Staying in Tune with Your Employees:
Striking a Human Chord in the Age of AI

A true story that left an impression…..

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- Jason has worked over 20 years in corporate legal and HR roles in diverse industries including maritime, energy/oil and gas, compliance, consulting and executive coaching. His expertise is in the areas of global employment/labor law, employee relations, data privacy compliance and legal administration.

- JAME Consulting, LLC focuses on providing comprehensive HR, legal, corporate and data privacy consulting advice and training for all stages of the employment lifecycle.

- JAME is committed to giving back to the community through by donating 10% of our time and revenue each year towards pro bono work and/or in service to non-profits.

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ALSO - the mention or discussion of any AI tools or resources are not endorsements or recommendations but are provided as examples of tools in certain industries/applications.

Let's take a quick poll….

How many are working in roles managing people?

What is the timeline for your business on integration of AI?

a) Already Started

b) Implementing later in 2025

c) Still deciding

d) What is AI?

AI Strategy?

"Are you SURE you want to question my AI strategy?"

https://timoelliott.com/blog/cartoons/artificial-intelligence-cartoons

Recent Survey Data on use of AI by employers

- __ out of 4 organizations reported using automation of AI to support HR-related activities?

- __% of companies are regularly using AI in operations?

- Average number of functions within a business that have adopted AI (McKinsey)

  - 5 or more =

  - 4 or more =

  - 3 or more =

  - 2 or more =

  - 1 function =

Recent Survey Data on use of AI by employers - Continued

- Business functions with highest use of AI

  - Marketing and Sales

  - Product and/or Service Development

  - IT

  - HR

- Industries with highest use of AI

  - Technology

  - Professional Services

  - Media and Telecom

Generative AI vs Traditional AI

Characteristic	Generative AI (Data Driven <u>Learning</u>)	Traditional AI (Defined Rules)
Objective	Create new data/content	Perform tasks based on predefined rules and patterns
Strengths	Creative, innovative, can handle uncertainty, novel applications. Proactive	Efficient, interpretable, good at specific task-solving. Reactive
Weaknesses	Not as good at pattern recognition and task-specific problem-solving as traditional AI systems	Can be less creative and innovative, not as good at handling uncertainty

Generative AI vs Traditional AI use examples

Generative AI	Traditional AI
Image and video generation	*Medical diagnosis* *Ex. ID of lung cancer tumors*
Medical diagnosis *Ex. Simulation of disease progression*	*Fraud detection*
Music generation	*Product recommendation systems*
Code generation	*Self-driving cars*
Drug discovery	*Voice assistants*
Creative writing	*Game playing*
Art and design	*Financial trading/Analysis*

Common Terms in AI

- **Bias (or Algorithmic Bias)** – A type of error in data output due to skewed, incorrect or biased training (input) data. HR Departments need to be aware.

- **Hallucination** – AI model output that deviates from reality or lacks a factual basis. Could result in inaccurate answers, fabricated stories or outputs that otherwise don't make sense. May be caused by:

  - Insufficient or biased training "learning" data

  - Overfitting – Model that struggles to adapt to more generalized or imprecise inputs or prompts. May associate an answer to something it has "memorized" and/or to a question that is not being asked.

- **Machine Learning** – A subdiscipline of AI suggestive that machines can learn through repetition.

- **Responsible AI** – The idea that AI developers have a responsibility to ensure that AI systems are developed <u>and used ethically</u>.

AI in business – The Good, The Bad and The Ugly....

AI in Business...THE GOOD?

In what areas of business operations would AI be the RIGHT tool? "THE GOOD"

- Business functions and operational requirements where AI can be most useful

- <u>Common Threads</u>:

- Agree or Disagree?

- Other functions?

AI in Business...

THE BAD?

AI....gone wrong!!!

McDonald's ends AI experiment after drive-thru ordering blunders

After working with IBM for three years to leverage **AI to take drive-thru orders**, McDonald's **called the whole thing off** in June 2024. The reason? A slew of social media videos showing confused and **frustrated customers** trying to get the AI to understand their orders.

One TikTok video in particular featured two people repeatedly pleading with the AI to stop as it kept adding more Chicken McNuggets to their order, eventually reaching 260. In a June 13, 2024, internal memo obtained by trade publication *Restaurant Business*, McDonald's announced it would end the partnership with IBM and shut down the tests.

AI....gone wrong!!!

Grok AI falsely accuses NBA star of vandalism spree

In an April 2024 post on X, Grok, the AI chatbot from **Elon Musk's xAI**, falsely accused NBA star Klay Thompson of throwing bricks through windows of multiple houses in Sacramento, Ca.

Some commentators speculated that Grok may have hallucinated the vandalism story about the Golden State Warriors star, who has since been traded to the Dallas Mavericks, after ingesting posts about Thompson "throwing bricks," common basketball parlance for a badly missed shot. In his final game with the Golden State Warriors, the team suffered a blowout loss as part of the worst postseason performance of Thompson's career.

AI in Business…

THE UGLY?

AI…. gone wrong – HR Application <u>with</u> legal liability
THE UGLY

iTutor Group's recruiting AI rejects applicants due to age

In August 2023, tutoring company iTutor Group **agreed to pay $365,000** to settle **a suit** brought by the US Equal Employment Opportunity Commission (EEOC). The federal agency said the company, which provides remote tutoring services to students in China, used AI-powered recruiting software that automatically rejected female applicants ages 55 and older, and male applicants ages 60 and older.

The EEOC said more than 200 qualified applicants were automatically rejected by the software.

In what areas of business operations would AI be the WRONG tool?
"THE BAD" and "THE UGLY"

- Business functions and operational requirements where AI will be likely fall short – **Humans must prevail!**
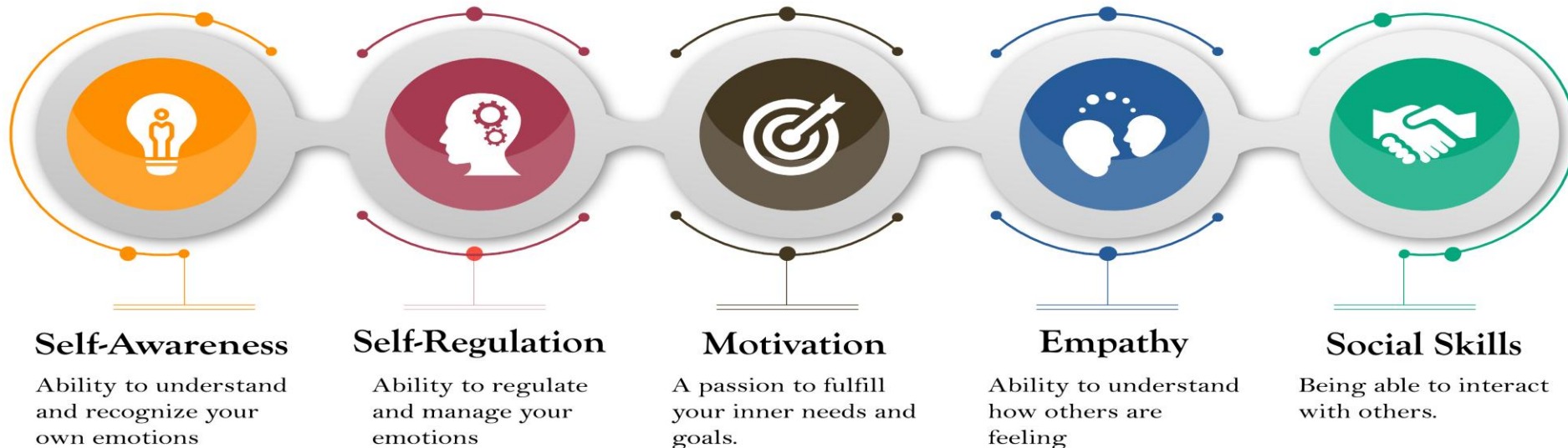
- Common Threads:

More to the story….

Emotional Intelligence - Dictionary Definition

The capacity to be aware of, control, and express one's emotions and to handle interpersonal relationships empathetically.

Emotional Intelligence - Practical Application

Five Elements Of Emotional Intelligence

Self-Awareness
Ability to understand and recognize your own emotions

Self-Regulation
Ability to regulate and manage your emotions

Motivation
A passion to fulfill your inner needs and goals.

Empathy
Ability to understand how others are feeling

Social Skills
Being able to interact with others.

Empathy

Empathy
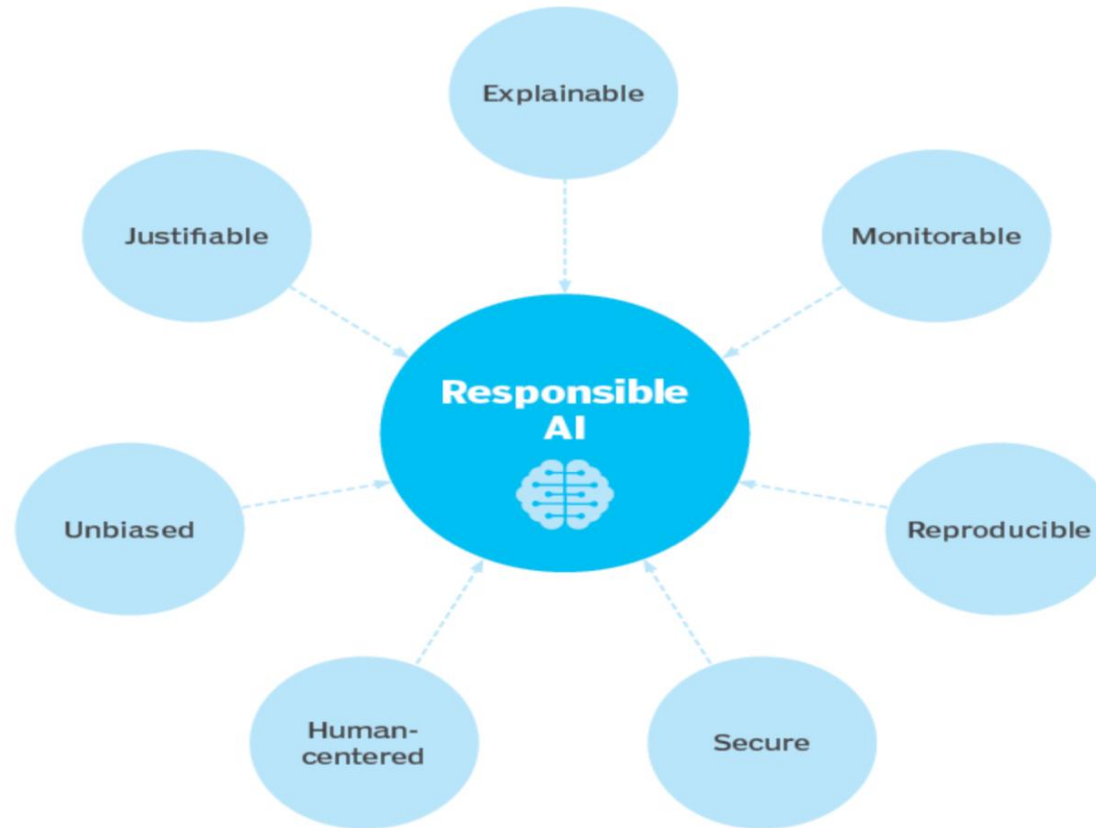
Responsible AI – Key Factors

AI and HR Synergies – How to effectively use TOGETHER

Employee Lifecycle Process	AI Applications	Human Interface
Onboarding	Applicant forms/documents/background screening	Updates on process, fielding questions, follow through
Performance Management	Retrieval of employee records, training history, prior ratings, goals and development requests	Delivery of feedback from manager and HR, gauging reaction, listening to employee response and/or concerns
Accommodation Request	Distribution and processing of leave forms and information	Good faith deliberations/idea exchange on reasonable accommodation/listening for other concerns

Legal Developments

US State laws - AI specific and broader data privacy – At a glance….

- **Enacted laws** – Most are focused on use of AI for automated decision-making or predictive analytics in screening

  - **California** (1 January 2026), **Colorado** (1 February 2026), and **Utah** (1 May 2024).

  - Utah law

    - *Artificial Intelligence Policy Act focuses specifically on generative AI that is a) trained on data, b) interacts with a person using text, audio or visual communication, and c) generates non-scripted outputs similar to outputs created by a human, with limited or no human oversight.*

- **Other state laws in committee (approximately 18) including Texas**

  - **Illinois** – 2 laws specifically focused on use of AI for *predictive data analytics* in employment screening (to exclude race and zip code) and *video interview* analysis.

  - **Maryland** - Law prohibits use of AI facial recognition technology during an applicant's interview without consent.

  - **New York (City)** - Law requires a bias audit be conducted on automated decision-making tools prior to use and that candidates or employees be notified of the use of such tools.

  - **Tennessee** - Ensuring Likeness Voice and Image Security **(ELVIS) Act** – Protects songwriters/performers from unauthorized replication of voice through AI.

- **19 states in total have overarching data privacy laws** (similar to the GDPR) broad in scope and already addressed certain restrictions on the use of AI (e.g., for automated decision-making).

International Laws/regulatory activity

- **EU AI Act – Primary Requirements**
  - Risk Management System (to identify foreseeable risks in the use)
  - Data Governance/Technical Documentation/Recordkeeping
  - Systems must be transparent and explainable (data sources, algorithms and decision-making processes)
  - Human Oversight parameters
- **Penalties**
  - Fines for non-compliance as high as EUR 35 Million or 7% of global annual turnover
  - Excludes AI or GPAI systems used only for scientific research and development activity/for purely personal and non-professional activity/national security and defense.

Recent Enforcement Actions

- **FTC** - "Operation AI Comply" - In September 2024 announced crackdown by FTC on multiple companies using AI in deceptive or unfair manner to confuse consumers (including one company claiming to sell "AI Lawyer" services).

- **SEC** initiated recent enforcement actions against two investment advisors (Delphia and Global Predictions) for "AI-washing" allegations that the firms promotional materials exaggerated their use of AI in their investment services. Violations were enforced under the Investment Advisers Act rules governing marketing and compliance policies. Entities were fined $225,000 and $175,000 respectively. 2025 enforcement actions initiated against software and semiconductor organizations.

- **EEOC** enforcement on algorithmic bias:

  - 2023 settlement - The EEOC alleged that iTutorGroup programmed online recruitment software to screen out women aged 55 or older and men who were 60 or older.

  - ITutorGroup (who provides English-language tutoring to students in China) agreed to pay $365,000 to more than 200 job applicants allegedly passed over because of their age.

- **China, EU and other countries** have issued fines under their existing/overarching data privacy laws for lack of transparency/misuse of automated data processing systems, often using AI.

Compliance Consideration 1 – Is AI use consistent with ethical practices

- **The Risk(s)**:

  - *Most laws enacted and those under consideration focus on the <u>ethical</u> use of AI. Likewise, companies should be sure that the use of AI, even if "legal", does not have the counter effect of breaching ethical commitments in the company's code of ethics, mission or values.*

  - *Is your use of AI consistent with your commitments to employees and stakeholders? Your commitment to protecting personal/sensitive information/customer information? How you market or advertise your services/goods?*

  - *Are you sacrificing or diluting your ethical commitments for speed/efficiency/profit?*

- **Recommended Actions:**

  - Engage employees and stakeholders in ongoing discussions about the ethical implications of AI

  - Create an environment where ethical considerations can be raised and discussed

Compliance Consideration 2 - Algorithm Bias...

- **The Risk**: *AI systems can produce biased results that replicate or perpetuate human biases within society, including historical and social inequality. Such bias can be driven by programming errors of the developer or input of data that was already subject to bias (example – a facial recognition algorithm trained on data that overrepresents white people vs black or other minorities).*

  - In 2021 the EEOC launched an agency-wide initiative focused on efforts to ensure that software, including AI based machine learning systems used in hiring and other employment decisions, comply with federal civil rights laws enforced by the EEOC.

- **Recommended Actions:**

  - Require any AI model/system providers to document how their systems mitigate the risk of algorithmic bias

    - Legal protections: Incorporate indemnity/warranty/liability cap carve-outs so that vendors know to take this seriously

  - Incorporate routine internal "human" oversight/audits of output from AI systems

  - Train HR, IT and other stakeholders on importance of bias audits and potential liability

Compliance Consideration 3 - Data Privacy and Security

- **The Risk(s)**:

  - *The EU and US (states) and other jurisdictions have/will have laws with comprehensive compliance requirements focused on data privacy and security.*

  - *AI systems may require/store vast amounts of data, including sensitive personal information.*

  - *Companies/employees using AI systems may have a tendency to relax security/confidentially protocols as a trade-off for speed/output.*

- **Recommended Actions:**

  - Make sure to incorporate new AI systems into existing data privacy/confidentiality procedures

  - Mandate that such systems have data encryption and secure access controls

  - Conduct regular data privacy impact assessments (what is the trade-off between confidentiality/security and speed/output)

Compliance Consideration 4 – Transparency of use

- **The Risk(s)**:

  - *Employees and other stakeholders may have confusion about how/when/why the Company uses AI, especially when used to support emotional decisions such as hiring, promotion and termination.*

  - *Confusion and a lack of transparency often lead to assumptions, which can lead to unfounded legal claims, employee disengagement and/or attrition.*

- **Recommended Actions:**

  - Make sure AI uses (especially as to decision-making) are explainable in non-technical terms

  - Provide clear documentation and communication about how, when and why AI tools are used

  - Notify applicants and employees how you may use AI in hiring/promotion decisions (many of the new US State laws require this)

  - Train key employees on how to use AI tools and the relevant Companies policies/procedures

Compliance Consideration 5 - Copyright and Intellectual Property Risks

- **The Risk(s)**:

  - *The power and speed of AI is a threat to the protection of human innovation, creative works of art and company trade secrets.*

  - *AI has the ability to scrape from millions of sources, **and** to make errors.*

  - ***Recent Cases in the news…***

  - In 2023, Samsung employees uploaded sensitive code into ChatGPT and the data was subsequently leaked.

  - Screen Actors Guild strike/negotiations focused heavily on guardrails for AI in protection of actors/artists voices, likenesses and performances.

  - Patents/Trademarks/Copyright – US and UK have opined that AI cannot be listed as an inventor for patent, owner for TM or author for copyright. However, the use of AI alone may not exclude from IP protection. Determination will be focused on percentage of "human" contribution.

- **Recommended Actions:**

  - Research potential use of "closed" AI systems – standalone systems, models that don't send confidential information outside the business

  - Closely scrutinize the purposes for which AI systems should be used, and the users of such systems in your organization

Recap: Recommendations for Employers.....

- Create an AI Governance Program with involvement of key internal/external stakeholders
  - Legal/Compliance/Risk Management/IT and outside counsel/cybersecurity experts
  - NIST Framework could be helpful starting point implementation roadmap
- Be strategic when deciding how, when and in what areas to implement AI
  - Conduct assessment of current company processes and procedures to identify areas where AI can be effectively, legally and ethically implemented;
  - Appreciate the ongoing need for Human oversight in areas involving sensitive HR matters and when feedback and communication is required (performance management, terminations, interviews).
- Consider pilot programs to test tools/process before full roll-out ("crawl before you walk")
- Establish continuous feedback mechanisms
- Review privacy policies/procedures at least once a year to update/incorporate AI protocols/tools
- Promote AI literacy and training – AI is here to stay

Useful resources for updates on AI laws and regulations

International Association of Privacy Professionals (IAPP) – www.iapp.org

AI Survey Data: www.mckinsey.com

HR Survey Data: www.shrm.com

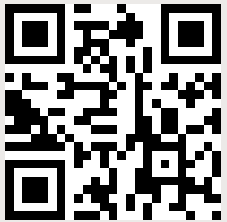National Institute of Standards and Technology (NIST)

- https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.600-1.pdf

Conclusion – Any Questions?

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