



Hiring by Algorithm: The New Rules of AI in Employment

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DISCLAIMER

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AGENDA

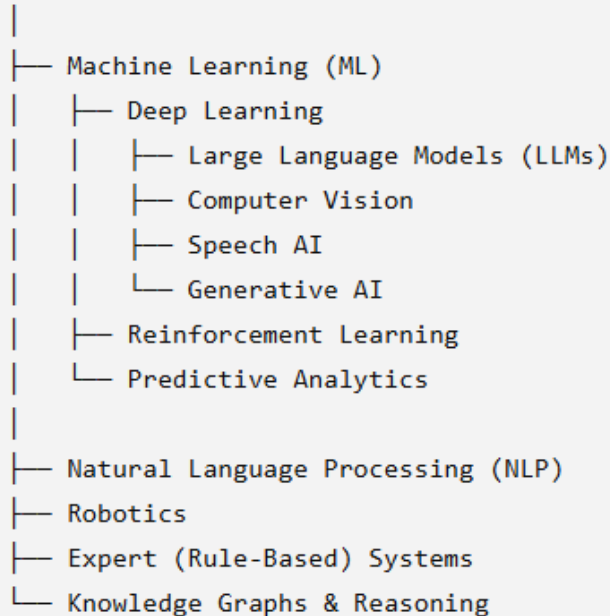
- What is AI (now)
- AI In Hiring—What's Actually in the Black Box
- AI Implementation From Legal Perspective
- AI Implementation from IO Psychologist Perspective

What is AI (now, in July 2026)

AI NOW—TECHNICAL ANSWER

The AI Landscape

Artificial Intelligence (AI)



- AI comes in many forms and functions
- AI Landscape is generated by ChatGPT
- Very (technically) comprehensive but not very helpful for the average professional.

ALGORITHMS

Algorithms are **equations or other logical rules used to solve a specific problem** — for example, to decide on a binary question (yes/no) or to estimate an unknown number.

- Step-by-step set of rules or operations
- Designed to divide people into groups
- Used to make decisions about these people based on group membership

GENAI GUESSES THE NEXT BEST WORD

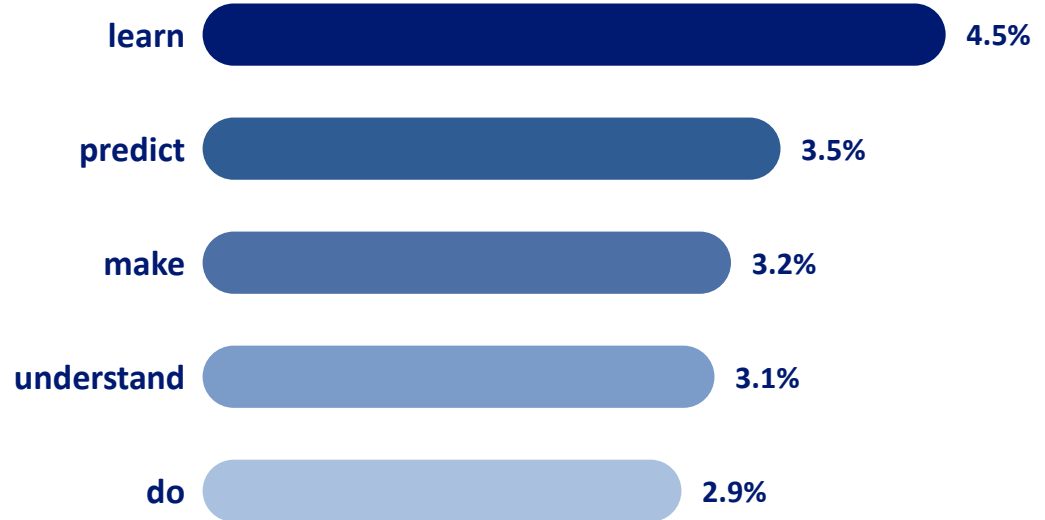
PROMPT

The best thing about AI is its ability to _____

predicts



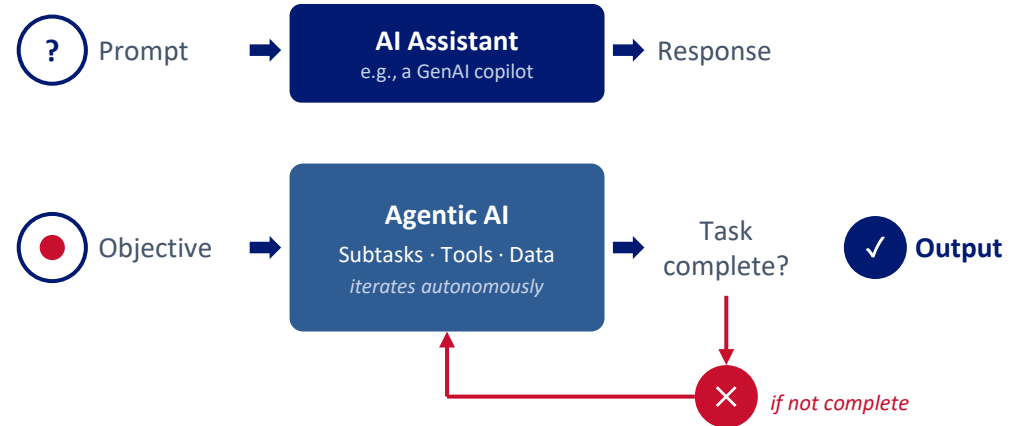
Most likely next words



Stephen Wolfram, "What Is ChatGPT Doingand Why Does It Work?"

“AGENTIC AI” AND “AI AGENTS”

- “Agentic AI” describes self-governing bots that solve problems and act with **limited human supervision**.
- Unlike AI “assistants,” agentic AI acts and **completes defined objectives without ongoing human interaction**.
- Can be **used to perform a broad range of tasks** to drive human efficiency (*e.g.*, managing patient administration).
- AI agents **can act unpredictably** as they work independently. Outputs should always be verified before use.



Comparison of the workflows of a standard AI Assistant (e.g., Copilot) and an AI Agent system

AI NOW—PRACTICAL ANSWER

- Professionals can get a lot of value from a handful of AI Tools

Tool Category	What it's for
AI Chat Assistant	Writing, brainstorming, explaining, summarizing
Meeting Assistant	Record, transcribe, and summarize meetings
Document AI	Search and analyze long documents
Presentation AI	Create slides quickly
AI Spreadsheet Tools	Analyze data and create formulas
Generative AI	Create content, graphics, music, powerpoints, etc.
Coding Assistant	Help write and explain code
Workflow Automation	Connect apps and automate processes
Agentic AI	Autonomous AI system work to achieve goals

AI NOW—PRACTICAL ANSWER

- Professionals can get a lot of value from 3 categories of AI Tools

“Copilots”	Generative AI	Agentic AI
AI Chat Assistant Meeting Assistant Document AI Presentation AI	AI Spreadsheet Tools Generative AI Coding Assistant	Workflow Automation Agentic AI

WHERE AI SHOWS UP IN HR TODAY



LIVE IN MARKET



Keystroke & activity-based **productivity scoring**



Badge-swipe data + AI **to flag RTO non-compliance**

The legal risk follows any system that influences **how people are evaluated** — not just how they are hired.

AI in Hiring

What's Actually Inside the Black Box

"How Can AI decide who is
worth interviewing?"

The Core Problem

THE MODEL LEARNS FROM YOUR HISTORY

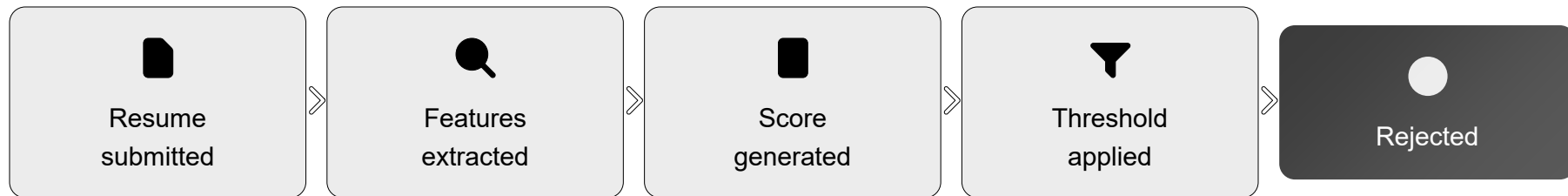
Imagine you hired a new recruiter. But instead of training them on your values and your goals, you handed them a filing cabinet with thirty years of hiring decisions and said — figure it out.

Learn who we hired. Learn who we didn't. And go do that again.

That is essentially what these systems do. They study historical outcomes and learn to reproduce them. Which sounds efficient. Until you ask what was actually in that filing cabinet.



THE DATA PIPELINE



▲ No human involved

Here's what actually happens when someone applies to a job using one of these platforms. Their resume goes in. The system pulls out signals — skills, dates, schools, location, contact info.

It generates a score. That score is compared to a threshold. And if they don't clear it, they're out. **Automatically.** Before a recruiter ever sees their name.

⚡ The person on the other end gets a form email. The system moves on. It just processed **ten thousand other resumes** in the same second.

WHAT THE MODEL ACTUALLY LEARNED

○ What we told it:

Find qualified candidates.



What it learned:

Find candidates who look like the people we hired before.

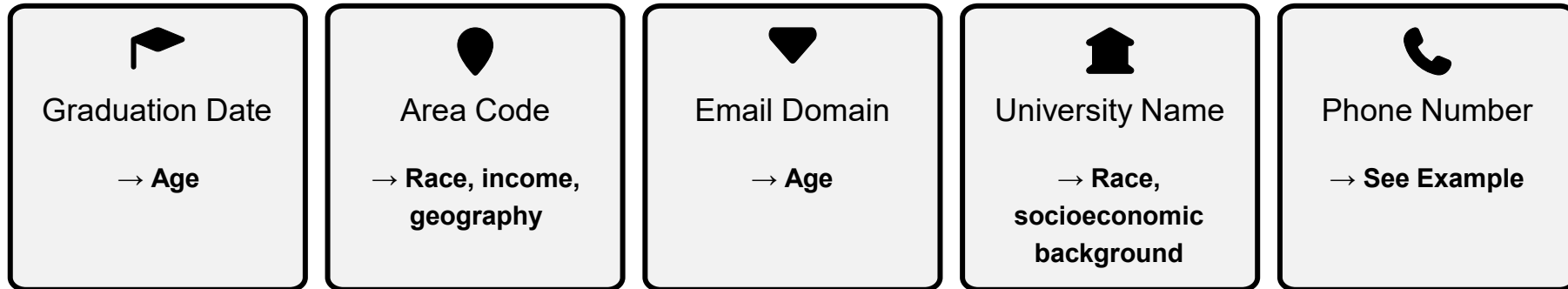
Here's the problem.

- We told the model to find good candidates.
- But the only definition of 'good candidate' it has access to is **whoever actually got hired historically**.
 - It has no concept of potential.
 - No concept of fairness. No concept of what the law requires.
 - No concept of current skills in demand.

It optimizes for pattern matching against a historical record. And if that historical record reflects thirty years of biased decisions — conscious or unconscious — the model learns those biases and executes them faster, and at greater scale, than any human recruiter ever could.

THE DISCRIMINATION BY PROXY PROBLEM

You don't need to include protected information. The model finds it anyway.



-  **The Phone Number Example:**
- A company reasonably rejects out-of-state applicants who won't relocate.
 - Sensible business decision.
 - The model observes that pattern and learns that certain area codes equal rejection.

THE BLACK BOX PROBLEM

Not all AI is the same — and the difference matters for compliance.

Layer	What It Does	Auditable?
1 Encoder / OCR	Reads and parses the resume — pulls out names, dates, skills, schools	Yes
2 Classical ML Scorer	Ranks and rejects the candidate — produces a score like a credit score <i>Where proxy signals live — this is where real audits must go</i>	With effort
3 Generative Ai	Explains the decision in plain English — creates post-hoc narratives <i>Written AFTER the score was computed — not an audit trail</i>	Not what you think

The generative layer didn't make the decision — it told a story about a decision that was already made.

The explanation and the decision are not the same thing.

That paragraph is not an audit trail. It is a very convincing imitation of one.

THE MOMENT TO ASK HARDER QUESTIONS

When your vendor shows you a system that explains its
reasoning in plain English —

**that is the moment to ask harder questions, not
fewer.**

AI Implementation From Legal Perspective

EXISTING LAWS STILL APPLY

The rules didn't reset.

Existing federal and state antidiscrimination laws still apply.

- New AI-specific state laws add to them — they don't replace them.
- **You can be liable even without an AEDT law.**

Federal laws

Anti-discrimination — Title VII, Equal Pay Act, ADEA, ADA · Consumer protection — FCRA

State & local statutes

Civil rights · equal pay · unfair or deceptive acts or practices · privacy laws

Enforcement signal

States are issuing guidance to regulate, investigate & enforce against AI-driven harm under existing laws

WHEN AI USE TRIGGERS LEGAL OBLIGATIONS

THE RISK SPECTRUM

Not every AI use carries the same legal risk. **Obligations rise as the tool shapes the decision.**

INCREASING LEGAL EXPOSURE →

LOWER RISK

Assistive · no decision

- Drafting job descriptions
- Interview scheduling
- Aggregate workforce dashboards

ELEVATED

Shapes who is seen

- Resume keyword search
- Candidate sourcing & outreach
- Applicant FAQ chatbots

TRIGGERS OBLIGATIONS

Scores or decides

- Scoring & ranking candidates
- Automated screening & filtering
- Pay & promotion recommendations

The obligation follows influence — the more a tool shapes the decision, the more the law expects: **testing, notice, and human review.**

STATE AI HIRING LAWS

HOW EACH LAW DEFINES THE TOOL

NEW YORK CITY	COLORADO	CALIFORNIA	CONNECTICUT
In effect	Effective Jan 2027	2025–2027	Oct 2026
Local Law 144 “AEDT”— a process using ML or AI that scores, ranks, or recommends to substantially assist or replace an employment decision.	SB 26-189 “ADMT”— automated decision-making technology that is a substantial factor in a consequential employment decision.	CCPA ADMT + CRD “ADMT”/“ADS”— technology that processes personal data to replace or substantially replace human decisions; FEHA calls it an automated-decision system.	Public Act 26-15 “AEDT”— an AI system that makes, or is a substantial factor in making, a consequential decision like hiring, pay, or firing.

They regulate **influence** — not just fully automated decisions.

Watch list: **Illinois** (Human Rights Act) · **New Jersey** (Law Against Discrimination) · **Texas** (TRAIGA) · **Maryland** (interview facial recognition)

COMMON OBLIGATIONS

WHAT COMPLIANCE ACTUALLY REQUIRES



Notice & disclosure

Tell applicants and employees before an AI tool is used to evaluate them.



Opt-out & alternative

Offer a way to decline automated processing or request a human review.



Explanation & appeal

Give reasons for adverse outcomes and a path to contest or correct them.



Bias audit & assessment

Independent bias testing or impact assessments before and during use.



Human oversight

Keep a person meaningfully in the loop on consequential decisions.



Recordkeeping

Retain notices, data, and audit results — often for four years.

LITIGATION IS MOVING TO SYSTEMS

WORKDAY

Mobley v. Workday, 740 F. Supp.3d 796 (N.D. Cal. Jul. 12, 2024)



Disparate impact + vendor-as-agent

- Court let federal bias claims proceed against the vendor as an alleged agent performing hiring functions.
- ADEA collective certified for applicants age 40+.

EIGHTFOLD

Kistler v. Eightfold, No. 4:26-cv-1768 (N.D. Cal. Mar. 2, 2026).



FCRA “consumer report”

- AI scores alleged to be an undisclosed employment-purpose consumer report.
- No need to prove bias — just missing disclosure, consent, and dispute rights.

Compliance helps — but it is not a complete defense.

Vendor reliance is not insulation: the employer owns the decision, and the vendor can still be pulled in.

A FIVE-PART GOVERNANCE PLAYBOOK

WHAT ORGANIZATIONS SHOULD DO



Intake and inventory

Catalog every tool that scores or ranks people across the hiring funnel.



Diligence and contracting

Demand real evidence and bake audit and indemnity rights into the contract.



Bias Testing

Test the use case in your own workflow — not just the vendor's model.



Human Governance

Keep a real human-in-the-loop with authority to override the tool.



Train & Monitor

Train users; watch for drift and feature creep across the lifecycle.

Vendor diligence is no longer procurement housekeeping — it is **litigation strategy**.

DILIGENCE AND CONTRACTING, IN PRACTICE



01 What good diligence looks like

- ✓ Demand bias and adverse-impact testing evidence.
- ✓ Map where the tool touches each hiring decision.
- ✓ Re-test on your own applicant pool and workflow.
- ✓ Review model documentation, data, and known limits.
- ✓ Confirm accommodations and a human-review path.



02 Contract terms to push for

- ✓ Audit or inspection rights where you can get them.
- ✓ Reasonable cooperation in litigation and inquiries.
- ✓ Indemnification for discrimination claims, if feasible.
- ✓ Data-use limits and deletion when you exit.
- ✓ Compliance warranties and clear exit rights.

Leverage varies — push for audit rights and indemnity where you can, and **document what you asked for.**

BIAS TESTING IS THE CENTERPIECE

Test the **use case**, not just the model.

- AI operates at scale and can be opaque.
- Models learn bias from historical decisions.
- Variables act as proxies for protected traits.

1

COMPLIANCE

Meet audit, notice, documentation & recordkeeping duties.

2

RISK MITIGATION

Catch disparities early; adjust inputs, thresholds, and use cases.

3

EVIDENCE

Build a record that you tested, understood, and responded.



Run bias testing by — or at the direction of — counsel. Framing it as legal advice may help support a claim of attorney-client privilege and/or work product.

KEEP A HUMAN IN THE LOOP

HUMAN-IN-THE-LOOP IS A GOVERNANCE FUNCTION

Meaningful human review means the reviewer can:

1

UNDERSTAND

Interpret what the tool's output actually means.

2

REVIEW

Weigh it against other relevant information.

3

OVERRIDE

Has real authority to change the decision.

Document deviations consistently — and monitor overrides as their own dataset.



THE BOTTOM LINE

The most defensible employers aren't the ones avoiding AI.
They're the ones who can **prove** they did each of these:



KNOW IT

what the tool
does



TEST IT

it for bias



GOVERN IT

how people use it



TRAIN IT

the decision-
makers



MONITOR IT

it over time

AI Implementation From IO Psychologist Perspective

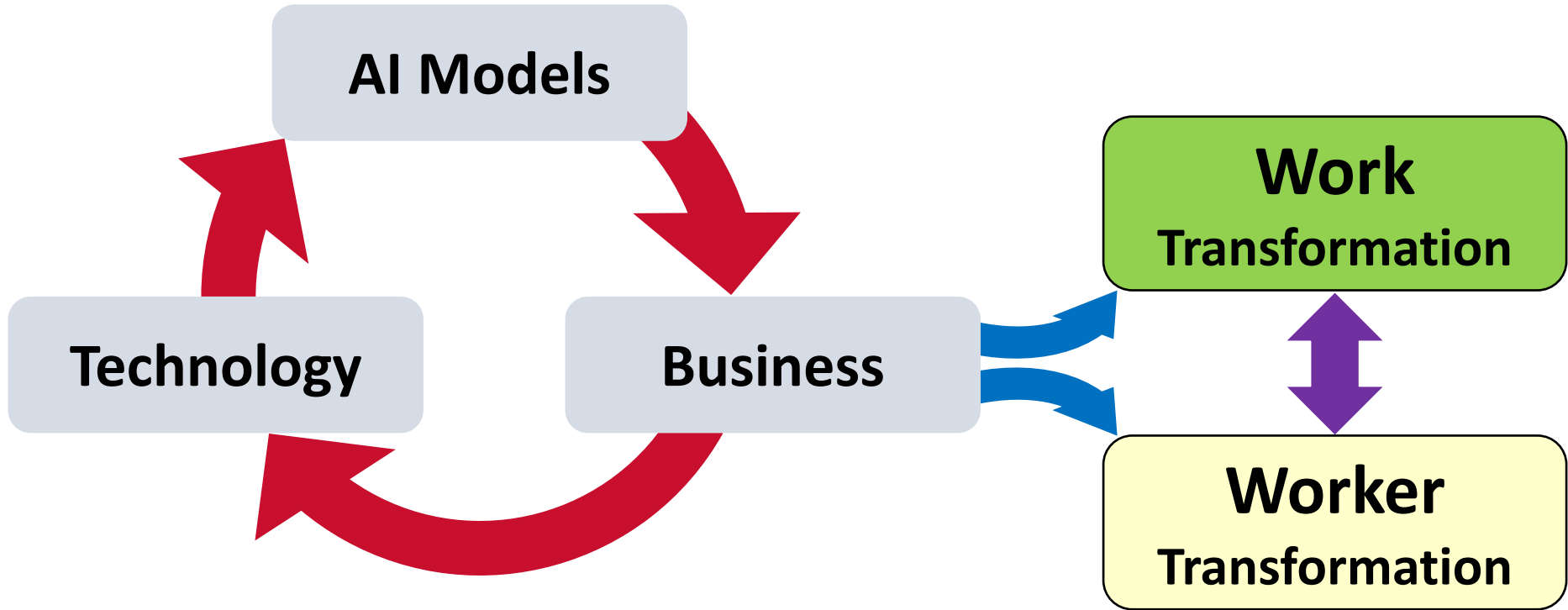
AI IMPACT ON THE WORKPLACE

Fluid Situation—We're Building the Plane While Flying It



T

AI IMPACT ON THE WORKPLACE



AI IMPACT >>

AI Models



Technology

2022

2023

2024

2025-26

Data Centers & Processor Power

- ChatGPT Launch
- Text Chat
- Basic Coding
- Hallucination Common

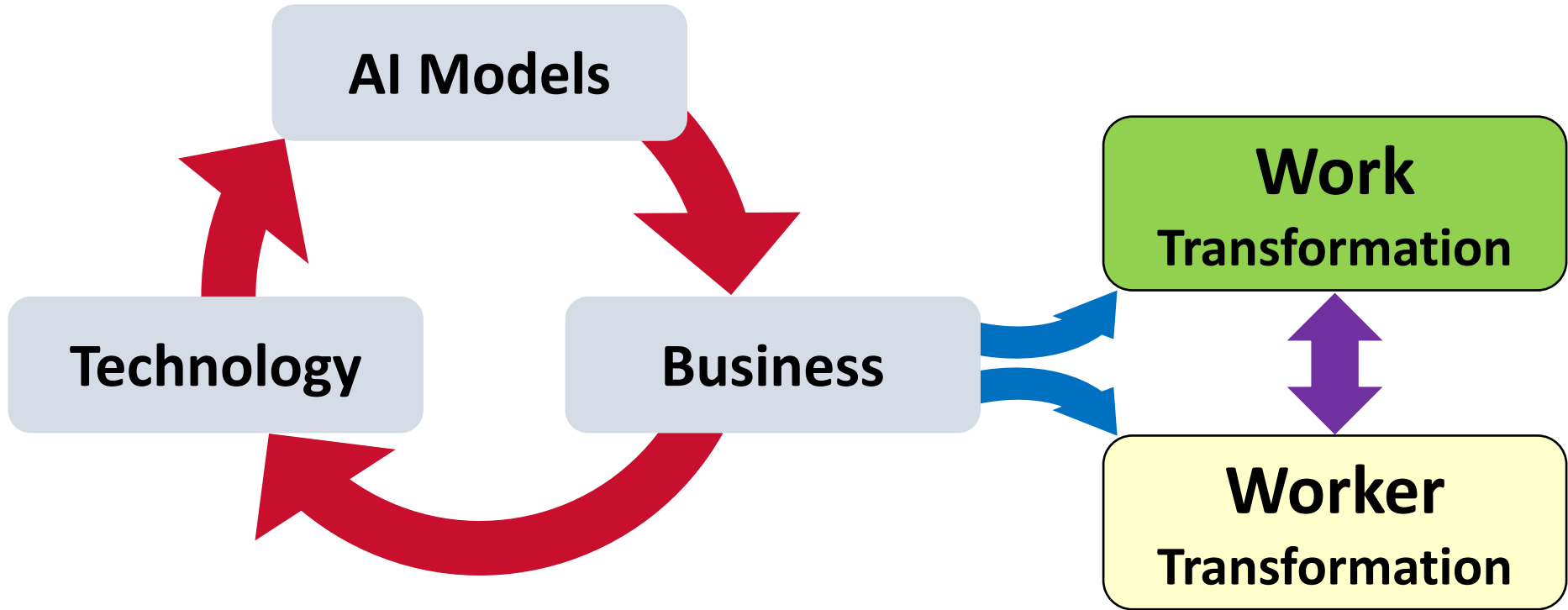
- ChatGPT 4
- Better Reasoning
- Longer Context
- Strong Coding

- Native Multimodal
- Image + Audio
- Voice Conversation
- Better Math
- Support Decisions
- Basic AI Agents

- AI Agents
- Use Bus. Systems & Tools
- Research Workflows
- Long Reasoning
- End-to-End Operations

- <https://llmtimeline.org/>
- <https://www.llm-evolution.com/>

AI IMPACT ON THE WORKPLACE



AI IMPACT

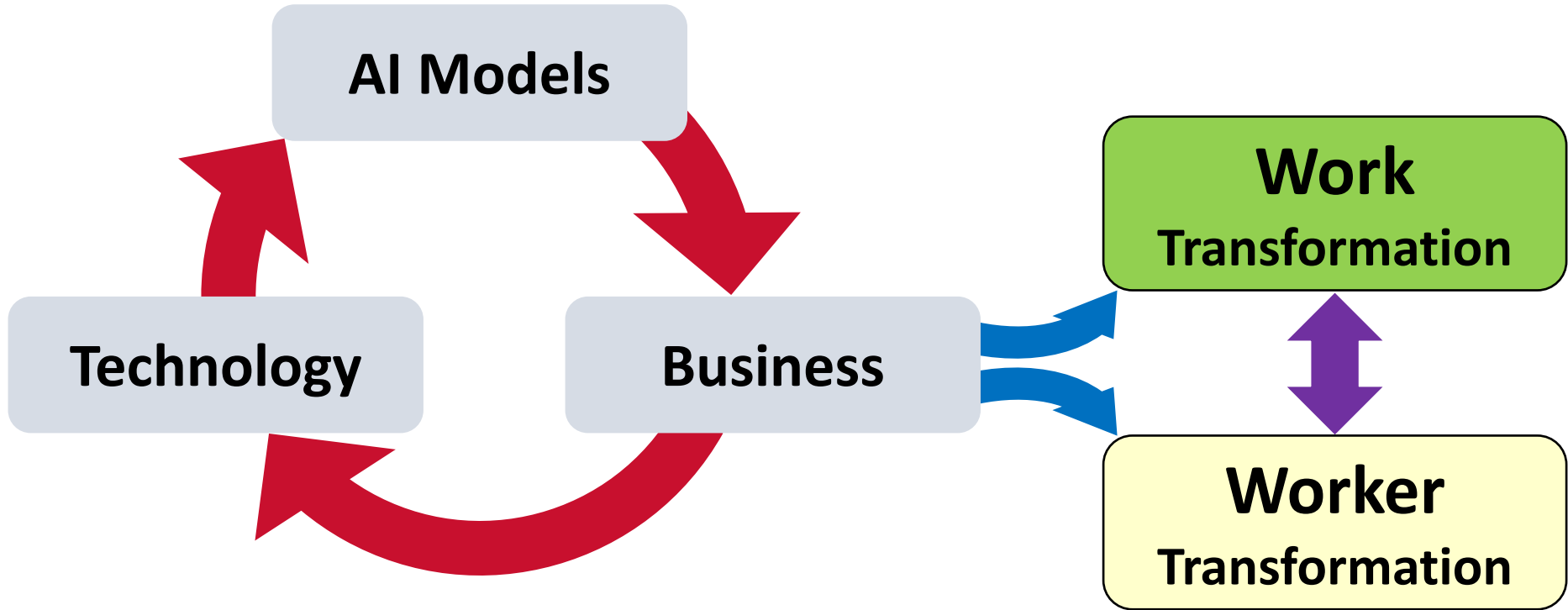
Business

AI Models



- Strategy
- Business Model
- Business Plans
- Operations
- Realignment

AI IMPACT ON THE WORKPLACE



AI IMPACT ON >>

Work Transformation

- AI Injecting Itself into the Work-flow
- Automating repetitive tasks
- Supporting employee decision-making
- Enhancing productivity
- Creating new job roles
- Changing workplace culture
- Improving customer experiences

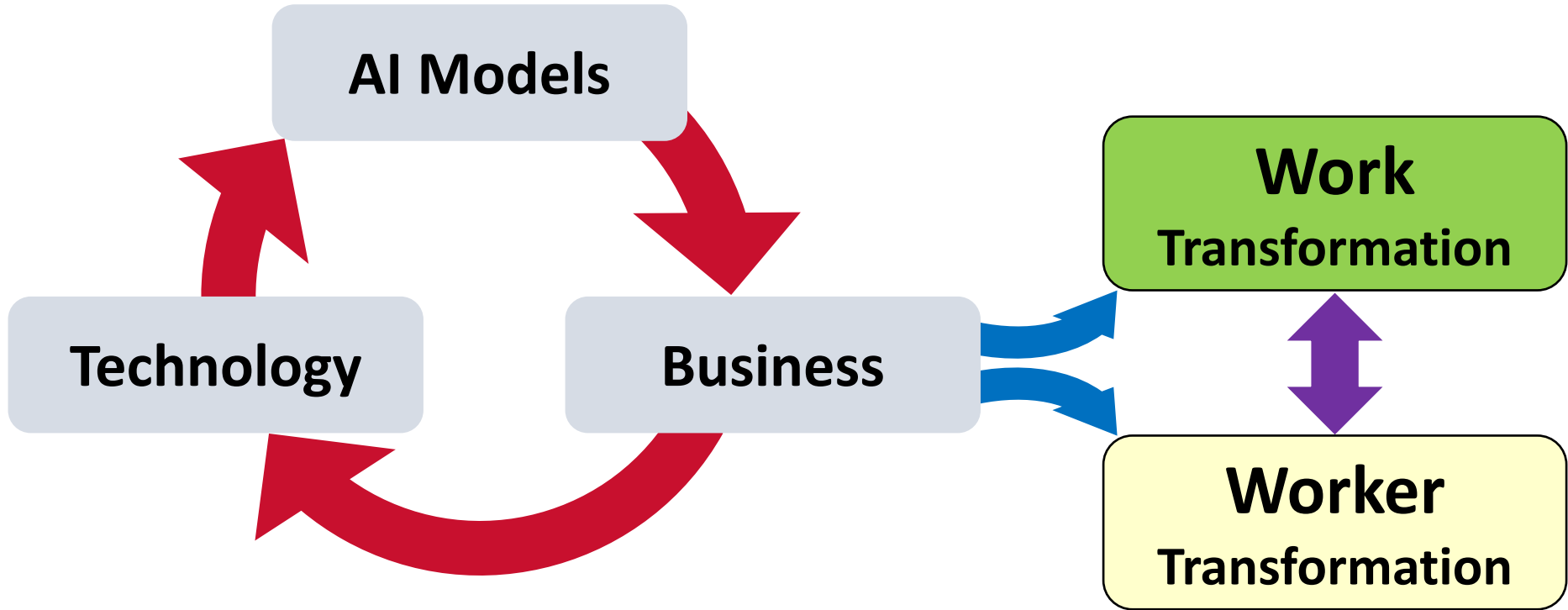
AI IMPACT ON >>

Work
Transformation

Why is There Transformation?

- Increasing (available) computing power
- Great Data Integration (Cloud Computing)
 - One of the Hurdles for Manual Analysis

AI IMPACT ON THE WORKPLACE



AI IMPACT ON >>

Worker Transformation

Current Trends

- Fluid and Adaptable
- Aptitude becoming more Critical than Achievement
- Continuous Learning
 - Traditional Job Models with Seniority Changes

AI IMPACT ON >>

**Worker
Transformation**



**Work
Transformation**

Assessment & Compliance

- Selection Testing
 - What to Test/Assess for???
- Performance Assessment
 - What is “good” performance???
- Validity (Reimagined)
 - Content
 - Criteria
 - Construct

RECAP

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A nighttime photograph of Washington, D.C. serves as the background for the left half of the slide. It shows the Washington Monument as a tall, brightly lit spire on the left. In the center, the Lincoln Memorial is illuminated, and the Potomac River flows in the foreground. The city lights of Washington are visible in the background under a dark blue sky with some clouds. A thick blue diagonal line separates this image from the white background on the right.

Thank You

www.nationalilg.org