Automated Decisions, Two Continents

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INPLP 11th Annual Conference

Amsterdam · 21 Nov 2026

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The US AI regulatory parfait



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One versus many

United States: many laws

Selected examples

Generative AI laws

CA AB 2013 (training data)
CA SB 942 (AI Transparency Act)

ADMT laws

CA CPPA ADMT regulations
Colorado SB 26-189
Connecticut PA 26-15 (SB 5)
NYC Local Law 144

Chatbot laws

CA SB 1001 (bot disclosure)
Utah HB 452 (mental health chatbots)

Companion bot laws

CA SB 243 (companion chatbots)
NY GBL Art. 47 (AI companions)

European Union: one law

1

EU AI Act

Regulation (EU) 2024/1689

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Significant decision vs. high risk

United States: ADMT laws

California CPPA regs: "significant decision"
Financial or lending services, housing, education, employment, healthcare

Colorado SB 26-189: "consequential decision"
Education, employment, housing, financial or lending, insurance, healthcare, essential government services

Connecticut PA 26-15: "employment-related decision"
Employment only

NYC Local Law 144: "employment decision"
Employment only: screening for hiring or promotion

European Union

AI Act: "high-risk" (Art. 6(2), Annex III)
Biometrics; critical infrastructure; education; employment; essential private and public services (incl. credit scoring, life and health insurance); law enforcement; migration; justice and democratic processes

GDPR Art. 22: solely automated decisions
"… which produces legal effects concerning him or her or similarly significantly affects him or her" – no sector list

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Triggers: influence vs. replace

Broadest trigger

Narrowest trigger



EU AI Act Art. 6(3)	Colorado SB 26-189	Connecticut PA 26-15	NYC Local Law 144	California CPPA regs
"not materially influencing the outcome of decision making" Exit from high-risk for Annex III systems; profiling is always high-risk	*"materially influence"* Output is a "non-de minimis factor" and "affects the outcome"	*"substantial factor used to make or materially influence"* "Substantial factor": "meaningfully alters the outcome"	*"substantially assist or replace discretionary decision making"* Narrowed by 6 RCNY §5-300: output used alone, weighted most, or to overrule	*"replace human decisionmaking or substantially replace human decisionmaking"* "Substantially replace": decision "without human involvement"

EU: Annex III systems are high-risk by default and 6(3) is an exit. US: each phrase is an entry trigger.

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What goes into the test: EU AI Act

AI Act Art. 6(3): exception to high-risk for Annex III systems

Not high-risk if it poses no significant risk of harm, including by "not materially influencing the outcome of decision making", and one condition applies:

(a) It performs only a narrow procedural task

(b) It improves the result of a human activity already completed

(c) It detects patterns or deviations in past decisions, without replacing or influencing the human assessment absent proper human review

(d) It performs a preparatory task for an Annex III assessment

Profiling: always high-risk, even if a condition applies

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What goes into the test: Colorado

DRAFT rules: 4 CCR 904-6, Rule 2.2 "De Minimis Factor" (interim draft, 6 Oct 2026; not adopted)

"De minimis": independent factors played a significantly larger role. Considerations:

1. Did the decision maker see the output, and did the decision match it?
2. Did they independently review other information, incl. primary evidence?
3. Did they have the subject-matter understanding to decide without it?
4. "Whether the Consequential Decision maker had the authority to make or change the Consequential Decision based on their independent review and analysis."
5. "Whether the Deployer's marketing, procurement contracts, internal policies, or training materials describe or direct that the ADMT output be used as a primary or determinative basis for the decision, or train personnel to treat the output as authoritative."
6. Is the data too voluminous or complex for a person to review in the time available?

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What goes into the test: Connecticut

PA 26-15 (SB 5) §7: automated employment-related decision technology

Covered: output is a "substantial factor" used to make or materially influence an employment-related decision

Substantial factor: meaningfully alters the outcome, e.g. a score, ranking, recommendation, classification or constraint

Excluded: everyday software (spreadsheets, databases, word processing, security tools) that does not make or materially influence the decision

Excluded: incidental uses, and purely descriptive, diagnostic or statistical information not relied on

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What goes into the test: NYC

Local Law 144 and 6 RCNY §5-300

A tool is covered if used to "substantially assist or replace discretionary decision making", meaning any of:

(i) The output is the only factor considered

(ii) The output is one of several criteria but weighted more than any other

(iii) The output is used to overrule conclusions from other factors, including human decision-making

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What goes into the test: California

CPPA regulations §7001(e)

ADMT: technology that replaces or substantially replaces human decisionmaking

Substantially replaces: the output is used to decide without "human involvement"

Human involvement: the reviewer must

(A) know how to interpret and use the output

(B) review and analyze the output and other relevant information

(C) have authority to make or change the decision based on that analysis

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Disclosure: AI Act vs. US

United States

California CPPA regs – Pre-use Notice: before ADMT processing, a "plain language explanation of the specific purpose", plus opt-out (or appeal) and access rights

Colorado SB 26-189 – adverse outcome notice: "within thirty days after making the decision", a "plain language description of the consequential decision and the role the covered ADMT played", how to get more information, and consumer rights (plus notice before use)

Connecticut PA 26-15: written notice before the employment decision (purpose, trade name, data, sources)

NYC LL144: notice "no less than ten business days before such use" (§20-871(b)); bias audit summary posted

Gen AI and bots: CA SB 942 latent disclosures and detection tool; "not human" notices for bots and companions (CA SB 1001, CA SB 243, NY GBL Art. 47, CT, Utah)

EU AI Act

Art. 26(11): Annex III deployers inform persons "subject to the use of the high-risk AI system"

Art. 26(7): employers inform workers' representatives and affected workers before use

Art. 50: AI interaction notice; machine-readable marking; deep fake disclosure

Art. 86: "clear and meaningful explanations of the role of the AI system"

Similar core: tell people AI is used and explain its role. Art. 26(11) sets no content; US notices list it.

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Assessments: FRIA vs. US

EU AI Act: FRIA (Art. 27)

Who: public-law bodies, private entities providing public services, credit scoring and life/health insurance deployers (Annex III 5(b), (c))

When: "Prior to deploying"; update if elements change

What: processes, frequency, affected groups, "specific risks of harm", human oversight, mitigation and complaints

Filed: results notified to the market surveillance authority

United States

California CPPA regs: risk assessment

Business, before using ADMT for a significant decision; review at least every 3 years; information submitted to the CPPA (first by 1 Apr 2028)

Colorado SB 26-189

No impact or risk assessment duty in the enacted text

Connecticut PA 26-15

Impact assessment only for state agencies' AI; none for private employers' tools

NYC LL144: bias audit

By an "independent auditor" within one year before use; selection or scoring rates and impact ratios by category; summary posted before use

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