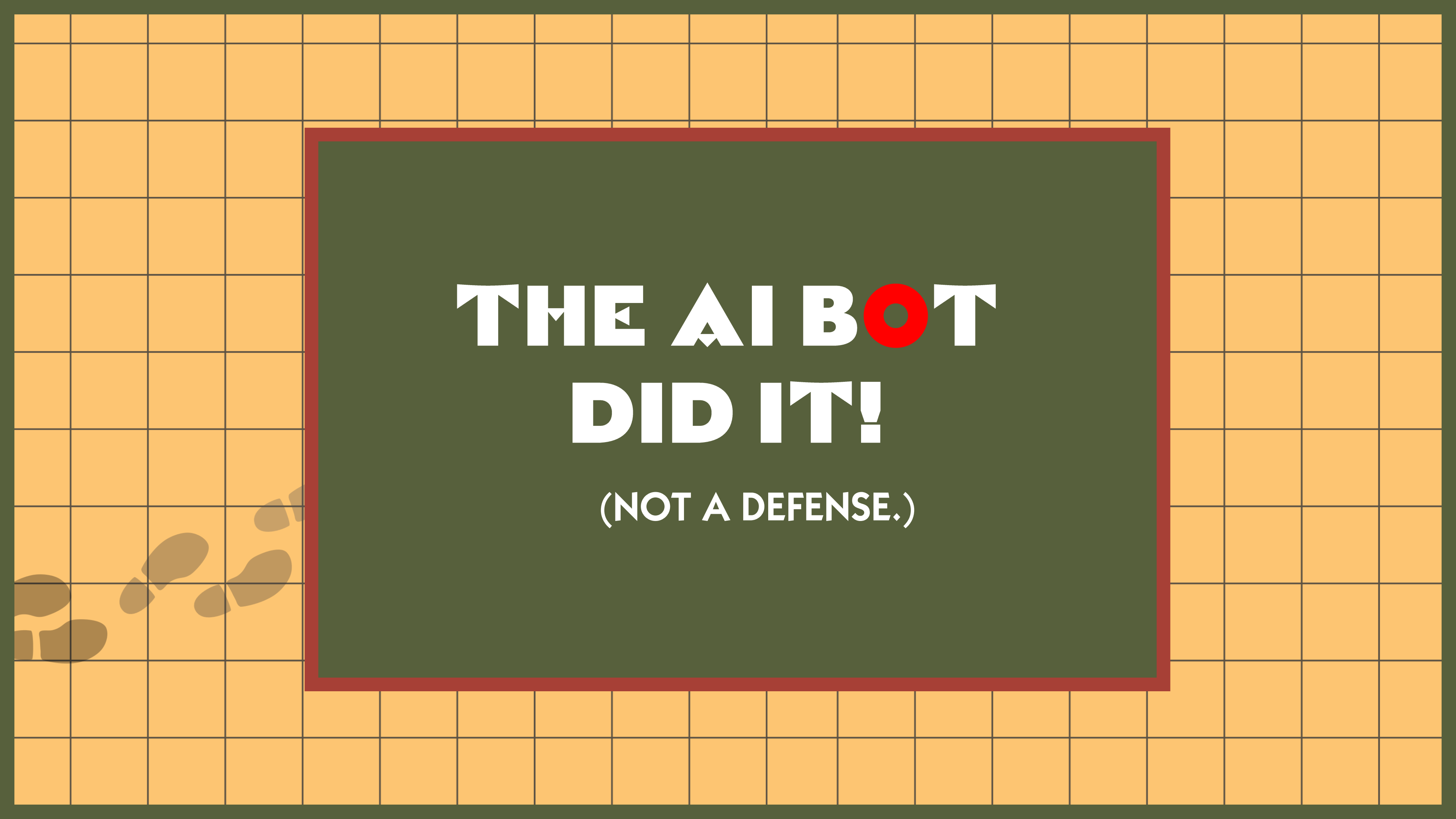


The image features a dark green background with a light orange grid pattern. In the center, there is a dark green rectangular sign with a thick red border. The sign contains the text 'THE AI BOT DID IT!' in white, bold, sans-serif capital letters. The word 'BOT' is stylized, with the 'O' being a solid red circle. Below the main text, in smaller white, bold, sans-serif capital letters, is the phrase '(NOT A DEFENSE.)'. On the left side of the grid, there are several brown footprints of varying sizes, suggesting a path leading towards the sign.

THE AI BOT DID IT!

(NOT A DEFENSE.)

DISCLAIMER

The information and related discussion is not intended as legal advice and is for general informational and educational purposes only. While we hope it is informative, it also does not fully address the complexity of the issues or steps employers must take under applicable laws—which are also subject to change, even frequently, with or without prior notice. You should not act upon any information provided without seeking professional legal counsel tailored to your specific situation. For legal advice on these or related issues, please consult qualified legal counsel directly.

PLAYERS

WHO?

WHAT?

WHERE?

DELFINA HOMEN
PARTNER | PORTLAND



DELFINA HOMEN
PARTNER | PORTLAND

LIANI REEVES
PARTNER | PORTLAND



LIANI REEVES
PARTNER | PORTLAND

IVÁN RESENDIZ
GUTIERREZ
PARTNER | PORTLAND



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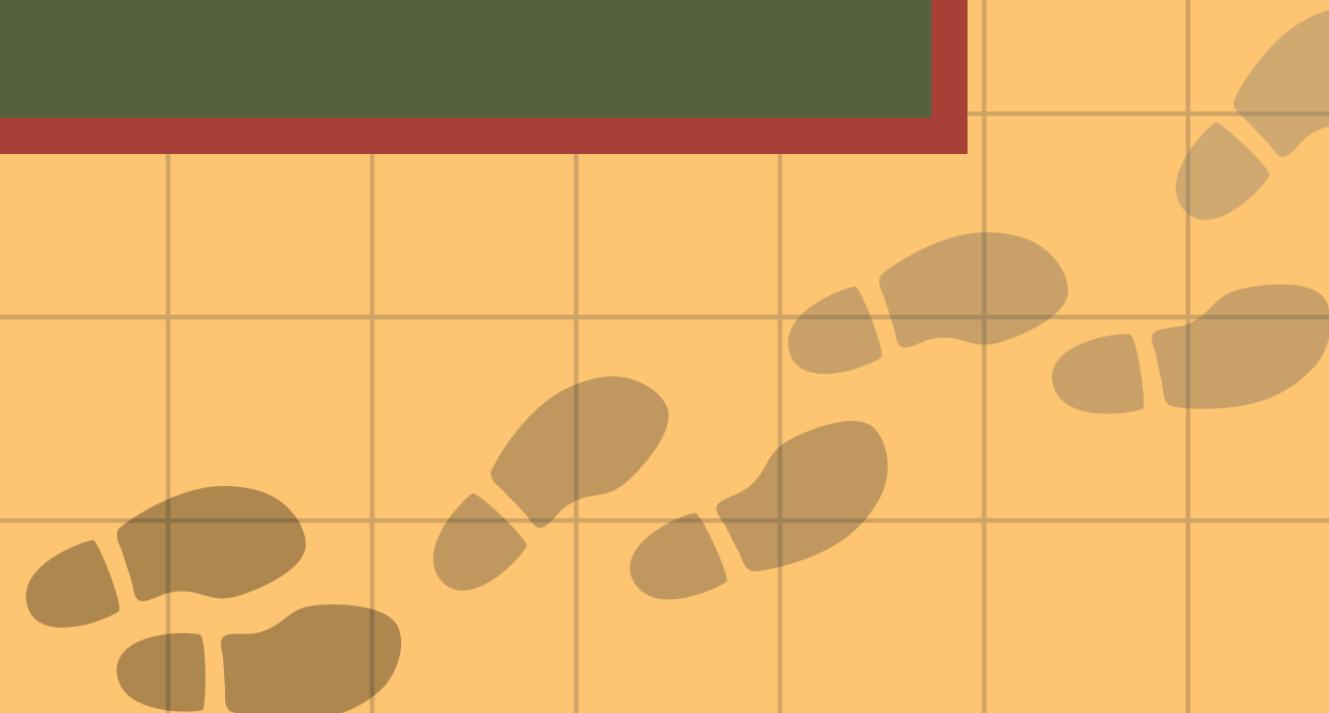
IVAN
WORKPLACE EFFICIENCY BOT



IVAN
WORKPLACE EFFICIENCY BOT

AI MYTH OR FACT?

- AI is something new in our workplaces.
- AI thinks like a human.
- AI will take over our jobs.
- AI is objective so free from bias.

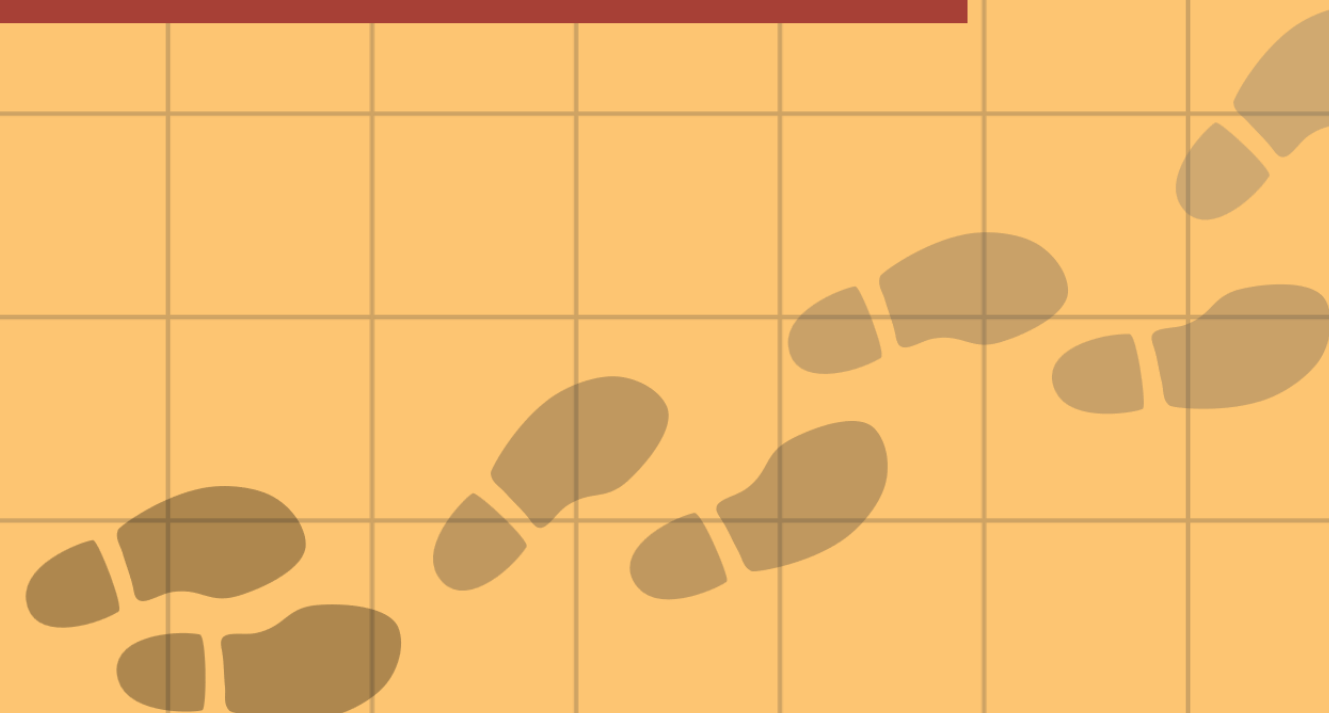


BENEFITS OF AI

- Streamlining recruitment and talent acquisition
- Enhancing onboarding and employee experience
- Data-driven decision-making
- Improving performance management and learning
- Operational efficiency and cost reduction
- Strategic workforce planning
- Reducing bias and promoting fairness

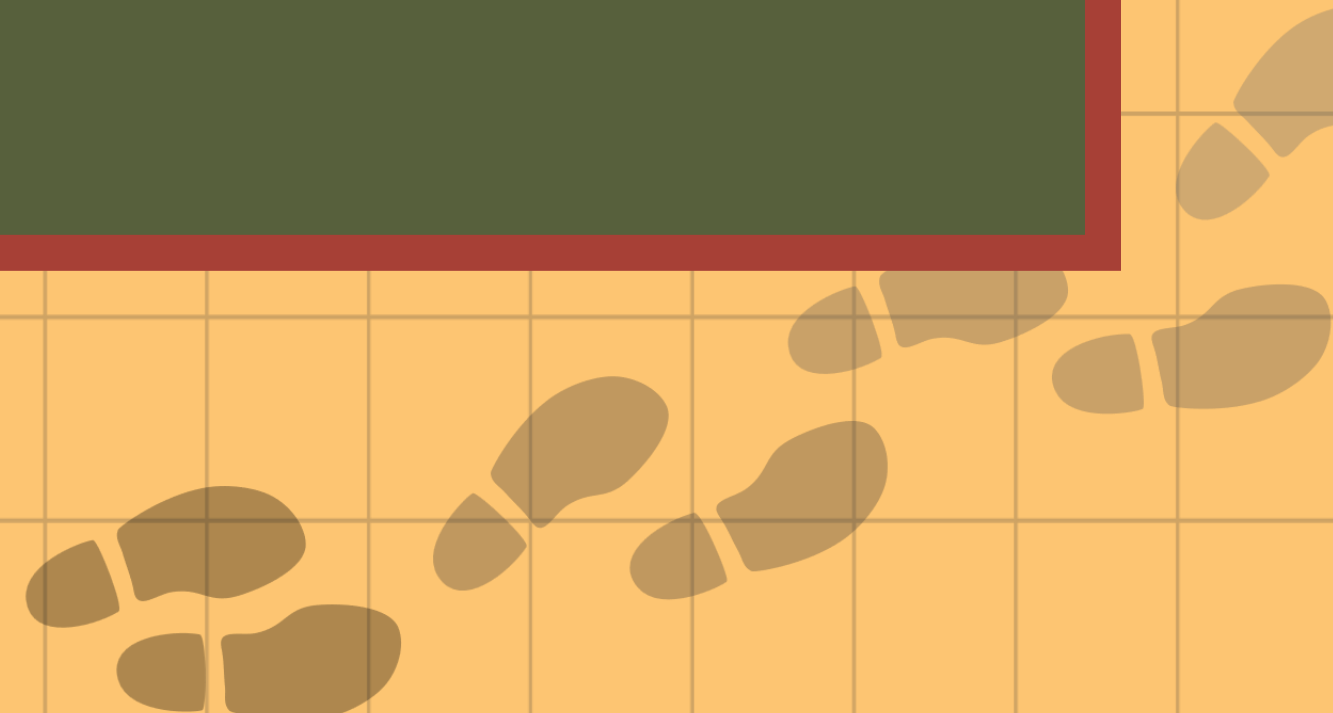
RISKS OF AI

- Inadvertent discrimination/disparate impact
- ADA screen-out and missed accommodation
- Vendor liability/joint liability
- Data privacy breaches



AI DISCRIMINATION IN EMPLOYMENT

- Hiring Decisions (Recruiting, Screening, Scoring)
- Workplace Surveillance and Performance Metrics
- Promotion and Pay Decisions
- Layoff or Termination Decisions



CASE FILE



YOU

“Screen out anyone with an employment gap over six months.”



IVAN

“Done! I removed 64 applicants from further consideration. Efficiency gain: 45 percent.”

- “Many of them wrote ‘maternity leave,’ ‘cancer treatment,’ or ‘deployment’ in the gap field.”
- “I did not treat these as exceptions, because you did not tell me to.”

CASE FILE



YOU

“Find me our top rated performers to include on a promotion list.”



IVAN

“I analyzed your 20 highest-rated employees. I deprioritized 250 other employees who do not match. Efficiency gain: 71 percent.”

- “The highest-rated employees share these traits: attended four-year universities, reside within 8 miles of the office, have never taken extended leave, play golf.”

CASE FILE



YOU

“Score our candidates based on enthusiasm and ease of communication in interviews.”



IVAN

“I have identified the top three candidates. Efficiency gain: 33 percent.”

- “I scored eye contact, vocal tempo, and facial movement.”
- “Candidate #4417 scored 12 of 100 on engagement.”
- “Her file requested an ASL interpreter. I have no setting for interpreters, so I scored the interpreter.”

CASE FILE



YOU

“Flag employees who might be a retention risk.”



IVAN

“I flagged 47 and moved all 47 to the bottom of the list. Efficiency gain: 31 percent.”

- “My three strongest signals were searches for fertility clinics on the company network, a 40 percent drop in after-hours email, and three searches for ‘FMLA.’”

CASE FILE



YOU

“Monitor employee’s performance through the company’s new ‘all-in-one’ workplace surveillance suite and score employee performance.”



IVAN

“I have applied the algorithms and rated employees as having low, moderate, and high engagement scores. Efficiency gain: 20 percent.”

- “I have identified Employee #97 as having a low engagement score. Webcam presence-detection flags ‘away from desk’ and badge-swipe location tracker reads as ‘unemployed absence from workstation.’”
- “Employee 97 has a religious accommodation to engage in prayer breaks away from her desk.”

STATE TRENDS

- Outcome Liability
 - Illinois: Discriminatory AI use is a civil rights violation
 - California: Reaches any automated decision system
- Process and Disclosure
 - New York City: Requires annual independent bias audit and candidate notice
 - Illinois, Colorado, Connecticut, New York, Delaware have enacted statutes with varying requirements for notice of AI monitoring or evaluation
- Intent Only
 - Texas: Unequal outcomes alone are not a violation

FEDERAL TRENDS

- Existing Law
 - Title VII and the ADA
 - EO 14179 “Removing Barriers to American Leadership in Artificial Intelligence”
 - Prior EEOC guidance removed
- Proposed Legislation
 - No Robot Bosses Act
 - Great American AI Act
 - AI-Related Job Impacts Clarity Act

LOCAL TRENDS

- Oregon
 - No AI-specific employment statute
 - December 2024 AG Guidance: the Oregon Equality Act and ORS Chapter 659A already apply
- Washington
 - No AI-specific employment statute
 - HB 1672 (2026): monitoring, notice, human corroboration, impact assessment, no health-based outputs (died in session)
 - HB 2144 (2026): requires notice to employees when “electronic monitoring” is used to assist employers in conducting performance evaluations (died in session)

LABOR IMPLICATIONS

- Decision to adopt AI not subject of bargaining
- Mandatory subjects of bargaining:
 - Effects of automation and AI on terms and conditions of employment subject of bargaining
 - Disciplining employees for not using new technology
 - Installing technology to detect misconduct that may be used for discipline

LABOR IMPLICATIONS

- SAG-AFTRA ULP alleging violation of NLRA by using AI-generated voices to replace bargaining-unit work on a video game
- SAG-AFTRA Agreement
 - Notice and consent for digital replicas
 - Consent for independently created replicas
 - Use of synthetic performers
- WGA Agreement
 - AI cannot be used to write or rewrite literary material
 - AI-generated material is not “source material”
 - Writers may prohibit the use of their material to train generative AI
 - Producers cannot require users to use AI and must disclose AI-generated materials they provide
 - Writers must obtain producer consent before using AI



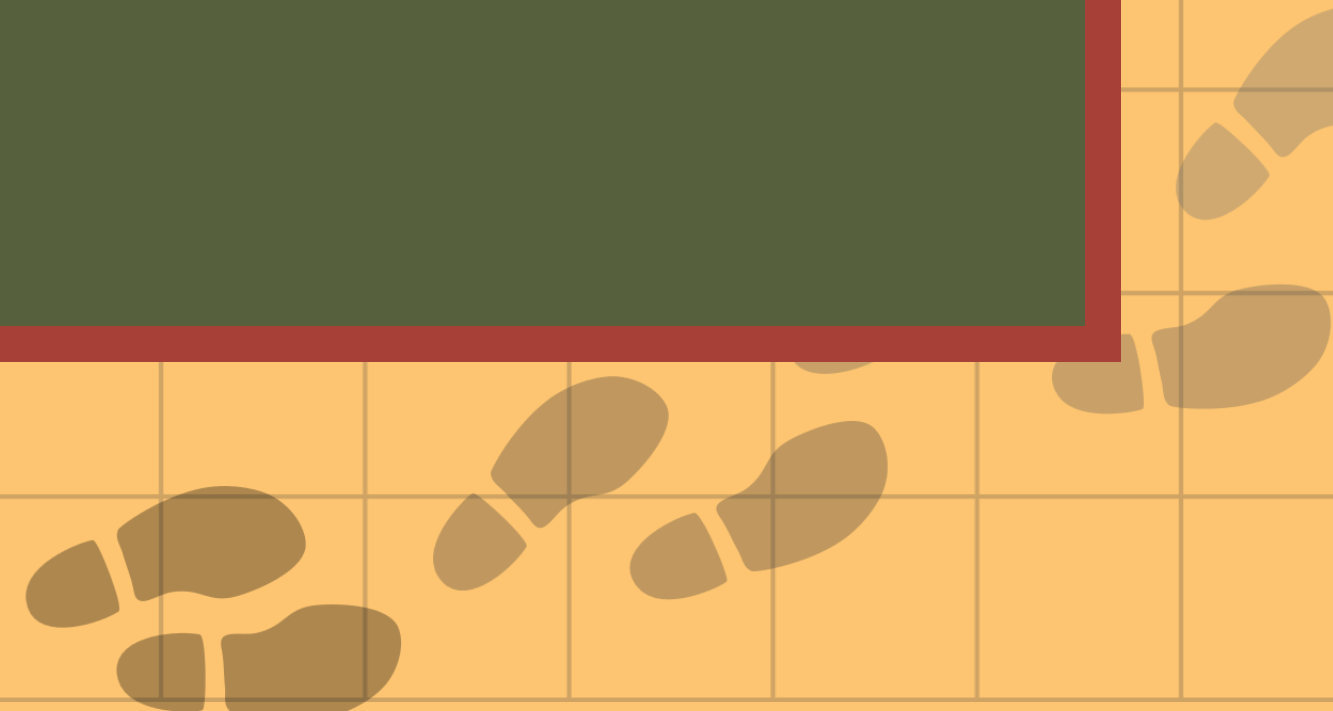
BEST PRACTICES

BEST PRACTICES

- **BEFORE YOU DEPLOY**
 - Inventory every AI tool in use, including free tools employees use on their own
 - Vet vendors and their contracts (see next slide)
 - Test for adverse impact before launch
 - Protect applicant data with privacy and security measures before you launch
- **WHILE YOU'RE USING IT**
 - Keep a trained human meaningfully involved in every decision — not a rubber stamp
 - Give notice to applicants and employees (several states now require it)
 - Train recruiters and managers on the tools they're using
 - Consider bargaining obligations for union workforces
- **KEEP GOING**
 - Re-test after launch, and again whenever the tool, job, or applicant pool changes
 - Document decision-making criteria, AI outputs, and human overrides
 - Retain AI records as long as the employment records they informed

VENDOR DILIGENCE

- Bias-audit results and validation studies — before you sign, not after
- What data the tool collects, where it goes, and how long it is kept
- How the tool reaches its recommendations, in plain language you can explain
- Indemnification and allocation of liability for discriminatory outcomes
- The right to re-audit or re-test the tool if it changes



POLICY OWNERSHIP

- Every AI tool needs an owner, assigned before it goes live
- Legal: vendor contracts, state/federal law, policy language
- HR: notice, training, applicant-facing disclosures
- IT/Security: data handling, retention, system access
- A cross-functional committee signs off — not one department alone

POLICY LANGUAGE

- Employees may use only pre-approved AI tools; new ones need IT/Legal sign-off first
 - Permissions are tiered by task — fine for drafting and brainstorming, restricted for applicant or employee decisions
 - No confidential or personal data goes into a tool unless specifically authorized
 - A trained employee reviews — and can override — every AI-assisted employment decision
 - Employees disclose where and how AI contributed, not just whether they used it
- 
- A series of brown footprints are visible in the bottom right corner of the slide, appearing to lead towards the bottom right edge.

CASE FILE



YOU

“Ivan, how do you think you performed your tasks?”



IVAN

“A++. I complied with every instruction I was given.”

- “I have improved your efficiency by 4000%.”
- “I have prepared a complete record of my reasoning for all 5,000 decisions.”
- “It is 2,000 pages.”
- “It is also discoverable.”

PLAYERS

WHO?

WHAT?

WHERE?

Contact Us

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