PSH Partner Alicia J. Samolis Featured in Landmark AI Applicant Screening Case

Description

Alicia J. Samolis, Chair of the firm's Employment & Labor Practice and Co-Chair of the Artificial Intelligence Task Force, was recently called upon to comment on the closely watched *Mobley v. Workday Inc.* litigation.

In the case, a federal court in California conditionally certified a class action against Workday, an AI-driven platform used by employers for applicant screening and other human resources functions. The case is unusual because the discrimination claims are directed not at the employers making hiring decisions, but at the AI platform provider itself. Plaintiffs argue that Workday acted as an "agent" of the employers using the platform, a theory the court has allowed to proceed.

The court also rejected arguments that the plaintiffs' Age Discrimination in Employment Act (ADEA) claims should be dismissed because the plaintiffs are applicants rather than employees. It likewise declined to dismiss claims under California discrimination law, despite the fact that many plaintiffs are neither California residents nor California workers.

> Commenting on the decision, Alicia observed: "At first read, the ruling may seem bad for employers. But … it may, in fact, serve to shield them from potential litigation in the future." From a practical standpoint, if other courts adopt the California court's reasoning, applicants and employees may be incentivized to pursue claims directly against platform providers, particularly because the potential class sizes could be much larger. As a result, employers may be less likely to be the primary litigation target.

That said, Alicia questioned whether the Workday rulings will gain traction nationwide.

> "As we all know, California … always [has] the extra employee-friendly decisions out there," she said. "I think other courts may very well look at this very [differently]," particularly given that viewing a platform as an "agent" is not in line with prior understanding of the agency concept.

Alicia also emphasized that the unique facts of the Workday case may limit its broader application. According to the allegations, the platform's outputs functioned more like directives or decisions versus merely providing data that employers were left to interpret for themselves.

From a risk-management perspective, she noted that platform providers could reduce exposure by carefully structuring outputs to make clear that employment decisions remain with the employer and avoid rankings and definitive recommendations that could be construed as employment decisions. Employers likewise may reduce risk by disabling algorithmic rankings and ensuring hiring decisions are based on individualized assessments rather than formulaic scoring. AI tools that are customized and applied on a case-by-case basis are generally less susceptible to class action claims.

In addition, Alicia highlighted the growing importance of arbitration agreements. Both employers and platform providers have a stronger incentive to ensure applicants and employees are subject to enforceable individual arbitration agreements that expressly cover both the employer and the platform provider. Likewise, each party should consider requiring the other be included in their arbitration provisions, as well as securing contractual indemnification and defense obligations when the other party's conduct gives rise to litigation.

Have questions about artificial intelligence in the workplace? Alicia has extensive experience advising both employers and employment-related AI technology providers on managing the legal and practical risks associated with workplace AI, including hiring technologies, compliance strategies, internal governance, and evolving regulatory requirements.

The full article is available through *Law.com* (subscription required).

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