Attorneys in Littler’s Robotics Practice Group regularly assist employers in the technology sector and employers that are integrating technological advances into their workplaces to navigate the complex and evolving terrain of employment and labor law. As the world’s largest law firm focusing solely on legal and regulatory issues affecting employers, Littler is in a unique position to help businesses confront the new challenges that robotics brings. Our Robotics Practice Group also works closely with Littler’s Workplace Policy Institute™ to provide expert testimony and model policies.

The use of robotics in the workplace is no longer a science fiction concept. In fact, robotics is the fastest growing industry in the world, poised to become the largest in the next decade. It is projected that, by 2025, half of the jobs currently performed in the U.S. will be performed by intricate machines and software. The reason for the extraordinary growth of robotics is the convergence of cloud computing, breakthroughs in sensor technology, data analytics, and software that teaches itself. In addition, open source manufacturing of components used in smart phones has greatly lowered the cost of building all kinds of robots, from drones to self-driving cars. Robotics is predicted to have the equivalent transformative impact on the workplace as the Web.

As employers incorporate robotic technology into the workplace, they must also adapt their compliance systems to this unique and rapidly evolving industry. Employers in the robotics industry should prepare for the legislative and regulatory obstacles that could affect how they do business in the U.S. and abroad.

The “Top 10” employment and labor law issues most impacted by the robotics revolution and growth of artificial intelligence (AI):

1. **Workplace Privacy and eDiscovery** – Many of the robotic systems being developed and AI programs collect data (often big data), triggering certain notice requirements and potential liability for the security of this information, particularly in the event of a breach. Depending on the country involved and the nature of the information transmitted, robotics data privacy directives may apply. In addition, the increase of digital robots and software systems to collect and classify electronic evidence presents enormous eDiscovery implications. Certain robotic systems generate massive amounts of data providing a digital reproduction of activities and events, opening new vistas for eDiscovery and corporate planning for data preservation.

2. **Workers’ Compensation** – The current workers’ compensation rubric does not comport with the unique features of the robotics industry. Workers’ compensation was legislated to provide compensation to injured workers regardless of fault, while granting employers a certain degree of immunity from tort liability. However, tort lawsuits are permitted against third parties to the workplace,
such as equipment manufacturers. If an electric saw injures a worker, the employer is protected by workers’ compensation, but the manufacturers of the saw are not. Would the same standards apply to robots who take over jobs previously performed by humans? Right now, the answer is yes and the potential liability could slow the use of robotics.

**Health and Safety** – Under OSHA, there is a legal requirement to maintain a safe workplace. Several OSHA regulations and guidelines already cover workplace robotics. Every manufacturer of robots for the workplace needs to be aware of these regulations and the debates that will follow as new and revised regulations are proposed. Meanwhile, there are dozens of specialized agencies that cover various industries and practices that are now being redefined through robotics. From interstate trucking and airlines to implants and medical devices, agencies and regulations designed to protect the public are increasingly covering robotics. Several agencies have jurisdiction over robotic devices and technology, many of which have a major impact on employment and labor laws.

**State Rights Statutes** – Robot technology offers employers resources that can go far beyond human performance. New interview robots can make sound and video recordings of exchanges with job candidates. State privacy statutes may require consent forms to be signed before recording candidate interviews. These same robots can measure many bodily functions and provide an analysis of the truthfulness of the candidates. Does this violate state lie detector statutes or other local regulations? The list of state workplace laws that could be relevant to the use of robots is long and must be evaluated on a case-by-case basis.

**Anti-Discrimination Protections** – Advanced robotics and AI used in recruiting must be compliant with anti-discrimination laws. When behavioral data is collected and compared to similar data about successful workers, unintended correlations can emerge that negatively impact candidates. The list of ways a computer could evaluate a job candidate or existing employee needs to be reviewed to make certain that disparate impact is not occurring, or, if it is, that it is justified by legitimate business requirements.

**Wage and Hour Requirements** – Robots currently are not subject to minimum wage and overtime pay requirements. However, an increasing number of robots are operated by humans located almost anywhere in the world. What wage and hour laws cover an operator who works with robots eight hours a day in a different state or country? As this form of distributed work becomes more popular and productive with new generations of robots, will wage and hour laws change? Are remote workers employees or independent contractors?

**Trade Secret Protection and Covenants Not-to-Compete** – Has the robotics producer established sufficient controls to protect proprietary information and trade secrets? Can an employee of a robotics company be required to sign a non-compete agreement? In which state is the work taking place? Like all technology companies, appropriate and legally enforceable agreements need to be in effect to protect the intellectual property of the robotics company, taking into consideration the above and other questions.

**Unionization and Collective Bargaining Requirements** – If robots are acquired to do work previously performed by unionized employees working under a collective bargaining agreement, is bargaining required? Does the collective bargaining agreement control the use of robots to perform
this work? Certain collective bargaining agreements define the work of bargaining unit members, excluding such work from being performed by others. Does this exclude robots? These and many other questions indicate that labor law concerns are critical regarding the use and deployment of robots in a unionized workplace.

**Human Displacement** – One of the most common debates regarding robotics is whether the industry creates more jobs than it eliminates. Limiting regulations and legislation is commonly proposed. Immediate legal issues include obligations for notice of layoffs (WARN), applicable severance pay, if any, and retraining opportunities. The more long-term issues include future regulatory or legislative restrictions on such job eliminations, for example, the requirement to show new jobs created by the use of robotics.

**International Standards and Agreements** – The ILO produced a major report on the use of robots to reduce hazardous conditions in the workplace. However, the deployment of robots is a global phenomenon. This means that the laws and practices in many countries will be significant factors in how robotics changes and develops. It will be critical that strong voices are heard in the ILO and throughout the several institutions addressing global working conditions and trade. Such reports will greatly influence whether restrictive regulations, legislation or agreements can be expected.

**How Can We Help?**

Attorneys in Littler’s Robotics Practice Group specialize in a broad spectrum of employment and labor issues, from workplace privacy to health and safety. Here’s how Littler can help:

- Provide high-quality employment and labor law representation and compliance assistance to employers in the robotics industry and employers integrating robotics and AI systems into their workplaces in the U.S. and worldwide.

- Through Littler’s Workplace Policy Institute™, provide model policies and expert testimony to legislatures, parliaments and regulatory agencies on employment and labor law compliance, challenges and practical recommendations on the adoption and implementation of workplace robotics.

- Provide a customized review of your robotics products and software to assess whether their use conflicts with workplace laws, and suggest compliance solutions.

- Examine how your products or software could be used to help users attain workplace compliance. For example, robotic exoskeletons or voice-activated software might be an appropriate reasonable accommodation for an individual with disabilities.

The above is just a sampling of our experience representing robotics entities in employment and labor law matters. To learn more about the Robotics Practice Group, our specific experience and how we can help you, please contact your Littler Attorney, or visit littler.com to find a Littler office nearest you.