

The Law of Employee Distillation and Cloning

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Abstract

The next generation of workplace AI may not merely replace employees; it may be trained to become them. Employers can now feed an employee's emails, chats, documents, meeting transcripts, code reviews, and behavioral traces into AI systems that reproduce not simply discrete outputs, but working style, tacit judgment, institutional memory, and professional persona. This Article calls this practice employee distillation and cloning, and offers the first systematic legal account of this emerging practice that marks a new frontier in the propertization of labor.

Existing law appears, at first glance, to offer employees many possible avenues of protection: privacy and data protection law, copyright, trade secret law's general skill, knowledge, and experience doctrine, the right of publicity, and contract law. Yet these protections largely dissolve upon closer inspection. Privacy law regulates only narrow forms of intrusive collection; data protection remains fragmented and uneven; copyright and trade secret laws often favor employers; right of publicity doctrine rarely reaches ordinary working identity; and contract law converts structural inequality into formal consent. The result, as this Article terms it, is a "rights mirage": the appearance of legal protection without meaningful control.

This Article further argues that the mirage matters. Although unregulated distillation may generate short-term productivity gains, it may also impose costs that firms do not fully internalize. These costs include productivity losses and organizational friction resulting from employee resistance, degraded knowledge sharing, reduced human-capital investment, impaired mobility, weakened cumulative innovation, and distinct dignitary and autonomy harms. The Article therefore calls for future governance directed not at prohibiting employee distillation, but at structuring it through notice, meaningful consent or bargaining, use limits, compensation, and collective governance.

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