How does using artificial intelligence (AI) in the hiring process impact people with disabilities?
(U.S. HHS Region 8)

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Increasingly, artificial intelligence (AI) is influencing employee hiring by replacing human decision making in tasks such as resume screening, interviewing and hiring applicants. The degree to which AI programming discriminates against people with disabilities in the hiring process is not clear. There is no major U.S. case law which directly addresses the issue. However, there are several examples of how AI introduces bias and potential discrimination in the process. One such example is the HireVue "Hiring Experience Platform™".

HireVue is an AI-driven hiring system designed to help companies determine which job candidates would be successful workers. The early HireVue system used AI to "examin[e] speech patterns, tone of voice, facial movements and other indicators."[i] The problem was that, "this method massively discriminates against many people with disabilities that significantly affect facial expression and voice."[ii] Further, "a meaningful connection between any person's facial features, tone of voice, and speech patterns,… and their competence as a worker… is not backed by scientific evidence."[iii] HireVue's AI and its application process have since been revised to minimize this type of bias and resulting discrimination.

While discrimination may be unintended on the part of AI software and design engineers, their unintentional biases may be coded into the AI system's decision-making processes, as happened in the HireVue example. The problem is further complicated for people with disabilities in that, "disability encompasses a vast and fluid number of physical and mental health conditions (such as asthma, depression, and post-traumatic stress disorder) which can come and go throughout a person's lifetime (or even in the course of a single day)."[iv] Designing an AI system that accounts for this fluidity is extremely difficult, if not impossible.

Documenting AI-related discrimination against applicants with disabilities in the hiring process is challenging. Legal discussions of AI technology and the ADA are scarce. While there are yet to be major legal decisions on the matter, the discrimination problem is clearly present.

The best way to improve AI-related hiring outcomes and reductions in bias and discrimination against applicants with disabilities is to commit to hiring standards and criteria that focus on essential job functions. Then, ensure AI algorithms measure applicant competence related to those job functions. At least one AI-driven hiring system allows applicants to request accommodations to the process (e.g., more time to answer on-line questions) but this also alerts hiring managers that the applicant may have a disability. Finally, confirm that the entire talent acquisition and retention process adheres to state and federal laws AND to hiring best-practices adopted by the human resource industry.

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[i] Whittaker, M., et al. (2019). "Disability, bias, and AI." AI Now Institute (2019), 15.

[ii] Fruchterman, J. & Mellea, J. (2018), "Expanding employment success for people with disabilities." Benetech, November (2018), 3.

[iii] Whittaker, M., et al. (2019), 6.

[iv] Ibid., 10.