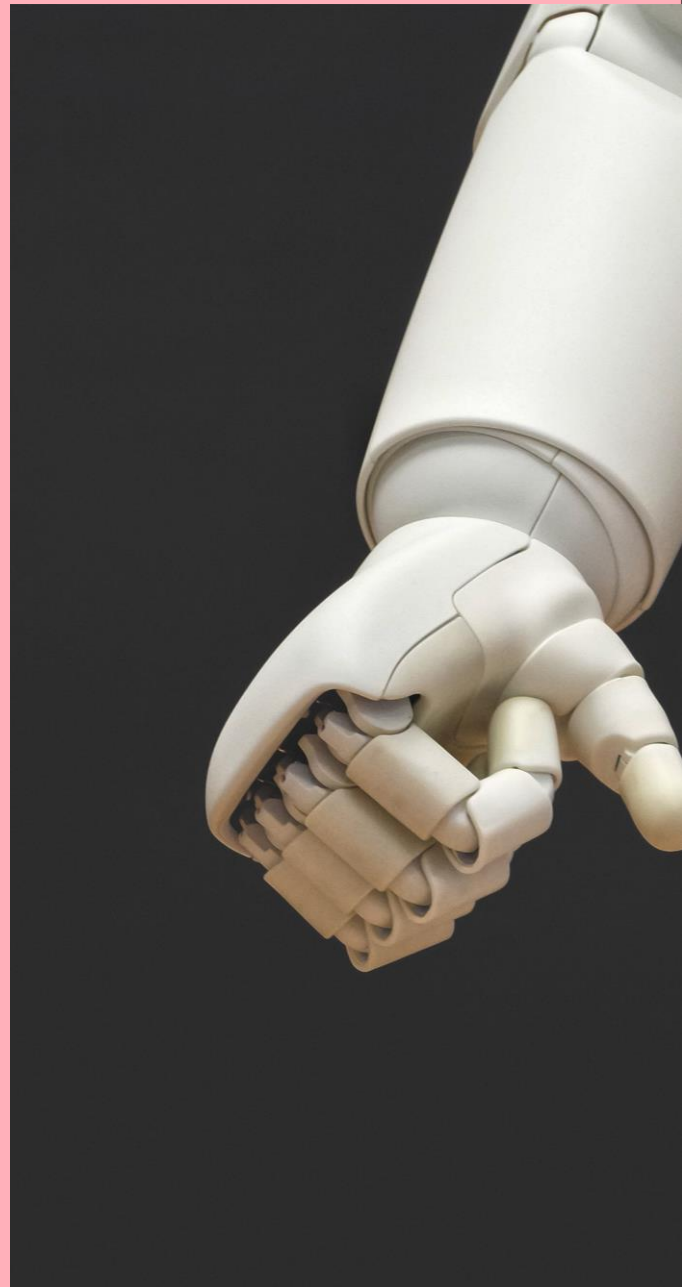


Bird & Bird

Talent Wars

December 2024



Contents



Foreword	3
Australia	4
China	7
Hong Kong	9
India	12
Indonesia	14
Japan	16
Malaysia	18
Philippines	20
Singapore	23
Taiwan	25
Thailand	27
United Arab Emirates	29
Vietnam	31
About Bird & Bird and our International HR Services Group	33
Key Contacts	34

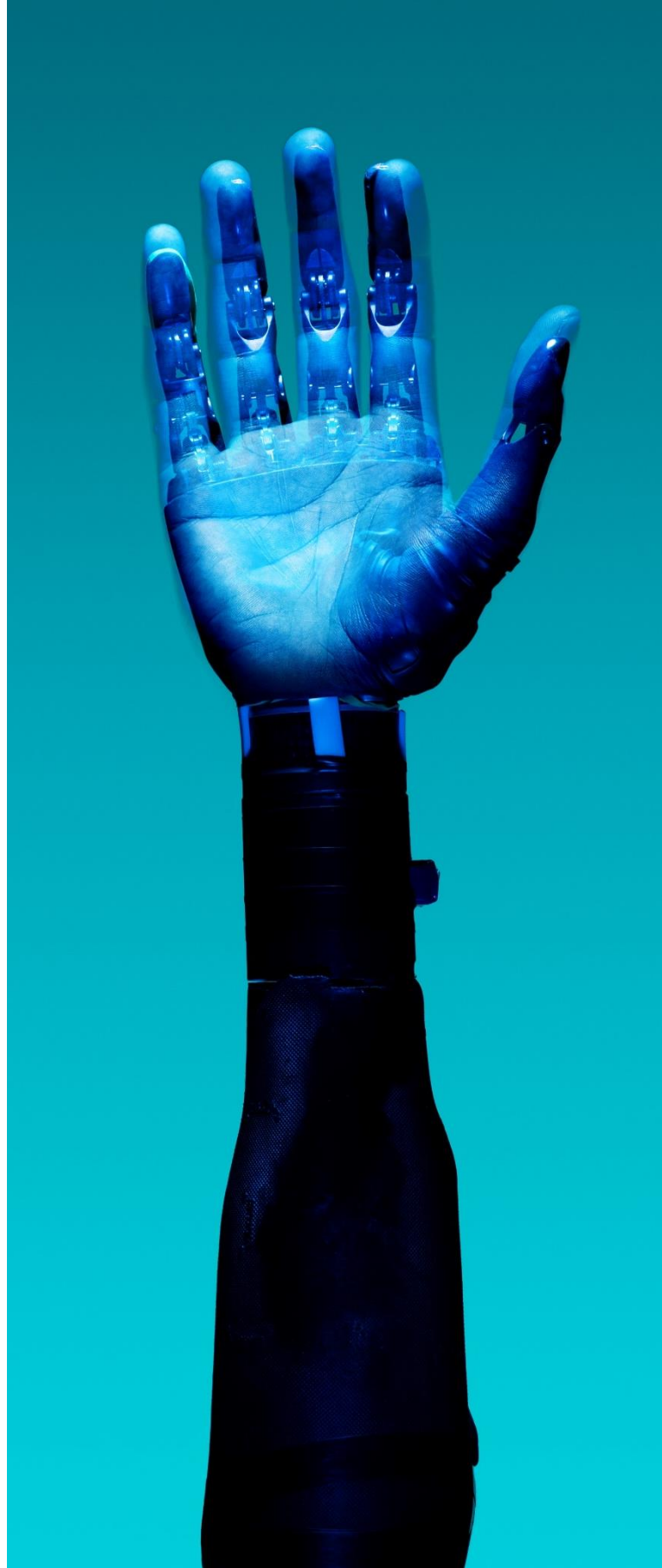
Foreword

The transformative impact of Artificial Intelligence (AI) in Human Resources (HR) across Asia is undeniable. From automating routine administrative tasks to revolutionizing HR decision-making on strategic matters like talent development and retention, the adoption of AI in HR will only increase in incidence.

In this publication, we provide a snapshot of the issues to be aware of when employing AI in various stages of the employee life cycle across 11 jurisdictions in Asia-Pacific (APAC). It may be gleaned that the use of AI in APAC is (still) not heavily regulated, although the freedom to use of AI is naturally fettered by data protection and equality law considerations. As employers amass personal data to help train and advance its AI applications, they must continually pay attention to what they can legally collect, use and retain.

Ethical and legal questions on the liability or fairness of AI applications in HR decision-making remain unclear and untested in Courts and Employment Tribunals, although in our view, a strong argument may be made that employers have a legal obligation to ensure that their AI algorithms are sufficiently trained to avoid discriminatory outcomes. This is perhaps why it has often been said that striking a balance between automation and the human touch that has always been at the heart of effective people management, is the desired goal.

This publication serves as a guide to understanding the current legal landscape and future potential of AI in HR across APAC. It is a timely reminder of what organisations should be mindful of when forging ahead with AI tools that offer optimization and efficiencies in so many ways, or the adoption of business protection strategies.



Australia

Does your jurisdiction have any AI laws?

There are no AI laws at present, but Australia has 8 voluntary AI Ethics Principles, which are designed to ensure that AI is safe, secure and reliable and are there to help businesses and governments practice the highest ethical standards in the process of designing, developing and implementing AI.

On 21 June 2024, the federal, state and territory governments released the 'National Framework for the Assurance of Artificial Intelligence in Government'. This Framework is aligned with Australia's 8 AI Ethics Principles and may become the foundation for future AI regulation across Australia.

Does your jurisdiction have workplace discrimination laws?

Yes.

Under the Fair Work Act 2009, it is unlawful for employers to take adverse action against an employee or prospective employee because of one or more attributes, including: race, colour, sex, sexual orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, social origin and experiencing family and domestic violence.

Adverse action taken by an employer include the doing, threatening, or organising any of the following:

- dismissing an employee;
- injuring an employee during their employment;
- altering an employee's position to their detriment;
- discriminating between one employee and other employees;
- refusing to employ a prospective employee;
- discriminating against a prospective employee on the terms and conditions in the offer of employment.

Additionally, we have specific sex, race, age and disability discrimination legislations, all of which prohibit discrimination in the workplace.

Does your jurisdiction regulate the use of AI in hiring?

No. However, the use of AI in hiring must comply with existing laws and regulations, including anti-discrimination laws and privacy laws to avoid potential liability (although liability has not yet been tested in the courts).

The government is currently in the process of considering whether to implement mandatory guardrails on those developing and deploying AI in Australia in high-risk settings. It is possible that hiring in the employment context would be considered a "high-risk" setting.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

The Privacy Act 1988 and the Australian Privacy Principles (APPs) apply to all uses of AI involving personal information, including situations where information is used to train, test or use an AI system.

In accordance with APP 5, employers must notify individuals of the purposes for which their personal information is collected – this includes use of information in an AI system.

Are there any legal risks with using AI in human resource management in your jurisdiction?

There may be legal risks when using AI in hiring processes, due to the potential for unlawful discrimination. If the data used to build the AI model reflects past hiring biases, the AI may replicate those biases in its future decisions, leading to unlawful discrimination. To mitigate this risk, employers should conduct regular audits of their AI systems to identify and correct any discriminatory patterns.

Are employers able to restrict employees from making any social media comments about the employer?

Yes, employers can implement a Social Media Policy that outlines acceptable and unacceptable behaviour on social media, including restrictions on posting content that could harm the employer's reputation or disclosing confidential information.

In the absence of a policy, in certain circumstances, employers may be able to take disciplinary action to have an employee remove an unwanted or damaging social media comment.



Does your jurisdiction have privacy/surveillance laws?

The Privacy Act 1988 sets out requirements for collecting, storing, using and disclosing personal information, via the Australian Privacy Principles (APPs).

The Act applies to:

- businesses with an annual turnover of \$3 million or more;
- all private health service providers;
- a limited range of small businesses;
- all Australian Government agencies.

If an employer is required to follow the APPs, it must implement a privacy policy.

The Privacy Act 1988 also sets out additional rules and higher standards for collecting and handling sensitive personal information.

Surveillance in the workplace is primarily regulated by state and territory laws. Generally, state laws cover the installation and use of CCTV, and some states also have specific workplace surveillance laws.

For example, in New South Wales, the Workplace Surveillance Act 2005 governs how employers can conduct surveillance on employees. The said Act requires (amongst other things) that employers provide 14 days' written notice to employees before commencing the surveillance.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes, provided that such monitoring is carried out in accordance with state-specific workplace surveillance laws.

The employer would also need to comply with the Privacy Act 1988 in respect of the handling of personal information collected through such monitoring.

Are there any legal risks with using employee tracking software in your jurisdiction?

The risks are low, provided that employers follow applicable laws across relevant states and territories and only deploy surveillance / monitoring for justifiable purposes.

China

Does your jurisdiction have any AI laws?

Yes, China has regulations such as the Interim Provisions on the Management of Generative AI Services (2023), Code of Ethics of New Generation Artificial Intelligence (2021), AI Safety Governance Framework V1.0 (2024) and broader laws such as the PRC Personal Information Protection Law (PIPL) and Cybersecurity Law, which govern AI-related activities, data processing, and ethical requirements to ensure safety, fairness, and transparency.

Does your jurisdiction have workplace discrimination laws?

Yes, the Labor Law, the Women's Rights and Interests Protection Law and the Employment Promotion Law of China prohibit workplace discrimination based on gender, ethnicity, race, disability, or religion. Certain specific provisions also protect against discrimination due to infectious diseases.

Does your jurisdiction regulate the use of AI in hiring?

Yes, but in a general manner. The use of AI in hiring must comply with the PIPL, ensuring lawful and transparent processing of personal data. Additionally, the Code of Ethics for New Generation Artificial Intelligence emphasizes the respect for privacy, freedom, dignity, and safety and preventing discrimination, prejudice, or privacy violations. Employers should avoid AI applications that infringe on individuals' lawful rights.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes, it is permitted, provided that employers comply with data protection and privacy laws and anti-discrimination under prevailing labour laws.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes. Under the PIPL, employers must inform employees and candidates of the processing purpose, methods, type of personal data being processed, retention period, and how individuals can exercise their rights. If sensitive personal data is processed, employers must explain its necessity and impact. Additionally, if decisions made through automated decision-making materially affect individuals' rights, they have the right to request an explanation and refuse decisions made solely by automated means.

Are there any legal risks with using AI in human resource management in your jurisdiction?

The legal risks appear low at this stage.

Are employers able to restrict employees from making any social media comments about the employer?

Yes, this can be done through implementation of relevant company policy or appropriate contractual provisions.

Does your jurisdiction have privacy/surveillance laws?

Yes. The Civil Code of China protects individuals' right to privacy, prohibiting intrusion, disclosure, or misuse of private matters. The PIPL requires data processors, including employers, to obtain prior consent for collecting or processing personal information unless exceptions apply. Monitoring and surveillance that involve personal data must comply with PIPL obligations, including informing employees and obtaining their consent where necessary.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes, to the extent that the use of the tracking software is limited to work-related scenarios and employers must (i) notify employees of the tracking system, (ii) comply with the PIPL with respect to the processing of information, (iii) avoid excessive monitoring that invades personal privacy.

Are there any legal risks with using employee tracking software in your jurisdiction?

Yes, there could be risks of violation and infringement of employee data and/or privacy (particularly if the tracking involves excessive tracking or conducted without employee's knowledge or consent).



Hong Kong

Does your jurisdiction have any AI laws?

Currently there is no law specifically governing AI use or regulation in Hong Kong.

However, the Office of the Privacy Commissioner for Personal Data has developed and published the following two documents: “Guidance on Ethical Development and Use of Artificial Intelligence” and “Artificial Intelligence: Model Personal Data Protection Framework”.

Since AI may at times process data sets that contain personal data of individuals, the Privacy (Data) Privacy Ordinance (“**PDPO**”) also applies to AI use. Existing Hong Kong legislation and common law principles may also be applicable.

Does your jurisdiction have workplace discrimination laws?

Yes. Hong Kong’s anti-discrimination legislation includes the Sex Discrimination Ordinance, Disability Discrimination Ordinance, Race Discrimination Ordinance and Family Status Discrimination Ordinance, which provide protections against discrimination and harassment in the workplace.

Under the ordinances, it is unlawful to directly or indirectly discriminate based on an individual’s sex, marital status, pregnancy, breastfeeding, disability, family status or race.

Does your jurisdiction regulate the use of AI in hiring?

No. However, the use of AI in hiring must comply with existing laws such as the PDPO and the anti-discrimination ordinances.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes. Pursuant to the Guidance on the Ethical Development and Use of Artificial Intelligence issued by the Office of the Privacy Commissioner for Personal Data, organisations should clearly and prominently disclose their use of AI and their relevant data privacy practices. Employers should therefore inform employees and candidates if AI is being used to process their personal data.

Are there any legal risks with using AI in human resource management in your jurisdiction?

There may be legal risks in using AI in human resources management due to AI biases which can lead to unlawful discrimination. To mitigate the risks, employers should closely monitor their AI systems to ensure that the data sets are not biased and that there is human oversight over AI decisions.

Are employers able to restrict employees from making any social media comments about the employer?

Yes. An employer can include express provisions in the employment contract which prohibit employees from making comments about the employer on social media or from making disparaging remarks about them.

Does your jurisdiction have privacy/surveillance laws?

Yes.

- There are constitutional protections for various privacy interests under the Basic Law.
- The PDPO is the main piece of legislation in Hong Kong governing privacy. It governs the collection, retention, processing, use and transfer of personal data. The legislation also covers the surveillance and monitoring of individuals.
- Privacy rights are also protected under the common law.
- The Interception of Communications and Surveillance Ordinance and the National Security Law both regulate the conduct of interception of communications and the use of surveillance devices by and on behalf of public officers.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

It depends on whether the data protection principles under the PDPO can be satisfied. An employer must ensure that the collection of personal data through the use of an employee tracking software is necessary and not excessive for the purpose for which it is being collected, the manner of personal data collection must be fair, the personal data must not be used for purposes other than those mentioned at the time of collection, employees must be informed of information required under the PDPO, security measures should be taken to protect personal data, employees are entitled to request access to personal data, and personal data must not be kept longer than is necessary for the fulfilment of the stated purposes.

Are there any legal risks with using employee tracking software in your jurisdiction?

Yes, the collection of personal data using employee tracking software may not be fair and may therefore be excessive if there are less privacy-intrusive ways of achieving the same purpose. For example, if the purpose of using the software is to manage workplace productivity, an employer may be able to achieve the same purpose through other means; for example, by requiring employees to record their time using timesheets. In addition, the use of tracking software may not provide an accurate measure of employee productivity. Reliance on such software could lead to biased or legally indefensible decisions.

There is also the risk that tracking software could intrude into employees' personal lives; for example, if the software enables employers to track employees' location, even outside working hours.



India

Does your jurisdiction have any AI laws?

India is yet to frame artificial intelligence specific laws. However, the Government of India, through its various ministries, has from time-to-time issued guidelines and advisories regarding the use of AI. The Government of India has published a strategic framework document for AI, emphasizing its application in sectors such as healthcare, agriculture, education, infrastructure, and mobility, which include ethical principles for responsible AI deployment, addressing both system-level considerations and the societal impacts, particularly the potential effects on employment due to automation. Additionally, the government has provided operational principles to guide the practical implementation of responsible AI practices across various domains.

The Ministry of Electronic and Information Technology has published an advisory on the diligence obligations to be undertaken by intermediaries and platforms when using AI to ensure compliance with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. All intermediaries and platform must ensure that no unlawful content is published further to the use of AI, clear labelling of under-tested AI generated output to indicate their potential unreliability and prevention of any form of bias in AI generated output. Additionally, intermediaries must provide clear terms of service regarding consequence of sharing misinformation and must monitor deep fake data.

Does your jurisdiction have workplace discrimination laws?

Yes, private employers are statutorily prohibited from discriminating on the basis of disability, sex, gender, maternity status, HIV status and caste.

Does your jurisdiction regulate the use of AI in hiring?

No, currently there is no such regulation.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

No, currently there is no requirement to specifically disclose AI being used to process personal data. That said, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (“**SPI Rules**”) requires obtaining consent in case of collection, transfer or processing of Sensitive Personal Information or Data in the electronic form (“**SPDI**”), which includes (i) passwords; (ii) financial information such as bank account or credit card or debit card or other payment instrument details; (iii) physical, physiological, and mental health condition; (iv) sexual orientation; (v) medical records and history; and (vi) biometric information.

Are there any legal risks with using AI in human resource management in your jurisdiction?

While the use of AI has not been prohibited or regulated in human resource management, it would be important for organisations to ensure that any AI that is deployed is trained to recognise and remove any inherent biases that may develop in the course of implementation and to comply with applicable anti-discriminatory laws and labour laws.

Are employers able to restrict employees from making any social media comments about the employer?

Employees in India *per se* cannot be restricted from making comments about their employer that are non-defamatory and do not breach the employee's confidentiality obligation. Organisations have however implemented social media policies or appropriate contractual provisions in the employment documentation to prescribe the manner in which individuals may use social media in their capacity as an employee of the organisation.

Does your jurisdiction have privacy/surveillance laws?

Yes. The main data protection legislations in India are the Information Technology Act, 2000 and the SPI Rules (*please see above*).

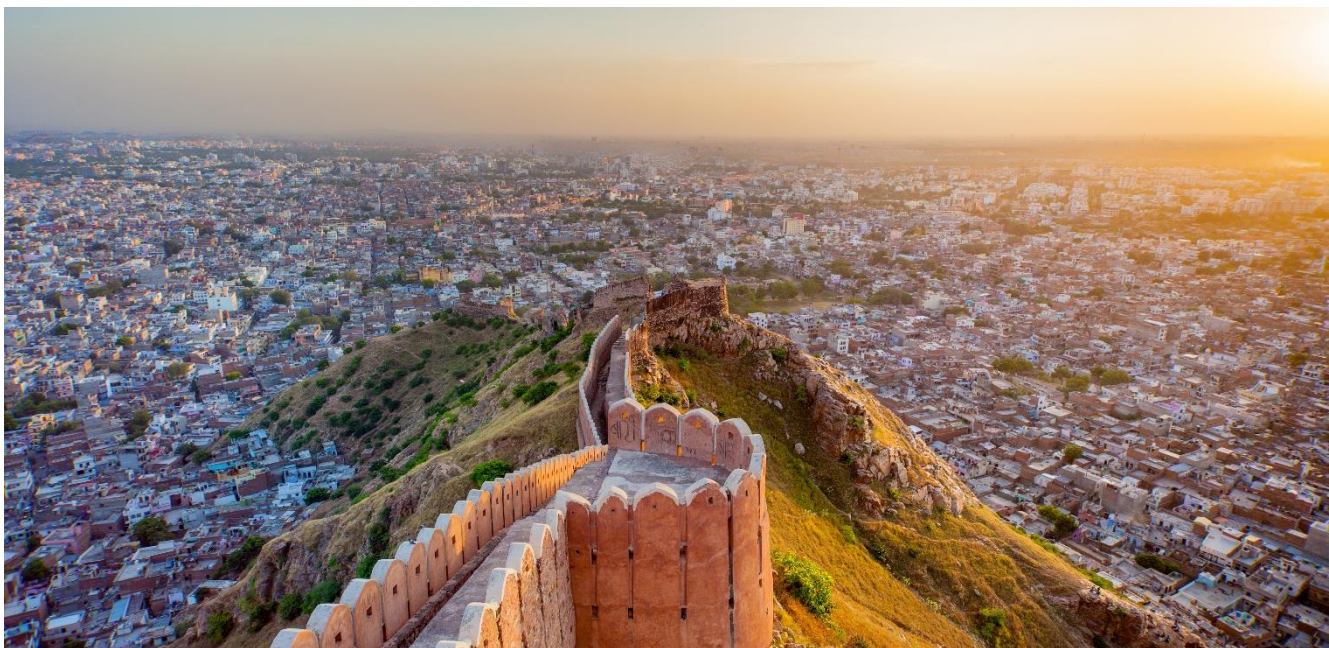
The Indian Government has recently passed the Digital Personal Data Protection Act, 2023 (“**DPDP**”), which prescribes rules and framework for the collection and usage of personal data. However, this statute is yet to be implemented.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

There is no restriction on implementing an employee tracking software so long as such software is installed on an employer resource such as a laptop or mobile phone. That said, it is recommended that employees be informed of the software or be specifically informed that they should not have an expectation of privacy when using employer resources.

Are there any legal risks with using employee tracking software in your jurisdiction?

While the use of employee tracking is yet to be tested in courts, the Supreme court of India has ruled that the right to privacy is a fundamental right guaranteed under the Indian Constitution. In addition, as stated, SPDI Rules imposes various obligations on data collection, storage, and processing of SPDI in the electronic form. Therefore, it is recommended that to the extent feasible organisation obtain consent/notify employees of any tracking software that is being used.



Indonesia

Does your jurisdiction have any AI laws?

Indonesia does not have specific AI laws. However, AI activities are guided by Law No. 11 of 2008 on Electronic Information and Transactions as lastly amended by Law No. 1 of 2024, and recent ethical guidelines from the Ministry of Communication and Informatics and the Financial Services Authority (OJK).

Does your jurisdiction have workplace discrimination laws?

Yes, Indonesian laws offer robust legal protection against workplace discrimination, as stipulated in several key regulations, such as Law No. 39 of 1999 on Human Rights, ratification of ILO Convention No. 111 on Discrimination in Employment and Occupation through Law No. 21 of 1999, and Law No. 13 of 2003 on Manpower as last amended by Law No. 6 of 2023 on Job Creation.

These cover areas such as restriction, exclusion, or preferential treatment based on religion, ethnicity, race, gender, political belief, or other grounds that diminish or negate equality in rights.

Does your jurisdiction regulate the use of AI in hiring?

Indonesia does not specifically regulate the use of AI in hiring processes. However, employers must ensure that any use of AI complies with existing laws relating to employment, data protection, anti-discrimination, and other relevant regulations.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes, the use of AI in human resource management is permitted in Indonesia as long as it complies with existing laws on employment, anti-discrimination, data protection, and other relevant regulations.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes, under Indonesian law, specifically Law No. 27 of 2022 on Personal Data Protection, there is a legal obligation to disclose to employees and candidates whenever AI is used to process their personal data.

Are there any legal risks with using AI in human resource management in your jurisdiction?

Yes, there are legal risks associated with using AI in human resource management in Indonesia, primarily related to compliance with existing employment, anti-discrimination, and data protection laws.

If an AI system unintentionally incorporates biases in recruitment, promotions, or performance evaluation, it may lead to discriminatory practices, exposing employers to legal liability.

Are employers able to restrict employees from making any social media comments about the employer?

There are no specific laws in Indonesia that prohibit employer's ability to restrict employees from making social media comments about their employer. Such restrictions can only be enforced if they are explicitly stated in contractual provisions or company regulations.

Does your jurisdiction have privacy/surveillance laws?

Yes. Law No. 27 of 2022 on Personal Data Protection and sector-specific regulations govern privacy and surveillance. Employers must inform and obtain consent before collecting or using personal data through surveillance, unless exceptions apply. Unauthorized surveillance may result in penalties.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. Employers must ensure they have a lawful basis, such as obtaining employee's consent, for the use of tracking software. They should also be transparent about the purpose and scope of monitoring, ensuring that it is limited to legitimate business needs.

Are there any legal risks with using employee tracking software in your jurisdiction?

Yes. Legal risks include non-compliance with Law No. 27 of 2022 on Personal Data Protection if such tracking is intrusive or lacks transparency. Employers must balance monitoring needs with employee privacy rights and ensure that tracking practices are proportionate and justified.



Japan

Does your jurisdiction have any AI laws?

No. However, to promote the benefits and reduce the risks of AI, the Ministry of Economy, Trade and Industry and the Ministry of Internal Affairs and Communications have developed some guidelines that set out what people involved in the development, provision, and use of AI should be aware of.

Does your jurisdiction have workplace discrimination laws?

Yes. Multiple legislations including the Labour Standards Act and the Equal Employment Opportunity Act prohibit discriminatory treatment of workers on the basis of nationality, creed, social status, gender, pregnancy, or childbirth, etc.

Does your jurisdiction regulate the use of AI in hiring?

No, but it is prohibited by law to obtain information about a candidate's family background, origin, beliefs, etc. during the recruitment process that are unrelated to their abilities and their suitability for the role. Recruitment activities that uses AI are also subject to this regulation.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

No, but under the Act on the Protection of Personal Information (APPI), if the use of AI means that personal information about employees or candidates will be provided to a third party, the company is obliged to disclose this fact and obtain the person's consent first.

Are there any legal risks with using AI in human resource management in your jurisdiction?

Providing personal information to a third party without the individual's consent, providing it to a foreign country without taking appropriate procedures required by the law, or using it for an undisclosed purpose, would be in violation of the APPI. There is a risk that these situations could occur if you enter the person's personal information into a generative AI tool.

A violation of the APPI could result in fines, guidance from administrative authorities, or public announcements, etc.

Are employers able to restrict employees from making any social media comments about the employer?

Yes, this can be done through an Acceptable Social Media Use Policy or appropriate contractual provisions.

In the absence of a policy/express provisions, employers may not have a strong basis to restrict employees from publicly commenting on the employer.

Does your jurisdiction have privacy/surveillance laws?

Yes, they are contained in the APPI.

To the extent that personal data is collected, used or disclosed in the monitoring and surveillance of individuals, the APPI will apply. This means that employers are required to take appropriate actions when collecting any personal information in accordance with the APPI.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. However, if the software collects personal information, the APPI will apply.

Are there any legal risks with using employee tracking software in your jurisdiction?

The legal risks appear low as long as the tracking is regarded as reasonable in light of the necessity of the tracking and the degree of impact on employees' privacy rights.



Malaysia

Does your jurisdiction have any AI laws?

There are no AI laws at present, but the government has introduced the National Guidelines on AI Governance & Ethics (Guidelines) which intends to develop and deploy AI in a safe, trustworthy and ethical manner.

Does your jurisdiction have workplace discrimination laws?

There are no specific legislations for workplace discrimination.

However, under the Employment Act 1955 (EA), the Director General of Labour (DG) is empowered to inquire into any dispute between an employee and the employer in respect of any matter relating to discrimination in employment, and to make an order pursuant to such inquiries. Any employer who fails to comply with an order of the DG is liable to a fine of up to RM50,000 and a daily fine of up to RM1,000 for each day the offence continues. The EA does not define discrimination or set out protected characteristics.

The powers of the DG to inquire into discriminatory practices in employment are wide and could potentially encompass inquiries into the use of AI in HR processes if such use resulted in discrimination.

Does your jurisdiction regulate the use of AI in hiring?

No. However, the Guidelines (which are not legally binding) includes a sample Code of Ethics, which addresses that when AI is used in the workplace, it should be fair. AI in the workplace could include automated or semi-automated decision such as hiring, promotion or employee monitoring.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes. Employees should be notified that AI is being used.

Employers should ensure that AI involving personal data is compliant with data protection laws. Under the current Personal Data Protection Act 2010 principles, personal data shall not be processed unless it is adequate, relevant, and not excessive for its purpose; processing must be made with consent and for a lawful purpose; information must be given concerning purposes for which the personal data is being processed, collected, or disclosed; disclosure without consent is not permissible; data must protected from loss, misuse, unauthorized access, etc.

Under the Guidelines, developers should, where necessary, obtain consent from individuals before using or disclosing personal data for AI development and deployment. The government may review the Personal Data Protection Act 2010 to align and support digitalization strategic initiatives including AI technology (e.g., to set standards for obtaining informed consent, ensuring data security, and defining the permissible uses of personal information).

Under the Personal Data Protection (Amendment) Act 2024 (which is not in force at the time of writing), biometric data will be categorised as sensitive personal data, which requires explicit consent of the individual before it is processed.

Are there any legal risks with using AI in human resource management in your jurisdiction?

The legal risks appear low at this stage.

Are employers able to restrict employees from making any social media comments about the employer?

Yes, this can be done through an Acceptable Social Media Use Policy or appropriate contractual provisions.

Does your jurisdiction have privacy/surveillance laws?

Yes. The main data protection legislation in Malaysia is the Personal Data Protection Act 2010.

To the extent that personal data is collected, used or disclosed in the monitoring and surveillance of individuals, the obligations under the Personal Data Protection Act 2010 apply. Employers are not to process an individual's personal data unless consent has been given by the individual, unless an exception to consent applies or the processing is otherwise authorised under law.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. However, employee consent is required in respect of personal data protection laws.

Are there any legal risks with using employee tracking software in your jurisdiction?

The legal risks appear low at this stage.



Philippines

Does your jurisdiction have any AI laws?

There are no specific laws which govern AI. However, when AI is used in connection with the processing of personal data, the Data Privacy Act applies. The National Privacy Commission has opined that the use of different modes of technology in processing personal data, including AI technology, must adhere to the principles of data privacy, such as: there must be a lawful basis for processing, the implementation of reasonable appropriate security measures and upholding the rights of the data subjects, among others.

It is also worthy to note that despite the lack of specific laws governing AI, artistic and literary works including employee's works are governed by the Intellectual Property Code (IP Code) for its use and authorship.

Does your jurisdiction have workplace discrimination laws?

Yes, there are several workplace discrimination laws governing different groups:

1. The Labor Code of the Philippines provides special rights for Women, Handicapped Persons, Minors, House helpers, and Homeworkers
2. Republic Act No. 9710, governing treatment and rights of women in the workplace.
3. Republic Act No. 7277, or the Magna Carta for Disabled persons, governing treatment of handicapped persons.
4. Republic Act No. 11036, the Mental Health Act, for persons suffering from mental health conditions.
5. Republic Act No. 10911, the Anti-Age Discrimination Act, which prevents discrimination based on age (either advancement or lack of).
6. Republic Act 7877, the Anti-Sexual Harassment Act, which defines and provides penalties and the mandatory framework for preventing sexual harassment.
7. Republic Act No. 11313, the Safe Spaces Act, which defines and provides penalties and the mandatory framework for preventing discrimination based on Gender and Sexual Identity.
8. Department of Labor and Employment Department Order No. 102-10, March 23, 2010 regarding Guidelines For The Implementation of HIV And AIDS Prevention And Control In The Workplace Program providing that workers shall not be discriminated against, from pre to post employment, including hiring, promotion or assignment, regardless of the HIV status, be it actual, perceived or suspected with HIV infection.
9. Department of Labor and Employment Department Labor Advisory, regarding Guidelines For The Implementation of Workplace Policy and Program on Hepatitis B providing that workers shall not be discriminated against, from pre to post employment, including hiring, promotion or assignment, regardless of their Hepatitis B status, be it actual, perceived or suspected.
10. Department of Labor and Employment Department Order No. 73-05, March 30, 2005, regarding Guidelines for the Implementation of Policy and Program on Tuberculosis (TB) Prevention And Control in the Workplace providing that workers with TB shall not be discriminated against.

Does your jurisdiction regulate the use of AI in hiring?

No, however, as an employers are essentially the controller of such personal information, they are obligated to adhere to the principles of data privacy, lawful basis for processing, implement reasonable appropriate security measures and uphold data subject rights. The use of AI should also adhere to the laws on discrimination in the process of hiring employees.

Is the use of AI in human resource management permitted in your jurisdiction?

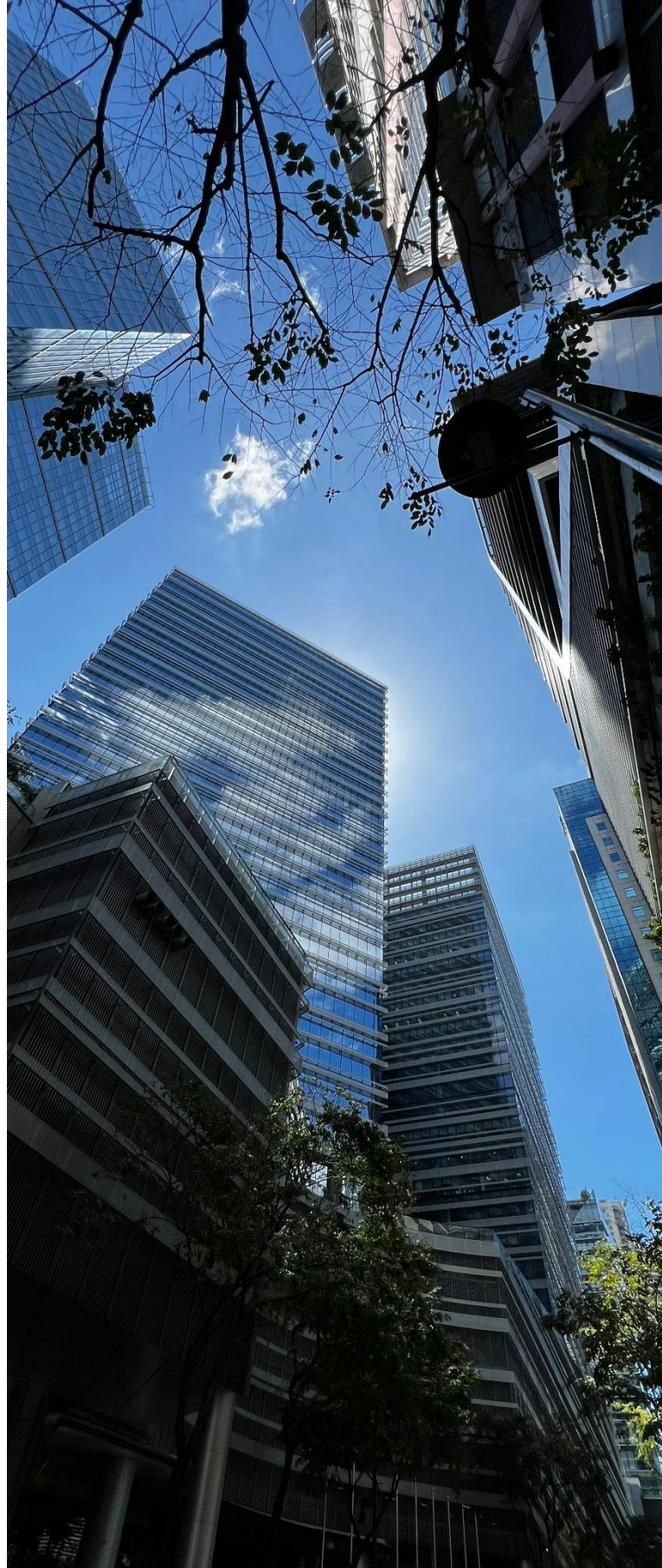
Yes. However, an employer is obligated to adhere to data privacy laws when the AI is used to process personal data.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes. The Data Privacy Act generally requires the employee to consent to any act of data processing that involves the collection of personal information. This is indiscriminate and covers all methods of processing, including AI technology, even if specific laws do not mention it.

Are there any legal risks with using AI in human resource management in your jurisdiction?

Yes, there are legal risks involved in using AI in human resource management, such as when the employer commits acts of unlawful processing or negligence in processing data.



Are employers able to restrict employees from making any social media comments about the employer?

Yes, this can be done through appropriate contractual provisions or be included in an employer's company policies.

In the absence of a policy/express provisions, employers may not have a strong basis to restrict employees from publicly commenting on the employer.

Does your jurisdiction have privacy/surveillance laws?

Yes. The Philippine Constitution, Data Privacy Act, Anti-Camcording Act and Anti-Wire Tapping Act govern privacy and surveillance respectively.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. However, employers should ensure that there is a lawful basis for the processing of personal data through the use of an employee tracking software (i.e., legitimate interest of the employer), that such processing complies with the data privacy principles of transparency, legitimate purpose and proportionality, secure that the employee's consent is obtained and conduct a privacy impact assessment. If the intended basis for processing is the employer's legitimate interest, it is important to determine whether the use of employee tracking software is necessary, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose.

An example of a legitimate interest is present in field personnel (i.e., drivers) and telecommuting employees or employees who perform their duties away from the main office and whose hours of work are difficult to determine with reasonable certainty.

Are there any legal risks with using employee tracking software in your jurisdiction?

Yes, legal risks include violation of data privacy laws, such as unlawful basis for processing of personal data, failure to adhere to the data privacy principles of transparency, legitimate purpose, and proportionality, and failure to implement security measures for the protection of personal data which may sanction employers to damages and administrative penalties.

Singapore

Does your jurisdiction have any AI laws?

No AI laws at present but we have a Model AI Governance Framework for Generative AI which seeks to present a consistent set of principles to guide the responsible development and deployment of generative AI technologies.

Does your jurisdiction have workplace discrimination laws?

Not at the time of writing but Singapore will implement the Workplace Fairness Legislation (prohibiting workplace discrimination) w.e.f. 2026 or 2027.

Under the proposed legislation, it is unlawful for employers to make adverse employment decisions in hiring, dismissal and appraisals based on the following recognised protected characteristics: age; nationality; sex, marital status, pregnancy status and caregiving responsibilities; race, religion and language; and disability and mental health conditions.

AI use in HR processes could come under scrutiny under the Workplace Fairness Legislation.

Does your jurisdiction regulate the use of AI in hiring?

No. However, the regulator is alive to the risk of bias in AI use. The Minister of Manpower has stated that if certain AI use results in discriminatory employment practices, employees or job applicants have recourse.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes. Employers will need to ensure that their data protection policy and/or privacy notices allows for the use of AI to process employee's personal data. It is also important that employers be fully transparent and provide information in their written policies on the relevant practices and safeguards in order to build trust with the data subjects and demonstrate accountability in their compliance with the Personal Data Protection Act 2012 (PDPA).

The PDPA does not prescribe a specific manner or form in which an organisation is to inform the individual of the purposes. However, the employer is required to state its purposes at an appropriate level of detail for the data subjects to determine the reasons and manner in which the employer will be collecting, using or disclosing their personal data. To supplement their understanding, they should be provided with a description of the type of personal data being collected/processed/stored/managed.

Are there any legal risks with using AI in human resource management in your jurisdiction?

The legal risks appear low at this stage.

Are employers able to restrict employees from making any social media comments about the employer?

Yes, this can be done through an Acceptable Social Media Use Policy or appropriate contractual provisions.

In the absence of a policy/express provisions, employers may not have a strong basis to restrict employees from publicly commenting on the employer.

Does your jurisdiction have privacy/surveillance laws?

Yes. The main data protection legislation in Singapore is the PDPA.

To the extent that personal data is collected, used or disclosed in the monitoring and surveillance of individuals, the obligations under the PDPA apply; employers are required to seek the individual's consent before any collection takes place unless an exception to consent applies or the collection is otherwise authorised under law.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. However, employee's consent is required from a PDPA viewpoint, unless an exemption applies.

Are there any legal risks with using employee tracking software in your jurisdiction?

The legal risks appear low at this stage. This is because Singapore does not have privacy laws but employers should ensure that the monitoring technologies employed are necessary, justified and proportionate.



Taiwan

Does your jurisdiction have any AI laws?

No. The National Science and Technology Council has announced the draft Basic Law on Artificial Intelligence and completed the collection of opinions from various sectors. The bill is expected to pass in the Legislative Yuan during this session (i.e., September to December 2024).

Does your jurisdiction have workplace discrimination laws?

Yes.

1. **Employment Service Act:** Explicitly prohibits discrimination against job applicants or employees, including discrimination based on race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, horoscope, blood type, or past membership in any labor union.
2. **Gender Equality in Employment Act:** Explicitly prohibits discrimination against job applicants or employees, including discrimination based on gender, sexual orientation, marital status, pregnancy, engaging in childbirth or childcare activities.
3. **Middle-aged and Elderly Employment Promotion Act:** Explicitly prohibits discrimination against job applicants or employees based on age.

Does your jurisdiction regulate the use of AI in hiring?

There is currently no legislation specifically addressing the use of AI in hiring. However, use of AI in recruitment would be subject to existing anti-discrimination, privacy and data protection legislation.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

No.

Are there any legal risks with using AI in human resource management in your jurisdiction?

The key risk from an employment law perspective is that AI bias may unintentionally lead to discriminatory recruitment outcomes and give rise to employment litigation. Employment (and recruitment) is considered to be a “high-risk” area for AI use because of the potential implications on people’s lives and careers. Therefore, its use in this area is likely to be subject to higher scrutiny.

Are employers able to restrict employees from making any social media comments about the employer?

Yes. It is possible to include a social media use policy clause in the employment agreement or work rules, specifying that employees are prohibited from commenting about the employer on social media.

Does your jurisdiction have privacy/surveillance laws?

Yes. Taiwan's primary privacy law is the Personal Data Protection Act; the primary surveillance law is the Communication Security and Surveillance Act.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. Employers must either inform employees about the items to be tracked, the duration, and the methods through work rules or policies, or obtain their consent prior to initiating tracking.

Are there any legal risks with using employee tracking software in your jurisdiction?

Yes. When tracking employees, employers must ensure that the tracking does not exceed the scope previously notified or consented to by the employee, nor go beyond purposes related to work duties. For example, there are court precedents where tracking or recording an employee's private communication(s) without notifying them or obtaining their consent was deemed a violation of the Communication Security and Surveillance Act, constituting a criminal offense.



Thailand

Does your jurisdiction have any AI laws?

Not at the time of writing. Thailand only has AI Ethics Guidelines developed by the AI Ethics Committee of the National Science and Technology Development Agency (NSDTA) (Guidelines). The Guidelines are merely suggestions for voluntary compliance.

Two draft legislations which aim to govern the use of AI in Thailand have been introduced:

1. the Draft Royal Decree on Business Operations that Use Artificial Intelligence System; and
2. the Draft Act on the Promotion and Support of AI Innovations in Thailand. They are currently in the initial draft forms and are subject to further changes.

Does your jurisdiction have workplace discrimination laws?

The Labor Protection Act B.E. 2541 (1998) (LPA) prohibits discrimination in employment based on gender. Male and female employees must be treated equally except where equal treatment is impossible because of the nature of certain work. Female employees who are pregnant cannot be terminated because of their pregnancy. The LPA does not have any provision dealing with AI use in HR processes that results in discriminatory employment practices.

Under the Constitution of the Kingdom of Thailand (Thai Constitution), discrimination against a person is not permitted, whether due to differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social status, religious beliefs, education, political opinions, or any other reason.

Does your jurisdiction regulate the use of AI in hiring?

No. However, under AI Ethics Guidelines, employment and human resource management, such as using AI for CV screening, are classified as high-risk use of AI, which should strictly adhere to the Guidelines.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes. Employers should disclose to employees and candidates that AI is being used to process their personal data in compliance with the Personal Data Protection Act B.E 2562 (2019) (PDPA).

In addition, the Operational Guideline of the Personal Data Protection Committee (PDPC) re: the Notification of the Purposes and Details of Collection of Personal Data from the Data Subjects provides recommendations that where the data controller collects, uses, or discloses personal data from other sources apart from the direct collection from the data subjects, especially where new technology causes the processing or disclosing of personal data of a large number of persons, e.g., via the use of AI, the data controller should conduct a Data Protection Impact Assessment (DPIA).

Are there any legal risks with using AI in human resource management in your jurisdiction?

The legal risks appear low at this stage.

Are employers able to restrict employees from making any social media comments about the employer?

Yes, this can be done through a social media use policy or appropriate contractual provisions.

In the absence of a policy/express provisions, employers may not have a strong basis to restrict employees from publicly commenting on the employer.

Does your jurisdiction have privacy/surveillance laws?

To the extent that personal data is collected, used or disclosed in the monitoring and surveillance of individuals, the obligations under the PDPA apply; employers are required to seek the individual's consent before any collection takes place unless an exception to consent applies or the collection is otherwise authorised under law.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. However, employee's consent or notification is required from a PDPA viewpoint, unless an exemption applies.

In accessing computer systems and computer data that have specific security measures not intended for employer use, employers may be liable under the Computer-Related Crime Act B.E. 2550 (2007) (CRCA). Employers should therefore have a clear policy regarding the scope of its data access.

Are there any legal risks with using employee tracking software in your jurisdiction?

Apart from the PDPA and the CRCA, Thailand does not currently have other privacy/surveillance laws. However, the employer should ensure that it complies with the PDPA, the CRCA, and that the monitoring technologies employed are necessary, justified and proportionate.



United Arab Emirates

**Please note that the UAE comprises multiple jurisdictions which each have their own rules and regulations, including numerous free zones as well as mainland “onshore” UAE. For the purposes of this document, we have focussed on mainland UAE.*

Does your jurisdiction have any AI laws?

There are presently no specific AI laws or regulations in the UAE. However, there are a number of key initiatives being implemented to guide the adoption of AI, such as the National Artificial Intelligence Strategy 2031 aimed at positioning the UAE as a global leader in artificial intelligence.

Additionally, we are seeing that AI relevant adjustment(s) are being made to existing regulation such as the DIFC Data Protection Law No. 5 of 2020 which was amended in September 2023 specifically to regulate autonomous and semi-autonomous systems, including AI and generative machine learning technology. AI

Does your jurisdiction have workplace discrimination laws?

Yes. Pursuant to the UAE Federal Decree no. 33 of 2021 on the regulation of labour relations, it is prohibited to discriminate on the basis of race, colour, sex, religion, national origin, social origin, or because of disability, which would impair equal opportunities or prejudice equality in obtaining or continuing a job and enjoying the rights.

Further, the UAE Federal Decree no. 34 of 2023 on combating discrimination, hatred and extremism prohibits discrimination both in the context of the incitement, facilitation or act or religious contempt or other intolerance, but also as a stand-alone punishment. Discrimination is defined in this law as any distinction, limitation, exception or preference among individuals or groups, on the basis of the religion, belief, rite, community, sect, race, colour, ethnic origin, gender or race, taking into consideration the laws in force in the UAE.

Does your jurisdiction regulate the use of AI in hiring?

No.

Is the use of AI in human resource management permitted in your jurisdiction?

It is neither expressly permitted nor prohibited.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes. Pursuant to the Federal Decree-Law No. 45 of 2021 (the “Data Protection Law”), in order for employers to process any personal data, employees must consent to such processing. It is therefore important that employers be fully transparent and provide information in their written policies on the relevant practices and safeguards.

Further, the Data Protection Law gives data subjects the right to object to decisions based solely on automated processing. Employers using automated decision-making systems must ensure they provide meaningful information about the logic involved and allow for human intervention when requested by the data subject.

Are there any legal risks with using AI in human resource management in your jurisdiction?

The legal risks appear low at this stage.

Are employers able to restrict employees from making any social media comments about the employer?

Yes, this can be done through an Acceptable Social Media Use Policy or appropriate contractual provisions.

Does your jurisdiction have privacy/surveillance laws?

Yes. The main data protection legislation in the UAE is the Data Protection Law.

To the extent that personal data is collected, used or disclosed in the monitoring and surveillance of individuals, the obligations under the Data Protection Law apply; employers are required to seek the individual's consent before any collection takes place unless an exception to consent applies or the collection is otherwise authorised under law.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. However, employee's consent is required from a Data Protection Law viewpoint, unless an exemption applies.

Are there any legal risks with using employee tracking software in your jurisdiction?

The legal risks appear low at this stage.



Vietnam

Does your jurisdiction have any AI laws?

No specific AI laws at present, but several legal documents have been issued for promoting the research and application of AI technologies.

Notably, the National Assembly has planned to pass the Law on Digital Technology Industry on May 2025 (DTI Law), which will set forth an initial legal framework for AI, including fundamental concepts, restrictions, requirements and management thereof, as well as incentives for development of AI technologies.

Does your jurisdiction have workplace discrimination laws?

Yes, Vietnam has adopted some international treaties against labour discrimination since 1982, as well as set forth workplace discrimination regulations in Labour Code.

Under the current Labour Code, it is unlawful for exclusion or preference based on race, skin colour, nationality origin or social origin, ethnicity, gender, age, maternity status, marital status, religion, belief, political opinion, disability, family responsibility or on the basis of HIV infection status or because of the establishment, accession or activities in a trade union or employees' organization at the enterprise adversely affecting equality regarding employment opportunity or trade or profession; or discrimination between full-time employees and part-time employees.

Does your jurisdiction regulate the use of AI in hiring?

No specific laws regulating the use of AI in hiring. However, AI-use as a toolkit in hiring must not violate the statutory prohibition on discrimination during labour as described above.

Is the use of AI in human resource management permitted in your jurisdiction?

Yes, subject to certain restrictions under specific laws (e.g. prohibition of workplace discrimination under the Labour Code) or under the upcoming DTI Law.

Is there a need to disclose to employees and candidates that AI is being used to process their personal data?

Yes. Employers, in the position of data controllers, are required to notify and obtain consent of employees and candidates in the position of data subjects before processing of their personal data unless exempted in a few cases by law (such as to fulfil the contractual obligations with the employees).

It is further noted that the laws impose strict conditions for a valid notice and a valid consent, including, inter alia, the transparency and specificity of notice and consent as to: types of personal data to be processed, the purpose(s) of processing, forms and locations of and methods for processing (e.g. AI use).

In addition, silence of data subjects shall not be considered as a valid consent whilst notice and consent can only be exempted in very limited events as prescribed by applicable laws.

Are there any legal risks with using AI in human resource management in your jurisdiction?

The legal risks appear low at this stage.

Are employers able to restrict employees from making any social media comments about the employer?

Yes, this can be done through:

1. the employer's internal labour regulations to be made in writing and registered with the provincial-level labour office if the employer employs 10 or more employees; or
2. appropriate contractual provisions in employment contracts signed with the employees, and in collective labour agreement signed with the employee's representative organization (if any).

Additionally, the employer may notify the specialized force for protecting network security under the Ministry of Public Security to seek protective measures when detecting violations of the laws on cybersecurity such as where there is fabricated information in cyberspace that harms the employers' reputation; or the employers' trade secret or confidential business information is under unauthorized disclosure in cyberspace.

Does your jurisdiction have privacy/surveillance laws?

Yes, Vietnam's main personal data protection legislation in Vietnam is the Constitution, Civil Code, Law on Information Technology, Law on Cyber-information Security, Law on Cybersecurity and its guiding Decree, and Decree 13/2023/ND-CP dated 17 April 2023, which govern personal information/data processing activities in almost all social aspects where certain regulatory restrictions and requirements may apply, such as prior notice and consent.

Is the use of employee tracking software permitted in your jurisdiction? (If yes, what should an employer consider when using employee tracking software?)

Yes. However, notice to and consent of the employee is required, except in limited situations permissible by law.

Are there any legal risks with using employee tracking software in your jurisdiction?

Yes, administrative penalties, e.g. monetary fines, may apply in certain non-compliance cases; however, the legal risks generally appear low in practice.



About Bird & Bird and our International HR Services Group

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'The Bird & Bird team are great at **keeping a project on track** as well as **synthesising advice from multiple countries** to find **practical solutions**.'

Chambers Global, 2024

Key Contacts

Singapore and ASEAN



Seow Hui Goh

Partner

+65 6428 9419
seowhui.goh@twobirds.com



Marcus Teo

Senior Managing Associate

+65 6428 1193
marcus.teo@twobirds.com

Australia



Kristy Peacock-Smith

Partner

+612 9226 9871
kristy.peacock-smith@twobirds.com

China & Hong Kong



Diana Purdy

Partner

+852 2248 6074
diana.purdy@twobirds.com

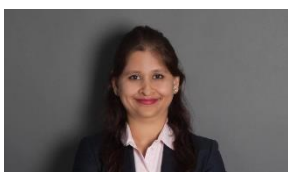


Sophie Wang

Senior Associate

+86 21 2312 1277
sophie.wang@twobirds.com

United Arab Emirates



Surabhi Singhi

Partner

+971 4309 3212
surabhi.singhi@twobirds.com



Thank you

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