



October 26, 2026

The Honorable Phil Weiser
Colorado Department of Law
Office of the Attorney General
Ralph L. Carr Judicial Building
Denver, CO 80203

Submitted via email

RE: SHRM's Regulatory Comment on Colorado Automated Decision-Making Technology in Consequential Decisions Act

Dear Attorney General Weiser,

[SHRM](#) is the fourth-largest membership-based organization in the world, representing nearly 340,000 HR and business leaders through a network of 550 affiliates spanning every U.S. state and congressional district, with over 5,000 members in Colorado. More than 95% of the Fortune 500 are represented within SHRM's membership, providing SHRM with a unique perspective on the workforce challenges and opportunities facing organizations of every size, industry, and sector.

I. Introduction

SHRM's membership operates at the intersection of talent acquisition, people management, and regulatory compliance, providing insights grounded in research and practical workplace experience. As the professionals responsible for implementing workplace policies and managing employment decisions, SHRM members have a direct interest in ensuring that regulations governing artificial intelligence (AI) are clear, practical, and responsive to workplace realities.

SHRM research underscores both the growing role of AI in HR and the uneven pace of adoption. In 2026, 46% of organizations expect to use AI in HR, and another SHRM report found that 92% of CHROs anticipate greater integration of AI into the workforce and 87% expect increased adoption within HR processes.¹ Adoption also varies considerably by organizational size: 60% of extra-large organizations have implemented AI in HR, compared with 33% of small and 35% of midsize organizations.² These findings reinforce the importance of establishing clear, practical requirements that accommodate employers with varying levels of technological and compliance capacity.

SHRM research also demonstrates how AI is used in the workplace through an assessment of 138 use cases across 16 HR practice areas found that adoption is concentrated in transactional and process-driven activities, particularly recruiting. Common applications include job description drafting and refinement (20%), automated resume parsing and screening (16%), candidate-job matching and recommendation engines (11%), and structured interview guide generation (10%).³

¹ Sources: The State of AI in HR 2026, SHRM, 2026 and 2026 CHRO Priorities and Perspectives, SHRM, 2025.

² Source: The State of AI in HR 2026, SHRM, 2026.

³ Source: The State of AI in HR 2026, SHRM, 2026.

These applications demonstrate the range of ways AI actually supports HR functions, from routine administrative assistance to more substantive decision support.

SHRM supports responsible AI adoption, meaningful transparency, worker protections, and human involvement in consequential employment decisions. We also recognize the Colorado Department of Law's (the Department) good-faith efforts to improve the proposed regulations through successive revisions and stakeholder engagement, including the removal of certain provisions and the addition of illustrative examples. Building on these efforts, SHRM respectfully offers the following recommendations to establish clear, proportional, and employment-specific requirements that protect workers while enabling employers to responsibly adopt and implement AI technologies.

II. Define Regulatory Coverage, De Minimis Factors, and the Presumption of Material Influence

SHRM respectfully requests the following changes to clarify regulatory coverage, establish workable standards for the presumption of material influence, and distinguish consequential AI use from applications that support independent human decision-making.

A. Distinguish De Minimis Factors from Covered AI Applications

The proposed definition of *de minimis* factor raises concerns regarding its practical application to routine and supportive uses of AI in employment decisions. Although the regulations establish six considerations for determining whether AI output constitutes a *de minimis* factor, these considerations could make it difficult for employers to demonstrate that AI played only an incidental or supporting role, even when other relevant factors played a substantially greater role in the decision. Consequently, while the regulations contemplate a *de minimis* distinction, the proposed considerations may make it difficult for employers to establish that AI output was a *de minimis* factor even when it played only an incidental or supporting role in the decision.

SHRM recognizes that the proposed definition appropriately considers independent evidence, subject-matter expertise, decision-making authority, and the relative significance of other factors. However, these considerations should be applied in a manner that reflects how employers actually use AI. For example, an employer may review AI-generated information alongside other evidence without treating that information as authoritative or determinative. The regulations should provide greater clarity regarding how employers can demonstrate that other considerations played a significantly larger role in the ultimate decision.

In particular, Rule 2.2 identifies as a consideration whether the decision-maker reviewed the ADMT output before making the consequential decision and whether the consequential decision was consistent with the ADMT output. This consideration creates uncertainty where a decision-maker reviews an ADMT output but independently evaluates primary evidence and reaches the same result. The fact that the independent human decision and the ADMT output are consistent does not necessarily establish that the ADMT output was a substantial factor in the decision. The Department should clarify that consistency between an ADMT output and the consequential decision, standing alone, does not preclude a finding that the output was a *de minimis* factor.

SHRM research reinforces this: among HR professionals using AI, 87% reported improvements in efficiency, 75% in work quality, and 70% in creativity.⁴ Yet its impact on decision-making was more limited, with 41% reporting slight improvements and 50% reporting no improvement.⁵ These findings illustrate how AI can enhance HR work without replacing human judgment or determining employment outcomes.

Relatedly, Factor Six considers whether an AI system processes a volume, type, or complexity of personal data that a decision-maker could not reasonably review or replicate independently within the available time. The inability to replicate independently an AI system's processing should not, by itself, weigh against a determination that AI output was a *de minimis* factor. AI is often valuable precisely because it enables employers to efficiently process and organize information that would otherwise require substantial time and resources. Treating the inability to replicate independently that processing as evidence that AI played a substantial role risks conflating the technology's information-processing capabilities with its actual influence on the consequential decision. Such an interpretation risks treating the characteristics that make AI useful — speed, efficiency, and information-processing capacity — as evidence against its limited role in the decision.

SHRM recommends that the Department clarify how employers can establish that AI output was a *de minimis* factor and provide employment-specific examples of covered and noncovered applications. The appropriate inquiry should focus on the actual influence of AI output on the employment outcome, rather than the mere use of AI, whether the ultimate decision was consistent with an AI output, or its capacity to process information efficiently.

B. Establish Workable Standards for Rebutting the Presumption of Material Influence

Rule 6.1 establishes a rebuttable presumption of material influence when an AI-generated output is reviewed by a decision-maker and is consistent with the consequential decision. Although Rule 6.1(B) provides mechanisms for rebuttal, its reliance on the *de minimis* standard raises questions about what constitutes sufficient evidence of independent human judgment, potentially collapsing the two inquiries into a near-per-se presumption and leaving employers uncertain how to demonstrate that AI did not substantially influence an employment outcome.

SHRM encourages the Department to reconsider whether such a presumption is necessary. A presumption of Material Influence may create unnecessary uncertainty for employers seeking to determine whether an ADMT output actually played a substantial role in an employment decision. Once the presumption applies, an employer must establish that the output was nevertheless *de minimis*, even where the decision-maker exercised independent judgment and other relevant factors played a significantly larger role in the decision. Rather than presuming influence based on these circumstances, the regulations should focus on whether AI output actually played a substantial role in the outcome.

However, if the Department retains the presumption, SHRM recommends clearer, workable rebuttal standards. Although Rule 6.1(B)(3) recognizes independent review as a basis for rebuttal, employers need guidance on what constitutes sufficient analysis, particularly when AI processes complex or high-volume information. Meaningful human oversight should not require decision-makers to replicate every analytical step performed by AI.

⁴ Source: The State of AI in HR 2026, SHRM, 2026.

⁵ Source: The State of AI in HR 2026, SHRM, 2026.

SHRM also supports Rule 6.1(D)'s exclusion of certain administrative applications, including tools used solely to summarize, organize, translate, draft, route, or present information. However, legitimate workplace applications may fall between administrative assistance and automated decision-making. The final regulations should clarify when AI augmentation crosses the threshold into material influence.

Accordingly, SHRM requests employment-specific examples illustrating how independent human judgment can be demonstrated when AI-assisted analysis and an employment decision reach the same outcome. The Department should also clarify the breadth and volume of information employers must maintain or produce under Rule 6, ensuring documentation requirements remain proportional to AI's actual role in the decision.

C. Address Geographic Applicability

SHRM also recommends that the Department expressly clarify how the regulations apply to prospective employees located outside Colorado, including individuals applying for positions with Colorado-based or multistate employers. The increasingly remote nature of recruitment and hiring complicates traditional geographic distinctions. Employers can advertise positions, receive applications, evaluate candidates, and conduct interviews entirely through digital platforms. Even when a position is physically located in Colorado, applicants may reside elsewhere throughout the hiring process.

The final regulations should therefore provide clear standards and examples addressing out-of-state applicants, Colorado-based positions, and multistate recruitment processes. Establishing these boundaries would promote consistent compliance and reduce uncertainty for employers operating across jurisdictions.

III. Recognize the Distinct Nature of Employment Decisions and Ensure Practical Human Review and Compliance Requirements

SHRM recommends that the Department incorporate explicit employment-specific standards into the final regulations that reflect the practical realities of hiring, promotions, performance management, and other consequential workplace decisions. While the proposed regulations address employment in certain provisions, greater specificity is needed to account for its distinct characteristics while ensuring employers receive procedural protections comparable to those afforded other regulated entities. These requirements should be established in the final regulatory text rather than left to subsequent guidance.

A. Clarify Meaningful Human Review and Reconsideration in Employment Decisions

SHRM supports meaningful human review as an important safeguard in consequential employment decisions and recognizes the Department's efforts to distinguish between a review that could change an adverse outcome and one that necessarily results in reversal.

Importantly, SHRM research suggests that there are already practical safeguards against fully removing humans from HR decision-making. Even if technical barriers to AI implementation were eliminated, 72% of HR professionals believed nontechnical barriers would prevent complete

automation of HR functions.⁶ Among those respondents, 87% cited preferences for human interaction among employees, applicants, and organizational leadership.⁷ These findings underscore that human involvement is not simply a regulatory expectation but an established feature of how organizations approach HR, particularly where empathy, contextual understanding, and independent judgment remain essential.

Therefore, the regulations must also recognize the distinct nature of employment decisions. Unlike certain other consequential decisions contemplated by the proposed regulations, where correcting an error may allow an otherwise eligible individual to receive a benefit based on established criteria, employment decisions often involve comparative assessments among multiple qualified individuals. There may be several legitimate, job-related reasons to select one applicant over another, even when both could reasonably perform the position. Moreover, employment opportunities are frequently finite, with generally only one position or promotion available. The right to seek Meaningful Human Review and Reconsideration arises after an adverse outcome and is exercised upon request by the affected applicant or employee. Accordingly, by the time an individual requests review and the employer completes that reconsideration process, that opportunity may have been awarded to another individual, making reversal impracticable or potentially affecting another employee or applicant. Importantly, SHRM is not advocating for diminished oversight or suggesting that improper factors should be permitted to influence employment opportunities. Rather, the regulations should recognize that employment decisions involve multiple legitimate considerations and competing interests, meaning that identifying an error through the post-adverse-outcome review and reconsideration process does not necessarily establish that a different outcome was warranted.

Accordingly, SHRM recommends that the Department expressly clarify that meaningful human review does not automatically require modifying or reversing an employment decision. The regulations should distinguish between identifying an error, determining whether it materially affected the outcome, and assessing whether corrective action is appropriate. A review should be considered meaningful when the reviewer genuinely evaluates the decision and has authority to change it where warranted, even if the original outcome is upheld. SHRM also requests that the prohibition on automated decision-making technology assisting in human review distinguish between delegating the review itself to AI and using permissible tools to organize, summarize, or present relevant information.

B. Extend Comparable Good-Faith Reliance Protections to Employers

The proposed regulations expressly permit downstream developers to reasonably rely on information provided by upstream developers, absent actual knowledge that the information is materially inaccurate or incomplete. SHRM supports this recognition of the practical limitations of third-party reliance but notes that comparable protections do not appear to extend to employers acting as deployers. Like downstream developers, employers frequently rely on vendor documentation, representations, and compliance assurances to understand AI functionality, risk assessments, and technical characteristics. Employers may lack access to the underlying models or proprietary information necessary to independently verify these representations. Without comparable protections, employers may remain responsible for satisfying regulatory obligations that depend on information or technical documentation supplied by third-party developers, even

⁶ Source: The State of AI in HR 2026, SHRM, 2026.

⁷ Source: The State of AI in HR 2026, SHRM, 2026.

where the employer reasonably relied on the developer's representations and lacked access to the information necessary to independently verify them.

SHRM therefore recommends that the Department extend an express reasonable-reliance protection to employers comparable to that afforded downstream developers. The final regulations should clarify the allocation of responsibilities between employers and AI developers or vendors, ensuring that employers are not held responsible for vendor deficiencies outside their knowledge or control when reasonably relying on documentation and assurances, absent actual knowledge that such information is materially inaccurate or incomplete. This protection would not relieve employers of their independent compliance obligations but would promote consistency across the regulatory framework.

Staffing agency relationships warrant separate consideration because they present a different allocation issue. Unlike AI developers, staffing agencies may independently conduct recruitment, screening, and other employment-related activities on behalf of client employers. SHRM recommends that the Department provide additional employment-specific examples clarifying which entity is the Deployer, and how Deployer responsibilities apply, when a staffing agency uses Covered ADMT in performing services for a client employer. The regulations should clarify how responsibilities are allocated between staffing agencies and client employers, including when employers may reasonably rely on an agency's compliance assurances without assuming responsibility for practices outside their knowledge or control.

C. Provide Appropriate Employer Review and Appeal Procedures

SHRM also recommends that the Department establish a clear mechanism for employers to seek clarification of how the Act and these rules apply to specific practices. For example, the Department could confirm that employers may petition for a declaratory order under the Colorado Administrative Procedure Act on questions arising under the Act, commit to timely responses, and publish nonbinding guidance or FAQs addressing recurring questions. Given the January 1, 2027, effective date and the novelty of these obligations, a predictable clarification pathway would promote consistent compliance and reduce reliance on enforcement to resolve interpretive questions.

While employers and other regulated entities may not be similarly situated, these differences should inform the design of procedural protections rather than justify their absence. Employers subject to consequential regulatory determinations should have an appropriate opportunity to seek review or reconsideration, particularly when questions arise regarding regulatory interpretation or the application of requirements to specific employment practices. Consistent with SHRM's recommendation regarding reasonable reliance, providing an employer-appropriate review mechanism would promote procedural fairness, greater regulatory consistency, and certainty for organizations implementing the law.

IV. Standardize Post-Adverse Decision Notice Requirements

SHRM supports meaningful transparency regarding AI-assisted employment decisions and recognizes the importance of providing individuals with clear information about the role of AI in consequential decisions. The proposed regulations provide the requirements regarding the form and content of post-Adverse-Outcome disclosures, including examples addressing employment decisions. SHRM encourages the Department to build on this framework by providing sample

disclosures tailored to each Covered Domain, including specifically addressing employment decisions.

Employment-specific guidance would be particularly valuable because employment decisions and processes may differ from those in other Covered Domains. Such model disclosures would help employers integrate the requirements into existing HR processes while promoting clear and consistent information for applicants and employees. SHRM recommends that the Department establish clear standards for post-adverse decision notices, including their timing, content, delivery, recordkeeping, and storage and retention requirements. These obligations should be expressly defined in the final regulations rather than left to subsequent guidance or case-by-case interpretation.

Importantly, the Department should clarify who must receive notices and what triggers the requirement in the employment context. For example, when AI assists in hiring, must every unsuccessful applicant receive an adverse notice and an opportunity to seek review, regardless of whether they were screened out, interviewed, or considered at a later stage? This distinction is particularly important given the volume of applications employers may receive for a single position. The regulations should also clarify how employers describe AI's role when it is only one of several factors considered, without implying that AI was determinative. Disclosure obligations should be proportional to AI's actual role and the information reasonably available to employers, particularly when third-party technologies are involved. SHRM requests employment-specific examples and clear compliance standards that allow employers to integrate these requirements into existing HR processes without unnecessary administrative burdens.

V. Conclusion

SHRM reaffirms its support for responsible AI adoption, meaningful transparency, worker protections, and human oversight. We appreciate the Department's efforts to improve the proposed regulations and encourage continued stakeholder engagement to ensure the final framework is clear, proportional, and administratively workable.

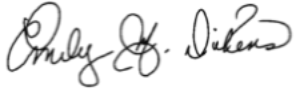
SHRM research highlights an opportunity for Colorado to strengthen employer education and outreach. As of February 2026, 57% of HR professionals working in states with employment-related AI laws or regulations reported being unaware of those requirements.⁸ This knowledge gap underscores the importance of proactive engagement to help employers understand and implement new obligations. SHRM encourages the Department to provide accessible guidance, standardized notices, FAQs, employment-specific examples, and substantive compliance webinars with opportunities for employer questions.

SHRM further urges the Department to provide employers with an extended compliance window following finalization of the regulations, rather than requiring full implementation by January 1, 2027. Compliance will require employers to evaluate AI-enabled technologies, coordinate with vendors, establish documentation and human review procedures, and train personnel across multiple functions. These efforts demand significant planning, particularly for small and midsize employers and those reliant on third-party systems.

⁸ Source: The State of AI in HR 2026, SHRM, 2026.

Accordingly, SHRM recommends that the Department, to the extent permitted by law, provide a reasonable transition period, including consideration of phased implementation for new requirements. During this period, the Department should prioritize education, technical assistance, and good-faith compliance while clarifying enforcement expectations. This approach would address implementation challenges arising from unresolved regulatory questions, promote consistent compliance, and uphold worker protections. SHRM remains committed to working with policymakers and drawing on the collective experience of its members to advance policies that support work, workers, and the workplace.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily M. Dickens". The signature is fluid and cursive, with the first name "Emily" being more prominent.

Emily M. Dickens, J.D.
Chief Administrative Officer
SHRM