

# LEGAL UPDATE

## EEOC and DOJ Issue Guidance on Artificial Intelligence and ADA Disability Discrimination

On May 12, 2022, the Equal Employment Opportunity Commission (EEOC) and U.S. Department of Justice (DOJ) each issued new technical assistance documents about how employers' use of artificial intelligence (AI) and other software tools to make employment decisions may result in unlawful disability discrimination under the Americans with Disabilities Act (ADA).

### EEOC Guidance

The [EEOC's new guidance](#) focuses on the following three ways an employer's use of software tools for employment decisions may violate the ADA:

- The employer does not provide a reasonable accommodation necessary for an individual to be rated fairly and accurately by the software;
- The software "screens out" an individual with a disability, even though the individual is able to do the job with a reasonable accommodation; and
- The software makes disability-related inquiries or includes medical examinations.

The EEOC also provides best practices to help employers avoid these violations.

### DOJ Guidance

The [DOJ's new guidance](#) provides a broad overview of rights and responsibilities under the ADA. It also provides examples of the types of software tools employers use, clarifies that employers must consider various disabilities when designing or choosing their software, and explains when an employer using software tools must provide a reasonable accommodation.

### Important Information

#### Employers and Software Use

Employers increasingly use software tools to help select new employees, monitor performance, determine pay or promotions, and administer or score tests. Without safeguards, this use may result in ADA violations.

#### ADA Concerns

The ADA requires employers with 15 or more employees to provide reasonable accommodations and have other processes in place to ensure that their software tools do not unfairly rate or screen out qualified individuals with disabilities.

*The new guidance explains how existing ADA requirements apply when employers use AI and other software tools to make employment decisions.*

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