

Establishing Effective AI Policies

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Burger, with attorneys at Offit Kurman. And today we are talking about employees using AI. So obviously AI, hot topic. We talk about it on here. It's in the news. It's everywhere. It's on everyone's mind. And a lot of employers are using it proactively or are getting involved with actually implementing things that they're encouraging their employees to access and use.

A lot of employers aren't quite there yet, and maybe just aren't paying a whole lot of attention. They're starting to look into it, but haven't really deployed anything yet. Regardless of which bucket you fall in, though, I think most people's employees are using AI in some way in their personal life or in their professional life, and are at least starting to dabble.

It's become really mainstream. It's become something that people are starting to use. It's popping up everywhere. [00:01:00] So what should employers be thinking about, Russell, as it relates to this? Kinda working from the assumption that people are using this stuff.

Russell Berger: Yeah, and I think that's a safe assumption to make.

And whether they're using it at your direction, under your control or not um, they're using it. And 'cause it makes people's lives easier, makes their jobs go by faster, they can be more efficient and get more done, they can get home sooner, whatever the case may be employees are gonna use AI and are using AI.

So as a starting point for, how do you manage this as an employer, right? Once people are using it, like you probably wanna exercise some control and some- put up some guardrails so it's used safely. And so one of the things that we strongly recommend is that all businesses should have a generative AI policy.

It's not the employee handbook, but it's an adjunct to that. It's just a policy that can be in place, goes to everybody, and really lays out what softwares are permitted to be used. What's safe, what's confidential?

Like for us as a law firm, we know we've got privileged information. Healthcare [00:02:00] facilities Have, HIPAA-protected information, so you can't just throw it into the web-based ChatGPT. That'll get you in a lot of trouble. What are the safe ways to use it?

What are the safe softwares that can be used, for your business? Um, when you do-- What types of things do we permit AI to be used for? What things do we not want AI used for? When we use AI, what is our protocol for checking to make sure that it's accurate? 'Cause ultimately we wanna make sure that the human user is responsible for the accuracy and is owning what the AI spits out.

How do we ensure that? What does that say in a policy? And, what is the human user doing to make sure that, we're not running afoul of any other laws? For example we're not using biased AI that is giving, frankly, you know, could be unlawful guidance.

How are we making sure that we're not using AI in a way that's discriminatory? So those are, the policies that like, or the issues you wanna embed to an AI policy.

Sarah Sawyer: Yeah, and I, I think once you have it, it'll give the guidance that your employees are no doubt looking for to [00:03:00] know how they should use it, whether they should use it.

In the absence of leadership on this topic, they will fill the void with their own independent research and what they're seeing online, what they're hearing, what other people might be doing. So part of it's just, that upfront guidance, but then part of it allows you to also performance manage any results or products that you're getting back because people are using this in a lot of ways and you might get something that you notice doesn't meet your expectations, like from an employee, because it was AI-generated and having those conversations around why that's acceptable or not acceptable or how they should be owning the work product, as you said, Russell. Like those conversations are a lot easier to have when you have a policy in place and you've set those expectations, and that you're evolving that policy and evolving how you're handling things in the workplace as the technology is evolving, as your use of it's evolving.

And being Able to have your own policy around what people can use can be really helpful in some of the examples you gave, especially around bias. Anyone who's managing people or who is doing [00:04:00] recruiting or doing any of that type of thing, if you have some really clear guidance on what they can use, or if you provide them a platform to use, whether it's Copilot or Claude or whatever it might be, you as an organization can set certain settings on those platform that prevent them from, doing certain things.

So the AI might tell them, "Hey, I can't do this," because, so someone might say, "Hey, write up this performance improvement plan for this employee, and I think these things about them. Do this." And you can make a setting on that technology that prevents them from doing that and actually says, "I can't answer that, but here's what I can do."

Right? You can get really deep into that. But you do wanna have some control over um, an understanding of how your employees are using it, 'cause they're gonna use it, and if you don't guide them, they're gonna use it how they think is best, which may or may not be what's best for the organization.

Russell Berger: Yeah and that's really the point is this tool is out there. If you know you have a bunch of employees that use vehicles, you gotta have a vehicle [00:05:00] use policy, right? You gotta have an AI policy 'cause people are using the AI technology and so you wanna be thoughtful, one, not just about the policy, but two, also the tools that you permit use for, and you wanna have a game plan for that as well 'cause you wanna make sure it's the right tools for your company that fit the right way and, to the exclusion of other tools.

Sarah Sawyer: Yeah. Well, thanks Russell. Great advice, and I'll see you next time.

Russell Berger: Thanks, Sarah.