Artificial Intelligence (AI) Driven Tools in the Workplace Policy (with Acknowledgment)

A Practical Guidance® Template by Joseph O'Keefe, Edward Young, and Hannah Morris, Proskauer Rose LLP

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Summary

This template is intended to provide a framework for a policy concerning use of artificial intelligence (AI) driven tools in the workplace. Employers are advised to adopt a policy to indicate the limits on AI's use in the workplace. This template includes practical guidance, drafting notes, and an alternate clause.

This template is intended for private employers. Employers may include a policy derived from this framework in an employee handbook or distribute it as a standalone policy. It is a non-jurisdictional policy and does not address all potential federal legal requirements, or state and local law distinctions; thus, you should check any potentially relevant laws and regulations.

Employers are increasingly adopting AI Driven Tools (AI Tools), including generative AI (GAI), to automate routine tasks and assist their employees in the performance of job functions. The myriad ways in which AI is being used by businesses cannot be captured in a one size fits all policy. This framework provides a structure which highlights certain key issues. Before implementation of any policy, the policy will need to be supplemented to address the unique needs of each business. In addition, prior to adoption of any provision or section set forth in this template or other policy, employers should consult with counsel. Federal, state, and local law and regulation of AI is rapidly evolving, and employers will need legal advice related to the laws and regulations applicable in the jurisdictions in which they operate prior to adoption any policy or provision concerning the use of AI. To the extent a business operates internationally, the law of the countries in which they operate will need to be considered.

For a full listing of key content covering employee handbook considerations, see Generative Artificial Intelligence (AI) Resource Kit.

For more information on AI policies in the workplace, see ChatGPT Risks and the Need for Corporate Policies.

1. **Purpose.** The purpose of this policy is to establish guidelines for the appropriate use of artificial intelligence (AI) in the workplace, including the use of Generative AI (GAI) and Algorithmic AI (AAI) tools, defined in Section 3. below. This policy aims to ensure that AI technology is used to enhance productivity, efficiency, and decision-making while complying with applicable law and respecting privacy, confidentiality, and data security.

> **Drafting Note to Paragraph 1.**
>
> Given the growing use of Generative AI (GAI) (e.g., Bard, ChatGPT) by employees and consultants in the workplace, businesses should evaluate the issues and risks associated with such use and consider implementing an AI use policy (such as this Artificial Intelligence (AI) Driven Tools in the Workplace Policy). For more guidance on drafting GAI policies, see ChatGPT Risks and the Need for Corporate Policies.

2. **Scope.**

   (a) This policy applies to all employees, contractors, and third-party vendors who interact with, develop, or implement AI tools within our organization (collectively, AI Users). It covers all AI technologies, including, but not limited to, machine learning, natural language processing, and computer vision.

3. **Definitions.**

   (a) Generative AI (GAI) is a technology that can create new content in response to prompts, including but not limited to text, speech, and images (e.g., ChatGPT).

   (b) Algorithmic AI (AAI) is a technology that analyzes data with machine-learning algorithms and can make decisions or predictions based on the data.

   (c) AI Tool is any app, software, or system that can independently change its own analytical methods and utilizes artificial intelligence (including Generative and Algorithmic AI), machine learning, or other advanced algorithms to perform tasks, analyze data, or make (or assist in making) decisions. AI Tools may use GAI, AAI, or both.

4. **Training.**

   (a) The Company may require that AI Users receive training, either in-house or through a third-party vendor, concerning the potential benefits and risks associated with using AI Tools and on the operation and use of approved AI Tools.

> **Drafting Note to Paragraph 4.(a).**
>
> Although training received from the employer is typically a factor considered in determining whether a worker is an employee or an independent contractor, the fact that all workers may receive such specialized training concerning the benefits and risks of using AI Tools may not weigh in favor of a finding that all such workers are employees. For further information regarding employee classification and the risks of misclassification, see Independent Contractor Tests and Risks of Worker Misclassification. To compare state and federal laws on independent contractors, see the Labor & Employment State Law Comparison Tool.

   (b) If the Company does require such training, AI Users must comply with any associated requirements (e.g., attendance and satisfaction of certain skills assessments) before they can access and use AI Tools for work-related purposes.

5. **General Principles.** For purposes of this policy:

   (a) This policy applies when AI Users use AI Tools to perform, or assist in the performance of, any work-related activities without regard to the location of the AI Users at the time they use the AI Tools, or whether the AI Users operate the AI Tools on Company equipment and systems, on the AI Users' personal devices, or on third-party electronic devices.

(b) AI Users should only use the AI Tools in circumstances when they enhance or assist the AI Users in performing their job-related tasks by enhancing productivity, efficiency, and decision-making. For example, AI Tools can be helpful aids in sorting, ranking, and evaluating large quantities of documents and information. AI Tools employing GAI can prepare first drafts of standard correspondence and documents, as well as for creating simple outlines.

(c) AI Tools may produce erroneous or nonsensical information or results that are not real, do not match any data the algorithm has been trained on, or do not follow any other discernible pattern. In addition, the results may reflect biased or incomplete data sets on which they were trained. AI Tools should not be used blindly for decision making and/or the creation of content and should never be relied upon for important inquiries.

(d) When AI Users use AI Tools to assist in their performance of job-related responsibilities, the Company expects AI Users to recognize the limitations of the tools they are using, avoid over-reliance on such tools, carefully review output for errors, and remain vigilant to identify potentially erroneous, incomplete, or otherwise problematic output.

(e) AI Users who have concerns with the output of an AI Tool should follow the Reporting Procedures set forth in section 8. below.

6. **Use of Approved AI Tools.**

(a) Company will maintain a list of AI Tools that have been approved for use, with a specific indication as to which departments and job classifications may use each tool (List). The List can be found here [list].

(i) Questions concerning whether an application which is not included on the List is an AI Tool – and, thus, subject to this policy – should be referred to [appropriate individual or department name].

(b) Prior to using an approved tool, the department or AI User seeking to use the tool must request and be approved for access by [where access request should be sent] and in the request state the intended use of the tool.

Drafting Note to Paragraph 6.(b).

As drafted, this default paragraph 6.(b) provides the employer with significant oversight and control over their AI Users› use of AI. Employers with significant intellectual property, confidential information, and/or other proprietary information should carefully consider the risks of allowing their employees to use AI Tools without seeking additional permission or access (such as the risk of disclosing such information to third parties), even when such AI Tools are on the approved List. For a more liberal use policy, consider using Alternate Paragraph 6.(b).

Alternate Paragraph 6.(b):

(b) Departments and AI Users may use approved AI Tools contained on the List without the need to seek additional permission or access.

Drafting Note to Alternate Paragraph 6.(b).

As drafted, the default paragraph 6.(b) provides the employer with significant oversight and control over their AI Users' use of AI. Employers with significant intellectual property, confidential information, and/or other proprietary information should carefully consider the risks of allowing their employees to use AI Tools without seeking additional permission or access (such as the risk of disclosing such information to third parties), even when such AI Tools are on the approved List. For a stricter use policy, use standard Paragraph 6.(b).

(c) Prior to using an AI Tool for any-work related purpose, regardless of their location, that is not on the List, not specifically approved for use in their department and job classification, or not approved for the task that the AI User seeks to use the AI Tool to perform, an AI User must receive express written consent from [supervisor/manager/HR designee]. The requesting AI User should be prepared to discuss the purpose, scope, and business justification of using the AI Tool in question to complete a work-related task.

(d) During working hours, AI User may only use AI Tools for work-related purposes in accordance with this policy. If an AI User uses AI Tools for non-work-related purposes during working hours, they may be subject to appropriate disciplinary action, up to and including immediate termination of employment or termination of contract (as in the case of a contractor or third-party vendor).

Drafting Note to Paragraph 6.(d).

Paragraph 6.(d) should be made consistent with the Company's computer use policies, if any. For best practices on drafting computer use policies, see Communications System, E-mail, Network, and Internet Policies: Key Drafting Tips, Computer, Mobile Phone, and Other Electronic Device Policies: Key Drafting Tips. For related non-jurisdictional templates, see Computers, Mobile Phones, and Other Electronic Devices Policy, Electronic Communication Systems Use Policy, and Communications Systems, Email, Networks, and Internet Policy.

(e) No AI User may use AI Tools for personnel decision-making purposes without the express written consent of [HR or an HR designee].

Drafting Note to Paragraph 6.(e).

Some states and local jurisdictions have begun to regulate the use of AI in personnel decisions. For example, in New York City, beginning July 5, 2023, the Automated Employment Decision Tools (AEDT) Law makes it unlawful for an employer or an employment agency to use an automated employment decision tool (as specifically defined in the law) to screen a candidate or employee for an employment decision unless:

- Such tool has been the subject of a bias audit conducted no more than one year prior to the use of such tool – and–

- A summary of the results of the most recent bias audit of such tool as well as the distribution date of the tool to which such audit applies has been made publicly available on the website of the employer or employment agency prior to the use of such tool.

NYC Administrative Code § 20-871 (Local Law 144 of 2021).

(f) AI Users must at all times comply with the Company's [identify policies against discrimination and harassment and other conduct policies] when using AI Tools. Please refer to those policies for additional information on what might be considered inappropriate or unlawful use.

Drafting Note to Paragraph 6.(f).

For guidance on drafting such policies, see Discrimination, Harassment, and Retaliation Policy Drafting Checklist, Anti-harassment Policies: Key Drafting Tips, Anti-harassment Policies: Key Drafting Tips. For non-jurisdictional template policies, see Equal Employment Opportunity / Non-discrimination Policy; Anti-harassment Policy (with Acknowledgment); and Anti-retaliation Policy (with Acknowledgment).

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7. **Confidentiality.**

(a) The input of confidential or sensitive information into an AI Tool could result in the disclosure of such information to third parties. When using AI Tools, AI Users must comply with [name policies concerning confidentiality, non-disclosure of trade secrets or intellectual property, IT/computer use policy, etc.].

(b) AI Users inputting data and information into an AI Tool are prohibited from disclosing trade secrets, confidential or proprietary business information belonging to the Company or its [clients/customers], or from infringing upon the intellectual property of the Company or others.

  (i) To the extent information is licensed from a third party, the output may be subject to restrictions on the use of the information contained therein. Inputting such licensed information into an AI Tool could constitute a breach by the user of those third-party restrictions.

(c) The publication or distribution of the output of an AI Tool could result in the violation of the Intellectual Property rights of third parties. Prior to publishing or distributing content generated by AI Tools (in whole or in part), an AI User must receive approval from [supervisor/manager]. When publishing or distributing content generated by AI Tools (in whole or in part), AI Users must make known –through a disclaimer or otherwise – that the content has been generated by AI.

(d) AI Users must at all times comply with Company [identify policies concerning data and record retention, and the proper storage, handling and sharing of sensitive information].

8. **Reporting Procedures.**

   (a) AI Users are expected to contact [their supervisor/manager/other appropriate individual or department name] immediately if they become aware of:

   (i) An actual or possible violation of this policy

   (ii) A breach of data privacy or security

   (iii) AI system failure –or–

   (iv) A circumstance where an AI Tool is generating output which is: i) erroneous, ii) incomplete, iii) misleading, iv) offensive, v) harassing, vi) discriminatory, vii) which causes an employee to have other concern(s), or viii) which violates any Company policy.

   (b) Reports made under this section will be investigated, and AI Users must cooperate with any such investigation.

   (c) The Company may, in its sole discretion, decide to suspend use of the AI Tool during any such investigation.

   (d) To the extent corrective measures are required following the investigation, AI Users must cooperate in the implementation of those measures.

9. **Violations.**

   (a) Violations of this policy may result in disciplinary action, up to and including termination of employment or contract (as in the case of a contractor or third-party vendor). Nothing herein shall modify the at-will nature of an employee's employment with the Company. If AI Users have questions about this policy, they should contact [appropriate individual or department name].

10. **Amendment of These Policies.**

    (a) AI technology and the laws and regulations governing AI are rapidly evolving and these policies may be amended from time to time to reflect the evolving landscape.

ACKNOWLEDGMENT

I acknowledge that I have received and read the Company's Artificial Intelligence (AI) Tools in the Workplace Policy. I understand it and will abide by it. I understand that this policy is not an employment contract and does not change my status as a[n] [at-will employee] [independent contractor] [third-party vendor].

Dated: _____

_____

Signature

_____

Printed Name

Drafting Note to Signature Line of Acknowledgement

You should include an acknowledgment provision, particularly if the employer will use this form as a standalone policy without incorporating it into an employee handbook, which should have an acknowledgment provision for its entire contents. This provision serves as evidence that the employee/independent contractor/third-party vendor was made aware of and understood the policy, and it helps negate any argument that the policy establishes a binding employment contract. Because it may be difficult to authenticate an e-signature in a subsequent litigation, the employer should obtain a handwritten signature, if possible. However, business realities often mandate that large employers use e-signatures. If this is the case, ensure that the employer takes steps to authenticate each e-signature as belonging to a particular individual. For more information on obtaining e-signatures, see What Every Employer Needs To Know About E-Signatures.

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Joseph C. O'Keefe is a partner in the Labor & Employment Law Department and Co-Head of the Restrictive Covenants, Trade Secrets & Unfair Competition Group.

Joe is an experienced trial lawyer who, for more than 30 years, has litigated employment disputes of all types on behalf of employers, before federal and state courts, arbitral tribunals (e.g. FINRA and AAA), and state and federal administrative agencies throughout the U.S. Joe has litigated employment-related lawsuits alleging breach of non-compete agreements, theft of trade secrets, discrimination, sexual harassment, whistleblowing, wage and hour violations, Title IX violations, breach of contract, defamation, fraud and other business related torts. Joe's practice includes representing clients in complex class and collective litigation, including alleged violation of state and federal pay equity laws, violations of wage and hour laws and discrimination claims. Joe's experience includes appellate work in both federal and state courts.

In addition to his extensive litigation practice, Joe regularly advises employers, writes and speaks on a wide range of employment related issues. He counsels clients concerning pay equity, use of Artificial Intelligence in the workplace, management of personnel problems, ADA/FMLA compliance, reductions in force, investigation of employee complaints, state and federal leave laws, wage and hour issues, employment policies and contracts.

Joe represents employers in a variety of industries including financial services, higher education (colleges and universities), pharmaceuticals/medical devices, health care, technology, communications, fashion, consumer products, publishing, media and real estate. He frequently writes articles concerning developments in the law and speaks at seminars concerning legal developments in the labor and employment law field.

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Edward "Eddie" C. Young is a senior counsel in the Labor & Employment Law Department and a member of the following Firm practice groups: Restrictive Covenants & Trade Secrets; Discrimination, Harassment & Title VII; and Whistleblowing & Retaliation.

Eddie represents employers in all aspects of employment law, with a concentration on litigating complex employment disputes of all types before federal and state courts throughout the country, the U.S. Equal Employment Opportunity Commission, state and local human rights commissions and arbitral tribunals (*e.g.*, FINRA and AAA). In particular, Eddie has successfully litigated employment-related disputes alleging breach of non-compete agreements, theft of trade secrets, discrimination, sexual harassment, whistleblower retaliation, wage and hour violations, including employee misclassification claims, breach of contract, defamation, fraud and other business-related torts. Eddie has obtained a world-wide injunction to enforce a client's non-competition restriction on a former executive, successfully defended a client through summary judgment and appeal against retaliation claims brought by a former General Counsel, represented Fortune 500 companies in defense of high-profile harassment claims associated with the #metoo movement, and provided representation to several professional sports leagues. He also has significant appellate experience, including successfully representing clients before the U.S. Circuit Court of Appeals for the First, Second and Seventh Circuits, as well as before the United States Supreme Court. Eddie often draws on his litigation experience to help clients avoid the courtroom by effectuating positive change in the workplace through impactful training, counseling and developing robust employment policies.

Working in a wide range of industries, Eddie represented clients in food services, financial services, medical devices, telecommunications, higher education, sports, retail, real estate and others.

Eddie has been recognized as "One to Watch" by *Best Lawyers* in America since 2021 and as a "Rising Star" by *Super Lawyers* since 2017. He also regularly advises clients, writes and speaks on cutting-edge legal issues, including the use of Artificial Intelligence in the workplace, and legal issues arising from the collection and use of employee biometric information.

Eddie maintains an active pro bono practice, including on-going representation of a certified class of approximately 65,000 visually disabled Chicagoans in litigation challenging the City's lack of accessible pedestrian crosswalks. Eddie is also a member of the Firm's Pro-Bono Committee and is a three-time recipient of the Firm's "Golden Gavel" award for his significant pro bono contributions.

Prior to joining Proskauer, Eddie was a *cum laude* graduate from Loyola University Chicago School of Law. He also obtained a Master's Degree in Human Resources and Industrial Relations from Loyola University Chicago Graduate School of Business. He began his practice at a national management-side employment law firm, and has also worked in the corporate human resources department of a national tax consulting firm and as a Fellow with the Illinois Human Rights Commission.

Hannah Morris, Associate, Proskauer Rose LLP

Hannah D. Morris is an associate in the Labor Department and a member of the Employment Litigation & Counseling Group.

During her time at Proskauer, Hannah has assisted in litigation and investigation matters involving workplace harassment, discrimination, and retaliation. She also assists employers in counseling matters, such as drafting employment handbooks and researching workplace policies.

Hannah earned her J.D. from the University of Virginia School of Law. While in law school, she served as a Research Assistant for Professor Richard J. Bonnie working on matters related to juvenile justice. Additionally, she interned for the Office of the Public Defender for Arlington County and the City of Falls Church.

Prior to law school, Hannah was a Teach for America Corps member teaching Fourth Grade in Eastern North Carolina.