

UC LEGAL AI TASK FORCE: LEGAL EXPERTISE

UC Legal has collected these resources to assist in navigating legal issues related to the use of artificial intelligence (AI). The resources are arranged by area of law (e.g., privacy, copyright, discrimination) and by government agency (e.g., HHS, Department of Education). Some resources that might not strictly apply to UC are included for their value in guiding UC thinking in this highly dynamic area. Generally speaking, when using these resources, please:

- Keep in mind the general principle that UC ought not use AI to do anything that UC is prohibited from doing without AI (e.g., UC is prohibited from discriminating on the basis of race or religion, using AI or not).
- Note that everything about AI – AI technology itself, as well as legal rules, best practices and guidance relating to the use of AI – is changing rapidly and will continue to do so. You should verify independently that any guidance upon which you rely is that latest version.
- Before using AI, consider using the UC AI Risk Assessment Guide (to be released in 2024 by the UC AI Council Risk Committee) and consult with counsel either in the Office of the General Counsel or at your UC location as appropriate.
- Note that this resource is current as of October 3, 2024 and users should check for updates.

List of Practice Areas & UC Activities

Possible Area of Law Implicated	Possible UC Activity(ies) Implicated	Links to Relevant Legislation/Regulations/Guidance/Cases
Discrimination/Bias	<ul style="list-style-type: none"> • Admissions (outreach/recruitment, decisions) • Employment • Employee Benefits • Health Insurance • Housing • Disability • Financial Aid 	<p>Artificial Intelligence and Algorithmic Fairness Initiative U.S. Equal Employment Opportunity Commission (eoc.gov)</p> <p>The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees U.S. Equal Employment Opportunity Commission (eoc.gov)</p> <p>Select Issues: Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures</p>

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		<p>Under Title VII of the Civil Rights Act of 1964 U.S. Equal Employment Opportunity Commission (eoc.gov)</p> <p>Employment – New York City: New York City Local Law 144 of 2021: prohibits employers from using automated decision tools unless there is a bias audit and provide notices to candidates.</p> <p>Employment – Illinois: Illinois, Artificial Intelligence Video Interview Act, 820 IL 42/1, requires employers to disclose the use of AI to analyze video interviews, provide other information, and obtain consent.</p> <p>Employment – Maryland: Maryland, HB 1202, prohibits employers from using facial recognition tools during interviews unless the candidate consents.</p>
Contract	<ul style="list-style-type: none"> • Business transactions • Real Estate transactions • Procurement • Due Diligence/Contract Review 	<p>John Linarelli. Artificial Intelligence and Contract Formation: Back to Contract as Bargain? Forthcoming in Stacy-Ann Elvy & Nancy Kim, Emerging Issues at the Intersection of Commercial Law and Technology (Cambridge University Press 2023). Abena Opong-Fosu. Analysis: Most M&A Attorneys Would Use AI for Due Diligence. Bloomberg Law. December 1, 2023. Donald G. Shelkey, Morgan Lewis. Current Legal Issues with AI: Due Diligence. October 9, 2023.</p>

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Privacy	<ul style="list-style-type: none"> • Clinical Health Care • Student Records • Public Records/IPA • Financial Records • Advancement (donor records) • Employment Records • Employment Actions (processing disability/leave requests) • Research 	<p>California Privacy Rights Act:</p> <p>The CPRA, which generally does not apply to UC, calls upon the California Privacy Protection Agency to issue regulations related to “automated decision-making technology” (ADMT). As of April 2024, proposed rules are being revised. Cal. Civ. Code §§ 1798.140 (definitions) (1798.185(a)(16)) (issuing regulations relating to ADMT).</p> <p>General Data Protection Regulation: Art. 22 GDPR; Recital 71.</p> <p>Under the GDPR, individuals living in the European Economic Area have the right not to be subject to a decision based solely on automated processing. At present, the GDPR applies to University activities only if they are offered to people living in the EU.</p> <p>U.S. Department of Commerce Request for Information (i.e., public comment) on the development of AI-ready open data assets and data dissemination standards</p>
Data Security	<ul style="list-style-type: none"> • Research • Health care 	<p>NIST, Adversarial Machine Learning: A Taxonomy and Terminology of Attacks and Mitigations (NIST.AI.100-2)</p>
Due Process	<ul style="list-style-type: none"> • Student Conduct • Employment Law • Unlawful Search and Seizure 	<p>Cary Coglianese. How a lawsuit about pencils can protect rights in the AI era. The Hill (August 11, 2023). Chris Chambers Goodman, AI, Can</p>

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		You Hear Me? Promoting Procedural Due Process in Government Use of Artificial Intelligence Technologies , 28 RICH. J.L. & TECH. 700 (2022).
Intellectual Property - Copyright	Copyright, including: <ul style="list-style-type: none"> ● Copyrightability and authorship ● Registrability ● LLM input/ingestion (infringement / fair use?) ● Output of AI tools (infringement / substantial similarity / infringing derivative works) ● Fair use ● Removal of “copyright management information” (CMI) as a potential violation of Section 1202 of DMCA 	USCO AI portal USCO AI Study USCO Notice of Inquiry : USCO Copyright Registration Guidance AI copyright litigation tracker
Intellectual Property – Trademark	<ul style="list-style-type: none"> ● Trademark 	USPTO Report, “ Public Views on Artificial Intelligence and Intellectual Property Policy ” (October 2020) USPTO Artificial Intelligence and Emerging Technologies Partnership Stradley & Ronon client alert, “ Artificial Intelligence in the Trademark World ” (October 6, 2020)

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Intellectual Property - Patents	<ul style="list-style-type: none"> Patents 	USPTO AI-related resources
Finance/Investment	<ul style="list-style-type: none"> Insurance (pricing, decisions to try/settle) Employee Fidelity investment choices? 	<p>Brian Joseph, AI in Insurance: The Good, the Bad and What Worries Regulators. State Net Capitol Journal. December 11, 2023. New York State, Department of Financial Services. Proposed Insurance Circular Letter Re: Use of Artificial Intelligence Systems and External Consumer Data and Information Sources in Insurance Underwriting and Pricing. January 16, 2024. Joshua Dupuy, Legal transparency in AI finance: facing the accountability dilemma in digital decision-making. Westlaw Today. March 1, 2024.</p>
Criminal	<ul style="list-style-type: none"> Stalking/Harassment Threat/Risk Assessment 	<p>Cyber Stalking (generally): CA Penal Code 646.9</p> <p>Electronic Harassment (generally): CA Penal Code 653.2</p> <p>U.S. Department of Justice Signals Tougher Enforcement Against Artificial Intelligence Crimes (Public remarks: here and here).</p>
Ethics/Professional Responsibility	<ul style="list-style-type: none"> Licensure (medical, legal) Professional malpractice (medical, legal) 	California State Bar Committee on Professional Responsibility and Conduct " Practical Guidance For the Use of GenAI in the Practice of Law "

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		<p>American Medical Association “Principles for Augmented Intelligence Development, Deployment, and Use”</p> <p>Potential issue: does AI owe a duty of care to the patient?</p>
Research	<ul style="list-style-type: none"> Human subjects research 	<p>U.S. Health and Human Services (HHS) Secretary’s Advisory Committee on Human Research Protections (SACHRP) provides expert guidance on issues and topics pertaining to or associated with the protection of human research subjects.</p> <p>In July 2022, SACHRP answered 10 questions regarding Considerations for Institutional Review Board(IRB) Review of Research Involving Artificial Intelligence.</p> <p>In October 2022, SACHRP answered 10 questions regarding IRB Considerations on the Use of Artificial Intelligence in Human Subjects Research.</p> <p>OHRP Exploratory Workshop on Human Research with AI, September 2024</p>

List of Legislation and Guidance (Enacted and Pending) – To Extent Not Noted Above

Issuing Agency (California or Federal)	Regulations	Resources and Guidance
White House		Blueprint for an AI Bill of Rights
U.S. Senate		A Roadmap for Artificial Intelligence Policy in the U.S. Senate
U.S. Department of Education	General nondiscrimination civil rights statutes apply to analysis of use of AI.	Office of Educational Technology. Artificial Intelligence (AI) and the Future of Teaching and Learning: Insights and Recommendations . May 24, 2023. Office of Educational Technology. Handout: AI and the Future of Teaching and Learning . (Accessed May 30, 2024).
U.S. Federal Trade Commission	16 C.F.R. Part 465: Trade Regulation Rule on the Use of Consumer Reviews and Testimonials (effective October 21, 2024). 16 C.F.R. Part 461: Trade Regulation Rule on Impersonation of Government and Businesses (effective April 1, 2024).	FTC. FTC Launches Inquiry into Generative AI Investments and Partnerships . January 25, 2024. FTC. FTC Submits Comments to FCC on Work to Protect Consumers from Potential Harmful Effects of AI . July 31, 2024. FTC. FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing . July 23, 2024.
U.S. Department of Health and Human Services	HHS imposes transparency requirements on developers of certified health information technology regarding predictive decision support interventions (generally understood to be AI). Office of National Coordinator for Health Information Technology. Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and	HHS has outlined an approach to prioritize the application and development of AI across various HHS mission areas. U.S. Dep't of Health & Human Services. " HHS Artificial Intelligence (AI) Strategy ." (accessed March 11, 2024).

Issuing Agency (California or Federal)	Regulations	Resources and Guidance
	<p>Information Sharing. 89 Fed. Reg. 1192 (January 9, 2024).</p>	<p>HHS reorganizes to streamline and bolster technology, cybersecurity, data, and AI strategy and policy functions (July 25, 2024)</p> <p>HHS. Guiding Principles Help Healthcare Community Address Potential Bias Resulting from Algorithms News Release. December 15, 2023.</p> <p>Chin, M. et al. Guiding Principles to Address the Impact of Algorithm Bias on Racial and Ethnic Disparities in Health and Health Care. JAMA Network Open. 2023; 6(12):e2345050.doi:10.1001/jamanetworkopen.2023.45050</p>
U.S. Centers for Medicare and Medicaid Services	<p>Medicare Advantage Organizations (MAOs) must make medical necessity determinations based on the circumstances of specific individuals, as opposed to relying on an algorithm or software that does not consider individual circumstances. CMS. Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly Final Rule. 88 Fed. Reg. 22120, 22195 (April 12, 2023).</p>	<p>CMS's AI Resource Webpage Artificial Intelligence at CMS.</p> <p>CMS. Frequently Asked Questions related to Coverage Criteria and Utilization Management Requirements in CMS Final Rule (CMS-4201-F). February 6, 2024.</p>
U.S. Copyright Office		U.S. Copyright office AI resource page
U.S. Patent and Trademark Office		U.S. PTO. Memorandum: The Applicability of Existing Regulations as to Party and Practitioner Misconduct

Issuing Agency (California or Federal)	Regulations	Resources and Guidance
		<p>Related to the Use of Artificial Intelligence. February 6, 2024.</p> <p>U.S. PTO resource page</p>
U.S. Equal Employment Opportunity Commission		EEOC AI resources
Executive Office of the President/U.S. Office of Management and Budget	Executive Office of the President. Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence . October 30, 2023.	Executive Office of the President, Office of Management and Budget. Memorandum: Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence . March 28, 2024.
U.S. Department of Defense		<p>Department of Defense, Chief Digital & Artificial Intelligence Office. Responsible AI Toolkit. November 14, 2023.</p> <p>Department of Defense. AI Ethical Principles. February 24, 2020.</p>
U.S. Food and Drug Administration		<p>FDA. Artificial Intelligence and Machine Learning Enabled Devices. (accessed June 3, 2024).</p> <p>FDA. Software as a Medical Device (accessed June 3, 2024).</p> <p>FDA. Artificial Intelligence and Medical Products: How CBER, CDER, CDRH, and OCP are Working Together. March 15, 2024.</p>
National Institute of Standards and Technology		NIST AI Risk Management Framework (AI RMF)

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		NIST Trustworthy & Responsible Artificial Intelligence Resource Center: https://airc.nist.gov/Home
Various federal agencies		JOINT STATEMENT ON ENFORCEMENT OF CIVIL RIGHTS, FAIR COMPETITION, CONSUMER PROTECTION, AND EQUAL OPPORTUNITY LAWS IN AUTOMATED SYSTEMS (dol.gov) issued 4/4/24 Joint Statement on Competition in Generative AI Foundation Models and AI Products , issued 7/23/24
California Governor's Office	Executive Department, State of California. Executive Order N-12-23 . September 6, 2023.	
California Civil Rights Council	Civil Rights Council. Proposed Regulations to Protect Against Employment Discrimination in Automated Decision-Making Systems . May 17, 2024; Civil Rights Council. Proposed Modifications to Employment Regulations Regarding Automated-Decision Systems Initial Statement of Reasons . May 17, 2024.	
California State Bar		The State Bar of California Standing Committee on Professional Responsibility and Conduct. Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (accessed May 30, 2024)
California Medical Board, Registered Nursing	SB 1120 (Becker) would require physicians to make final decisions on what treatments patients should receive rather than artificial intelligence.	Professional associations also have AI guidance/policies: <ul style="list-style-type: none"> • American Medical Association • American Nurses Association

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		<ul style="list-style-type: none"> • American Counseling Association
States Other Than California	Colorado Artificial Intelligence Act	National Conference of State Legislatures. Summary Artificial Intelligence 2024 Legislation (June 3, 2024).
Europe	European Union Artificial Intelligence Act, Text of Final Draft, March 2024	
California	<p>AB 2013 (generative AI training data transparency); AB 2885 (definition of AI); SB 942 (California Transparency Act); AB 2602 (digital replicas); AB 3030 (requires specified health care providers to disclose the use of GenAI when used to generate communications to a patient pertaining to patient clinical information); SB 1120 (establishes requirements on health plans and insurers applicable to their use AI for utilization review and utilization management decisions, including that the use of AI, algorithm, or other software must be based upon a patient’s medical or other clinical history and individual clinical circumstances as presented by the requesting provider and not supplant health care provider decision making).</p>	Gov. Newsom vetoed SB 1047 .