broke down as follows:

- United States (100%)
- Canada (30%)
- Western Europe (30%)
- Asia-Pacific (23%)
- Mexico (21%)
- Australia (19%)
- Eastern Europe (18%)
- South America (18%)
- Africa (14%)