

Central CA CCD ERC
Northern CA CCD ERC
Southern CA CCD ERC

“Emerging Legal Issues Related With
AI”

9:00 AM – 12:00 PM

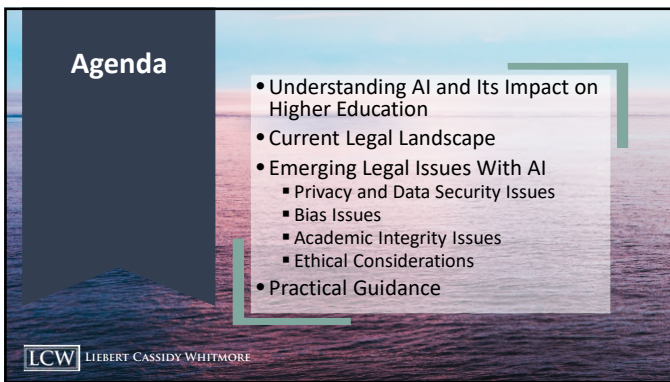
Presented by:

Alysha Stein-Manes

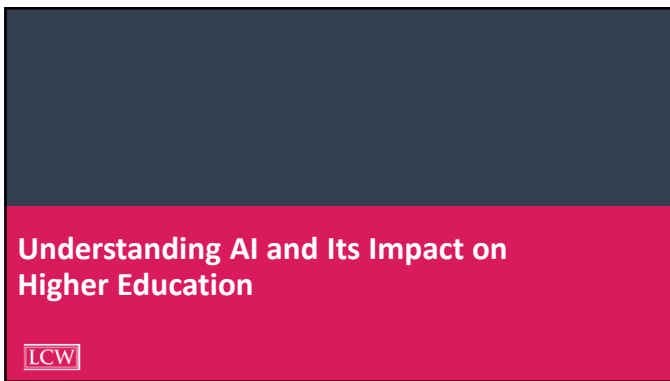
April 5, 2024



1



2



3

A Primer...

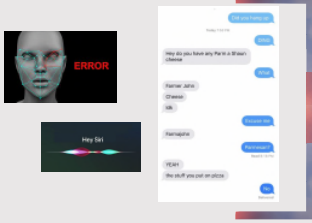
- AI is Artificial Intelligence
 - Technology that enables computers and machines to simulate human intelligence and problem-solving capabilities
 - Machine-Learning
 - Large Language Model (LLM)

LCW LIEBERT CASSIDY WHITMORE

4

We Use AI On A Daily Basis

- Facial recognition
- Siri/Alexa/Google
- Social media
- Autocorrect



LCW LIEBERT CASSIDY WHITMORE

5

What Is Generative AI?

- A type of AI that produces content
- November 2022- ChatGPT introduced to the public
- Since November of 2022, Generative AI has become multimodal; not just text as input and output

LCW LIEBERT CASSIDY WHITMORE

6

How Does Generative AI Work?

- Prompt → Algorithm → Response in form of new content
 - Multimodal now
- Generative AI models combine algorithms to present and process content

LCW LIEBERT CASSIDY WHITMORE

7

Generative AI Tools & Platforms

LCW LIEBERT CASSIDY WHITMORE

8

Initial Doomsday Predictions/Articles

- “AI could replace equivalent of 300 millions job – report” – *bbc.com*, March 2023
- “ChatGPT is a Plague Upon Education” – *Inside HigherEd*, February 2023
- “ChatGPT will do more harm than good” – *MIT Technology Review*, April 2023
- “Yes, We Are in a (ChatGPT) Crisis” – *Inside HigherEd*, April 2023

LCW LIEBERT CASSIDY WHITMORE

9

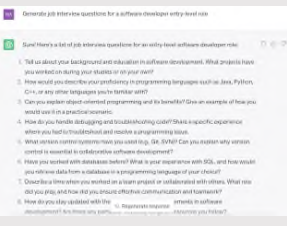
Quick Uptick...

- “How embracing artificial intelligence is getting workers ahead” – *bbc.com*, July 2023
- “ChatGPT is going to change education, not destroy it” – *MIT Technology Review*, April 2023
- “Warming up to the power of chatGPT” – *Inside HigherEd*, July 2023

LCW LIEBERT CASSIDY WHITMORE

10

Generative AI Platform Example:



Generate job interview questions for a software developer entry-level role

Sure! Here's a list of job interview questions for an entry-level software developer role:

1. Tell us about your background and education in software development. What projects have you worked on during your studies or your work?
2. How would you describe your proficiency in programming languages such as Java, Python, C++, or any other languages you're familiar with?
3. Can you explain object-oriented programming and its benefits? Give an example of how you would use it in a real-world scenario.
4. How do you handle debugging and troubleshooting code? Share a specific experience where you faced a challenge and resolved a programming issue.
5. What version control systems have you used (e.g., Git, SVN)? Can you explain why version control is essential in software development?
6. Have you worked with databases before? What is your experience with SQL, and how would you retrieve data from a database in a programming language of your choice?
7. Describe a time when you worked on a team project or collaborated with others. What role did you play, and how did you ensure effective communication and teamwork?
8. How do you stay updated with the latest trends and technologies in software development? Are there any online resources or communities you follow?

LCW LIEBERT CASSIDY WHITMORE

11

It's Almost Impossible To Detect AI-Generated Output

- Mimics human writing styles
- Produces complex content
- AI is increasingly sophisticated
- Lack of obvious flaws

LCW LIEBERT CASSIDY WHITMORE

12

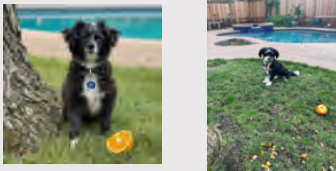
Uses Of Generative AI

- Writing email responses, creating dating profiles, resumes, and term papers
- Creating photorealistic art in a particular style
- Suggesting new drug compounds to test
- Designing physical products and buildings
- Writing music in a specific style or tone

LCW LIEBERT CASSIDY WHITMORE

13

Deepfake



LCW LIEBERT CASSIDY WHITMORE

14

Statistics Regarding Use Of AI

- Half of students are regular users of Generative AI
- 75% of students who already use Generative AI, indicate they will continue to use it *even if* their professors or institutions ban the technology
- Majority of students believe that Generative AI will have a positive impact on their learning

*GenAI In Higher Education: Fall 2023 Update – Tyton Partners

LCW LIEBERT CASSIDY WHITMORE

15

Statistics Regarding Use of AI

- Only 22% of faculty are using Generative AI, and primarily to understand what their students see when they use the tools
- Nearly 20% of AI-using faculty allow small parts or first drafts of entire assignments to be written by generative AI tool

*GenAI In Higher Education: Fall 2023 Update – Tyton Partners

LCW LIEBERT CASSIDY WHITMORE

16

Ease Of Use Increases Fear and Anxiety

- Rapidly evolving space, without regulation...yet (more on that later)
- Change causes confusion and fear
- Burgeoning legal issues
- Ethical considerations

LCW LIEBERT CASSIDY WHITMORE

17

It's Not All Good Though...


- Sports Illustrated uses AI generated authors and article
- Fake AI-generated women on tech conference agenda

LCW LIEBERT CASSIDY WHITMORE

18

More Generative AI Blunders

- Fake citations from ChatGPT used by an attorney
- Uber Eats began using AI-generated food images



LCW LIEBERT CASSIDY WHITMORE

19

Current Uses Of AI In Higher Education

- As an efficient study tool
- Educational accessibility
- Academic guidance
- Personalized learning
- Administrative support

LCW LIEBERT CASSIDY WHITMORE

20

Overview Of Challenges Regarding Use Of AI In Higher Education

- Depersonalized student interactions
- Algorithmic bias and fairness, *i.e.* potentially, biased decision-making
- Reliability of information
- Ethical implications
- Accessibility

LCW LIEBERT CASSIDY WHITMORE

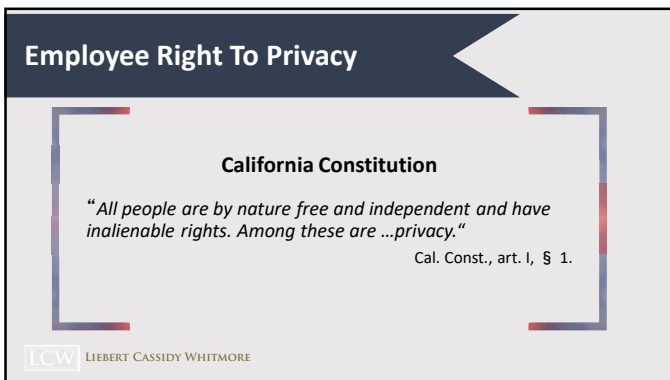
21



Current Legal Landscape

LCW

22



Employee Right To Privacy

California Constitution

"All people are by nature free and independent and have inalienable rights. Among these are ...privacy."

Cal. Const., art. I, § 1.

LCW LIEBERT CASSIDY WHITMORE

23



Sources Of The Right To Privacy

- United States Constitution
- California Constitution
- Common Law



LCW LIEBERT CASSIDY WHITMORE

24

FERPA

- Family Educational Rights & Privacy Act
 - Regulates the disclosure of personally identifiable information from education records
 - Education records cannot be released without written consent of the student or a court order

LCW LIEBERT CASSIDY WHITMORE

25

HIPPA & CMIA

- Health Insurance Portability And Accountability Act
 - Requires appropriate safeguards to protect the privacy of personal health information, including individual medical records
 - Limits and conditions the uses and disclosures of information
- Confidentiality of Medical Information Act
 - Prohibits acquisition, use, and disclosure of medical information without prior written authorization

LCW LIEBERT CASSIDY WHITMORE

26

Discrimination, Harassment & Retaliation

- Fair Employment and Housing Act (FEHA)
 - Prohibits employment discrimination, harassment, or retaliation in the employment context
- Americans with Disabilities Act (ADA)
 - Prohibits employment discrimination on the basis of a physical or mental disability.

LCW LIEBERT CASSIDY WHITMORE

27

Recent Caselaw

- *Raines v. U.S. Healthworks Medical Group* (2023)
15 Cal.5th 268
 - Expands the definition of the term “employer” under the Fair Employment and Housing Act (FEHA)
 - Impact on businesses that provide services or otherwise assist employers in the use of automated-decision systems for recruiting, screening, hiring, compensation, and other personnel management decisions

LCW LIEBERT CASSIDY WHITMORE

28

AI Legal Battles To Watch:

- Algorithmic Bias
 - *Mobley v. Workday, Inc.*, 2024 U.S. Dist. LEXIS 11573
- IP Creators Sue Big Tech
 - *Tremblay, et. al v. OpenAI Inc., et. al*, 2024 U.S. Dist. LEXIS 24618

LCW LIEBERT CASSIDY WHITMORE

29

Newsom Issues Executive Order N-12-23 (Sept. 6, 2023)

- Directs states agencies to study the development, use, and risks of generative AI
- State agencies are also required to devise policies and regulations for AI



LCW LIEBERT CASSIDY WHITMORE

30

Biden Executive Order (Oct. 30, 2023)

- New standards for AI safety and security
- Protect against the risks of using AI to engineer dangerous biological materials
- Protect Americans from AI-enabled fraud and deception
- Address algorithmic discrimination
- Develop best practices on use of AI in sentencing, parole and probation, surveillance, and pretrial release and detention

LCW LIEBERT CASSIDY WHITMORE

31

California Privacy Protection Agency

- California data privacy law is enforced by CPPA Board with power to make rules
- Board proposed rules to regulate automated decision-making technology (ADMT) in November of 2023:
 - Require companies to issue notice to consumers that they utilize this technology
 - Would allow CA residents to stop the use of their personal data from ADMT
 - Employers would also be required to notify job applicants if a decision regarding their employment was based on ADMT

LCW LIEBERT CASSIDY WHITMORE

32

California Privacy Protection Agency

- Proposed rules would affect any company making more than \$25 million in annual revenue or processing the personal data of more than 100,000 Californians

LCW LIEBERT CASSIDY WHITMORE

33

Pending Legislation

- State lawmakers currently considering more than 30 AI-related bills across a wide range of topics
 - AB 2930: Prohibits Algorithmic Discrimination
 - AB 3058: Addressing Employment Replaced by AI
 - SB 1047: Requiring Safety Standards for Large AI Models



LCW LIEBERT CASSIDY WHITMORE

34

Other Bills


- AB 2602: “Digital Replicas” in the entertainment industry
- Crackdown on deepfakes
- Election Integrity
- AI usage by lawyers

LCW LIEBERT CASSIDY WHITMORE

35

What’s Next?

- 2024 legislative session will run through August 31
- Many bills won’t pass, but it provides insight into how elected officials think about AI and AI governance



LCW LIEBERT CASSIDY WHITMORE

36

Don't Forget District Policies

- Confidentiality
- Privacy
- Acceptable Use
- Plagiarism
- Academic integrity
- Code of conduct

LCW LIEBERT CASSIDY WHITMORE

37

Emerging Legal Issues

LCW

38

Privacy Concerns & Data Security

- Student data
 - Expectation of boundaries between personal and academic lives
 - Potential misuse of data

LCW LIEBERT CASSIDY WHITMORE

39

Privacy Concerns & Data Security

- Surveillance & monitoring
 - You are being tracked!
- How is the information being saved?
- Who is it being shared with?
- Who is the information being sold to?
- What's the level of transparency?

LCW LIEBERT CASSIDY WHITMORE

40

Privacy Concerns & Data Security

- Cybersecurity risks in AI
 - Data breaches
 - Malware/Phishing
 - Leaking user chat history
 - Data manipulation
 - Impersonation



LCW LIEBERT CASSIDY WHITMORE

41

Case Study

Michelle has applied for a position as an Administrative Assistant at City College. City College utilizes AI to screen applications and resumes to determine which individuals possess the minimum qualifications for the position. Despite a strong background and meeting the minimum qualifications, Michelle does not move on to an interview.

What do you think?

LCW LIEBERT CASSIDY WHITMORE

42

Case Study

Miguel, a native of Brazil, is a student at City College. He has prepared his final essay submission for his class, English 101, which accounts for 25% of his final grade. Miguel's professor utilizes an AI tool intended to detect writing samples generated by AI. Miguel's essay is flagged by the AI platform and the District determines Miguel has violated its policy against plagiarism.

What do you think?

LCW LIEBERT CASSIDY WHITMORE

43

Bias

- Training data bias
- Algorithmic bias
- Cognitive bias

LCW LIEBERT CASSIDY WHITMORE

44

Example Of Bias

Type in "Flight Attendant" in Google search engine bar and view images.

What do you see?

LCW LIEBERT CASSIDY WHITMORE

45

Example Of Bias

Now type in "Judge" in Google search engine bar and view images.

What do you see?

LCW LIEBERT CASSIDY WHITMORE

46

Case Study

Professor Allen is preparing his course lectures for next semester. Out of curiosity, Professor Allen enters a prompt in ChatGPT to help develop some of his lectures. Within seconds of his prompt, ChatGPT creates well-written and thoughtful responses. Professor Allen utilizes the responses created by ChatGPT to finalize and guide his lectures.

What do you think?

LCW LIEBERT CASSIDY WHITMORE

47

Case Study Cont.

Professor Allen fails to perform any cite-check of references noted in the course lectures prepared by ChatGPT. He repeats the information provided by the Generative AI platform verbatim. One savvy student googles a reference noted by Professor Allen and determines it is fake and does not exist.

What do you think?

LCW LIEBERT CASSIDY WHITMORE

48

Twist On Case Study

Professor Allen's lectures are so well-received by students, he is commended by the District for his outstanding and intellectual work in his field.

What do you think?

LCW LIEBERT CASSIDY WHITMORE

49

Intellectual Property & Copyright

- Only works created by humans are protected by copyright laws
 - Generative AI involves little human input
- Who gets credit?
 - Is it the developer of the AI model who is the creator?
 - Is it the person who considered and input the prompts?

LCW LIEBERT CASSIDY WHITMORE

50

Academic Integrity

- Definition: Expectation that all members of the academic community act with honesty, trust, fairness, respect, and responsibility

LCW LIEBERT CASSIDY WHITMORE

51

Academic Integrity

- Use of AI may (most likely does) increase risk of:
 - Plagiarism/dishonesty
 - Unauthorized use
 - Misinformation

LCW LIEBERT CASSIDY WHITMORE

52

Ethical Considerations

- Accessibility and inclusion concerns
 - Underrepresented communities
 - Individuals with disabilities
 - Potential to exacerbate existing inequalities

LCW LIEBERT CASSIDY WHITMORE

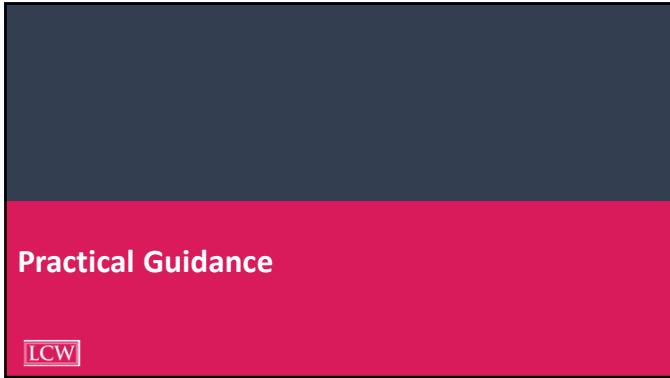
53

Ethical Considerations

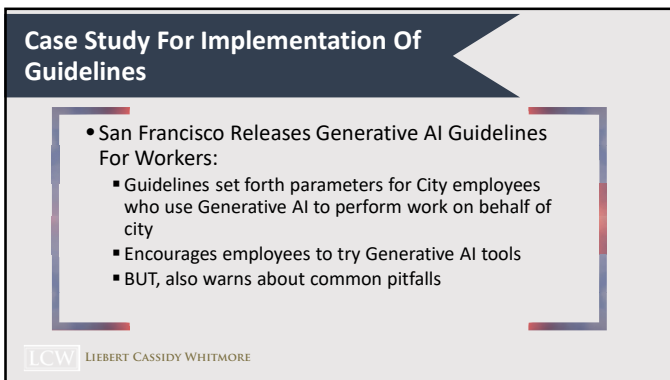
- Job displacement
 - Automating educational tasks raises legitimate fears about potential job losses in the sector
- Social impacts
 - Social development and mental well-being concerns when relying on AI
 - Reduction of student engagement and motivation

LCW LIEBERT CASSIDY WHITMORE

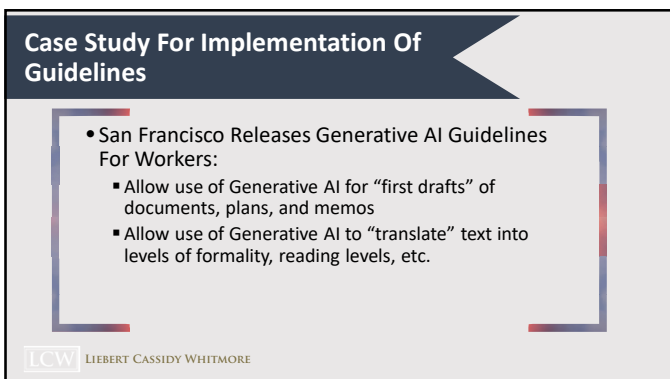
54



55



56



57

Case Study For Implementation Of Guidelines

- San Francisco Releases Generative AI Guidelines For Workers:
 - Prohibits entering any information into public Generative AI tools that cannot be fully released to public
 - Prohibits publication of any Generative AI output (including images, or codes) without full knowledgeable review and disclosure

LCW LIEBERT CASSIDY WHITMORE

58

Case Study For Implementation Of Guidelines

- San Francisco Releases Generative AI Guidelines For Workers:
 - Prohibits employees from asking Generative AI to find facts or make decisions without expert human review
 - Prohibits employees from generating a fake image or recording which purports to be a San Franciscan or public official

LCW LIEBERT CASSIDY WHITMORE

59

Case Study For Implementation Of Guidelines

- San Francisco Releases Generative AI Guidelines For Workers:
 - Prohibits concealing use of Generative AI during interaction with colleagues or the public, such as tools that may be listening and transcribing the conversation

LCW LIEBERT CASSIDY WHITMORE

60

Pursue AI Education And Training

- Technology is complicated and fast moving
- Understanding of promises and limitation of AI critical
 - To be able to discuss framework for guidance or ethical considerations
 - To prepare students and discuss student usage in classroom
 - To be able to use responsibly

LCW LIEBERT CASSIDY WHITMORE

61

Have Proactive Discussions

- Emphasize importance of learning
- Discuss ethical uses of AI
- Prepare students
 - How assignments that use AI will be graded
 - Help educate students on how to integrate AI into learning

LCW LIEBERT CASSIDY WHITMORE

62

Communicate Expectations

- Discuss acceptable and unacceptable use of AI on campus.
- Communicate any expectations.
- Understand where information goes and whether the AI can collect or use.
 - Read the fine print! Seek legal guidance.
 - Consider FERPA.

LCW LIEBERT CASSIDY WHITMORE

63

Be Transparent

- Hiring
- Screening
- Promotion
- Admissions

LCW LIEBERT CASSIDY WHITMORE

64

Thank You!

Questions?

LCW LIEBERT CASSIDY WHITMORE

65
