AI, ALGORITHMIC BIAS, AND EMPLOYMENT LAW: NAVIGATING LEGAL CHALLENGES AND ENSURING FAIRNESS IN THE WORKPLACE

OBJECTIVES

- Discussion of algorithmic bias basics
- Examine potential biases in AI algorithms and the legal implications under employment discrimination laws and other areas of law
- Explore how algorithmic bias impacts underrepresented groups
- Discussion of how current laws/statutes are attempting to mitigate algorithmic bias
- Recommendations for how to avoid harmful outcomes in employment when relying on AI technology

WHAT IS AI?



WHAT IS AI?

- Self-driving cars
- Recommendation engines
- Bots and digital assistants
- Spam filters
- Smart home technology
- Health data analysis









BENEFITS FOR EMPLOYERS

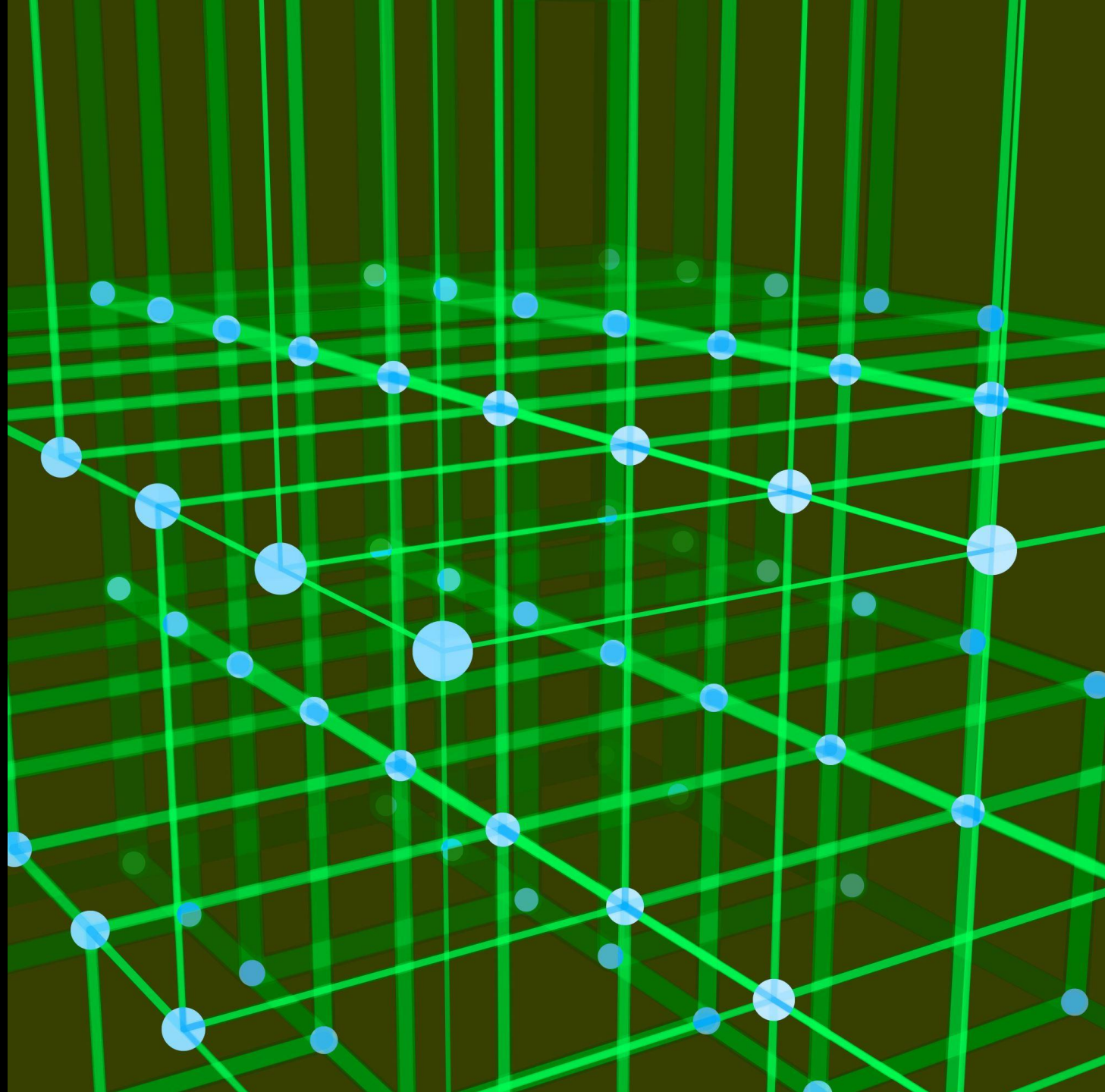
- Possible customized candidate questions
- Lack of human bias related to physical appearance, accessories, regional accents, tattoos (if well designed)
- Removed biased language from job descriptions
- Removing bias from screening process (maybe)
- Validating qualifications
- Collecting candidate data

BENEFITS FOR EMPLOYERS

- Anonymize certain information about candidates, reducing the possibility that characteristics, such as a candidate's name, that may be associated with certain protected classes, are not considered during the evaluation process
- Limit biographical information until after the candidate passes certain tests/shows certain skills
- Standardize interviews to level the playing field

ALGORITHMIC BIAS

Systematic and repeatable errors in a computer system that produce unfair outcomes.



WHAT ARE THE CURRENT LEGAL IMPLICATIONS?

AI legal issues are popping up in different areas of law including healthcare, insurance, premises liability, and employment.

HEALTHCARE/INSURANCE



- Healthcare providers and insurance carriers have relied on AI to make impactful decisions with little human oversight.

Lokken v UnitedHealth Group Inc., No. 0:23-cv-03514 (2023)

Barrows v Humana Inc., No. 3:23-cv-00654 (2023)

Kisting-Leung v Cigna Corp., No. 2:23-cv-01477 (2023)

PREMISES LIABILITY



FTC v. Rite Aid Corporation, No. 2:23-cv-5023 (2023)

Rite Aid used facial recognition technology to exclude customers from its "watchlist" database.

CIVIL RIGHTS

- The Detroit Police Department's facial recognition technology produced false outcomes that led to civil rights suits.



Woodruff v. City of Detroit, No. 5:23-cv-11886 (2023)



CIVIL RIGHTS

- The Detroit Police Department's facial recognition technology produced false outcomes that led to civil rights suits.



Williams v. City of Detroit, No. 2:21-cv-10827 (2021)

EMPLOYMENT LAW



EEOC v. iTutorGroup, Inc., et al., No. 1:22-cv-02565 (2023)

- Online tutoring company's application program excluded applicants of a certain age.

EMPLOYMENT LAW



Mobley v. Workday, Inc., No. 3:23-cv-00770-RFL (2024)

- The employment screening vendor allegedly excluded applicants based on race and other protected characteristics.

WORKDAY CASE

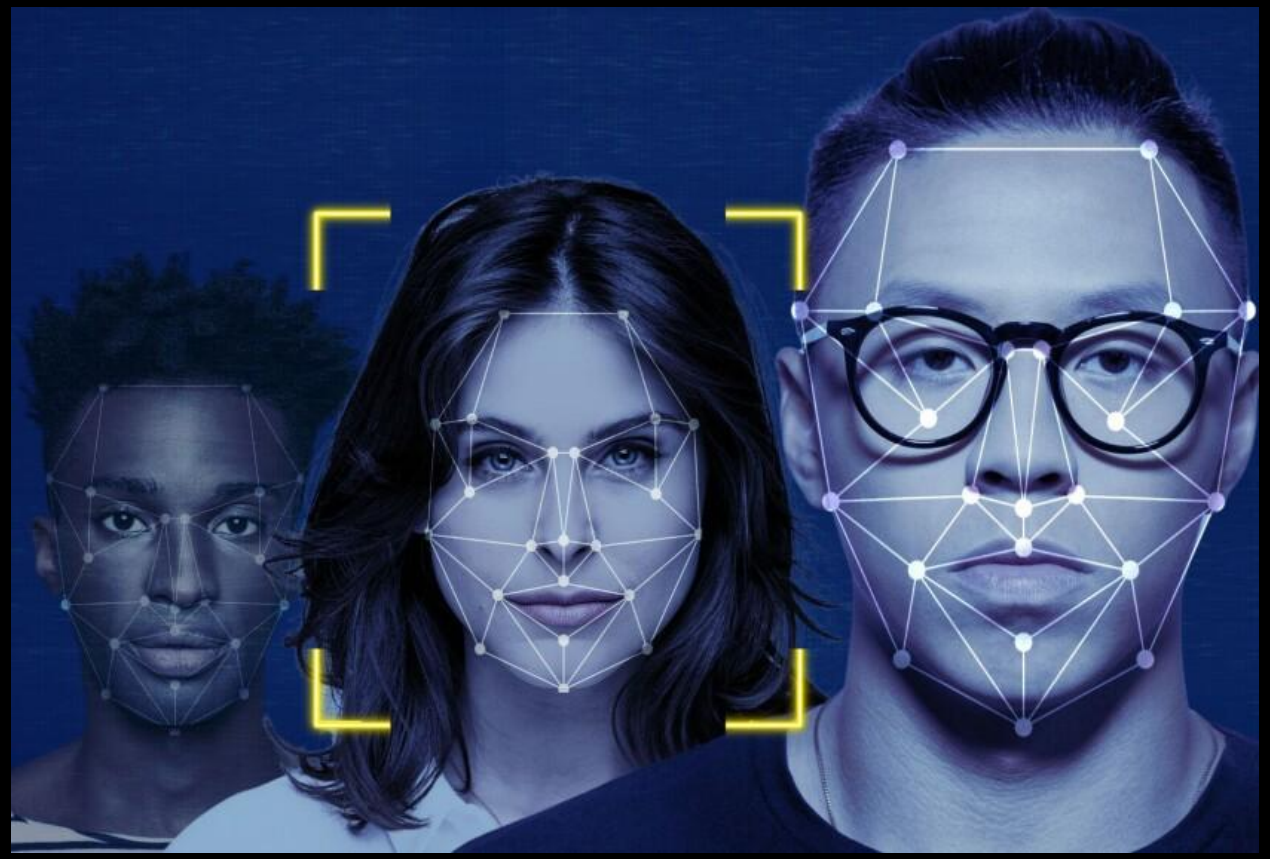
- Which did the court choose: Workday is a (1) employment agency; (2) agent; or (3) indirect employer?
- Should the employer who contracted Workday or similar vendors also be held responsible?
- If so, Do plaintiffs have to prove that the employer knew that the tool was biased and still used it, or is the disparate impact in generating biased applications enough?
- Is there a level of due diligence that employers need to engage in to verify that the hiring tools are not biased?

ALGORITHMIC BIAS AND ITS IMPACT ON UNDERREPRESENTED PEOPLE

AMAZON'S RECRUITING TOOL

- Amazon used in-house recruiting program to hire top talent
- Not gender-neutral
- Unqualified candidates were recommended for jobs that did not match qualifications

FACIAL RECOGNITION SYSTEMS



ADDRESSING ALGORITHMIC BIAS

RECOMMENDATIONS

- Human Involvement
- Identify Goals and Tools to Assist to Help Meet Goals
- Audits
- Training
- Track Legislation
- EEOC Guidance



AI HIRING TOOLS

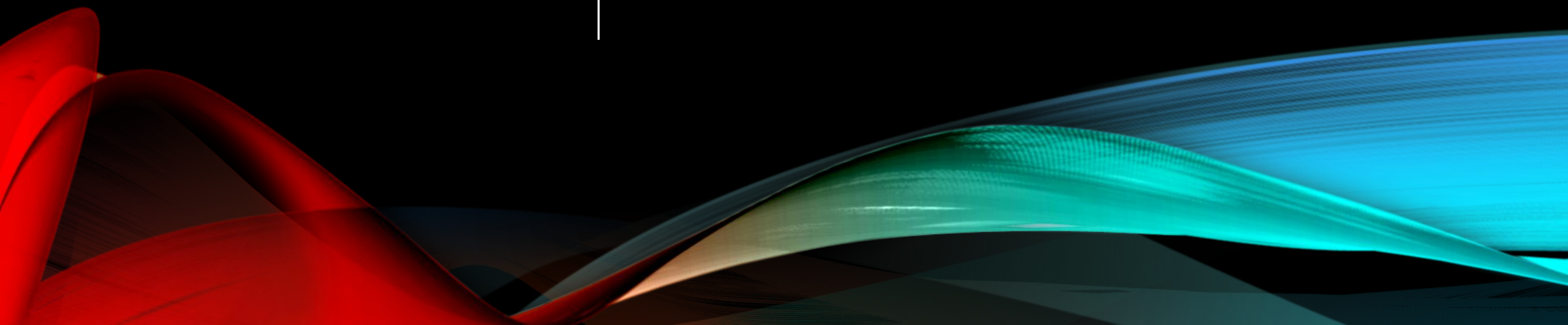
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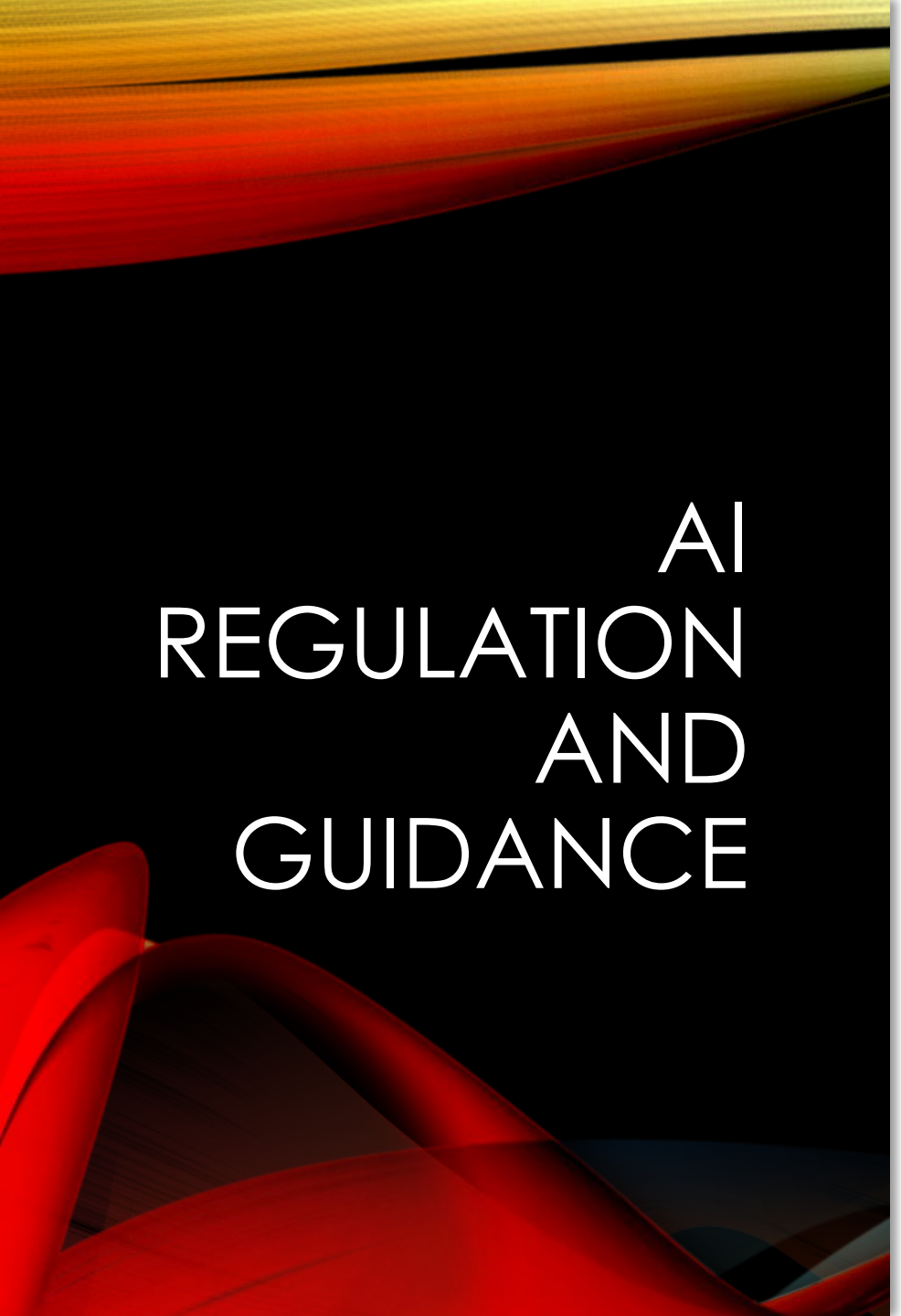
Conceals PII

TalVista

Helps employers avoid bias, through optimized job descriptions, blind reviews, and structured interviews

AI GOVERNANCE





2019 Algorithmic Accountability Act

NJ Bill A38255

NY Law Local Law 144 of 2021

NY Biometric Act

EEOC Guidance



QUESTIONS?



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