ALM | LAW.COM

New York Law Journal

AI: The Murky Regulatory Outlook . . . and What's Next

By Matthew Dunn

February 21, 2025

In 2025, artificial intelligence (AI) will continue to dominate headlines and garner the attention of industry and government leaders as well as the average consumer, with there likely to be important policy and regulatory developments this year that will be key indicators of how AI innovation, development, and use will continue.

In the U.S., President Trump has surrounded himself with AI industry leaders and, in the first days of his Presidency, has signaled that he favors innovation over regulation and will be shifting away from the policy goals of his predecessor who was focused on mitigating the many risks associated with AI.

The European Union (EU) has led the way in efforts to regulate AI, emphasizing risk mitigation and oversight, with enforcement of its AI Act on the horizon. U.S. state and local governments are leading the way in the U.S. with laws and regulations specifically addressing AI systems that lean towards the EU's approach. These various laws, which differ in applicability and scope, create the possibility of there being a patchwork of overlapping and conflicting regulations and laws.

Credit: peshkova/Adobe Stock

U.S. Federal Approach

There continues to be no comprehensive federal law regulating the use of AI, and there is unlikely to be such a law in the next four years, with a new administration marking a shift in AI priorities.

President Trump took office on Jan. 20, 2025, and immediately, on the first day, issued an executive order that rescinded President Biden's 2023 Executive Order, signaling a clear shift in AI policy that favors innovation over regulation and de-emphasizes concern for discriminatory effects and other risks.

Biden's now-rescinded 2023 Executive Order, entitled "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence," directed federal agencies to develop standards and regulations that were focused on mitigating harm to consumers, minimizing privacy risks, avoiding bias and civil rights violations, and cooperating with international allies and partners.

On Jan. 23, 2025, he issued an Executive Order entitled "Removing Barriers to American Leadership in Artificial Intelligence" which directed the development of "AI systems that are free from ideological bias or engineered social agendas" and revoked "AI policies and directives that act as barriers to American AI innovation." It also called for the Assistant to the President for Science and Technology (APST) and other government leaders to submit an action plan within 180 days.

Also, on Jan. 21, 2025, Trump announced the Stargate Project, a joint venture backed by technology companies such as OpenAI and Softbank, which would invest $500 billion in developing US AI infrastructure, and the construction of new data centers in Texas has begun.

This is consistent with Trump's stated concern about AI competition abroad, including from China, and his priority to position the U.S. as the international leader in AI innovation. Subsequently, the publicity surrounding Chinese AI app DeepSeek, a low-cost open source AI model, heightened Trump's concerns about competitiveness as well as broad concerns for data privacy and national security.

Meanwhile, in furtherance of his stated priorities, Trump has surrounded himself with influential AI industry leaders who are generally interested in a less restrictive regulatory environment. He named David Sacks, a billionaire venture capitalist and former COO of PayPal, as the Administration's "A.I. & Crypto Czar."

Elon Musk (of Tesla, SpaceX and X, among other technology companies) is playing a leading role in Trump's Administration as head of the Department of Government Efficiency (DOGE). And many technology leaders were present at Trump's inauguration festivities, including leaders of Alphabet, Amazon, Meta, OpenAI, and TikTok.

The movement away from regulation and advancement of innovation will likely start to take shape in the coming months.

European Union AI Act

Industry leaders and governmental officials in the EU are observing the fast-moving developments in the US with keen interest. The EU made the first significant strides to place guardrails on AI. The EU's Artificial Intelligence Act (the EU AI Act) was the first comprehensive legal framework for the regulation of AI systems, and has already become a model for other jurisdictions.

It went into effect across all EU Member States on Aug. 1, 2024, and the enforcement of the majority of its provisions will begin on Aug. 2, 2026. The EU AI Act applies to providers, developers, importers, and users/deployers who place or put into service AI systems in the EU market, irrespective of where they are established or located, but does not apply to AI systems used solely for scientific research, development, and testing.

The EU AI Act features a risk-based approach to regulation which requires an initial assessment of the risks each AI system can generate. The EU AI Act completely bans certain AI practices that present an unacceptable risk to fundamental rights, such as those that manipulate

human behavior or exploit individuals' vulnerabilities (e.g., age or disabilities).

It imposes burdensome obligations on users of high-risk AI systems (such as those used in critical infrastructures, in medical devices and safety products, and in ways that affect access to educational and employment opportunities), requiring risk management programs, data training and governance, and technical documentation and recordkeeping.

U.S. — State and Local AI Laws

As occurred with data privacy regulations, individual U.S. states have begun enacting AI legislation to fill the void caused by the lack of a federal framework. Given the attitude of President Trump, some states may slow down their movement towards AI laws, but several are already on the books.

The Utah Artificial Intelligence Policy Act (AIPA), which became effective May 1, 2024, regulates the use of Generative AI ("Gen AI") technologies by businesses or individuals to interact with Utah consumers. Gen AI is AI used to interact with persons using text, audio, or visual communication. When a business or person uses Gen AI to interact with an individual, they are required to disclose that the individual is interacting with Gen AI if the individual asks.

In May 2024, Colorado enacted its own comprehensive AI regulation, the Colorado AI Act, which will become effective on February 1, 2026. Colorado's AI Act, like the EU AI Act, adopts a risk-based approach to AI regulation, and applies to developers and users of AI systems who are doing business in Colorado.

Like the EU AI Act, it imposes notice, documentation, disclosure, and impact assessment requirements on developers and deployers of any "high-risk" AI system, which is an AI system that is involved in making decisions affection education or employment opportunities, financial or lending services, essential government services, healthcare services, housing, insurance, or legal services. It requires that developers and entities that deploy "high-risk" AI systems use reasonable care to prevent algorithmic discrimination.

On September 19, 2024, California enacted the California AI Transparency Act, which goes into effect Jan. 1, 2026. It will require providers of Gen AI systems to, inter alia, make available an AI detection tool, at no cost to users, that will allow users to check whether images, video, or audio content has been created or altered using a Gen AI system.

In September 2024, California enacted several other AI-related laws in various areas, including health care, data privacy, watermarking content (provenance data), robocalls, deepfake pornography, election deepfakes, and entertainment industry use of voice or likeness replicas.

Many other states have proposed similar legislation, and, unless there is a federal law that leads to preemption, it is expected that more states will enact comprehensive AI laws to curb AI uses.

U.S. State and Local Employment-Related AI Laws

In the employment context, regulators are seeking to prevent the use of AI algorithmic systems that make decisions about candidates based on factors like race, ethnicity, and gender. Many companies use AI systems in screening resumes and sorting and analyzing employment applications, in some cases with the systems predicting the success of candidates based on individual characteristics.

New York City enacted the first employment-specific AI law in the U.S., which became effective in July 2023. It requires employers or employment agencies that use automated employment decision tools (AEDTs), located in New York City or involving NYC employees, to submit those AEDTs to periodic bias audits, to make information about the bias audit publicly available, and to provide certain notices to job candidates or employees.

In August 2024, Illinois enacted a law that will go into effect on Jan. 1, 2026. Under this law, employers will be required to notify employees when they use AI for employment decisions which include recruitment, hiring, promotion, renewal of employment, selection for training, discharge, discipline, tenure, or the terms, or conditions of employment. It prohibits employers from using AI in a manner that discriminates against employees that are within protected classes in Illinois.

Illinois also has a law, which took effect in January 2020, that requires employers who use AI to analyze video interviews of applicants to, among other things, provide notice and obtain consent.

Other states have also introduced bills to specifically regulate the use of AI in the employment context.

State Data Privacy Laws

Often overlooked is the fact that many existing state data privacy laws have AI regulation components. Specifically, such laws regulate the use of automated decision-making technology (ADMT) in processing personal data.

ADMT generally refers to the use of automated processes with personal data to make decisions around financial or lending services, housing, insurance, educational enrollment, criminal justice, employment opportunities, health care services or access to essential goods or services.

Common examples include the use of AI to process personal data in connection with determining loan qualifications or in hiring and employment decisions (like AEDT described above). It also may involve AI-related profiling, such as the widespread use of targeted advertising by consumer websites.

In general, state privacy laws require notice to consumers and the opportunity for consumers to opt out of such processing of their personal data in these contexts. States with currently effective data privacy laws that regulate the use of AI technology, such as ADMT, involving personal data include California, Colorado, Connecticut, Virginia, Utah, Texas, Oregon, and Montana. Other states have similar laws that will go into effect in the future.

Takeaways

Given the various laws applicable to AI that are currently in effect and those on the way, and the somewhat uncertain regulatory future, it is important that companies immediately assess their use of AI and evaluate their compliance obligations. And, of course, organizations should continue to closely monitor regulatory developments.

Matthew Dunn *is the Partner and Chair of Carter Ledyard's Cybersecurity and Data Privacy Practice.*