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按推断晋升:内部流动体系、绩效数据及其对残障便利安排的阻断

Heather Grizzle · May 19, 2025

An internal mobility platform decides which employees see which openings. That is a promotion decision, and under the ADA it can be an accommodation one.

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该系统是什么

一种人工智能内部人才流动平台被描述为一种人才激活工具。它将员工技能与内部空缺职位相匹配,从绩效数据中挖掘个性化的成长路径,支持继任计划,并通过帮助员工在不离职的情况下找到下一个职位来降低离职率。这种定位是发展性的,其初衷通常是真诚的。

The system is also a promotion screening system, and it should be governed as one. It determines which employees are shown which opportunities, which are identified as ready, and which are proposed to hiring managers considering internal candidates. Failure to promote and failure to transfer are established theories of liability under Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA). The Uniform Guidelines on Employee Selection Procedures apply by their terms to selection procedures affecting hiring, promotion, and other employment opportunities, not to external hiring alone. New York City's Local Law 144 reaches automated employment decision tools used to evaluate employees for promotion as well as to screen candidates, a scope point that organizations deploying internal mobility platforms routinely miss because they think of the law as a hiring statute.

Novara Consulting Group's position is that internal mobility systems carry higher governance risk than external screening systems, for reasons specific to the population they act on, and that the developmental framing is what allows the risk to go unexamined.

无人记录的不利行动

外部招聘会留下记录。候选人提交申请,雇主收到申请,做出决定,发出拒绝通知。双方都知道发生了什么。

Internal mobility works differently. The system determines which openings appear in an employee's feed. An employee who is not matched to a role does not receive a rejection, because she never applied. She never saw the posting. There is no application, no decision record, no notice, and nothing for her to contest. From her perspective nothing occurred at all, which is precisely why nothing is examined.

From the employer's perspective a selection decision was made. An algorithm determined that this employee was not a candidate for that opportunity, on criteria the employer did not write, using data the employer did not validate for this purpose. The absence of a rejection record does not convert the decision

> 拒绝记录的缺失并不会使该决定变成“非决定”。它只是把决定变成了雇主无法重建的决定。

into a non-decision. It converts it into a decision the employer cannot reconstruct.

This matters most where the employee has a protected characteristic or protected activity in her file. Consider an employee who requested an accommodation eighteen months ago, or took protected leave, or raised a complaint. If she is subsequently not surfaced for opportunities, she has a retaliation claim, and retaliation claims are the most common category the EEOC receives. The standard is whether the action would dissuade a reasonable worker from engaging in protected activity, and the denial of promotional opportunity comfortably meets it. The employer's defense requires showing why she was not matched. If the answer is that a model produced a ranking and the scores were not retained, the employer has no defense to offer, only an absence.

Performance data is the wrong input, and it is the employer's own product

这些平台从绩效数据中挖掘成长路径。这一输入项理应受到比目前更多的审视,因为绩效数据并非对客观世界的观察记录,而是管理者所写下内容的记录。

经理评分因评分者、关系亲疏及群体差异而存在已被充分记录和研究的波动性。将其输入到流动模型中并不能消除这种波动性。它只是把主观判断转化为数字化输入,并将其传播到该员工此后是否被展示的每一个未来机会上,同时为结果披上了分析客观性的外衣。该组织并没有用数据取代管理者偏见,而是给管理者偏见赋予了分数,并延长了其影响范围。

本文所关注的员工群体还存在一个更深层的问题。绩效记录会反映出因残疾相关休假、缩减工时、便利安排、分阶段返岗、病假或照护责任而产生的时期。涵盖能力受限时期的评分会较低,而作为对该时期的描述而言,这种较低评分本身是“合理”的。一个训练用来从绩效历史中判断“准备就绪程度”的模型,将系统性地把档案中包含此类时期的员工排名靠后,而且系统中不会出现任何标注为“残疾”的变量。雇主无需推断出残疾这一事实,结果便已与之吻合——因为绩效记录本身已经将其编码在内。

调岗是一种便利安排,而该系统如今横亘其前

这一点是内部人才流动区别于本系列所讨论的其他所有应用场景的关键所在,也是最有可能引发雇主始料未及的诉讼的一点。

Under the ADA, reasonable accommodation may include reassignment to a vacant position. Where an employee can no longer perform the essential functions of her current role even with accommodation, reassignment to a vacant position for which she is qualified is an accommodation the employer is required to consider, and the employer's obligation extends to identifying vacancies rather than merely inviting the employee to compete for them in the ordinary way.

内部人才流动平台掌控着空缺职位的可见性。一旦部署,它便成为员工了解现有职位的机制。一名正处于调岗流程中的员工,如果因模型基于其因便利安排申请所涉病症而受压低的绩效记录给她打出低分,从而未被推送适合的空缺职位,那么她就因同一份数据而被辜负了两次。

该组织不太可能将此识别为便利安排失职,因为便利安排流程与流动平台分属不同职能部门,由不同的人负责,且采购原因也各不相同。从未有人问过“人才市场”是否会成为调岗机制。但事实是,自空缺职位列表被纳入该平台之日起,它就已经变成了这样的机制。

> **将其以书面形式明确规定**
>
> 任何同时运行便利安排流程和内部人才流动平台的组织,都应能够以书面形式说明:调岗所需的空缺职位识别是如何运作的,是否通过该平台进行,以及谁负责确保处于调岗流程中的员工能看到那些该模型原本不会推送给她的职位。

继任计划与年龄

继任计划在该主张中被明确提及,并自带其特有的风险暴露。一个用于识别高潜力员工、晋升准备度或关键岗位继任人选的模型,实际上正在生成一种分类结果,而这种分类决定了谁能获得发展投入、可见度和机会。

此类模型所能获取的输入数据与年龄高度相关。任职年限、职业阶段、在岗时间、资历取得的时间远近、以往晋升的速度,以及职业发展轨迹的形态,都与在职年数密切相关。一个从这些信号中识别新兴人才的系统,无论是否有意为之,都会产生带有年龄模式的输出结果,而《雇佣年龄歧视法》并不要求证明故意性。如果由此产生的分类导致差异化投入,那么雇主就是在一个自己无法解释、却被记录为“人才战略”的基础上,做出了一系列就业决定。

治理问题与适用于任何个人层面评分的问题相同:该分类会导致什么后续行动,而这一行动作为一项就业决定(而非分析输出)是否经得起审查。如果没有任何后续行动,该模型就不产生任何价值。如果有后续行动,那它就是可审查的。

应删除的两项主张

该主张附带了两项断言,理应从对外传播内容中删除。

第一项是该举措与多元化目标相一致。经1991年修订的《第七章》规定,在涉及候选人就业或晋升的选拔或推荐过程中,基于种族、肤色、宗教、性别或民族出身而调整分数、使用不同的分数线或以其他方式改变与就业相关测试结果的做法均属违法。该法律条文明确提及了“晋升”一词。没有证据表明流动平台存在此类行为,问题的关键并不在于该组织做错了什么。关键在于,一份将自动化晋升工具与人口统计学目标相挂钩的公开声明,是该组织自己撰写、无法撤回、且日后可能被要求作出解释的文件。更准确且更安全的表述是:该组织正在扩大被纳入机会考虑范围的员工群体,已就相关标准与岗位的相关性作出书面说明,并对结果进行监测。

The second is that the system minimizes bias. There is no public evidence base supporting that claim for internal mobility tools, and the input analysis above suggests the mechanism runs the other way. An organization that says this has adopted a vendor's assertion as its own representation about its promotion practices, in writing, without substantiation.

部署前应确认的事项

在内部人才流动系统决定谁能看到哪些机会之前,以下六项事项应基于证据而非供应商描述予以明确解答。

1. Determine whether the platform will become the vacancy identification mechanism for ADA reassignment. If it will, establish a parallel route that does not depend on the model's ranking, and name the person responsible for operating it.
2. 为每位员工的每个机会保留分数、输入数据及模型版本。不推送某个空缺职位的决定本身就是一项选拔决定,而这也是该组织最难以重建的一类决定,因为并未产生任何拒绝记录。

3. 确定哪些绩效数据被输入该模型以及涵盖的时间段,并明确该模型如何处理包含受保护休假、缩减工时或便利安排时期的记录。如果从未有人问过这个问题,那么答案就是:该模型会将这些情形视为低绩效表现。
4. 针对每一个被评分的构念,说明其对应目标职位的哪一项已记录的要求。《统一指南》适用于晋升,而其所设想的成分分析正需要此项工作。
5. 确定员工是否被告知自己正在被评分,他们能看到自己档案中的哪些信息,以及他们是否能够更正这些信息。一名无法看到自己为何未被匹配的员工也就无法就此提出异议,这就抑制了本可以在正式投诉之前浮现问题的内部申诉渠道。
6. 确认在当地法律下的适用范围。在该组织于纽约市雇有员工的情况下,一个用于评估员工晋升资格的自动化工具将落入《144号地方法》的适用范围,无论该组织是否将其视为一套招聘系统。

结语

支持内部人才流动的发展性理由是站得住脚的。员工确实渴望成长与透明度,内部流动确实能降低离职率,系统性地推送机会的组织,其表现也确实优于仅依赖经理个人印象的组织。

这些系统之所以存在风险,是因为它们作用的对象是员工而非求职者,而员工身上带有绩效历史、受保护行为、便利安排记录和任职年限。这其中的每一项,要么是模型会使用的输入项,要么是模型可能引发诉讼的依据。该系统产生的不利行动还具有隐蔽性,这意味着该组织不会通过投诉发现某种模式,因为受影响的员工根本无从投诉。她只是不断地未被展示相关信息而已。

能够妥善治理这一问题的组织,是那些将流动平台视为一套晋升流程、按此进行文档记录、按此保存相关记录,并核查该平台是否已在不知不觉中成为某项法律所要求的便利安排必须经由其传递的通道的组织。

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TIPS

Know something about a sign language AI system that the public should know? Send it to tips@novaracg.com. Every tip is read by me and kept confidential. If you work in the UK, writing to us is not by itself a protected disclosure under the Public Interest Disclosure Act 1998, so before you share employer information, check your options with Protect (protect-advice.org.uk), the free whistleblowing advice line.

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