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HOLLMAN DEJONG & LAING S.C.

EMPLOYER NEW YEAR'S RESOLUTION #3—ADDRESS ARTIFICIAL INTELLIGENCE

Another week, another resolution. This time, we're addressing the AI elephant in the room. While the use cases for AI are myriad, the legal landscape is somewhat unknown and rapidly developing. But, for better or worse, employees *are* using AI. So, from trade secret risks to proposed legal oversight, employers need to address AI now.

1. **Stop Wondering If It's Happening and Start Managing It**

The biggest mistake an employer can make is assuming their workforce isn't using AI because they haven't "authorized" it yet. They're potentially using it to polish emails, summarize complex contracts, and draft performance reviews.

If you don't have a clear AI use policy, you have an unmanaged risk. Your resolution should be to audit which tools are being used and implement a policy that clearly defines approved and prohibited platforms and approved and prohibited uses.

2. **Protect Your Trade Secrets**

We often think of trade secret theft as a "bad actor" with a thumb drive, but in 2026, your secrets are more likely to "walk out the door" through a ChatGPT prompt. Under the Defend Trade Secrets Act and the Wisconsin Uniform Trade Secrets Act, it is required that reasonable efforts must be taken to maintain the secrecy of information that is a trade secret. Every time an employee feeds a sensitive proposal or proprietary code into a public AI model to clean it up or summarize it, that data may be used to train the model, arguably making it ascertainable to others and, therefore, not secret.

In addition to implementing a clear policy, employers should consider updating their confidentiality agreements and training staff on the risks (and consequences) associated with inputting confidential and proprietary information into open-source AI platforms.

3. **Commit to the Human Oversight**

In Wisconsin, the Governor's Task Force on Workforce and Artificial Intelligence has been tasked with gathering and analyzing information to produce an advisory action plan to identify the current state of generative AI's impact on Wisconsin's labor market; develop

informed predictions regarding its opportunities and impact for the near term and into the future; identify how these workforce opportunities and impacts may touch Wisconsin's key industries, occupations, and foundational skillsets; explore initiatives to advance equity and economic opportunity in the face of these changes; and based on these findings, recommend policy directions and investments related to workforce development and educational systems to capitalize on the AI transformation.

Although the Governor's Task Force on Workforce and Artificial Intelligence may not result in specific legislation, some states, such as California, are implementing laws that prohibit employers from relying exclusively on AI for hiring, firing, or disciplinary actions. Even without an AI-specific law, AI algorithms are susceptible to implicit bias, which employers must avoid to remain in compliance with general employment laws such as Title VII and the Wisconsin Fair Employment Act.

Employers should ensure employment decisions are, at a minimum, reviewed and validated by a human so that an actual person can explain the reasoning behind any AI-assisted outcome.

Ultimately, AI is a tool, not a replacement for sound management or legal compliance. The goal for 2026 isn't to stop using AI; instead, the goal is to require employees to use it responsibly. By being intentional and proactive this year, employers can enjoy the benefits of AI without accidentally falling victim to its employment law pitfalls.

As always, **O'Neil Cannon** is here for you. We encourage you to reach out with any labor and employment questions, concerns, or legal issues you may have, including assistance with AI policies.