

'AI can't replace judgment' — risks, best practices for HR in using AI for hiring, performance management - Canadian HR Reporter

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Executive Summary

This article addresses the legal and operational risks facing Canadian employers who deploy artificial intelligence in hiring and performance management processes. The central argument, advanced by three Canadian employment lawyers, is that AI functions legitimately as a supplementary tool but cannot substitute for human judgment, particularly where human rights legislation, privacy obligations, and employment standards apply. Key evidence includes Ontario's statutory disclosure requirement under the Employment Standards Act for employers with 25 or more employees, the risk of AI-generated performance prompts becoming admissible court evidence, and the danger of algorithmic bias replicating historical hiring patterns. The lawyers also highlight concerns around AI chatbot liability, offer letter errors, and the inability of quantitative metrics to capture accommodation-related performance variation. The article concludes that employers bear non-transferable legal responsibility regardless of vendor use, and that internal accountability structures, regular audits, and mandatory human review at all decision points are the practical mechanisms for managing AI-related legal exposure in Canadian workplaces.

Key Insights

1. Ontario is currently the only Canadian province with a statutory requirement mandating disclosure of AI use in recruitment, applying to employers with 25 or more employees under the Employment Standards Act.
2. AI-generated performance review prompts may be admissible as evidence in Canadian litigation, creating a documented record of employer intent that could undermine good faith defenses in wrongful dismissal cases.
3. Quantitative performance metrics tracked by AI — such as keystrokes, attendance, and response times — can mask underlying accommodation issues, potentially exposing employers to human rights liability if treated as conclusive performance evidence.
4. Employer legal liability does not transfer to third-party AI vendors; the responsibility to understand the tool, train internal users, and ensure compliance remains with the employer.
5. AI chatbots used in candidate communications are treated as organizational representatives, meaning their outputs carry the same legal accountability as communications made by human employees.

Practical Takeaways

- Employers using AI in recruitment or performance management are advised by legal counsel to designate an internal accountability lead — described as an 'AI quarterback' — who understands both the technology and departmental usage, and to conduct regular internal audits of AI outputs for accuracy and bias.
- All AI-generated documents, including offer letters, disciplinary correspondence, performance reviews, and meeting notes, require human review before use, as errors or omissions in these materials carry significant legal consequences under Canadian employment, human rights, and privacy law.

Critical Analysis

Strengths: The article draws on three named legal practitioners with specific Canadian jurisdictional expertise, providing actionable, context-specific observations rather than generic commentary. The inclusion of Ontario's Employment Standards Act disclosure requirement grounds the piece in verifiable statutory reality. The evidentiary risk around AI prompts is a genuinely underreported issue with direct implications for HR practice. **Limitations:** The article contains no empirical data, no cited studies, and no statistical evidence supporting any of its claims. All assertions are based on practitioner opinion, which, while informed, is inherently subjective and anecdotal. The piece does not engage with any counterarguments or scenarios where AI has demonstrably reduced bias compared to human decision-makers. **Bias:** The article is framed entirely from a risk-mitigation and legal liability perspective, which reflects the professional orientation of its sources. This creates a systematically cautionary tone that may overweight legal risk relative to operational benefit. No HR technology vendors, AI developers, or counterbalancing perspectives are represented. The Canadian HR Reporter audience may also introduce a degree of selection bias toward compliance-heavy framing.

Organizational Practice

Canadian employers are described as using AI tools to write job postings, score resumes on a one-to-100 scale, rank candidates, generate first drafts of performance reviews, produce disciplinary letters, schedule interviews via chatbot, and transcribe performance and disciplinary meetings. Third-party AI vendors are engaged for recruitment processes, with employers signing contracts without always fully understanding the underlying metrics or training data. Some employers are using AI to compile performance data such as keystrokes, email response times, attendance, and office attendance rates. Ontario employers with 25 or more employees are legally required to disclose AI use in publicly posted job advertisements.

Strategic Implications

The article points toward a tightening regulatory environment in Canada around AI transparency in HR, with Ontario's disclosure requirement potentially serving as a legislative precedent for other provinces. The evidentiary treatment of AI prompts in performance management contexts signals that legal standards for documentation in employment disputes may evolve to include the inputs given to AI systems, not just their outputs. The gap between quantitative AI-tracked metrics and qualitative human performance dimensions implies that organizations relying heavily on automated performance data may face increased exposure in accommodation and human rights disputes. The concentration of legal accountability at the employer level — regardless of vendor involvement — suggests that AI governance structures within HR functions may become a standard area of organizational audit and compliance review.

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