

Integrating generative AI: key considerations for employers

By Joe O’Keefe, Esq., Shanice Smith-Banks, Esq., and Alisha Bruce, Esq., Proskauer

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Generative AI (GAI) has been making headlines in 2023, sparking excitement with its potential to increase productivity and efficiency for both individuals and businesses. By automating routine tasks and quickly generating ideas, designs, content and more, GAI offers a wealth of possibilities for businesses seeking to streamline operations and drive growth.

Companies worldwide are discovering the significant benefits of integrating generative AI applications into their operations to improve products and services, internal processes, and gain a competitive edge in their markets. However, rapid advancements in GAI technology are prompting businesses of all sizes to assess the potential benefits and risks of adopting GAI in their operations.

GAI tools should not be used blindly for decision-making and/or content creation and, given current limitations, should not be relied upon for important inquiries.

Correctly and strategically employed, GAI tools can address various challenges companies face, but businesses must understand the risks associated with AI adoption and ensure appropriate policies and practices are in place.

This article explores key considerations for employers looking to introduce GAI into the workplace, as well as insights for investors evaluating potential investments in businesses using this technology:

1. Understand the limitations of GAI tools.

While GAI tools are becoming more advanced, they have significant limitations. There is some likelihood that vendors may be exaggerating the capabilities while obscuring the risks and limitations of their GAI products.

The FTC recently published a blog post¹ warning vendors “not to overpromise what your algorithm or AI-based tool can deliver.” GAI tools, in their present form, have been reported to produce erroneous information or hallucinations. Their output may reflect limited or incomplete data sets on which they were trained.

AI applications can potentially produce biased outputs due to the unfiltered data they review and absorb in their training. Employers should make employees aware of algorithmic bias and the potential legal exposure it may create.

GAI tools should only be used when they enhance or assist employees in performing their job-related tasks by improving productivity, efficiency, and decision-making. For example, AI tools can be helpful aids in sorting, ranking, and evaluating large quantities of documents and information.

AI tools employing GAI can prepare first drafts of standard correspondence and documents and create simple outlines. GAI tools should not be used blindly for decision-making and/or content creation and, given current limitations, should not be relied upon for important inquiries.

2. Develop a strategy for integrating AI into the workforce.

Employers should conduct a cost-benefit analysis before implementing GAI tools. This should include assessing the potential benefits of the tools in terms of increased productivity and efficiency, as well as the potential costs and risks associated with their use.

Employers should develop a clear strategy for integrating GAI tools into the workforce, including identifying which tasks are suitable for automation and which require human input. Employers should evaluate the functions and workflows that could benefit from automation or augmentation through GAI.

Simultaneously, employers should develop a plan for retraining employees impacted by the introduction of GAI for a smoother integration process.

3. Recognize that applicants for jobs and employees are already using GAI.

It is likely that many, if not most, applicants for positions are already using GAI today to create or review resumes, essays, and other application materials. Similarly, employees are using these tools now often without the knowledge of their employers.

Companies should understand the unique needs of their businesses and dictate if, when, and how AI can be used by employees to perform job functions. Employers that establish a system of oversight can prevent inappropriate or unknown use of the technology.

4. Establish policies concerning the use of GAI.

Employers must develop and implement a comprehensive policy tailored to their unique businesses that will govern employee use of AI in the workplace.

Topics that should be considered for inclusion in a comprehensive policy include third-party vendor management, approval of GAI tools before use, training and collaboration between humans and GAI tools, confidentiality, the possibility of intellectual property infringement, accessibility and inclusivity, employee feedback and engagement, liability and risk management, and AI governance and oversight.

- **Third-party vendor management:** Establish guidelines for selecting, contracting, and managing third-party vendors providing GAI tools. Ensure they adhere to your company's policies, legal requirements, and ethical standards and have proper security measures in place to protect your data.
- **Approval of GAI tools before use:** Establish a process for approving GAI tools before their incorporation and managing their use. Set clear criteria for tasks suitable for automation or augmentation through GAI and outline the steps employees must follow before using AI tools.
- **Training:** Provide effective training materials to help employees understand company policies concerning GAI use, how GAI works, and the specific tools or software employees will use. Offer hands-on training and ongoing support to employees using GAI in their work.
- **Confidentiality:** Emphasize the importance of protecting confidential and trade secret information when using GAI tools and complying with company policies and procedures designed to safeguard sensitive data.
- **Intellectual property infringement:** Highlight the likelihood that GAI tools may use data covered by legal protections such as trademarks, copyrights, and patents. Establish procedures for identifying, protecting, and managing the intellectual property rights associated with GAI-generated content.
- **Accessibility and inclusivity:** Develop guidelines to promote inclusivity, ensuring that GAI tools are accessible to all employees, regardless of their abilities. Ensure that AI-generated content is accessible to a diverse audience and that the tools do not perpetuate existing biases.
- **Employee feedback and engagement:** Establish a system for collecting and incorporating employee feedback on the use of GAI tools. Encourage employees to voice their opinions, concerns, and suggestions and involve them in the decision-making process related to AI implementation.
- **Liability and risk management:** Establish an effective process, including a clearly defined reporting procedure, to address issues arising from AI tool use, including data breaches, system failures, erroneous output, and offensive or discriminatory content. Promptly investigate and, when appropriate, implement remediation for reported issues.
- **AI governance and oversight:** Establish an AI governance structure within the organization, such as an AI ethics

committee or a dedicated AI officer responsible for overseeing GAI policies, compliance, and risk management. Implement a process for regularly evaluating GAI tools' performance, effectiveness, and compliance with company policies and legal regulations.

5. Periodic policy review and updates.

Establish a process for regularly reviewing and updating GAI policies to keep pace with evolving technologies, legal requirements, and industry best practices. This may include periodic assessments of GAI tools' performance and compliance, consultation with legal counsel and industry experts, and employee feedback.

Implement a system for monitoring employees' use of GAI tools and enforcing company policies. This may include periodic audits, automated monitoring systems, or other mechanisms to ensure compliance with established guidelines and address policy violations. Clearly state the potential consequences associated with policy violations, such as disciplinary actions or termination.

6. Monitor laws and regulations.

Employers must comply with all relevant federal, state, and local laws and regulations surrounding the use of GAI applications. Legislative efforts to create boundaries on the use of AI are rapidly evolving. If your company operates across different countries, ensure that GAI policies and practices comply with local laws and regulations, including data protection, employment, and intellectual property laws.

Employers need to stay on top of legal developments, be prepared to rapidly amend and supplement policies as legal developments and evolving technology may require and should consult with counsel to seek guidance on navigating this complex legal landscape.

The integration of GAI offers a promising future for businesses seeking to improve profitability, productivity, efficiency, and innovation. However, to fully harness its potential, employers and investors must approach GAI adoption with a strategic and comprehensive understanding of the technology's limitations, risks, and legal implications.

By establishing clear policies, providing employee training, and fostering an open and collaborative environment, organizations can successfully integrate GAI into their operations while minimizing potential pitfalls. As the legal landscape surrounding GAI continues to evolve, businesses must remain vigilant in monitoring and adapting to new regulations and best practices.

By taking a proactive and informed approach to GAI adoption, employers and investors can unlock the full potential of this transformative technology while ensuring ethical, responsible, and compliant use.

Notes

¹ <https://bit.ly/45EApTu>

About the authors



Joe O'Keefe (L) is co-head of **Proskauer's** restrictive covenants, trade secrets and unfair-competition group and a member of its labor and employment department. O'Keefe is an experienced trial lawyer who litigates employment disputes on behalf of employers and regularly counsels clients on the use of artificial intelligence in the workplace. He is based in the firm's New York office and can be reached at jokeefe@proskauer.com. **Shanice Smith-Banks** (C), an associate in the firm's labor and employment department, litigates claims

of unlawful discrimination, harassment, retaliation and whistleblowing. She also assists in conducting workplace investigations related to discrimination, harassment and retaliation. She is based in the firm's New Orleans office and can be reached at ssmith-banks@proskauer.com. **Alisha Bruce** (R), also an associate in the firm's labor and employment department, focuses on a range of employment matters, including employment discrimination and harassment litigation, whistleblowing and retaliation, and policies, handbooks and training. She is based in the firm's New York office and can be reached at abruce@proskauer.com.

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