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to the Secretary of Commerce Gina Raimondo and NAIAC

Unless the unintended consequences of AI-enabled HR technology are urgently addressed, hundreds of millions worldwide face lifetimes of economic and societal exclusion.

Just imagine:

- You lose your dream job because your stammer caused you to go 15 seconds over the 3 minutes permitted for the video interview - and the algorithm automatically discards you.
- You have a facial disfigurement from an acid burn, but the AI tool doesn't recognise your face as real.
- Your sight impairment makes eye contact tricky, but you can't find any way to request that the video assessment disregard the way your eyes move around.
- Your ADHD means you 'fidget' in front of your screen and the surveillance tech assumes you aren't working – or accuses you of cheating.
- You usually lip-read at interviews, no problem, but this robot interviewer doesn't have any - lips….
- You have used a wheelchair since you were four, but the virtual reality test drops you walking into an ancient tomb to assess your problem-solving skills.
- You struggle to even imagine standing up (!), never mind doing so while solving complex puzzles.
- And how will you know if your personality profile, produced by scanning everything you have ever put online, tells the recruiter you belong to a Parkinson's Disease network? Is that why your application got nowhere? And if you could take someone to court, who would it be?

Developers often claim they have removed human bias, by dropping their AI software into a standardised recruitment process that treats everyone the same.

But standard processes are by definition inherently discriminatory – which is why we are discussing accommodations today – employers are obliged to make reasonable adjustments at every stage of the employment cycle if they want to employ disabled people on an equal basis.

We treat people differently to treat them fairly. Imagine insisting that the next Stephan Hawkins climb stairs to an interview, because every candidate is required to do the same. Well – HR tech is the new stairs.

What we have here is a classic 'market failure'- neither the HR buyers, nor their tech suppliers understand disability discrimination: neither party seems to know how to design a recruitment process that is both barrier-free for people with similar access needs (think- accessible game controls) and flexible for individuals so they can demonstrate their potential (as in, bypassing psychometrics not validated for the candidate's autism)

We need to move from unhelpful waffle about vaguely defined 'inclusion' and bring the conversation back to some 'Disability Equality Basics'.

We all need to make it clear that 'equality' in the workplace is not possible:

- when you can't ask for an interview to be extended because online process doesn't let you register the request
- when you can't complete the application form using a screen reader
- when you have an intellectual disability and can do the job, but the Robot Recruiter cannot simplify the questions,
- when the American screening tool discards your CV because it has never heard of the prestigious college for the Deaf Loyola College, - or even more worrying - because it has.

A leading HR tech developer, HireVue, recently argued that it is the employer that will be liable if a candidate claims discrimination when HireView data was used to justify the decision not to hire them. It's not every day that a supplier sends a 'Buyers Beware' alert to potential and existing customers.

In essence

We have badly trained HR people buying badly designed technology that is all too often grounded in 'snake oil science'- *technology that is not fit for purpose for anyone* – never mind those the researchers describe as 'outliers'

I jumped at the chance to be here today as obviously governments and regulators have a huge role to play – and have something of a wish list – here are the 6 things I would do if I had a magic wand.

Wish 1

I would mount a formal inquiry into the impact of AI powered HR technology on local job markets and the wider economy.

This isn't just about recruitment –PEAT has recently highlighted some of the risks for disabled people in work, as they confront Surveillance Tech which provides their employers with inaccurate and unfair assessments of their job performance

You could lose your job because the technology tracks keyboard activity, but you use dictation software. And consider the Proctoring Tech that so often wrongly accuses disabled students of cheating – and how robot supervisors set unrealistic and physically damaging productivity targets for people in work – it goes on and on. This isn't about replacing people with AI tool – this is different as it equates to actively excluding those already marginalised and disadvantaged in any labour market. And don't forget that many of the workers first displaced – or do we say replaced - by AI, will be older and therefore more likely to have disabilities and/or health conditions. And these older workers will start to look for another job and have no choice but to try to get through these discriminatory automated recruitment systems.

Wish 2

We need to challenge the assumption that 'the problem is the technology' and talk much more directly about and with and at the people who buy it and the people who create it and the people who market it as 'free from human bias - (which any AI scientist will tell you is impossible) and hold them personally to account for mitigating potential harm with explicit reference to 'disability.'

Wish 3

Which means we need more straight talk from regulators.

It was good to see your EEOC issuing some guidance in this area - the first such regulator to do so.

But surely the time has come to make it crustal clear that the risk is now unacceptable.

Regulators need to shift their messaging from 'could be unlawful' and 'may be' unlaw and 'could violate ADA' – to HR attention grabbing statements like:
- 'Failure to make reasonable accommodations online **WILL** trigger serious legal risk
- Failure to tell every candidate how to request reasonable accommodations from the outset is **highly likely to be unlawful** given how hard it is to justify not doing that which was reasonable…

Wish 4

We need a formal inquiry into HR training and certification and the impact of that training on excluded and marginalised workers –including but not only disabled people.

We expect doctors to know the difference between an elbow and a knee.

We should be able to count on to HR professionals to understand unfair disability discrimination- and how to avoid it.

How could a SHRM certified HR practitioner possibly ever justify buying a standardised automated recruitment system? Why don't they run a mile?

Wish 5

The time has come to combine existing equality legislation with much stronger consumer protection – developers should be required to prove that their HR products are 'safe' for disabled and other disadvantaged groups – before they can put them on the market.… Rather than waiting for a named individual to try to prove they have been treated badly by an algorithm they didn't even know was there.

It is good to see the European Commission moving towards framing the challenge as 'product liability'.

https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5807

To quote the AI Liability Directive:

"It will harmonise certain rules for claims outside of the scope of the Product Liability damages… and safety The new rules will, for instance, make it easier to obtain compensation if someone has been discriminated in a recruitment process involving AI technology".

Wish 6

Both parties need to share liability – in effect - when we see an employer recklessly using a defective tool that has the potential to cause serious harm to already disadvantaged people (while - ironically- denying these same employers access to talent – so everyone loses).

Surely the manufacturer of thar defective machine should be liable- as well as the customer who failed to exercise due diligence when deciding to buy it.

And I conclude with an idea I've been kicking around in the past day or so – would welcome your thoughts.

Just as we require the pharma industry to list the potential side effects of aspirin in every package-

shouldn't these HR tech developers be required to list 'on the package'- the marginalised groups who because they have NOT been involved in the development – in the testing -in the risk assessments of the product-are probably at risk.

Which alerts the buyer employer to the potentially harmful legal and ethical and economic 'side effects' of using that HR technology- and alerts regulators as to which vulnerable workers are particularly at risk as they, the regulators, simply read the packaging.

I would be very interested in your feedback.

 if Aspirin must – no choice - tell me the risks – why not HireVue- the Tengai Robot – Topday, WorkDay etc. etc. etc.

Please do check out our volunteer website www.disabilityethicalai.org- a central resource bank we are developing to help key stakeholders understand and address these issues.

Thank you for your attention.