



Automated Employment Decision Tools: Frequently Asked Questions

The NYC Department of Consumer and Worker Protection (DCWP) enforces Local Law 144 of 2021 which regulates automated employment decision tools. These FAQ provide general information and guidance. Sections include:

- I. Overview of the Law
- II. General Bias Audit Requirements
- III. Data Requirements
- IV. Independent Auditors
- V. Responsibility for Bias Audits
- VI. Notice Requirements
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I. Overview of the Law

1. What is Local Law 144 of 2021?

The Law prohibits employers and employment agencies from using an automated employment decision tool (AEDT) in New York City unless they ensure a bias audit was done and provide required notices.

The Law was enacted in 2021. It took effect on January 1, 2023. Enforcement begins on July 5, 2023.

2. What is an AEDT?

An AEDT is a computer-based tool that:

- Uses machine learning, statistical modeling, data analytics, or artificial intelligence. AND
- Helps employers and employment agencies make employment decisions. AND
- Substantially assists or replaces discretionary decision-making.

3. How can you tell if a tool uses machine learning, statistical modeling, data analytics, or artificial intelligence?

Machine learning, statistical modeling, data analytics, or artificial intelligence are mathematical, computer-based techniques used to:

- Generate a prediction or a classification. AND
- Identify the inputs, the relative importance of the identified inputs, and any other parameters to improve the accuracy of the generated prediction or classification.

A prediction includes but is not limited to an assessment of a candidate's fit for the job or likelihood of success.

A classification is an assignment of an observation to a group, such as categorizations based on skill sets or aptitude.

See [The Rules of the City of New York](#)¹ for additional guidance.

¹ Visit <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-138393>

4. What are the Law’s requirements and how do they apply to an AEDT used “in the city”?

The Law applies only to employers and employment agencies that use an AEDT “in the city.” This means:

- The job location is an office in NYC, at least part time. OR
- The job is fully remote but the location associated with it is an office in NYC. OR
- The location of the employment agency using the AEDT is NYC or, if the location of the employment agency is outside NYC, one of the bullets above is true.

If the Law applies:

- A bias audit of the AEDT must be completed before its use. AND
- Job candidates who are New York City residents must receive notice that the employer or employment agency uses an AEDT.

5. Is an “employment decision” just the final hiring or promotion decision?

No. The Law defines employment decision more broadly to include screening.

If employers or employment agencies use an AEDT to substantially help them assess or screen candidates at any point in the hiring or promotion process, they must comply with the Law’s requirements before using an AEDT.

6. Do the Law’s requirements apply if an employer or employment agency uses an AEDT to scan a resume bank, conduct outreach to potential candidates, or invite applications?

No. The requirements apply to AEDT use to assess candidates for hiring or promotion only. A candidate for employment is a person who has applied for a specific position by submitting the necessary information or items in the format required by the employer or employment agency.

If AEDT use is to assess someone who is not an employee being considered for promotion and who has not applied for a specific position for employment, the bias audit and notice requirements do not apply.

II. General Bias Audit Requirements

1. What is a bias audit?

A bias audit is an impartial evaluation by an independent auditor.

At a minimum, an independent auditor’s evaluation must include calculations of selection or scoring rates and the impact ratio across sex categories, race/ethnicity categories, and intersectional categories.

See [The Rules of the City of New York](#)² for examples of what must be in a bias audit.

2. Do employers and employment agencies have to stop using an AEDT if the results of a bias audit seem to indicate a disparate impact?

The Law requires employers and employment agencies to do a bias audit; however, the Law does not require any specific actions based on the results of a bias audit.

Important: Federal, state, and New York City laws prohibit discrimination. Employers and employment agencies must comply with all relevant Anti-Discrimination laws and rules to determine any necessary actions based on the results of a bias audit.

Visit nyc.gov/humanrights for more information about the NYC Human Rights Law.

² Visit <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-138530>

3. Do employers and employment agencies have to publicly share the results of a bias audit?

Yes. Employers and employment agencies must publish:

- A summary of the results of the most recent bias audit. AND
- The distribution date of the AEDT.

Distribution date is the date employers and employment agencies began using the AEDT.

They can:

- Post this information on the employment section of their website. AND/OR
- Provide an active hyperlink to a website with this information.

The summary of results must include:

- The date of the most recent bias audit of the AEDT. AND
- The source and explanation of the data used to conduct the bias audit. AND
- The number of individuals the AEDT assessed that fall within an unknown category. AND
- The number of applicants or candidates, the selection or scoring rates, as applicable, and the impact ratios for all categories.

4. How often must employers and employment agencies perform a bias audit?

Every year. Employers and employment agencies can only rely on a bias audit for one year from the date it was conducted. To be able to use an AEDT, they must ensure the AEDT has had a bias audit within the past year.

III. Data Requirements

1. What data should employers and employment agencies use to conduct a bias audit?

Historical data of the AEDT must be used to conduct a bias audit. "Historical data" is the data collected during an employer's or employment agency's use of an AEDT to assess candidates for employment or employees for promotion.

There are exceptions for test data. See the FAQ that follow.

2. Can a bias audit use historical data from another employer's or employment agency's use of the same AEDT?

Yes. A bias audit can use the historical data of multiple employers or employment agencies that use the same AEDT; however, employers and employment agencies can only rely on it if:

- They provided historical data from their use of the AEDT to the independent auditor conducting the bias audit. OR
- It is the first time they are using the AEDT.

3. Can employers and employment agencies limit the historical data—for example, time periods—used for a bias audit?

The Law has no specific requirement about the historical data used for a bias audit. However, the summary of the results of a bias audit must include the source and explanation of the data used to conduct the bias audit. If the historical data was limited in any way, including to a specific region or time period, the audit should explain why.

4. Can companies that hire for different positions rely on a bias audit based on the historical data of multiple employers or employment agencies?

Yes. However, companies can only rely on it if:

- They provided historical data from their use of the AEDT to the independent auditor conducting the bias audit. OR
- It is the first time they are using the AEDT.

There is no additional requirement that the companies providing historical data used the AEDT to hire or promote for the same type of position.

5. What should employers and employment agencies do if they do not collect demographic data from applicants or if they have minimal historical data from their use of an AEDT?

If there is insufficient historical data available to conduct a statistically significant bias audit, test data can be used to conduct a bias audit.

See [The Rules of the City of New York](#)³ for specific examples of data use.

6. Can employers and employment agencies impute⁴ demographic information to applicants or use algorithmic software to infer it?

No. Imputed or inferred data cannot be used to conduct a bias audit.

Historical data must be used to conduct a bias audit. Historical data is data collected during an employer's or employment agency's use of an AEDT to assess candidates for employment or employees for promotion.

If there is insufficient historical data available to conduct a statistically significant bias audit, the following can be used to conduct a bias audit:

- Historical data of other employers or employment agencies. OR
- Test data.

7. What is a “statistically significant bias audit”?

DCWP has not set a specific requirement for statistical significance. If an independent auditor determines there is insufficient historical data to conduct a statistically significant bias audit, test data may be used to conduct the bias audit. The summary of results of the bias audit must explain why test data was used and include the source and description of the data.

8. What are the requirements for test data?

To allow for flexibility and development of best practices in this rapidly developing field, DCWP has not set requirements for test data. However, the summary of results of the bias audit must include the source and explanation of the data used to conduct the bias audit. In addition, if the bias audit used test data, the summary should explain how the data was sourced or developed.

9. When can the calculations in a bias audit exclude a sex, race/ethnicity, or intersectional category?

If a category represents less than 2% of the data used for the bias audit, it can be excluded from the required calculations. However, the calculations must include all other categories.

Note: The requirements for the bias audit are minimum requirements. An independent auditor can provide further explanation of the data or calculations.

³ Visit <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-138529>

⁴ In statistics, imputation is the process of replacing missing data with substituted values.

IV. Independent Auditors

1. Does DCWP have a list of approved independent auditors?

No. The Law does not require independent auditors to be approved by DCWP.

2. Who can be an independent auditor?

An independent auditor is someone who exercises objective and impartial judgment in the performance of a bias audit.

Auditors are NOT independent if they:

- Work for the employer or employment agency that will use the AEDT or the vendor that developed or distributes the AEDT. OR
- Were involved in using, developing, or distributing the AEDT regardless of where they work currently. OR
- Have a direct financial interest or a material indirect financial interest in the employer or employment agency that will use the AEDT or the vendor that developed or distributed the AEDT.

V. Responsibility for Bias Audits

1. Who is responsible for complying with the Law's bias audit requirement?

Employers and employment agencies are responsible for ensuring they do not use an AEDT unless a bias audit was done.

The vendor that created the AEDT is not responsible for a bias audit of the tool.

2. Can a vendor do a bias audit of its own tool?

Yes. A vendor can have an independent auditor do a bias audit of its tool. The Law does not prohibit a vendor from having a bias audit done or coordinating the collection of data to use to conduct a bias audit.

Important: Employers and employment agencies are ultimately responsible for ensuring a bias audit was done before using an AEDT.

VI. Notice Requirements

1. How must employers and employment agencies provide notice of AEDT use?

Employers and employment agencies must notify employees and job candidates who are residents of New York City that they are using an AEDT and the job qualifications or characteristics the AEDT will assess. Employers and employment agencies must:

- Include in the notice instructions to request a reasonable accommodation under other laws. AND
- Provide the notice 10 business days before using an AEDT. AND
- Provide the notice in a job posting or by mail or email. Note:
 - *For job applicants:* As an alternative, employers and employment agencies can provide notice on the employment section of their website. Notice on a website does not have to be position-specific.
 - *For candidates for promotion:* As an alternative, employers and employment agencies can include notice in a written policy or procedure. Notice provided in this way does not have to be position-specific.

2. If employers and employment agencies provide notice on their website, when can they start using an AEDT to assess applicants for a position?

Employers and employment agencies can begin using an AEDT 10 business days after posting notice on their website regardless of when a specific job posted.

VII. Complaints

1. How can someone make a complaint about violations of the Law?

To submit a complaint, contact 311 or visit the DCWP website at nyc.gov/dcwp.

Complaints should include all of the following:

- Details of the job posting or position
- Name and type of AEDT
- Notice provided, if any
- Explanation of suspected violation (for example, AEDT used without notice)

2. How will DCWP handle discrimination complaints involving AEDT use?

DCWP enforces the Law's prohibition on AEDT use without a bias audit and required notices.

Claims of discrimination involving AEDT use should go to the NYC Commission on Human Rights (Commission) which enforces the NYC Human Rights Law.

DCWP will refer any claims of discrimination to the Commission.