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## Regulatory Update

# New California Regulations on Employers' Use of AI to Make Decisions Go Into Effect Oct. 1, 2025

By [Felicia A. Davis](#), [Sara B. Tomezsko](#), [Ankush Dhupar](#), [Christopher G. Cho](#) and [Dan Richards](#)

Earlier this year, the California's Civil Rights Council (CRC), a branch of the California Civil Rights Department, [approved the final text](#) of [new regulations](#) to address employers' lawful use of artificial intelligence (AI) and automated-decision systems (ADSs) under California's Fair Employment and Housing Act (FEHA). Taking effect on Oct. 1, 2025, these regulations clarify that employers cannot use ADSs to make employment decisions that discriminate against applicants or employees in violation of FEHA, the California state law prohibiting discrimination in employment and housing. The regulations also offer a glimpse into how choices made about testing employment decision-making systems — automated or otherwise — can help, or hurt, an employer in litigation.

### What Are Automated-Decision Systems?

The regulations define an ADS as a “computational process that makes a decision or facilitates human decision making regarding an employment benefit” that “may be derived from and/or use artificial intelligence, machine-learning, algorithms, statistics, and/or other data processing techniques.”

The regulations also provide a non-exhaustive, illustrative list of the tasks ADSs perform, including: assessing applicants or employees with “questions, puzzles, games, and other challenges”; directing job advertisements to targeted groups; screening resumes for terms and patterns; evaluating facial expressions and speech and voice patterns in online interviews; and analyzing applicant or employee information from third parties. ADSs exclude certain types of processors, such as word processors, spreadsheet software, information technology software, map navigation systems, spellchecking and calculators — “provided that these technologies do not make a decision regarding an employment benefit.”

### What Do the Regulations Require With Respect to Automated-Decision Systems?

The regulations make clear that it is unlawful to use an ADS in connection with an employment decision to discriminate against persons based on their national origin, sex, pregnancy, marital status, disability or age. The regulations further incorporate ADSs into several of FEHA's existing proscriptions and requirements, as discussed below.

**Pre-Employment Practices:** The regulations provide that employers cannot use “online application technology” that “limits, screens out, ranks, or prioritizes applicants based on their schedule” if it has a disparate impact on applicants based on their religion, disability or medical condition, unless the

technology is “job-related and consistent with business necessity” and “includes a mechanism for the applicant to request an accommodation.” The regulations also specify that the use of an ADS to “measur[e] an applicant’s skill, dexterity, reaction time, and/or other abilities or characteristics may discriminate against individuals with certain disabilities and other [protected] characteristics.” In such circumstances, an employer may need to reasonably accommodate the applicant. Likewise, an ADS that “analyzes an applicant’s tone of voice, facial expressions or other physical characteristics or behavior” may discriminate on the basis of disability. Here, too, an employer may need to reasonably accommodate applicants.

**Criminal History:** FEHA generally prohibits employers from considering an applicant’s criminal history before making a conditional offer of employment. That prohibition now extends to “inquiring about criminal history through ... the use of an automated-decision system.”

**Unlawful Medical or Psychological Inquiries:** FEHA generally proscribes medical or psychological examinations before extending offers of employment to applicants. The regulations extend the term “medical or psychological examination” to those administered through ADSs. The regulations add that an ADS such as “a test, question, puzzle, game, or other challenge that is likely to elicit information about a disability” can be considered a medical or psychological inquiry, which may fall within FEHA’s general proscription.

**Third-Party Liability Extended to Agents:** The regulations expressly extend liability for ADS-driven discrimination to employers’ agents. The regulations define “agents” to include “any person acting on behalf of an employer, directly or indirectly, to exercise a function traditionally exercised by the employer or any other FEHA-regulated activity, ... including when such activities and decisions are conducted in whole or in part through the use of an automated decision system.”

**Extended Recordkeeping Requirements:** The regulations further require employers to preserve personnel and other employment records for four years — an increase from the previous two-year requirement. This obligation also extends to ADS data, which includes “[a]ny data used in or resulting from the application of an [ADS]” as well as “[a]ny data used to develop or customize an [ADS] for use by a particular employer.”

**Anti-Bias Testing:** Although the regulations do not mandate that employers test ADSs for bias, they suggest that there is utility in doing so, including a potential affirmative defense, as “[r]elevant to a claim of employment discrimination or an available defense is evidence, or lack of evidence, of anti-bias testing or similar proactive efforts to avoid unlawful discrimination.”

## Next Steps

Employers should prepare now, as the new ADS regulations will go into effect on [Oct. 1, 2025](#). Employers should also consider the interplay between these state law requirements and the current federal administration’s approach of [deprioritizing disparate-impact enforcement](#) and [prohibiting the use of “quotas or otherwise ‘balancing’ a workforce by race, sex, or other protected traits.”](#)

AI vendors should prepare now, too. The regulations contemplate liability for an AI vendor when an employer delegates an employment decision-making function to the vendor.

Paul Hastings stands ready to help employers and vendors navigate this evolving legal landscape and, if necessary, engage in any ADS remediation efforts. Stay tuned for a webinar in early September 2025 that will further discuss these California regulations and their impact on employers nationwide.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

**Los Angeles**

Felicia A. Davis  
+1-213-683-6120  
[feliciadavis@paulhastings.com](mailto:feliciadavis@paulhastings.com)

Ankush Dhupar  
+1-213-683-6263  
[ankushdhupar@paulhastings.com](mailto:ankushdhupar@paulhastings.com)

Christopher Cho  
+1-213-683-6131  
[christophercho@paulhastings.com](mailto:christophercho@paulhastings.com)

**New York**

Paul C. Evans  
+1-212-318-6009  
[paulevans@paulhastings.com](mailto:paulevans@paulhastings.com)

Kenneth W. Gage  
+1-212-318-6046  
[kennethgage@paulhastings.com](mailto:kennethgage@paulhastings.com)

Sara B. Tomezsko  
+1-212-318-6267  
[saratomezsko@paulhastings.com](mailto:saratomezsko@paulhastings.com)

Dan Richards  
+1-212-318-6739  
[danrichards@paulhastings.com](mailto:danrichards@paulhastings.com)

**San Francisco**

Brian A. Featherstun  
+1-415-856-7012  
[brianfeatherstun@paulhastings.com](mailto:brianfeatherstun@paulhastings.com)

**Paul Hastings LLP**

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