



When the Algorithm Becomes the Manager

Rethinking Employer Liability for AI-Driven Supervision

EMPLOYMENT LAW HAS LONG ASSUMED that managerial authority is exercised by human actors. Performance evaluations, discipline, scheduling, promotion, and termination decisions traditionally flowed from identifiable supervisors whose intent, bias, or negligence could be assessed. That assumption is rapidly becoming obsolete.

The Rise of Algorithmic Management

Across industries, employers now deploy algorithmic systems that assign workloads, evaluate productivity, rank employees, reduce hours, flag workers for discipline, or even trigger termination. These systems—often marketed as “decision support tools”—frequently operate with minimal human oversight. Yet employment law has not meaningfully confronted a fundamental question: when an algorithm exercises managerial authority, who bears legal responsibility for its outcomes?

Most regulatory and scholarly attention has focused narrowly on artificial intelligence in hiring. The more consequential development, however, is AI’s quiet migration into day-to-day supervision. Algorithms increasingly determine which employees receive favorable shifts, which are labeled “low performers,” and which are deemed “high risk” for disengagement or attrition. These determinations can directly affect compensation, job security, and advancement opportunities—core terms and conditions of employment.

Why Delegation Does Not Eliminate Liability

From a doctrinal standpoint, employers may argue that discriminatory or retaliatory outcomes produced by algorithms lack the requisite intent to support liability. That argument should fail. Anti-discrimination statutes generally impose liability based on effects and causation, not moral blameworthiness. Courts have long recognized that employers cannot evade responsibility by delegating employment decisions to third parties. Algorithms should be no different.

Indeed, employers retain control over whether to deploy such systems, how they are trained, what data they rely upon, and whether their outputs are reviewed or challenged. Allowing employers to disclaim liability because “the system made the decision” would create a perverse incentive to automate risk rather than prevent it. Employment protections would erode precisely where managerial power is most opaque.

The Way Forward

Existing legal frameworks already point toward a solution. The doctrine of non-delegable duty, vicarious liability principles, and the Supreme Court’s “cat’s paw” jurisprudence all support the conclusion that employers remain accountable when decision-making authority—human or not—produces unlawful outcomes. An algorithm that consistently disadvantages older workers, caregivers, or employees who engage in protected activity should trigger scrutiny regardless of whether a human harbored animus.

What is missing is a clear analytical lens for courts, employers, and practitioners. Employers should be required to treat algorithmic supervision as they would any managerial function: subject to validation, audit, transparency, and meaningful human review. Failure to do so should expose them to the same liability that would attach if a biased or careless supervisor were making the decisions.

As algorithmic management becomes normalized, employment law faces a choice. It can allow accountability to dissolve into technical complexity—or it can reaffirm a simple principle: managerial power, however exercised, carries legal responsibility. The future of workplace protections may depend on that choice. ■

If you have questions about the algorithmic management in the workplace, contact the NIEDWESKE LAW FIRM, LLC at 908-738-8500 and one of our highly skilled employment attorneys will assist you.