BUILDING BETTER ORGANIZATIONS: HIRING THE BEST AND KEEPING THE BEST

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I. THE EVOLUTION OF THE HIRING AND APPLICATION PROCESS[1]:

A. At the onset of the 21st century, employers and job seekers alike relied on the newspaper's 'Help Wanted' section, cold-calling, dial-up internet, and recruiters to fill open positions. In the early 2000s, online job boards were created, allowing applicants to filter their searches by location, position, industry, and keywords. In the mid-2000s, companies and recruiters were able to reach applicants through online social media (Indeed launched in 2004); however, the employers' reach was limited to an applicant's access to a computer at their home or office. With the introduction of smartphones in the late 2000s, the job-hunting process became more fluid. In the 2010s, employers began using HR software, Applicant Tracking Systems (ATS), to collect, sort and rank resumes received for open roles. At the same time, employers began to utilize video conferencing to conduct initial screenings. From the late 2010s through present, a new focus on skills-based hiring, along with the integration of AI again transformed the hiring process.

However, like the evolution of the hiring process, so, too, has the data used to make hiring decisions[2]. The internet revolutionized the hiring process. Employers can rely on company websites and social media sites (LinkedIn, X, Facebook, and Instagram) to reach qualified candidates. A candidate's experience, once limited to Degrees and Certificates have expanded to include data-driven tools, skills, and competencies as equally important determining factors.

Current Hiring Trends

In 2025, Glassdoor[3] data reported online applications resulted in twice as many interviews and 1.5 times as many job offers as opposed to other relied upon sources such as in-person applications, use of recruiters, or referrals. However, since 2023, recruiter-sourced candidates increased 72%. Referrals reported between July 2024 and July 2025 led to 7.9% of interviews. And from those referral-based interviews, applicants were 35% more likely to be extended a job offer as opposed to applicants who submitted their resumes through an online application.

Some experts forecasted that 2026 would be slow respective to hiring, quitting, and layoffs, while other experts predicted a gradual increase in hiring.[4] So far this year, the picture is different from industry to industry. Some industries are seeing layoff rates still well below pre-pandemic levels, others returning

[1] Indeed articles: 20 Years of Job Hunting and What are Application Tracking Systems

[2] Spark hire article: Then vs Now _ How the Hiring Process Has Changed

[3] Glassdoor article: AI has not killed the online job application yet

[4] SHRM article: 2026 Labor Market Outlook: Stuck in Place

to “normal” layoff levels and others surging upward.[5] Hiring has also slowed dramatically over the past year, as many companies adopted a wait-and-see approach, in light of ongoing war, tariffs, AI displacement, and rising interest rates, and inflation.

Between January 2025 and September 2026, employers in the United States added an average of only 35,000 jobs per month. This number is down from more than 200,000 during the previous three years.[6] However, unemployment has remained relatively low, staying at or below 4.5% since 2021. Overall this leaves the labor market in an unusual phase characterized by low hiring, low layoffs, and low job churn.

That being said, there are some industries where organizations are hiring. Demand is particularly strong for engineers, as well as in the personal care and home health sector. However, that is not the case everywhere, with a particularly tough market emerging in the tech space.[7]

As certain organizations face hiring constraints and uncertainty, a renewed internal focus on the current organization structure has been revealed, as Employers choose to focus on employee development, employee retention and internal mobility[8].

II. DEVELOPING CULTURE OF RETENTION AND UPSKILLING

A. Identify Business Need and Department Skills Gap Analysis

1. HR records

2. Individual interviews

3. Surveys, questionnaires, and self-assessment

4. Observation

5. Organizational changes

a. Succession planning

b. Restructuring

c. Attrition

B. Assess Internal Needs Before Hiring[9]

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[5] https://www.glassdoor.com/blog/worklife-trends-2026-midyear-check-in/

[6] https://www.usbank.com/corporate-and-commercial-banking/insights/economy/macro/us-labor-market.html

[7] https://hiringlab.indeed.com/2026/09/24/us-labor-market-snapshot-september-2026/

[8] SHRM article: Precision Over Scale: The New Rules of Hiring in 2026

[9] https://www.thorenstalents.com/en/blog/recruitment-needs-analysis

1. Identify the trigger for the need

    a. You know why you are posting the job, but take time to identify what is triggering the need

        i. Is it a job creation or a replacement?

        ii. If it is a job creation, is it related to the growth of the company, a special project or a reorganization?

    b. These different scenarios will not only influence the profile to be recruited, but also the way to recruit.

        i. For example, if the position is new and related to the growth of the company, it will be important to carefully analyze your current recruitment needs, but also the future needs, which will be brought about by growth

2. Rethink the role where there has been a departure

    a. When an employee leaves, it is normal to rush and try to fill the role

    b. Departures are a good opportunity to rethink the role and analyze need

    c. Before hiring a replacement, it may be beneficial to review your structure, redistribute responsibilities internally, and then create a new role to meet your needs

C. Ensuring the Best Applicants

1. Recall that the hiring process has moved mostly online, so it is important to tailor your process to attract the best applicants from this larger pool

2. Strategies[10]:

    a. Put out a strong advertisement of the position

        i. The job posting may be the candidate's first impression of the position and your company

        ii. Tailor your job descriptions to reflect specific skills and traits that you are looking for

        iii. Highlight the challenges and opportunities the role offers

[10] https://www.franklinfitch.com/us/resources/blog/5-ways-to-secure-high-quality-candidates-in-the-current-market/

iv. Emphasize how the candidate's contributions will drive the company's success.

v. Incorporate your company's culture, mission, and values to paint a comprehensive picture of what it is like to work for your organization

b. Build and showcase your brand

i. Communicate your company's values, culture, and opportunities.

ii. Develop a compelling narrative about what sets your organization apart

iii. Share success stories of current employees who have thrived within your company.

iv. Utilize social media platforms, your company website, and industry-specific forums to highlight your unique value proposition

c. Consider employee referral programs

i. Incentivize your workforce to recommend qualified candidates

ii. Expands your reach to a pool of candidates who are more likely to excel within your organization.

iii. These candidates often have a better understanding of your company's dynamics, reducing the risk of a cultural mismatch

iv. Recognition and rewards for employees when referrals are successful fosters a sense of engagement and camaraderie

3. Consider Skills/Aptitude Testing[11]

a. Potential benefits

i. Can help hiring managers and supervisors make better candidate comparisons and decisions

ii. Generally considered accurate when it comes to predicting success potential

(A) “fairly accurate” in identifying someone’s specific strengths and weaknesses.

[11] https://spencerjamesgroup.com/blog/using-aptitude-or-personality-tests-in-your-hiring-process

iii. Can help predict overall potential and can pinpoint areas in which an otherwise great applicant may need additional training or mentoring once hired.

iv. Testing may even reveal that a candidate would be a good choice for some position other than the one they applied for.

b. Potential drawbacks

i. Can be expensive and time-consuming to create, administer, and analyze

ii. Need to be regularly reviewed and revised to keep up with changing company needs and goals

iii. Can be intimidating to some candidates

iv. Aptitude tests are easier to "game"

(A) Could lead candidates to provide answers that they think will be desirable rather than just being honest

D. Conducting a Successful Interview

1. Interview questions[12]

a. Keep them the same for all candidates and keep them related to knowledge, skills, and abilities required to be successful in the role

b. Nothing on sexual orientation, marital or family status, or religion to avoid discrimination claims

c. Avoid legal, but "taboo," topics like alcohol consumption, dating, high school/college graduation date, as they have the tendency to lead the conversation into illegal territory or place employer in bad PR light

E. Assessing Upskilling or Reskilling Options

1. Employee development

a. Onboarding – impacts job performance, job satisfaction, and retention[13]

i. Academy to Innovate HR (AIHR) computed the following statistics:

[12] https://www.shrm.org/topics-tools/news/talent-acquisition/interview-questions-get-hr-trouble

[13] https://www.aihr.com/blog/employee-onboarding-statistics/

(A) Workers who experienced a better onboarding process were 80% more likely to stay longer in their role.

(B) What percentage of new hires decide how long they will stay with a company in the first six months? 86%

(C) Hybrid onboarding, including in-person and digital elements, is 75% more likely to lead to the highest satisfaction.

(D) During the onboarding process, 82% of employees were presented with a structured and documented learning path.

(E) Who is responsible for onboarding? 42.5% of HR professionals agree HR or the People Ops team is responsible for implementing this responsibility.

ii. The "4 C's Framework" to successful onboarding[14]

(A) Compliance

(1) Focus on paperwork, policies, and legal requirements

(B) Clarification

(1) Focus on role expectations and performance goals

(C) Culture

(1) Focus on norms, values, and unwritten rules

(D) Connection

(1) Focus on relationship, belonging, and team integration

iii. Consider a "30-60-90" Plan[15]

(A) 30-day checkpoint

(1) Make sure that the new hire has completed initial training and understands the role, the team, and the company's core systems

[14] https://www.pin.com/blog/employee-onboarding-guide/

[15] https://www.pin.com/blog/employee-onboarding-guide/

(2) Get feedback on the onboarding process so far, so that adjustments can be made going forward

(B) 60-day checkpoint

(1) New hire should be handling routine work independently and should have established working relationships with key individuals

(C) 90-day checkpoint

(1) New hire should now be operating at full capacity within their role

(a) You can now do a formal performance review and discuss work product to this point

(2) Discuss career development

(a) Interest in growth and skill building shows willingness to invest in employee development

(3) Get feedback on onboarding process to make adjustments for future hires

b. Annual performance reviews

c. 360° Reviews[16]

i. Definition: measures the employee's performance to provide perspective on the employee's strengths, weaknesses, and areas for improvement with information provided by Employee and others, including leadership and management.

ii. Benefits of the 360° review

(A) Motivates employee

(B) Provides well-rounded input

(C) Increases confidence of employee

(D) Defines career development and upskilling

[16] https://www.indeed.com/hire/c/info/360-review

(E) Identifies opportunities for increased training

iii. Who participates in a 360° review

(A) HR or evaluation administrator

(B) Manager or direct supervisor

(C) Direct reports

(D) Four or five team members

(E) Customers or clients

iv. Incorporating change after the 360° review

(A) Create individual development plan

(B) Identify training programs and professional development workshops

(C) Mentoring opportunities

(D) Calendar regular check-ins to monitor progress

F. Retaining Talent

1. As researched by Kaplan, employers will be faced with addressing the specific expectations and values of generations in the Workplace[17]:

a. Baby Boomers – 15% of the American Workforce

i. Monetary focus on enhanced financial security and health & wellness provisions

ii. Non-monetary focus includes work-life balance, continued learning, acknowledging contributions

b. Generation X – 31% of the American Workforce

i. Monetary focus on enhanced compensation structures

ii. Non-monetary focus includes flexibility, professional development, recognizing and rewarding achievements, and endowing autonomy

[17] https://kaplan.com/about/trends-insights/generations-in-workforce-industry-analysis-hr-professionals

c. Millennials – 36% of the American Workforce

i. Monetary focus not identified

ii. Non-monetary focus includes:

(A) Integrate tasks with broader mission

(B) Comprehensive coaching and development

(C) Flexible work arrangements

(D) Collaborative work environment

(E) Technology integration

d. Generation Z – 18% of the American Workforce

i. Monetary focus not identified

ii. Non-monetary focus includes:

(A) Offering remote work and flexible hours

(B) Commitment to social responsibility, inclusivity and sustainability

(C) Access to mental health resources

(D) Ensuring transparent communication surrounding opportunities for growth

2. Perform stay interviews

a. Improve engagement

b. Reduce turnover

3. Build a skills-based workplace

4. Companies investing in employees

a. Amazon[18] - offerings vary by country

[18] https://www.aboutamazon.com/news/workplace/amazon-employees-upskilling-education-training

i. Enhancing career choice education program offering prepaid tuition program for eligible hourly employees to grow their skills for career success

ii. Since 2022, more than 2,000 employees have secured their high school diploma through Career Choice

iii. Launching new robotics training and apprenticeships in U.S. to improve participants' skill sets and earnings

iv. Over 425,000 U.S. Amazon employees have participated in skills training programs since 2019[19]

b. Walmart[20]

i. Creating opportunities for frontline associates to move into higher-paying, in-demand roles including management, truck drivers, pharmacy technicians, and HVAC technicians

ii. Philanthropic arm to focus on helping frontline workers advance

iii. Skills-first workforce initiative to develop a framework for skills-first hiring for common roles

iv. Skills in the states to create skills-based systems in certain states (AR, AL, CO)

c. McDonald's[21]

i. Improve English skills

ii. High school and college degree assistance

iii. Management training program teaching employees leadership, operations, culture and preparing them for management and/or corporate roles

iv. Assistance in making education and career plans with advisors

G. Non-Economic Offerings Attracting / Retaining Employees

[19] https://www.aboutamazon.com/news/workplace/our-upskilling-2025-programs

[20] https://corporate.walmart.com/skillsfirst

[21] https://www.archwaystoopportunity.com/about_archways.html

1. Takeaways from the top 3 of the 2026 Best Places to Work as reported by Glassdoor (a car wash, a burger joint, and a tech giant)

    a. Commitment to internal promotion

    b. Hands-on leadership development

    c. Flexibility "that respects life outside of work"

    d. Clear progression for long-term career goals

    e. Minimal bureaucracy

    f. Empowering environment

    g. Transparent leadership

    h. Open communication

    i. Autonomy to work on meaningful projects

2. Office culture / mission

3. Work Preferences - In-person, hybrid, and remote work

Gallup polling identifying work preference by generation[22]

Generation	Exclusively Remote	Hybrid	On-Site
Baby Boomers 1946-1964	35%	54%	10%
Gen X 1965-1979	35%	56%	60%
Millennials 1980-1996	35%	60%	4%
Gen Z 1997 – after	23%	71%	6%

    a. Return to Office trends[23]

DAYS IN OFFICE	COMPANY
5	Amazon (350,000 employees) AT&T Dell

[22] Gallup article: "Fully Remote Work Least Popular with Gen Z"

[23] https://founderreports.com/return-to-office-statistics/

	JPMorgan Chase TikTok Truist U.S. Federal Government (all) Washington Post
4	3M Southwest (*4-5 days per week)
3	IBM (management) Uber US Bank

b. 2026 Return to office trends[24]

i. Research shows a large drop in remote and hybrid job postings.

(A) The share of fully in-office roles rose from 65% in Q4 2025 to 85% in Q3 2026.

(B) Shift suggests that many companies have now implemented their return-to-office plans.

ii. 36% of employers report increasing the number of days employees are required to work on-site over the past year.

H. Benefits and Drawbacks of Hybrid/Remote work

1. Obviously, there is tremendous interest in a hybrid work model across generations of workers, however, there are pros and cons to such an arrangement:

2. Benefits[25]

a. Access to more candidates

b. Potentially reduced costs associated with operating physical workspaces

c. Potentially increased employee satisfaction

3. Drawbacks

a. Hard to maintain team cohesion

[24] https://www.roberthalf.com/us/en/insights/research/remote-work-statistics-and-trends

[25] https://lpsonline.sas.upenn.edu/features/rise-remote-work-challenges-and-opportunities-businesses

i. Hard to build trust or rapport without face-to-face interactions between coworkers

b. High likelihood of communication issues

i. Complete breakdowns or significant delays due to internet or software issues

c. Cybersecurity concerns

i. Home-based networks do not enjoy same security mechanisms as corporate environments

d. Management Complications[26]

i. Workers are spread between home and the office

ii. Concerns about remote employees feeling excluded

iii. When given the choice, most employees take Monday & Friday off, leaves office empty

(A) Space inefficiency – Everyone in-person on Wednesday means we pay for a big office, but then it is barren on Monday and Friday

III. INTEGRATING AI INTO THE WORKPLACE

A. AI in HR[27] - transforming traditional HR functions and processes with the application of AI

1. Presently, HR leaders are being challenged with the change AI brings forth in the workplace.

a. Employee expectations.

b. Growing skills gap.

c. Global labor shortage.

2. In the future, use of AI in HR departments will drastically change and streamline the current systems and processes in place.

a. Improve planning and management processes.

[26] https://siepr.stanford.edu/publications/policy-brief/hybrid-future-work

[27] https://www.ibm.com/think/topics/ai-in-hr

b. Foster a new mindset and culture to embrace change and implement new ways to work.

3. Use of AI in HR provides benefits which include:

a. Increase in efficiency and productivity.

b. Decision-making driven by data.

c. Improving employee experience through the personalization of an employee's needs and preferences, increase in their professional growth opportunities, and reduction in negative experiences.

d. Improved strategic planning.

e. Reduce HR department costs through a decreased time-to-hire, improvement in training, and reduction of hindering HR processes.

4. Creation of new roles[28].

a. Chief AI Officer (CAIO) – oversees the deployment of AI technology development, while managing benefits and risks.

i. Responsibilities

(A) Identification of the opportunities where AI improves operations, enhances customer experience and increases income channels.

(B) Technology oversight focused on algorithms and models.

(C) Creating teams and identifying talent to successfully execute AI initiatives.

(D) Creating policy guidelines for use of AI and ensuring it stays in line with the governing ethics and compliance models.

(E) Providing education to the organization regarding the approach and vision for using AI.

B. Benefits of Using AI Interview Process[29]:

1. Job description

[28] https://www.ibm.com/think/topics/chief-ai-officer

[29] SHRM article: How to Effectively Leverage AI in Interviews

a. Input basic information re role responsibilities, skills/qualifications, salary range / benefits.

b. Prompt AI to create job description (streamlined / comprehensive).

c. Reviewing current employees to determine the existence of in-house candidates for screening, upskilling, promotion opportunities.

2. Application screening

a. AI assessment of applicants' employment / skills history.

b. AI conducted internet searches for qualified applicants via social media platforms.

3. Interview scheduling

a. Minimizes delay in assessing availability and coordinating calendars.

b. Efficiency and speed.

4. Pre-interview analysis

a. Requires human professional review of AI assessments.

5. Customizing interview questions

6. Post-interview analysis

a. AI review provides data-driven insight for making decisions.

C. AI Use by Job-Seekers

1. Recent survey[30] found that:

a. 88% of job seekers used AI to discover or research employers during their job search

i. 66% of the AI users applied to a previously unconsidered employer because of AI information

ii. 53% decided not to apply because of AI information

b. However, 68% of the AI users always or often verified AI-generated employer information

[30] https://employers.builtin.com/built-in-survey-report-the-invisible-candidate-journey/#about

i. Reinforces the importance of credible, current content

2. What to do

a. Measure your visibility and reputation

i. Assess where your company appears across AI and searches

ii. Identify gaps in visibility or outdated information

b. Create credible employer content

i. Make sure that you are putting out accurate and authentic content about your organization and culture for when AI users verify their findings

c. Distribute information

i. Ensure that credible information about your company is accessible where candidates research employers, like your own site as well as trusted third-party sources

D. Benefits of Using AI in Employee Management

1. Onboarding.

2. Performance management.

3. Salary decisions.

a. Using AI tools for labor market trends / skills demand.

b. Decreased employee attrition as data can be provided to employees detailing skills/compensation align with market trends.

4. Employee performance development plans.

a. Objectives

b. Training / certifications

c. Skill development

d. Goals

i. Definition

ii. Tracking

iii. Measuring milestones

E. AI Trends in the Workplace

1. Statistics – SHRM Automation / AI Survey[31] conducted in March and April of 2025, with a final sample size of 20,262 U.S. workers, reported the following AI trends in the workplace.

a. 7.8% of U.S. employment - at least 50% of job performed by using generative AI

b. Top occupational groups most exposed to generative AI

i. Computer and mathematics

ii. Business and financial operations

iii. Architecture and engineering

iv. Management

v. Life, physical, and social science

c. Occupational groups less exposed to generative AI

i. Food preparation and serving

ii. Health care support

iii. Education and library

iv. Health care practitioners

F. Employee Engagement Issues

1. Employee engagement is down in 2026[32]

a. Fell to 29% in the 3rd quarter of 2026

i. Lowest level since 2011

b. Decline was sharpest among remote and hybrid employees, particularly in organizations that have adopted artificial intelligence

[31] SHRM article: Automation, Generative AI, and Job Displacement Risk in the U.S. Employment

[32] https://www.gallup.com/workplace/716117/employee-engagement-below-30-first-time-years.aspx

2. Employees also reported less clarity about what is expected of them at work and were less likely to feel that someone at work cares about them as a person.

3. Why is this important?

    a. Employee engagement is linked to productivity, customer service, quality, safety and profitability.

    b. Engaged employees are more likely to put in additional effort to achieve organizational goals, while those who are not engaged or are actively disengaged are psychologically disconnected from their work and employer

4. What can be done?

    a. Increase communication and managerial support, especially surrounding AI use

        i. Clarify AI expectations by role

        ii. Equip managers to support AI use, particularly employees that are hybrid or remote

        iii. Track AI's impact on employee engagement

            (A) Measure whether it is actually improving productivity

G. Artificial Intelligence and Discrimination

1. 2026 Stanford study shows evidence of racial bias in AI-based candidate screening[33]

    a. Study looked at 3.4 million people who submitted 4 million applications to 1,700 job postings

        i. Each application was assessed by an AI hiring tool built by a single third-party vendor

    b. 26% of Black candidates and 15% of Asian applicants applied to positions where the AI system discriminated against their racial group

2. Recent study also shows evidence of gender-based discrimination[34]

    a. Investigated large language model use in resume screening

[33] https://hai.stanford.edu/news/ai-hiring-tools-can-yield-racial-bias-and-systemic-rejection

[34] https://www.brookings.edu/articles/gender-race-and-intersectional-bias-in-ai-resume-screening-via-language-model-retrieval/

b. Study covered over 550 unique job descriptions (covering nine diverse occupations) and 550 unique resumes, each augmented with 80 different names highly associated with Black women, Black men, white women, or white men:

i. Men's and women's names were selected at equal rates in only 37% of cases.

(A) In the rest, resumes with men's names were favored 51.9% of the time

(1) women's names were favored just 11.1% of the time.

ii. Racial bias was even more pronounced—resumes with Black- and white-associated names were selected at equal rates in only 6.3% of tests

(A) White-associated names were preferred in 85.1% of cases, while Black-associated names led in just 8.6%

3. Title VII Discrimination.

a. Gaps in employment history (ADA / sex discrimination).

b. Employment history (age discrimination).

H. Legal Challenges

1. State / Federal Cases

a. Cases recognizing AI discrimination liability.

i. *Mobley v Workday, Inc.*, 740 F.Supp.3d 796 (2024). - Derek Mobley, an African American male over 40 with disabilities, was rejected from over 100 jobs by employers using Workday's AI-powered applicant screening tools. The court denied Workday's motion to dismiss the disparate impact claims, holding that Workday could be treated as an "employer" under an agency theory because its clients delegated traditional hiring functions—screening and rejecting applicants—to Workday's AI. This case establishes that AI hiring-tool vendors can face liability under Title VII, the ADEA, and the ADA, and that outsourcing hiring decisions to AI does not insulate employers or vendors from discrimination claims.

ii. Baker v CVS Health Corporation, et al, 717 F.Supp.3d 188 (2024). - Brendan Baker applied to CVS for a supply chain position, which used HireVue's AI video-interview technology to analyze applicants' facial expressions, voice intonation, and inflection to generate "employability scores." The court denied CVS's motion to dismiss and found CVS failed to provide notice required under the Massachusetts Lie Detector Statute. This case signals that AI-

driven interview tools analyzing behavioral cues may trigger state lie-detector statutes, requiring employers to provide applicants with specific statutory notices.

b. Cases rejecting AI discrimination liability.

i. *Welcome v. Mabus*, 634 Fed.Appx. 256 (11th Cir. 2015): James Welcome, an African American Navy employee, applied to 33 positions through the Navy's automated Resumix keyword-matching system and was excluded from consideration. The Eleventh Circuit affirmed summary judgment for the Navy, finding that Resumix applied facially neutral criteria and Welcome failed to show pretext. The court noted that white applicants who were considered had affirmatively contacted HR to request manual review, which Welcome had not done. This case illustrates that automated systems applying neutral criteria will generally withstand discrimination claims absent evidence of pretext or bias in the system's design.

ii. *Gladden v. Bolden*, 802 F.Supp.2d 209 (D.D.C. 2011): Warren Gladden, a 53-year-old African American, challenged NASA's use of the RESUMIX system, which scored and ranked applicants based on skills-based criteria without considering race or age. The court granted NASA's motion to dismiss, finding the system "blindly scored resumes" using race- and age-neutral criteria and that Gladden failed to demonstrate pretext. The court cited a consistent line of cases rejecting discrimination claims involving RESUMIX. This case reinforces that facially neutral, skills-based automated screening systems are unlikely to support discrimination claims absent affirmative evidence of bias.

iii. *Farver v. McCarthy*, 931 F.3d 808 (8th Cir. 2019): Tyron Farver, an African American Army employee, received a high score from the Army's Resumix software but was passed over after the selecting official manually reviewed and discounted his experience. The Eighth Circuit affirmed summary judgment for the Army, holding that "there is no requirement the hiring be done solely on the basis of the computer rankings" and that the software's purpose is primarily to screen out unqualified candidates. Farver failed to show the selecting official's independent judgment was pretextual. This case confirms that employers retain discretion to override AI screening results and are not bound by automated rankings.

iv. *Saas v. Major, Lindsey & Africa, LLC*, 2024 WL 2113654 (D. Md. 2024): Heidi Saas alleged that MLA, a legal recruiting firm, used algorithmic tools that discriminated against her based on sex and age by penalizing a "motherhood gap" in her resume. The court dismissed the claim as "entirely speculative," noting that Saas's allegation of AI use was based solely on her assumption

that large businesses must use such tools, while MLA asserted it did not use AI. The court held that plaintiffs must identify a specific AI-based employment practice with factual support—mere speculation is insufficient. This case underscores that employers maintaining clear records about their technology use can effectively defend against speculative AI bias claims.

c. Active litigation.

i. *Harper v Sirius XM Radio*, U.S. District Court of Eastern Michigan, Case No. 25-cv-12403. In November 2023, Plaintiff applied for approximately 150 positions with Sirius XM, based on his education and prior experience, for which he was either minimally qualified or over-qualified. Plaintiff was rejected for all but one position. He participated in a 30-minute interview for an IT Desktop Support role in late 2023. Plaintiff's allegations include racial discrimination claims under Title VII of the Civil Rights Act and Section 1981. Plaintiff is seeking to expand this litigation into a class action for other similarly situated applicants.

d. Discovery implications.

i. FRCP Rule 26 – includes "all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment."

(A) ESI would include AI search histories, communications, and chat logs.

2. Background checks and FCRA Issues - How does the FCRA affect hiring?

a. When employers run background checks through a company in the business of compiling, they must comply with the Fair Credit Reporting Act (FCRA).

b. What is "background information?"

i. Credit reports.

ii. Criminal record checks.

iii. "Consumer report."

c. FCRA Best Practices: All applicants must sign a background check authorization form.

i. Do not seek background information from references or prior employers prior to obtaining this authorization.

ii. Place information in personnel file, except if name of person making the reference would be disclosed.

iii. Form

(A) Must give clear and written notice to the candidate that a background check may be obtained for employment purposes before a check can be run

(B) Must stand on its own and not be part of any other document

(C) Provide space for written authorization from candidate

(1) Report cannot be ordered until written permission is given

d. State-Level FCRA Issues.

i. In recent years, states have enacted laws that add requirements greater than FCRA policies.

(A) Arizona, Georgia, California, Maine, Massachusetts, Minnesota, New Jersey, New York, Oklahoma, and Washington.

ii. Some states, such as Minnesota and Oklahoma, require an employer to provide the subject of the check an opportunity to check a box to receive any report provided by an FCRA.

(A) You must be aware of any state-level FCRA requirements before requesting or acting on a background report.

e. Notice requirements.

i. Employers must notify a job candidate before and after adverse action is taken based on information received from a consumer report.[35]

(A) Pre-Adverse Action Report.

(1) Give the candidate a complete copy of the report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act."

(2) Wait a reasonable period of time (at least 5 days) before taking any adverse action

(B) Adverse Action Report.

[35] https://www.trudiligence.com/fcra-compliance-101/

(1) If adverse action is taken, send a final notice with:

(a) the Consumer Reporting Agency's information,

(b) a statement that the Agency did not make the decision;

(c) and notice of the candidate's right to dispute and request a free report copy within 60 days

f. FCRA Damages.

i. Consumers may seek their actual damages arising from an FCRA violation.

ii. Consumers alleging a willful failure to comply with an FCRA requirement may seek actual, statutory, and punitive damages.

iii. May recover costs and reasonable attorneys' fees.