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The first legal challenge to an AI tool under consumer protection laws signals a strategic pivot by plaintiffs and underscores the need for employers to assess their hiring practices and vendor relationships.

Key takeaways

- An AI platform has been accused of violating the FCRA by creating “consumer reports” on job applicants without their knowledge or consent.
- The complaint is the first to target AI-assisted employment decisions under the statute, indicating a shift in litigation strategies.
- Companies should conduct internal risk assessments and review their vendor contracts.



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In a proposed class action lawsuit filed on 20 January 2026, two individuals alleged that talent intelligence platform Eightfold AI violated the Fair Credit Reporting Act 2011 (FCRA), the California Investigative Consumer Reporting Agencies Act 1975 (ICRAA) and California unfair competition laws by creating “hidden” consumer reports on job applicants without complying with statutory requirements. The complaint, filed in California state court, is, according to plaintiffs’ counsel, the first to challenge the use of AI in employment

decisions under the FCRA. It may signal a broader trend of reliance on existing laws to scrutinise this use.

According to the complaint, Eightfold acts as a consumer reporting agency by scraping and aggregating information from job applicants’ social media accounts and device activity to produce “match scores” that predict the likelihood of applicants’ success, as well as ranked lists that employers may use to filter candidates.

The plaintiffs have characterised these outputs as “consumer reports,” broadly defined by the FCRA as “any written, oral, or other communication of any information by a consumer reporting agency” bearing on, among other things, a consumer’s “character, general reputation, personal characteristics, or mode of living.”

The FCRA mandates consumer reporting agencies to make certain disclosures and ensure that individuals can review and correct reports that are provided to prospective employers. The plaintiffs have claimed that Eightfold failed to comply with these requirements.

“There is no AI-exemption to these laws, which have for decades been an essential tool in protecting job applicants from abuses by third parties—like background check companies—that profit by collecting information about and evaluating job applicants,” the plaintiffs wrote.

Employment law as a testing ground for AI claims

Employment law has emerged as a prominent area for plaintiffs to bring novel AI claims. Eversheds Sutherland partner Bradford Newman attributes this to early-stage AI product development for recruitment and HR.

“Employment is largely data driven. Applicants and resumes are very neat metrics that lend themselves nicely to an AI-developed solution, so this is how the technology was initially ‘productised,’” Newman said. “In theory, AI scales well in the employment context. Developers realised the value proposition and were likely willing to accept the cost of litigation that would come with it.”

Legal challenges to the use of AI in employment decisions often focus on the discriminatory nature of the technology, Fisher Phillips partner David Walton said. For example, a class action lawsuit filed in 2023 against HR software company Workday claimed that the company should be held liable for allegedly deploying discriminatory AI systems used by employers in applicant screening. In certifying the class, the US District Court for the Northern District of California left open the possibility that Workday can be held liable under Title VII of the Civil Rights Act 1964 because it acts as an agent for employers using its software.

Similarly, a class action filed in August 2025 against Sirius XM Radio alleged race discrimination in hiring through the use of AI screening tools that relied on data points that “proxy for race,” including zip codes and academic institutions. The case is currently pending before the US District Court for the Eastern District of Michigan.

State AI laws and regulations also tend to target models’ biases in employment decisions. California and Illinois, for example, prohibit employers from using AI tools that discriminate against applicants or employees.

A shift from AI discrimination

Walton noted that the plaintiff pool for Title VII and other discrimination claims “is expanding” now that the federal government is encouraging majority groups to file those types of lawsuits, adding that bias is “a grey area” and can be difficult to prove. The use of AI, rather than the tools themselves, may be a better target for litigation, he said.

The plaintiffs in the Eightfold class action are putting this theory to the test. Though “not designed to regulate AI in resume screening,” Walton said the FCRA may have been “an attractive statute” in this case “for many reasons.”

“It’s very easy to turn FCRA claims into a class, because it’s a policy or a tool that’s applied to a bunch of people. The FCRA clearly requires you to give certain notice, and consumers have rights to object or provide an explanation. Plaintiffs don’t have to show actual harm because the law provides for statutory damages,” Walton said.

Eightfold disagrees with the plaintiffs’ claims: a spokesperson for the company told Lexology PRO in an email that the characterisation of its products as consumer reports is “factually incorrect.”

The company explained that it “operates on data submitted by candidates to [their] customers or provided by [their] customers.” Because Eightfold’s data is limited to these two sources, the spokesperson said, the company does not believe it should be considered a consumer reporting agency under the FCRA or the ICRAA.

“We use information such as skills, experience and education that applicants choose to submit to our customers and data authorized by our customers under contract. Candidates have the ability to view and, if necessary, correct the data Eightfold has gathered,” Eightfold’s spokesperson said. “This is one of many differentiators of our platform.”

Walton said that the outcome of the Eightfold class action could establish a precedent for similar challenges moving forward, not only under the FCRA but across a range of emerging claims against AI in hiring and recruitment.

The possibilities for plaintiffs to repurpose existing statutes to challenge companies’ use of AI seems endless. Walton said that tort law could be one avenue to allege “employers’ negligent use or development of AI.” He also said plaintiffs may sue under federal and state data privacy laws.

“A lot of companies will build tools and use data about job applicants to help train the tool. The argument could be that by training the tool based on data from outside of the employer, they may be breaching data privacy laws,” Walton said.

The plaintiffs in the Eightfold class action also argued that the company’s “deceptive business practices” violated California’s unfair competition laws. This may be another body of law that plaintiffs will cite in challenges to AI-assisted employment decisions, Walton said.

Several state laws could be used for this purpose, Eversheds Sutherland’s Newman added. He identified the California Private Attorneys General Act 2004 and state racketeering laws as potential candidates.

“We’re going to see the plaintiffs’ bar invoke every possible statute on the books. The use case right now is shifting from discrimination claims to privacy or consumer protection claims, and in a few years another trend will emerge,” Newman said. “It’s just going to continue to morph.”

“Reacting” to new litigation

The novelty of the Eightfold case is a reminder to employers that the use of AI in hiring and recruitment can expose companies in more ways than one.

Though Eightfold was the target of this lawsuit, the companies that deployed the technology are not out of the woods, Newman said. Should Eightfold be found liable under the FCRA, he predicts that plaintiffs will challenge its downstream consumers that they believe “should have known they were violating the law.”

Newman added that companies will continue to take a “reactive approach” to addressing novel theories of liability.

“There’s going to be an ad hoc evolution of contract representations and warranties. Now that *Eightfold* has happened, we’re going to see purchasers start asking for confirmation that vendors are not violating the FCRA,” Newman said. “Each time there’s a new theory, there’s going to be more demand for representations and warranties and indemnification between the parties buying and selling these tools.”

Fisher Phillips’ Walton noted that AI is no longer optional in hiring and recruitment, given the surge of applicants on platforms like LinkedIn and the influx of candidates enabled by remote work. He said companies should ensure that AI vendors perform bias audits and risk assessments, while also carrying out their own internal reviews.

“There’s undoubtedly a need to use these tools, but a good plaintiff’s lawyer is going to make anything look biased or unlawful under whatever statute they’re using,” Walton said. “Some courts are going to allow suits like *Eightfold*, some are going to put limits on them. But I foresee a huge increase in cases meant to test these different legal theories.”

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