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AI in the workplace:
Bridging technology and regulation

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Introduction

Artificial Intelligence (“AI”) is revolutionising the modern workplace by enhancing efficiency, productivity, and innovation. With advanced algorithms and machine learning, AI automates repetitive tasks, analyses data, and supports better decision-making. By adopting AI, businesses streamline operations and empower employees to focus on more creative and strategic activities, paving the way for a smarter and more competitive future.

In this guide, we draw upon some of the key challenges posed by the adoption of AI in the global workplace and provide tools to help employers manage them. We also look at the legal landscape and the direction of travel for AI regulation across the world.



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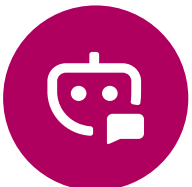


01 AI’s integration in the workplace

When considering the adoption of AI in the workplace, the key question employers now face is not whether they will use AI but rather how they will use it.

Recent reports suggest that nearly 40% of jobs globally are exposed to AI, rising to 60% for advanced economies.¹ For staff and prospective recruits, there is therefore a significant chance that AI will impact their professional lives.

Redefining the workplace

There is no shortage of ways in which AI is already being leveraged by employers across the employment lifecycle, from hiring and firing to everything in between, including decisions about reward, investigations into performance, and improving the quality of the employee experience.

 Social media screening	 CV sifting	 Bias identification
 Task automation	 Speech, facial, or emotion recognition	 Keystroke technology
 Virtual assistants/ chatbots	 Employee engagement analysis	 Attendance tracking

Deploying AI and automation successfully in the workplace can give employers a competitive edge over businesses that are yet to adopt these new technologies. For instance, AI is well-placed to speed up time-consuming decision-making processes. Supercharging the recruitment process for HR, it can review and filter countless CVs, conduct interviews, and field questions from candidates via chatbots to enhance operational efficiency.

When it comes to reward, AI can facilitate decision-making by analysing vast amounts of data to make recommendations on changes to compensation. It may also play a role in reducing unconscious bias in incentive decisions, potentially having a positive effect on closing the gender pay gap.

Even areas like employee engagement and retention have the potential to benefit from AI integration. Predictive analytics can help companies detect flight risks or signs of discontent among employees, giving employers a heads-up to intervene and possibly reduce staff turnover.

Moreover, the use of new technology is not a zero-sum game that only offers benefits to employers. Automation of monotonous, repetitive tasks allows employees to focus on more strategic and creative aspects of their job, increasing productivity and job satisfaction. AI can serve as an invaluable desktop assistant, helping with scheduling, summarising, researching and drafting (see [section 3](#) in this guide).

However, there will undoubtedly be roles that AI replaces, rather than enhances. Focusing on reskilling and upskilling can play a pivotal role in mitigating employees’ anxiety about job displacement (see [section 2](#) in this guide).

Challenges and opportunities

Some applications of AI undoubtedly attract more controversy than others – for example, its use in monitoring staff. A wide range of AI tools are available to conduct surveillance, including counting keystrokes, screen recording and measuring time spent at the desk. While this technology may enhance safety at work by enforcing proper rest breaks, there is a risk that a culture of surveillance could lower employee engagement and erode trust.

Integrating AI into the workplace requires employers to navigate a patchwork of rules, including employment and labour laws, data protection and privacy, contract law, human rights, and, in some jurisdictions, emerging AI-specific regulation (see [section 5](#) in this guide). Some employers have already found themselves on the wrong side of the law, facing challenges by employees that they have been ‘robo-fired’ or discriminated against by facial recognition software (see [section 4](#) in this guide).



The careful balance to be struck by employers is effectively harnessing the undoubted benefits of the use of AI in the workplace, while managing the unique ethical, cultural and legal challenges that may arise.”

Sinead Casey, Partner,
Employment & Incentives, London

¹ Gen-AI: Artificial Intelligence and the Future of Work, IMF (January 2024)

02 Navigating workplace changes

AI-driven job displacement is a gradual concern, and employers must adhere to local consultation and/or information obligations to manage potential workforce reductions and redundancies. Despite possible job losses, AI advancements offer opportunities for new high-skilled roles and upskilling employees, necessitating open communication to integrate AI smoothly and address employee concerns.

The risk of job displacement

In addition to the existing controversy about AI as mentioned above (e.g. its use in monitoring staff), there also exists a fear in relation to job losses. However, the current consensus seems to be that job losses related to AI advancement are likely to be gradual. In any event, where any potential workforce reductions and redundancies are proposed, employers should be mindful of their consultation obligations, as required by local law and/or any applicable collective bargaining or works council agreements in place.

Consultation and/or information

Consultation and/or information requirements vary in different countries and local advice should be sought where redundancies are proposed. In the **UK**, employers should be particularly mindful of the duty to notify the Secretary of State of proposed redundancies, and collectively consult with appropriate representatives of the affected employees, when proposing to make 20 or more redundancies within a 90-day period at one establishment. Failure to do so can result in both criminal and civil penalties.

In **France**, the implementation of AI in the workplace is subject to consultation with the relevant works council. Employees should be provided with details of any employee monitoring carried out by the employer; the

purpose and use of technology in the workplace; and the possible impact of that technology on employees' working conditions. If an employer is considering a reduction in the workforce, again it must consult with the relevant works council. Where 10 or more redundancies are proposed in a 90-day period, a 'social plan' must be prepared, with input from the trade unions and labour administration, with the aim of avoiding or limiting the number of redundancies, including via redeployment measures. Failure to do so could lead to criminal and civil penalties for the employer and its legal representatives, as well as damages for wrongful termination.

In **China**, where a company undergoes significant technological reform or adjustments to its operations, it can only proceed with a mass layoff² – subject to specific consultation requirements – if it has considered the option of agreeing amendments to employment contracts (e.g. redeployment opportunities). Failure to comply with these local law requirements can lead to a finding of wrongful termination, resulting in compensatory awards equivalent to double the amount of statutory severance entitlement, or an order for reinstatement.

Where there is a proposal to change or adapt an employee's role or duties because of the impact of new AI technologies (rather than make them redundant), this should generally be done with the employee's consent.

Opportunities created by advancements in AI

While AI may lead to a reduction in the need for some types of roles, it may also lead to the creation of new roles (particularly more high-skilled roles). Employers will also be presented with new opportunities to upskill employees and create a more efficient and innovative workforce, as mentioned above under [section 1](#).

In any event, it is important that employers are mindful of any possible concerns regarding AI and the potential impact on employee wellbeing, so that they can be managed appropriately.

Communication is key

Employers should be open and transparent with employees about how AI is being integrated in the workplace. Where possible, organisations should ensure that employees are part of the journey so that they feel empowered to use AI to augment and improve ways of working, rather than seeing it as a potential threat. Holding information sessions and highlighting past examples of technological evolution can help provide perspective and alleviate some concerns.

As set out above, where organisations are considering role reductions as a result of efficiencies created by new technology, they should ensure that they follow any

local legal requirements, including consultation and/or information requirements, and consider whether any redundancies could be avoided, for example by redeployment or an agreed change to an employee's duties.

Navigating the future of workplace changes requires a proactive and balanced approach. Employee anxiety is understandable, but employers and employees alike can embrace change and work together to adapt to new ways of working.



While AI technologies have undeniably transformed the workplace and will continue to do so, their integration also brings challenges, including the risk of job displacement for some. Employers must strike a balance between leveraging AI for efficiency and having regard to the impact on their workforce and staff wellbeing. Where any redundancies are proposed, employers should be mindful of local law consultation and/or information obligations, to mitigate the risk of civil and, potentially, criminal liabilities.”

Anjali Raval, Managing Associate, London

² This involves the unilateral termination of 20 or more employees, or 10% or more of the workforce.

03 Workplace tools of tomorrow

The adoption of AI, and in particular generative AI, will also have implications for the way in which many employees perform their roles. Use of generative AI chatbots (“chatbots”) in the workplace is increasingly widespread and such tools offer opportunities for employees to operate more efficiently and, in some cases, more creatively.

Chatbots are capable of assisting employees with a broad range of tasks, including drafting correspondence, summarising, researching, translating, creating presentations and generating ideas. However, use of chatbots in the workplace is not without risk:

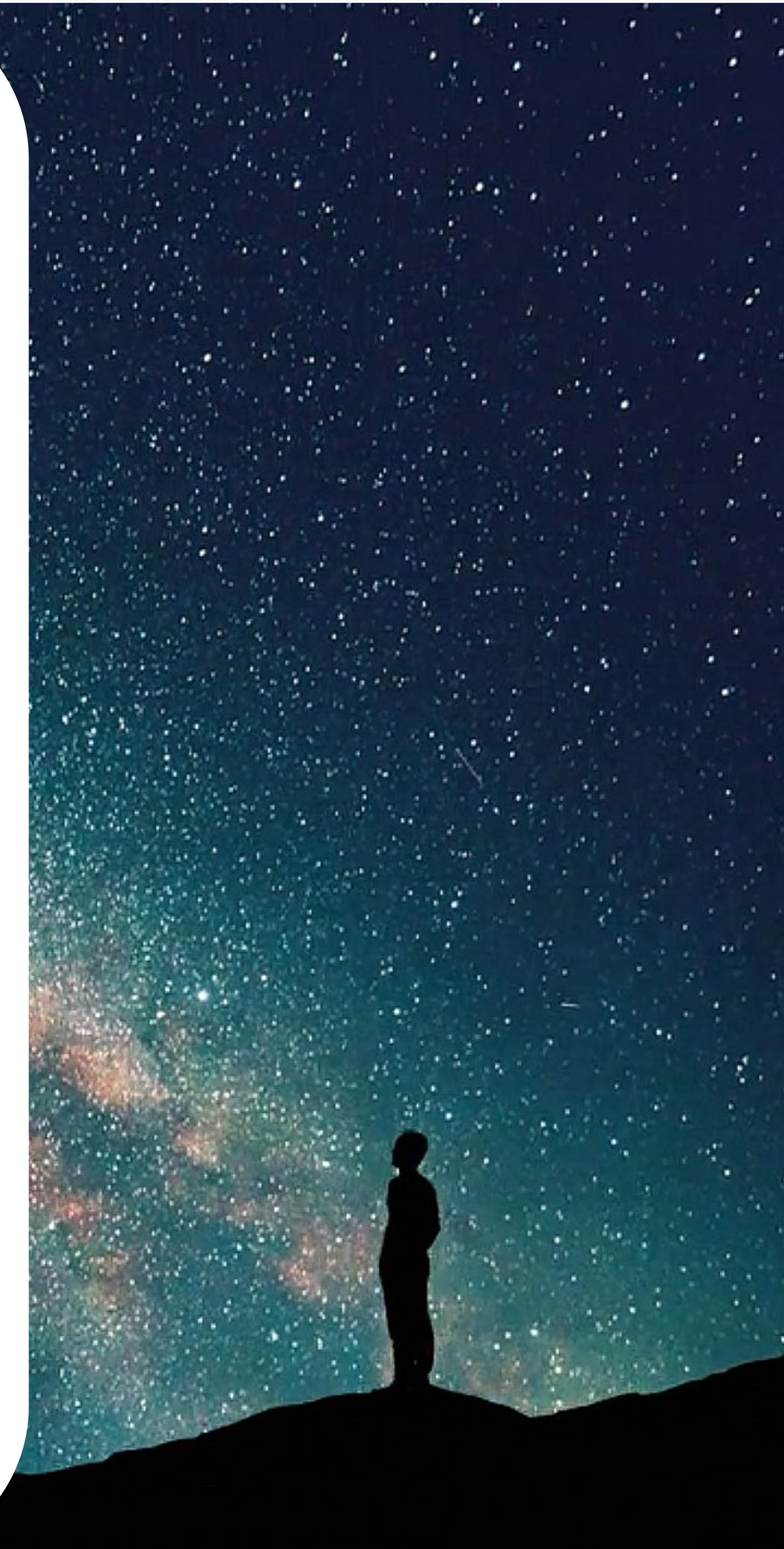
- > **Quality and accuracy:** Rather than having inherent knowledge, chatbots operate on a probabilistic or predictive basis. The answers they provide may well be inaccurate. Worse still, the nature of the technology also gives rise to the potential for “hallucinations”, in which the chatbot invents a response.
- > **Plagiarism:** Chatbots may be trained on material that belongs to third parties and consequently the output may contain content that is subject to copyright. Publication of this material may infringe copyright, leading to the risk of claims and reputational damage. In certain jurisdictions, an employee’s work product can be copyrighted, and this copyright can be assigned to their employer. The courts will need to consider on a case-by-case basis whether this practice of copyright allocation is still feasible in the context of chatbot output.

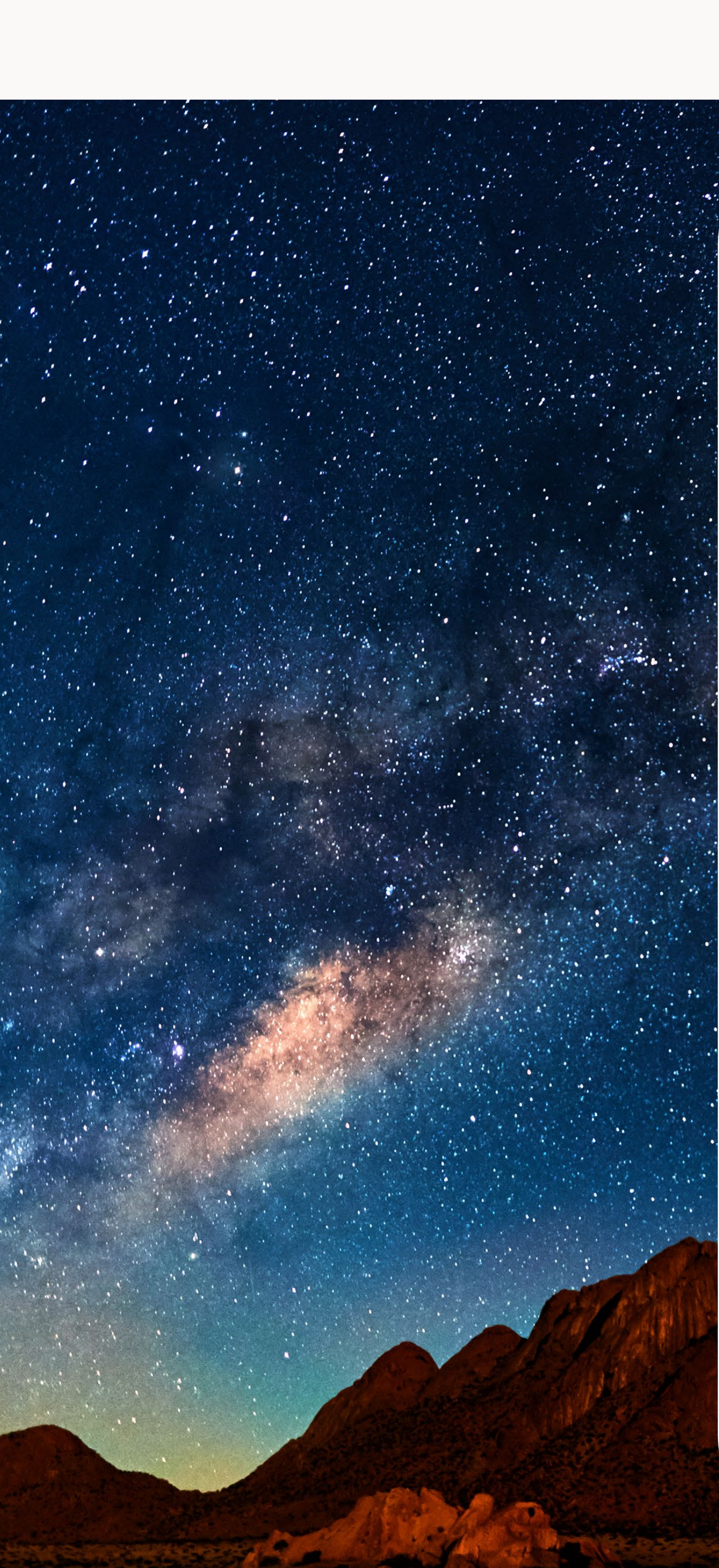
- > **Confidentiality and trade secrets:** Information input into publicly accessible chatbots may be used to train the chatbot and made available to other users. Unless information is anonymised, use of the chatbot has the potential to expose personal data and commercial information.

Effective policies are essential to manage the benefits and mitigate the risks associated with the use of chatbots in the workplace. These policies should be clear and comprehensive, covering the following key aspects:

- > **Risk awareness:** State the limitations and potential risks of using chatbots as set out above, so that employees are aware of these risks and can consider how best to mitigate their impact when using chatbots.
- > **Authorised platforms:** Specify which chatbots are permitted for use within the organisation. This helps in maintaining control over the technology being utilised and ensures compliance with security and privacy standards.
- > **Authorised use:** Specify the types of tasks for which chatbots can be used, and where their use is discouraged (for example, tasks that are particularly sensitive or require high levels of accuracy).

- > **Transparency of use:** Mandate that employees declare when they use chatbots in their work outputs. This ensures accountability and allows for scrutiny of AI-generated content for quality and accuracy
- > **Evaluation of outputs:** Stress the importance of checking and validating the output of any chatbots to ensure the output is correct, relevant / appropriate in the context and meets the required standards.
- > **Confidentiality and data security:** Clearly outline the protocols for handling sensitive information. Employees should be prohibited from inputting confidential or proprietary information into publicly accessible chatbots unless they are anonymised and secure mechanisms are in place to protect the data.
- > **Ethical considerations:** Emphasise the importance of ethical use of chatbots. This includes respecting copyright laws, avoiding biases in AI-generated content, and ensuring that the use of AI aligns with the organisation’s values and ethical standards.





Training on the use of chatbots is also paramount to ensure that all employees are comfortable and proficient in using generative AI tools. A comprehensive training programme should cover:

- > **Introduction to generative AI:** Provide an overview of what generative AI is, how it works, and its potential applications and limitations. This foundational knowledge will demystify the technology and build confidence among employees to use chatbots effectively in their role.
- > **Practical usage guidelines:** Educate employees on when and how to effectively use generative AI. Include examples of appropriate and inappropriate use cases to clarify boundaries and promote responsible usage.
- > **Effective prompting:** Teach employees how to craft effective prompts to maximise the utility of the AI tools. This includes using clear, concise language and understanding how to refine prompts to yield more accurate and relevant results.
- > **Validation techniques:** Instruct employees on how to verify and validate AI-generated content. This training should cover techniques for fact-checking, cross-referencing sources, and reviewing content for quality and accuracy.
- > **Risk management:** Raise awareness about potential risks and how to mitigate them. This includes recognising and addressing issues related to data privacy, intellectual property, and the ethical implications of using AI.

To successfully integrate chatbots in the workplace, fostering a transparent and communicative environment is crucial. Employers should consider the following strategies as a means of achieving this:

- > **Open dialogue:** Encourage open discussions about the use of AI within the organisation. This can be facilitated through regular meetings, forums, and feedback sessions where employees can voice their concerns, share experiences, and suggest improvements. For organisations with staff forums/representatives, particularly those in EU jurisdictions, consider including AI within the consultation scope, when not already required by law. Establishing a dedicated consultation body for AI-related matters could also facilitate structured communication and address any implications for terms and conditions of employment.
- > **Clear communication:** Keep employees informed about the organisation's AI strategy, including current pilot schemes, potential use cases, and long-term plans. Clear and transparent communication helps build trust and engages employees in the AI adoption process.
- > **Policy accessibility:** Ensure that all policies related to AI usage are easily accessible and communicated effectively to all employees. Regular updates and reminders about these policies can help maintain adherence and awareness.

- > **Culture of partnership:** Where appropriate (in particular, in smaller organisations) employers may want to consider adopting a collaborative approach to AI implementation by involving employees or their representative bodies in decision-making processes. This partnership fosters a sense of ownership and involvement, making AI adoption a shared organisational goal.

By implementing these strategies, employers can create a supportive environment that maximises the benefits of generative AI while minimising associated risks, ultimately driving innovation and productivity within the workplace.



Employers should prioritise educating their workforce on the effective and safe use of AI by putting in place a comprehensive training program and policy guidance and continuing to evolve such training and policies to reflect the fast-moving pace of change in the AI space.”

Sinead Casey, Partner,
Employment & Incentives, London

04 AI's potential to a fairer workplace?

Throughout the employment lifecycle, the power of AI can be harnessed to minimise human bias and promote fairness. However, there are inherent risks with AI that may undermine diversity, equity and inclusion within the workplace, and without appropriate guardrails in place, have the potential to discriminate at scale.

The risk of discrimination

Discrimination is arguably AI's biggest workplace risk. AI systems learn from historical data, and as a result can perpetuate existing stereotypes, prejudices, and biases if such behaviours are baked into training AI data sets. There have been numerous high-profile examples of AI discriminating against workers with certain protected characteristics, and facial recognition software has been particularly problematic, with a number of studies showing that the systems misidentify minority ethnic people more frequently than white people. In the **UK**, the case of *Manjang v Uber* is a cautionary tale of the potential risks of AI treating certain groups less favourably. When facial recognition technology allegedly failed to verify a Black driver of African descent, Uber found themselves facing a claim for indirect race discrimination. Another example is the artificial intelligence-based recruiting program developed by Amazon in 2014 and abandoned three years later after a major flaw was discovered: the system effectively discriminated against women, primarily because it had been trained on data that was predominantly related to men.

In legal frameworks where courts and tribunals can draw adverse inferences when considering whether discriminatory behaviour has arisen, the black-box nature of AI tools adds further risk, given the challenge employers face in identifying where and how biases may have been introduced in a decision-making process.

Limits on decision-making

AI has the potential to combat bias more effectively than humans. It can standardise decision-making processes where subjective human judgements can ordinarily lead to favouritism or unfair treatment. The capacity and volume of data AI tools can also considerably outreach that of a human, and AI can reduce a human's subjective interpretation of data. However, there are limits on its applicability to workplace decisions which employers must understand, acknowledge, and respect.

Concepts of fairness, reasonableness and equity are the foundations of many employment and labour law frameworks across the globe, and fairness of decision-making will be dependent on considering acts of mitigation and factual context in every case. Over-reliance on the output of AI tools without appropriate guardrails in place can therefore lead to legal challenge, as AI tools often lack the ability to understand nuanced and complex human emotions and social dynamics that are integral to many aspects of HR and workplace decisions.

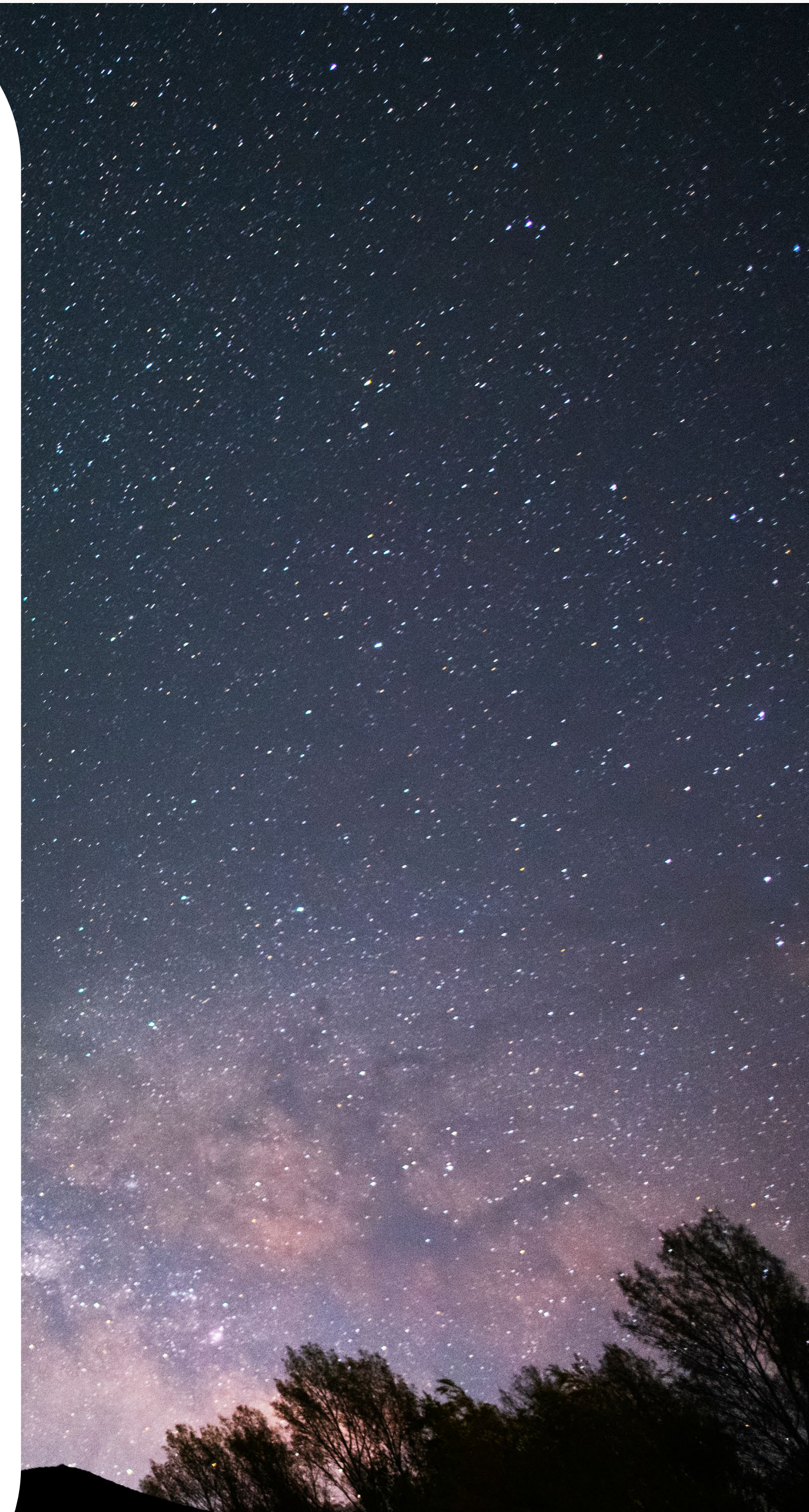
In the **UK and EU** for example, principles of trust and confidence underpin the employment relationship, and decisions about employees which entail exercising discretion under the employment contract must be lawful, rational, and made in good faith. Outsourcing critical decisions to AI risks undermining the dynamic

between employer and employee and eroding the personal nature of the relationship, and employers may struggle to demonstrate that their decisions are lawful, rational and made in good faith due to the black-box nature of AI decision-making, which often provides little to no transparency, and thereby creating exposure for employers by leaving decisions open to challenge. This could ultimately lead to the deterioration of a company's culture.



AI holds significant promise in enhancing workplace fairness by eliminating human biases and the potential to analyse vast amounts of data; however, it also carries the risk of perpetuating existing stereotypes and discriminating at scale if the underlying training data is biased.”

Laurie Ollivent, Senior Associate & Co-Head of Diversity Faculty, London





Mitigating the risks

To decrease the risks associated with AI, employers must adopt robust data governance and risk management frameworks, which may include routinely auditing AI systems for bias, using diverse and representative training data sets, recording activities in order to enable traceability of results and ensuring there is human oversight to interpret and act on AI-driven insights. Implementing ethical AI guidelines and compliance frameworks, for example to ensure greater transparency, can also bolster efforts to mitigate these inherent risks.

Some jurisdictions are already implementing legislation and regulation to ensure employers have these guardrails in place, such as, for example, the **EU** (see [section 5](#) in this guide). On top of that, the EU Steering Committee on Anti-Discrimination, Diversity and Inclusion and the Gender Equality Commission of the Council of Europe are developing a study on the impact of AI systems, their potential for promoting equality, and the associated discrimination risks. The results of this study may influence future regulation.

National anti-discrimination legislation may also evolve significantly in response to the AI Act. For example in **Germany**, legal commentators have pointed out that the existing anti-discrimination legal framework does not adequately address instances of “automated discrimination” by AI. As well as this, given the lack of transparency in outcomes of many AI-driven processes, and the fact that AI-driven decision-making is often based on the review of a vast amount of data, statistical correlations, and seemingly unrelated variables,

this can make it more difficult to easily categorise any discriminatory outcomes of AI decision-making processes within existing legislative frameworks, or even to identify instances of discrimination in the first place.

Across many regions in **APAC** there is developing guidance aimed at mitigating the employment risks resulting from the use of AI in the workplace, namely to address potential risks of discrimination and bias, and to ensure that AI decisions do not systematically disadvantage individuals whilst promoting fairness, ethics, and transparency in its use. In 2023, **China** released draft national standards on security requirements for automated decision-making, seeking public feedback (see [section 5](#) in this guide).

Across **other regions**, existing anti-discrimination legal frameworks are being used to consider the impacts of AI to ensure that any use supports fair and inclusive employment decisions. In **Australia**, governments and regulators are also considering the potential impacts of AI on human rights, with the AHRC recently recommending a new national human rights law to reduce potential discrimination caused by AI.

It can thus be stated that, while AI can be a valuable tool in supporting fair workplace decisions, it is not a panacea. Human oversight, ethical considerations, and robust governance frameworks are indispensable to ensuring that AI contributes positively to employment practices. Balancing the capabilities of AI with the irreplaceable value of human judgement is key to realising a fairer and more inclusive workplace.

05 The AI legal landscape

Across the globe, countries are taking diverse approaches to the regulation of AI. The pressure to regulate is fuelled by the risk of misuse of AI and the threat it poses to individuals. However, mindful of the opportunities and keen to avoid discouraging innovation and investment, governments have a fine line to tread between stifling progress and ensuring adequate regulatory oversight.

While some countries have adopted a clear stance, introducing legally binding rules which developers and users must comply with, a more common approach has been to implement a more flexible set of principles or standards designed to create a framework but with limited consequences in the case of a failure to comply.

This patchwork of inconsistent approaches is complex for businesses to navigate. Regulations may have extra-territorial effect, requiring simultaneous compliance with different sets of rules. More malleable standards create uncertainty as to whether, in the longer term, AI models will remain lawful.

China

China was an early mover on AI regulation. In December 2021, it released the Management Measures for Internet Information Service Algorithm Recommendations, effective from 1 March 2022. A key highlight is the requirement for algorithm recommendation service providers to consider employees' legitimate rights regarding remuneration, rest, and holidays when scheduling or allocating tasks. Relevant algorithms for order distribution, remuneration, working hours, and rewards and punishments must be implemented and improved.

In July 2023, China issued its first generative AI regulation, the Interim Measures for the Management of Generative Artificial Intelligence Services, effective from 15 August 2023. These measures instruct

regulators to take an “inclusive and prudent” approach and adopt a “classified and graded” regulatory method. Businesses providing generative AI services must, in principle, implement measures to prevent discrimination based on nationality, ethnicity, gender, region, religion, age, career, or health.

Anti-discrimination requirements are also found in draft national standards released in August 2023. According to the draft, personal data processors, including companies using AI for hiring, should avoid creating biased labels and design fair candidate filters. Job seekers can request explanations of the algorithms used.

European Union

Leading the charge to human-centric regulation of AI, the EU introduced the first general, comprehensive AI legislation. The EU AI Act came into force on 1 August 2024, although its provisions will be phased in over a three-year period. The Act classifies AI according to four categories of risk. Generally speaking, the higher the risk, the stricter the rules. As such, certain practices, including the use of emotion recognition software in the workplace, are banned completely.

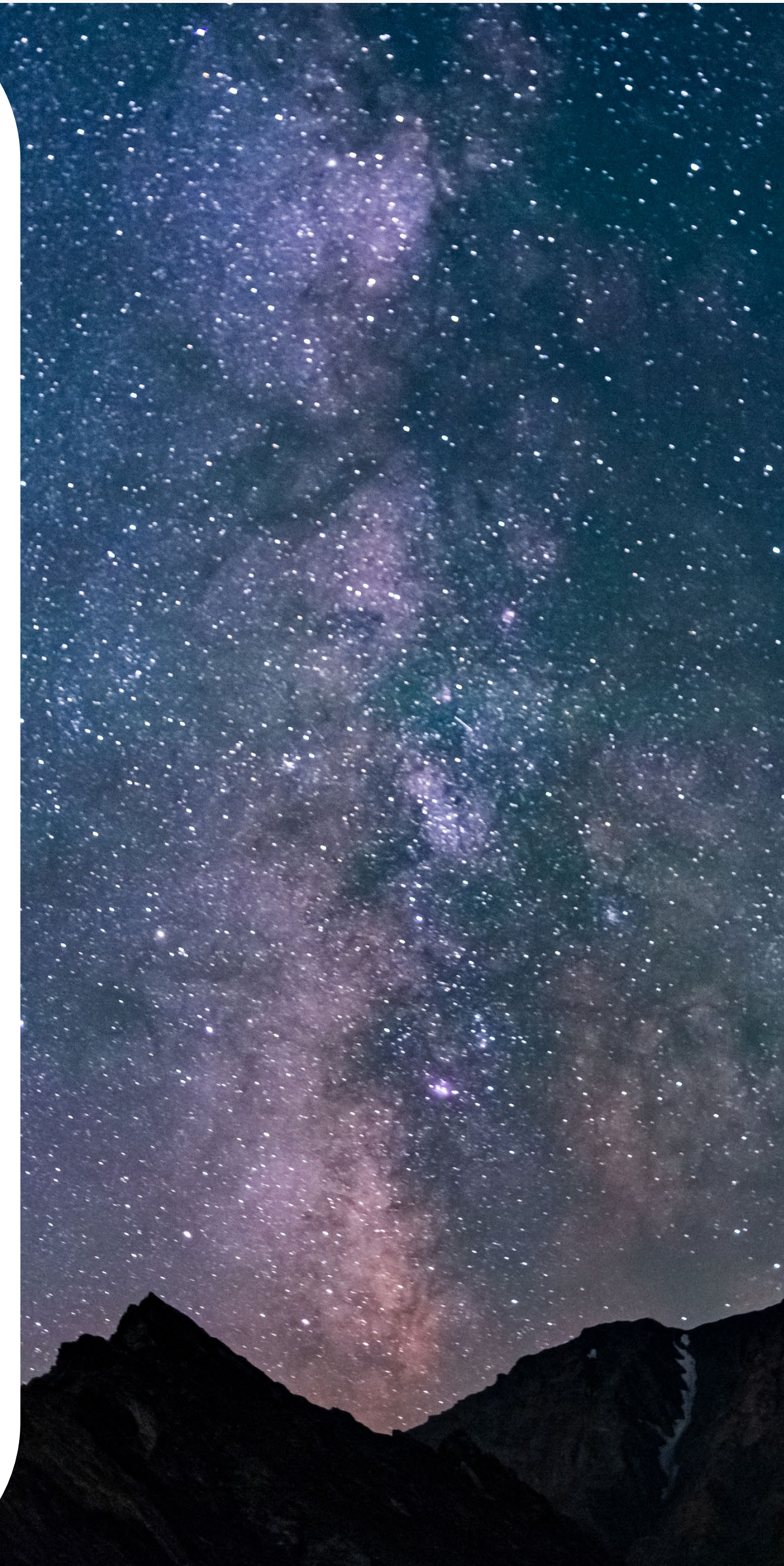
The use of AI in most workplace decision-making is perceived as posing a significant risk of harm and therefore categorised as high-risk. This includes the use of AI in recruitment and selection; decisions affecting the terms of a work-related relationship, including promotions and terminations; allocating tasks based

on individual behaviour or personal characteristics; and monitoring or evaluation of workers. Deployers of high-risk AI systems must meet specific requirements, including ensuring human oversight, ensuring input data is relevant and representative, and monitoring the operation of AI systems.

The territorial scope of the EU AI Act is very wide and has the potential to capture many international organisations which are not seeking to market their products within the EU. Critically, non-compliance with the EU AI Act can lead to significant fines of up to 7% of global annual turnover.

United States

There are currently no comprehensive federal laws that specifically regulate the development, deployment and use of AI. However, in October 2023, the Biden administration issued an executive order on safe, secure and trustworthy artificial intelligence. The executive order lists eight key principles and priorities to encourage the responsible development of AI technologies. This includes the development of principles and best practices to mitigate the harms and maximise the benefits of AI for workers. In addition to requiring the development of federal standards, the Executive Order also requires developers of the most powerful AI systems to share safety test results and other critical information with the US government.



United Kingdom

To date, the UK has adopted a pro-innovation approach to artificial intelligence. Keen not to stifle technological progress, the former UK government confirmed that it had no plans to introduce AI legislation. However, the recently-elected Labour government has indicated a change in tack. At the state opening of the UK Parliament, it announced that it would seek to establish appropriate legislation to place requirements on those working to develop the most powerful artificial intelligence models.

A blueprint for AI legislation already exists. In April 2024, the Trades Union Congress published a draft AI bill which proposes rules for the fair and safe use of AI systems in the workplace. The bill introduces a matrix of obligations on employers and a series of protections for employees and adopts the same risk-based model as that of the EU AI Act. Further details of the new government’s legislative AI plans are likely to emerge over the coming months.

“

Developers and users of AI face a fragmented and inconsistent global regulatory picture. The rapid rise of AI has triggered a rush to regulate in some jurisdictions. Within the EU, the AI Act, the first of its kind in the world, imposes stringent obligations on both providers and deployers, and allows the EU and individual member states to add rules for specific sectors.”

Jennifer Granado Aranzana, Managing Associate, Brussels

“

Many countries, including the UK, have sought to strike a balance between encouraging innovation while maintaining guardrails to protect against harm, adopting a lighter touch and more flexible approach.”

Louise Mason, Senior Associate, London



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