



Trustworthy AI and Human Capital

**Challenges and Opportunities
for AI in Human Capital**

Background

The federal workforce plays a critical role in executing the missions of federal agencies in service of the American people. At the heart of developing and shaping this workforce are the federal human capital and personnel management offices, which are now navigating a rapidly changing hiring landscape. In today's highly competitive job market, human capital officials are tasked with attracting well-qualified applicants in the face of an aging federal workforce, new hybrid modes of work, and employment in the wake of a worldwide pandemic.

To address these challenges, many federal agencies are increasingly looking to harness the extraordinary potential of data-driven artificial intelligence (AI) systems to reduce the burden of key activities such as sourcing, workforce analytics, training, and employee evaluation and retention. For example:

- The Government Accountability Office has advocated for federal agencies to study the role AI will play on employment, workforce development, training, and retention¹.
- As part of its 2022-2026 Strategic Plan, OPM² has committed to increase its capacity to use advanced analytical tools and methods like AI and machine learning (ML) to improve processes and reduce administrative burden on federal agencies, as well as invest in enterprise data strategy to expand the quality and use of human capital data to drive government-wide human capital insights, inform policy, and drive decisions.



Key Statistics: Federal Work Force

1 The United States Office of Personnel Management (OPM) Federal Priorities Report found “that 31.4% of Federal government employees will be eligible for retirement within five years,” demonstrating an impending surge of vacancies that will need to be filled³.

2 A Deloitte survey of public sector leaders showed that about 57 percent of early AI adopters surveyed believe that AI is “very” or “critically” important to their organization's success today, and 74 percent of respondents believe it will be in the next two years⁴.

1 <https://www.gao.gov/assets/gao-18-142sp.pdf>

2 <https://www.opm.gov/about-us/strategic-plan/goal-4-provide-innovative-and-data-driven-solutions/>

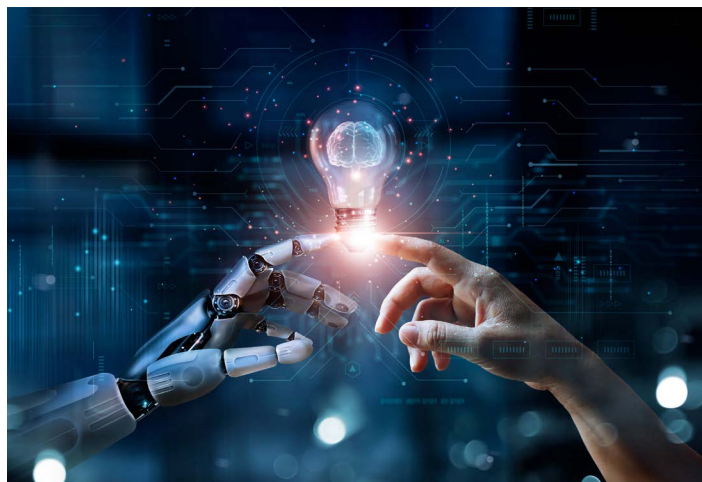
3 <https://www.opm.gov/policy-data-oversight/human-capital-management/federal-workforce-priorities-report/>

4 <https://www2.deloitte.com/us/en/insights/industry/public-sector/ai-early-adopters-public-sector.html>

The Challenge

Adopting AI solutions to enhance human capital activities means that agencies need to learn and navigate a complex and dynamic regulatory landscape. While AI-specific labor laws at the federal level do not currently exist, existing federal labor laws and protections around fair hiring practices could potentially extend to AI-based decisions. These considerations can be seen in the US Equal Employment Opportunity Commission's (EEOC) release of guidance⁵ in May 2022 on the intersection of AI and the Americans with Disabilities Act (ADA) for private sector and the federal government, while the Department of Justice released similar guidance⁶ extending to state and local governments. EEOC's Draft Strategic Enforcement Plan (SEP) for 2023-2027 announces the agency's intention to focus on "the use of automated systems... [that] exclude or adversely impact protected groups."

Many state and local-level governments are trending toward increasing legislation around AI in human capital practices as well. For example, a pending New York City law⁷ prohibits employers from using an automated employment decision tool unless such tool has been subject to a bias audit within one year of the use of the tool, while an Illinois law⁸ imposes strict limitations on employers who use AI to analyze candidate video interviews. Tracking and complying with these local and state laws as well as federal guidance requires sophisticated regulatory and AI expertise.



5 <https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence>

6 <https://www.ada.gov/resources/ai-guidance/>

7 New York City: Local law 144 of 2021: This law is postponed until April 2023 to revise proposed rules.

8 The Artificial Intelligence Video Interview Act



Hiring Practice Laws That May Extend to AI Hiring Technologies

- 1 Title VII of the Civil Rights Act of 1964
- 2 Age Discrimination in Employment Act (ADEA)
- 3 Americans with Disabilities Act (ADA)
- 4 Uniformed Services Employment and Reemployment Rights Act (USERRA)
- 5 Pregnancy Discrimination Act
- 6 Equal Pay Act of 1963

Example Use Cases and Risks for AI in Human Capital

	Description	AI Risks
Sourcing	<ul style="list-style-type: none"> • Sifting through large pools of candidates and resumes quickly • Identifying candidates that would have been overlooked due to applicant volume or flaws in traditional processes alone 	<ul style="list-style-type: none"> • Job postings are only visible to specific groups of candidates • Job postings exclude specific groups of candidates • Job recommendations shown to job seekers differ based on attributes unrelated to position • Resume scraping is biased against certain demographics
Employee evaluation	<ul style="list-style-type: none"> • Performing automated first-pass reviews and recommendations for compensation decisions and risk assessments • Developing technologies for providing wage transparency and fairness⁹ • Maintaining fair employee progression over time based on data 	<ul style="list-style-type: none"> • Employee retention outcomes differ by attributes unrelated to the position • Employee promotion and compensation outcomes differ based on attributes unrelated to the position

Beyond legal considerations, emerging developments in AI research and governance have led to a confluence of guidance and frameworks around how to effectively govern AI. These include Executive Orders (13859, 13960), the upcoming NIST AI Risk Management Framework, and the Blueprint for the AI Bill of Rights. Internationally, legislation such as the EU Artificial Intelligence Act is pending ratification and may also impact AI systems around the world. Enforceable regulations to protect the American public by ensuring equitable, ethical, and transparent AI may be not only critical but inevitable. Developing a proactive, forward-looking stance toward compliance vs a reactive one can enable agencies and their Human Capital Officials to take advantage of AI's transformative potential.

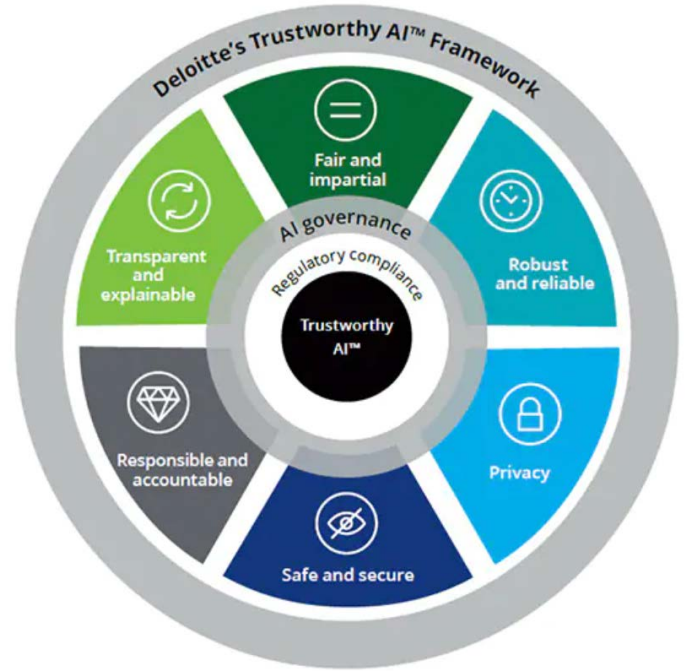
⁹ <https://www.media.mit.edu/projects/the-shipt-calculator-crowdsourcing-gig-worker-pay-data-to-audit-algorithmic-management/overview/>

Solution: Deloitte’s Trustworthy AI™ Framework

Deloitte’s Trustworthy AI framework is designed to align to the core concepts of existing and emerging regulations. This approach enables our clients to navigate a complex and evolving regulatory landscape while leveraging the transformative potential of AI. Using this framework, we can help clients:

- Review their AI-assisted hiring systems and processes for unintended bias and compliance with federal labor law
- Achieve transparency and explainability in automated systems
- Develop governance and oversight to maintain algorithm functions
- Protect the data and privacy of applicants
- Empower staff through trainings and agency-wide AI ecosystems

Artificial intelligence can help transform the federal government’s approach to developing and maintaining its workforce. Our Trustworthy AI Framework can assist your agency to swiftly adapt to evolving regulations and enjoy the benefits of AI. We are here to guide and join you on your AI journey.



Deloitte Trustworthy AI Framework	Examples of Human Capital Legislation Addressed
Fair and Impartial	Title VII, ADEA, ADA, USERRA, NYC Local law 144 of 2021
Transparent and Explainable	NYC Local law 144 of 2021
Responsible and Accountable	AI Bill of Rights
Safe and Secure	CCPA
Privacy	GDPR ⁹ , Illinois (Artificial Intelligence Video Interview Act), Maryland Use of Facial Recognition Services Prohibition ¹⁰
Robust and Reliable	AI Bill of Rights

⁹ <https://www2.deloitte.com/nl/nl/pages/risk/articles/cyber-security-privacy-gdpr-in-the-public-sector.html>

¹⁰ <https://mgaleg.maryland.gov/2020RS/bills/hb/hb1202T.pdf>

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