NEW YORK CITY

DEPARTMENT OF CONSUMER AND WORKER PROTECTION

DCWP RULES HEARING - AEDTS

VIRTUAL PUBLIC HEARING

VIA TELECONFERENCE

January 23, 2023

INDEX

1   MS. KARLINE JUNG: Hi, everyone. We're just

2   going to get started in a few minutes. So if every-,

3   if everyone could just mute themselves, that would be

4   great. Thank you. I'm just going to wait a couple of

5   more minutes and then get started.

6   Okay. Thanks for your patience, everyone.

7   We'll start the hearing now. Good morning. My name

8   is Karline Jung. I've been designated as the hearing

9   officer for the public hearing of the Department of

10   Consumer and Worker Protection on proposed rules to

11   implement Local Law 144 of 2021 relating to automated

12   employment tools. This hearing is being held by

13   teleconference call. It is now 11:04 a.m. on Monday,

14   January 23, 2023, and I am hereby convening the Public

15   Hearing on this proposed rule.

16   The proposed rule was published in the City

17   Record on December 23, 2022. The published notice and

18   rules are available online on the NYC Rules website

19   and the Department's website. The Department has

20   proposed these rules pursuant to the authority vested

21   in the Commissioner of the Department of Consumer and

22   Worker Protection by sections 1043 and 2203(f) of the

23   New York City Charter, and section 20-104(b) of the

24   New York City Administrative Code.

25   This hearing affords the public the

1   opportunity to comment on all aspects of the rules the

2   Department has proposed. The Department will

3   carefully review all testimony and written comments

4   received at this hearing, and will give due weight and

5   consideration to proposals and recommendations that

6   are submitted for the record at this hearing.

7   To ensure that everyone seeking to testify

8   will have an opportunity to do so, I ask that we all

9   follow -- excuse me -- these ground rules. During the

10   hearing, all participants should give due respect and

11   consideration to the folks offering their testimony.

12   And please mute your lines if you're not speaking

13   Each witness will have a maximum of three

14   minutes to provide oral testimony. If your comments

15   take longer than three minutes, please synthesize your

16   oral testimony and leave a written copy for the

17   record. Unlike the limit on the time for oral

18   testimony, there is no limit on the number of pages

19   you can submit as written testimony or as documents

20   for the record. The written submission will be made

21   part of the public record.

22   Before we begin, I'll remind everyone to

23   mute your lines until called to provide testimony.

24   Also, before we get started, if anyone is interested

25   in providing testimony and you have not let me know,

1   please notify me now. You can either let me know by

2   messaging in the chat or unmuting yourselves,

3   whichever works for you.

4   Okay. And if you're interested in providing

5   testimony, if you could just raise your hand, I can

6   put you down and add you to our list. Alright. I

7   will call our first witness, Jason Albert.

8   MR. JASON ALBERT: Thank you. Hello. My

9   name is Jason Albert and I am the Global Chief Privacy

10   Officer at ADP. ADP appreciates the opportunity to

11   provide comments on the Department of Consumer and

12   Worker Protection's revised proposed rules regarding

13   automated employment decision tools.

14   ADP provides a range of administrative

15   solutions to over 1 million employers worldwide,

16   enabling employers of all types and sizes to manage

17   their employment responsibilities, from recruitment to

18   retirement. ADP has been a leader in AI ethics,

19   including through publication of a set of AI ethics

20   principles and establishing an AI Data and Ethics

21   Committee comprised of internal and external experts.

22   As with the original proposed rules, the

23   revised proposed rules provide helpful clarification

24   of how Local Law #144 operates and gives companies

25   developing and deploying AEDTs greater certainty

1   regarding how to meet the law's obligations. At the

2   same time, we ask that DCWP revert to the provision in

3   the first draft of the proposed rules, allowing

4   companies to use internal resources to conduct

5   independent audits, so long as those resources were

6   not involved in the development of the AEDT.

7   In the original proposed rules, DCWP defined

8   an independent auditor to include persons or groups

9   that might be part of the same company, but were not

10   involved in the development or use of the AEDT.

11   Oftentimes, others in the company will be in the best

12   position to conduct an audit, given their expertise in

13   the systems the company uses and develops, and the

14   particulars of the machine learning the company

15   employs. While third parties are increasingly

16   entering the AI audit space, this industry is still

17   nascent, so enabling companies to rely on internal

18   experts who were not involved in the development or

19   use of the AEDT helps ensure that the bias audit is

20   effective.

21   We also ask that DCWP delay enforcement of

22   the law to give companies the opportunity to implement

23   it in light of the proposed rules. Given the revision

24   to the proposed rules and the new hearing, DCWP has

25   already delayed the enforcement date of the Act until

1   mid-April. Given the planned timeline for the

2   adoption of the proposed rules, a short enforcement

3   delay would give companies time to fully implement the

4   law, as clarified by the regulations.

5   We also wanted to call out an additional

6   positive aspect of the revised proposed rules.

7   Several commenters to the proposed rules asked that

8   bias audits be performed by each employer, even when a

9   tool, such as those we provide, are used across many

10   employers. This would have resulted in much

11   duplicative effort by those employers, imposing a

12   substantial burden on small and medium sized

13   businesses and reducing the uptake of AEDTs, which

14   offer substantial benefits to employers and candidates

15   alike. The revised proposed rules provide that

16   employers can rely on a single bias audit of an AEDT

17   used across multiple employers, so long as they

18   contribute data to the audit, thereby addressing

19   concerns about bias resulting from the AEDT itself.

20   ADP appreciates the opportunity to submit

21   these comments on the proposed rules and DCWP's

22   consideration of them. If you have any questions or

23   would like additional information, please do not

24   hesitate to contact me. Thank you very much.

25   MS. JUNG: Great. Thank you. Next? Oh,

1 | next we have Ryan Carrier.

2 | MR. RYAN CARRIER: -- time to testify today.

3 | My name is Ryan Carrier. I'm the Executive Director

4 | of ForHumanity, a non-profit public charity with more

5 | than 1,200 members from 78 countries around the world.

6 | We are a civil society organization. And that is our

7 | on- only focus and mission, is to mitigate risk to

8 | humans from automated employment decision tools.

9 | We fully support Local Law 144. We support

10 | the improvements to independence. Unlike the previous

11 | speaker, the movement and direction of independence is

12 | much closer to the true level definition. We think it

13 | doesn't go quite far enough and would advise that the

14 | adoption of a Sarbanes-Oxley, PCAOB and SEC definition

15 | would ensure the, the legal grounding and solid

16 | footing of the term "independence" under this law and

17 | achieve the proper protections for humans that are

18 | afforded by a fourth line of defense through

19 | independent and external auditors.

20 | In terms of defining the law -- defining

21 | AEDTs and defining machine learning, we think that the

22 | rulemaking continues to be in a misstep. These

23 | definitions are not in scope and not in alignment with

24 | existing definitions elsewhere, particularly the White

25 | House's AI blueprints for a bill of rights. Sorry,

1 | the blueprint for an AI bill of rights. I should say

2 | that properly. And that by trying to define an

3 | automated employment decision tool too narrowly, with

4 | too much focus, and trying to define terms like

5 | artificial intelligence and machine learning, which

6 | have proven very difficult to define, will

7 | artificially narrow the scope of this law and, thus,

8 | put humans at risk, and, more importantly, put the

9 | spirit of the law at risk, because we've already heard

10 | of providers who will aim to subvert the law by

11 | manipulating the words and def- definitions of their

12 | systems vis-à-vis theses definitions.

13 | We think the spirit of the law is, is to

14 | prop-, is to make sure that all tools that are used to

15 | adjudicate employment and employment decisions would

16 | be governed by this bias audit, and we think that's in

17 | the best interest of humans. So we would encourage a

18 | step back from defining these terms and use more

19 | generic terms. We have supplied a definition of

20 | automated system from the blueprints on an AI bill of

21 | rights. We've also supplied [unintelligible]

22 | [00:14:23] in 58 use cases of automated de-,

23 | employment decision tools, and those are available for

24 | all to adopt, and including DCWP.

25 | Thank you for your time.

1   MS. JUNG: Alright, thank you. Next, we

2   have Shea Brown.

3   MR. SHEA BROWN: Hello. Thank you very

4   much. I appreciate the opportunity to speak. My name

5   is Shea Brown. I'm the CEO of BABL AI, a company that

6   audits algorithm for bias, disparate impact, ethical

7   risk and good governance.

8   I'd like to first say this, this law is a

9   welcomed attempt to, to mitigate some of the real

10   harms that some of these systems can cause, and the

11   new proposed rules have gone a long, a long way in

12   clarifying a lot of the aspects of the original law

13   that were confusing. In particular, things like

14   independence and different constraints on what a bias

15   audit should be.

16   So I really want to just focus on one thing

17   in this, and that's actually to agree with Ryan

18   Carrier's comments from ForHumanity about the scope of

19   this law. And, in particular, the current -- there's

20   two aspects. The first one is that the current

21   definition of AEDT is overly stringent. In

22   particular, the bar and automated tool must meet to

23   qualify as being able to substantially assist or

24   replace discretionary dec- decision making is

25   excessively high. In our experience, it is extremely

1   rare that an automated system is deployed in such a

2   manner that it would provide users with no other

3   factors beside just to simplify an output or to

4   overrule human decision making. On the contrary, the

5   majority of these automated systems are intended to

6   assist users. And, so, our worries is that employers

7   and vendors of these tools could claim exemption from

8   bias audits simply because their tool -- tool's

9   outputs are just one of many factors that are being

10   considered by recruiters.

11   For this reason, we strongly urge the

12   Department to remove the expanded definition of

13   substantially assist to replace discretionary decision

14   making. We believe the employers procure these tools

15   precisely because they believe they will substantially

16   assist in their employment decisions, and further

17   attempts to clarify these words will unnecessarily

18   narrow the scope.

19   The second issue, as was mentioned before,

20   is the definition of machine learning, statistical

21   modeling, data analytics or artificial intelligence.

22   It's important to note that an automated tool does not

23   need to have artificial intelligence or machine

24   learning to result in bias or discrimination. The

25   current definition focuses primarily on methods which

1   │   are based on training and optimization of parameters.

2   │   We believe the overemphasis on this technical aspect

3   │   of machine learning would exempt many simple

4   │   algorithms and automated systems that would,

5   │   nonetheless, amplify bias.

6   │   So we recommend the Department remove the

7   │   new definition of machine learning, statistical

8   │   modeling, data analytics or artificial intelligence.

9   │   What is currently written does not cover the extent of

10   │   what these words actually mean, nor what the spirit of

11   │   the law intended.

12   │   I'd like to once again thank the Department

13   │   for allowing me the opportunity to speak.

14   │   MS. JUNG: Alright, thank you. Next --

15   │   sorry if I mispronounce your name -- Julia

16   │   Stoyanovich.

17   │   MS. JULIA STOYANOVICH: Yes, thank you very

18   │   much. Dear Chair and members of the Department, my

19   │   name is Julia Stoyanovich. I am an Associate

20   │   Professor of Computer Science and Engineering, and of

21   │   Data Science, and the Director of the Center for

22   │   Responsible AI at New York University. I am speaking

23   │   to you today from an NYU classroom, and I am

24   │   accompanied here by about 60 students who are taking

25   │   my responsible data science course, so they are here

1   with me.

2   I would like to commend the Department of

3   Consumer and Worker Protection on their continued

4   efforts to make AEDT regulation a reality. And I

5   would like to underscore the exceptional competence

6   and dedication of Irene Byhovsky, legislative counsel

7   to the Committee on Technology, who has been an

8   incredible advocate to all New Yorkers in her work on

9   this law from its inception.

10   In my testimony, I would like to make four

11   recommendations, and I'll be brief, regarding the

12   enforcement of Local Law 144. First, my

13   recommendation is to clarify and provide explicit

14   guidance on the notice to candidates on employee's

15   portion of the law. [Unintelligible] [00:18:39]

16   information about qualifications and characteristics

17   for which the tools screen in a manner that is

18   comprehensive, specific, understandable and actionable

19   for job seekers and employees. Rulemaking on this law

20   has thus far focused almost solely on the bias audit

21   provisions. Notice to candidates and employees, if

22   implemented as the law intends, will help get at the

23   validity of predictions made by these tools. There

24   [unintelligible] [00:19:09] of many tools are

25   [unintelligible] [00:19:13] arbiter, tools that don't

1   work, hurt job seekers and employees, subjecting them

2   to [unintelligible] [00:19:19] decision making with no

3   recourse. Tools that don't work also hurt employers.

4   They waste money paying for software that doesn't

5   work, and miss out on many well-qualified candidates

6   based on a self-fulfilling prophecy delivered by

7   [unintelligible] [00:19:33] showing job seekers and

8   employees simple standardized labels that list the

9   factors that go into the tool's decision, both before

10   they are screened and after a decision is made. Job

11   seekers, employees and their representatives should be

12   directly involved in the design and testing of such

13   labels. And I give examples of this in my written

14   testimony, based on my recent Wall Street Journal

15   article on this topic.

16   My second recommendation is to expand the

17   scope of auditing beyond bias to also interrogate

18   whether the tools work. In my own work, done in

19   collaboration with an inter-disciplinary team, I

20   evaluated the validity of two algorithmic personality

21   tests, tools that are used for pre-employment

22   assessment, Humantic AI and Crystal. We found that

23   these tools cannot be considered valid testing

24   instruments. For example, Crystal frequently computes

25   different personality profiles if the same resume is

1   given in PDF versus in raw text, while Humantic AI

2   gives different profiles on a LinkedIn profile versus

3   a resume of the same job seeker. Such tools cannot be

4   allowed to proliferate, and Local Law 144 should help

5   protect candidates from their use.

6   My third recommendation is [unintelligible]

7   [00:20:48] their representatives in defining

8   [unintelligible] [00:20:53] notices. I will not

9   [unintelligible] [00:20:56] written statement.

10   And my final recommendation is to expand the

11   scope of auditing for bias beyond disparate impact to

12   include other dimensions of discrimination, again,

13   based on input, input from all key stakeholders,

14   including job seekers, employees and their

15   representatives.

16   I would like to keep my testimony brief.

17   Please refer to my written testimony submitted now, as

18   well as to the testimony I submitted at two previous

19   hearings. Thank you very much.

20   MS. JUNG: Alright, thank you. Next, we

21   have Merve Hickok.

22   MS. MERVE HICKOK: Thank you for the

23   opportunity. This is Merve Hickok. I'm the founder

24   of AIethicist.org, focusing on algorithmic

25   discrimination. And I'm a former human resources

1 | practitioner who used to work in Fortune 100, so I

2 | sort of have a unique intersection. I'm also the

3 | Research Director at Center for AI and Digital Policy,

4 | and a lecturer on data science ethics at University of

5 | Michigan.

6 | Local Law 144 is the first of its kind in

7 | the world mandating independent bias audits and

8 | transparency of results. New York City Law is

9 | expected to create a blueprint for future local, state

10 | and national jurisdictions around the world. It can

11 | be the pioneer in pri- prioritizing diversity, equity

12 | and civil rights. And I have been involved with this

13 | law since its first draft, announced February 2020. I

14 | submitted multiple rounds of written comments and

15 | recommendations, also for this round, so I'm just

16 | going to keep very brief to my main concerns here.

17 | I congratulate DCWP for clarifying the

18 | independence of auditors and, hence, possible

19 | conflicts of interest. Currently, I'm very concerned

20 | with attempts to narrow the scope of the law by

21 | diluting the definition of automated employment

22 | decision tools and to remove the requirement to make

23 | quantitative results of the bias audit public. The

24 | opacity regarding some of the employment decision

25 | tools and their impact on historically marginalized

1   groups is well documented. We need vendors to create

2   products responsibly and employers not to create

3   disparate impact.

4   In the long run, bias audit and transparent

5   results would help both innovation, protect candidates

6   and also help businesses meet their diversity goals

7   and walk the talk. Transparent audits give results --

8   transparent audit results give the businesses a chance

9   to walk their talk about equity, diversity and

10   inclusion.

11   As DCWP is making great progress and working

12   to clarify the questions about law and make rules

13   about how to operationalize, we see some employers and

14   interest groups trying to characterize the law as

15   burdensome. They omit to mention their obligations to

16   not to discriminate under Civile Rights Title VII and

17   their responsibility, their existing responsibility to

18   monitor the impact of employment decisions.

19   Monitoring selection rates and impact ratios has been

20   around for decades. Employers know this, vendors know

21   this. Yet, some try to reframe this as burdensome and

22   new. It's not burdensome if you're already respecting

23   this, and not negatively impacting certain groups.

24   They already tried to change the definitions

25   of the tools and scope of this law and create

1   loopholes. If successful in their efforts to water

2   down the definitions to a meaningless scope and remove

3   the obligations to publish the results transparently,

4   this law will be born still. I strongly urge the

5   council to remove the definition of AI, ML and

6   statistical modeling, et cetera, as well as the

7   subject of qualifiers in the definition of AEDTs,

8   first, to prevent loopholes, second, to keep the law

9   flexible for future innovation and techniques. I hope

10   the council stays true to the intent and spirit of the

11   law and protects the residents of -- New York City

12   residents.

13   Thank you for your consideration of my

14   views, and I would welcome the opportunity to discuss

15   this in detail. Thank you.

16   MS. JUNG: Thank you. Next, we have Rafael

17   Espinal. Rafael? Okay. We will skip over to Andrew

18   Hamilton. Okay. Next, we have Sara Kassir.

19   MS. SARA KASSIR: Hello. I'm actually

20   reading this statement on behalf of Dr. Frida Polli,

21   who is, unfortunately, sick today. But please accept

22   these comments on her behalf. And we will also be

23   submitting written under her name.

24   Okay. I'm Dr. Frida Polli, and I'm a former

25   Harvard and MIT-trained cognitive scientist and a

1   founder of a company called Pymetrics. As an industry

2   outsider, my observations of the HR tech space have

3   led me to be an avid supporter of the transparency

4   objectives of this law. My comments are in the

5   capacity as the founder of Pymetrics.

6   I originally testified about the bias audit

7   law when it was still a bill before the City Council's

8   Technology Committee over two years ago. I explained

9   that through the many conversations I had with New

10   York City employers, I felt that many sincerely wanted

11   to improve the diversity of their workforce and were

12   looking for solutions to do so. However, because so

13   little public information was available that could

14   help employers distinguish between those technologies

15   that were built with equity in mind and those that

16   were not, employers struggled to navigate the way

17   forward. I firmly believed then, as I do now, that

18   progress for workforce diversity was contingent upon

19   bringing transparency to hiring technology.

20   When Local Law 144 was ultimate- ultimately

21   passed by the City Council, I was particularly

22   grateful to our policy makers for recognizing that

23   this initiative was about more than just regulating

24   AI. Instead, the language suggested that bias audits

25   would become the norm for a wide variety of automated

1   hiring tools, effectively placing old and new

2   technologies on an even playing field. The definition

3   of AEDT indicated that bias audits were to be a nece-,

4   a necessity for any automated decision making system

5   that collected data from job applicants, analyzed it

6   using a computational process, and provided the

7   employers with an interpretive output. In my view,

8   such a broad transparency regime had the potential to

9   fundamentally change the nature of hiring for the

10   better.

11   Unfortunately, at present, DCWP's proposed

12   rules have reversed one of the most exciting an

13   progressive aspects of this law. The draft definition

14   of AEDT would render many, if not most, hiring

15   technologies exempt from bias audits. If Local Law

16   144 is implemented in this manner, I'm concerned that

17   our City will see no benefit from the initiative at

18   all.

19   My strong request to regulators today is

20   simple. Please avoid the temptation to slice and dice

21   the hiring technology industry as you work to finalize

22   this legislation. In context of job applicant

23   screening, automated decision making is not a new term

24   and there is no need to reinvent the wheel on this

25   front. Employers have been able to use automated

1   hiring tools for decades. Bias audits must be

2   conducted on all forms of systems that have

3   consequences for NYC workers, irrespective of their

4   technical nuances.

5   The amendments to the draft rules suggest

6   that DCWT-, excuse me, DCWP is perhaps attempting to

7   limit the requirement of bias audits to only those

8   hiring technologies that presently -- excuse me --

9   that present high risks of being discriminatory. For

10   example, one criteria in order for a system to be

11   designated as an AEDT is that it must fully override

12   human decision makers. As a cognitive scientist, I

13   would like to respond to this point with a reminder

14   that there is no reason to suggest that human

15   reviewers have any tendency to make hiring less

16   biased. On the contrary, since human reviewers rely

17   on implicit biases and social stereotypes to evaluate

18   candidates, there is little reason to assume that we

19   will see a reduction in disparate impact.

20   I would like to thank the agency for the

21   opportunity to speak about this issues, and I am

22   optimistic that ethically-designed hiring technology

23   governed by pragmatic auding and reporting standards

24   will make the experience of discrimination less common

25   for New York workers. Thank you for your time.

1   MS. JUNG: Alright, thank you. I'm just

2   going to call back Rafael Espinal once again.

3   UNIDENTIFIED FEMALE 1: It looks like he's

4   trying to talk, but you're on mute.

5   MS. JUNG: Oh.

6   UNIDENTIFIED FEMALE 1: Wait. I still can't

7   hear you, but I can see your mouth moving.

8   MS. JUNG: Rafael, could you try rejoining,

9   maybe, and see if that helps?

10   UNIDENTIFIED MALE 1: In the meantime, just

11   --

12   MS. JUNG: Okay. In the meantime, next, we

13   have Council Member Selvena Brooks-Powers. And then,

14   next, Nathan Mondragon. Nathan, I don't think we can

15   hear you. You want to try rejoining?

16   MR. RAFAEL ESPINAL: Hello?

17   MS. JUNG: Yes, we can hear you now.

18   MR. ESPINAL: Okay, good.

19   MS. JUNG: Rafael?

20   MR. ESPINAL: Yes.

21   MS. JUNG: Yes. Okay, you have three

22   minutes. You can start.

23   MR. ESPINAL: Okay, thank you so much.

24   First and foremost, thank you, Commissioner Mayuga,

25   and the team at DCWP for convening this hearing. My

1   name is Rafael Espinal and I am the Executive Director

2   of the Freelancers Union. My organization represents

3   the interests of over half a million independent

4   workers nationwide, operating in diverse industries.

5   Previously, I had the honor of serving as a council

6   member for the New York City's 37th District. I have

7   spent much, I have spent much of my career looking for

8   and creating opportunities to disrupt systematic

9   inequality. I believe that there are currently, that

10   we are currently facing such an opportunity with Local

11   Law 144.

12   We are at a crossroads. The decisions this

13   administration makes in the coming months about how to

14   execute this law will speak volumes about our City's

15   priorities. If New York City is to prioritize

16   equality of opportunity, Local Law 144 would

17   unapologetically push businesses to take a hard look

18   at the way they evaluate job candidates.

19   Upon taking a look, many of these

20   organizations will have to come to terms with the fact

21   that their hiring tools have played a role in perpet-

22   perpetuating historical disadvantage. Employers,

23   regulators and the public will be armed with data.

24   This data will make it possible to distinguish between

25   employers who are generally working to promote

1   workforce diversity and those who are not. If New

2   York City is to prioritize maintaining the status quo,

3   Local 144 will be implemented in a manner that panders

4   to traditional -- traditionalist business interests.

5   Regulators will be publish rules that make bias audits

6   an extremely rare requirement that can easily be

7   circumvented by savvy corporate legal teams.

8   Information regarding which types of hiring tools

9   disadvantage minorities will remain hidden, as it has

10   been since the civil rights era. Employers who use

11   biased AEDTs will face no incentives to change.

12   Like many voices who have spoken out about

13   this issue to date, I sincerely hope that New York

14   City takes the former approach regarding Local Law

15   144. As a society, we're becoming less and less

16   tolerant of opacity regarding how important life

17   decisions are made, and for good reason. Transparency

18   is the future when it comes to understanding bias in

19   contexts like hiring, education, healthcare and

20   housing.

21   In terms of next steps for Local Law 144,

22   DCWP has already put considerable thought into proper

23   form and structure of bias audits. Their work to date

24   has several strengths. For example, I am pleased that

25   the Agency's proposed rules specify that an auditor

1 must generally inde-, generally independent from the

2 auditing organization. Additionally, DCWP has been

3 wise to shape bias audits around the well established

4 concept of dis- disparate impact analysis, enshrined

5 by Title VII of the Civil Rights Act.

6 While I'm appreciative of the Agency's

7 efforts, there is also a major weakness in the

8 proposed rules that needs to be amended before the

9 guidance is finalized. When our City Council passed

10 this legislation, the language was very clear in

11 stating that bias audits will be required for all

12 kinds of automated hiring tools, regardless of the

13 technical nuances. Whether inadvertently or

14 otherwise, DCWP's proposed rules now call for a

15 dramatically limited scope. I believe the scope is so

16 limited that it would make the law, the local law

17 practically useless.

18 I would like to leave the administration

19 with this message. Opportunities for disrupting

20 systematic inequality, particularly on issues related

21 to racial equity, are rare. Opportunities to lead the

22 nation in this disruption are even less common. It is

23 my sincere hope that we seize this moment and be bold

24 in our fight against bias in hiring. Thank you so

25 much.

1   MS. JUNG: Thank you. Next, we have Nathan

2 Mondragon.

3   MR. NATHAN MONDRAGON: Can you hear me now,

4 please?

5   MS. JUNG: Yes, we can hear you.

6   MR. MONDRAGON: Perfect. Thank you. Thank

7 you, Ms. Jung. My name is Nathan Mondragon and I am

8 the Chief Industrial and Organizational Psychologist

9 at HireVue. HireVue is a video interviewing and

10 assessment platform. We support both the candidate

11 and employer interview experience in a broad range of

12 industries and customers around the globe.

13   We share New York City's interest in

14 protecting job seekers by notifying them when AI is

15 being used in the hiring process and ensuring these

16 technologies are audited before making decisions.

17 HireVue has previously testified in November relating

18 to the New York City's Local Law 144, and we are

19 pleased to see much of the feedback reflected in the

20 revised and proposed rules.

21   HireVue seeks to offer a fair, more

22 inclusive and equitable hiring experience using

23 science-backed methods and industry best practices.

24 Our additional comments today are rooted in our

25 expertise and commitment to the responsible

1   development of our AI technology to make the hiring

2   process better for candidates and employers. We would

3   like to call attention to a few items for

4   consideration that may have unintended effects based

5   on the recent proposed rules.

6   1) The revised definition of machine

7   learning requires three components to meet its

8   definition. The first two components are related to

9   what machine learning is, but the third component,

10   cross validation, is an optional design step in

11   machine learning development. Cross validation is an

12   important step in testing and deploying a good machine

13   learning model, but it is not a necessary step. AEDT

14   providers releasing machine learning models without

15   cross validation would avoid being subject to the law,

16   as it is currently written.

17   Second, some machine learning tools use

18   natural language processing to infer user meaning.

19   For example, a chat bot asking minimum qualification

20   screening questions, such as are you over 18 years

21   old, would not use machine learning on an expected

22   user answer of yes, but it would use machine learning

23   to infer that a response of yep or sure also means a

24   yes answer. We ask for clarification on whether the

25   law is intended to apply to these simplistic uses of

1   machine learning.

2   3)   Finally, although not part of the

3   proposed revisions, we continue to be concerned about

4   the impact of the 10-day notice requirement. The

5   standard hiring process for many jobs has been

6   streamlined through the use of technology down to a

7   few days or even a few hours. This waiting period

8   will inevitably disadvantage New York City candidates

9   when candidates from other areas of the region or

10   remote candidates can be hired quicker. This period

11   may also adversely affect New York City employers who

12   now need to wait to make business critical hiring

13   decisions in industries already strained by labor

14   shortages.

15   HireVue continues to appreciate the

16   thoughtful revisions reflected in the most recent

17   proposed rules. As always, ongoing dialogue is the

18   key to creating legislation that protects candidates,

19   companies and innovation. HireVue encourages

20   transparency and supports laws that promote openness,

21   and enhance of fairness and efficiency of the hiring

22   process for all individuals.

23   Thank you for your time today.

24   MS. JUNG: Alright, thank you. Next, we

25   have Andrew Hamilton.

1   MR. ANDREW HAMILTON: Good morning. My name

2   is Andrew Hamilton. I'm the former President of the

3   Metro New York Chapter of the National Black MBAs.

4   Over two years ago, I testified before the

5   City Council Technology Committee in support of Local

6   1-, Local Law 144. This past November, I reiterated

7   my support during the D- DCWP's hearing regarding the

8   rule making process. Today, I continue to believe in

9   the massive potential offered by this legislation, but

10   only if the Agency heeds some important feedback on

11   the latest draft rules.

12   During my November testimony, I encouraged

13   DCWP to be realistic in predicting how many -- how

14   employers will feel about the transparency

15   requirements outlined by this law. Specifically, I

16   urged regulators to implement this legislation with a

17   definition of the automated employment decision tools,

18   or AEDTs, that was broad and inclusive of many types

19   of technologies. I urged that limiting the

20   requirement of these bias audits to only very moderate

21   technologies would perversely incentivize employers to

22   avoid innovation.

23   My message to the administration today is

24   simple. You cannot implement Law 144 with, with the

25   proposed definition of AEDTs unless your goal is to

1   ensure that you will have zero impact. The draft

2   language published by the DCWP only requires bias

3   audits in circumstances where an employer has

4   completely handed over control of the hiring to

5   computers with no human oversight whatsoever. But

6   very few, if any, employers will hire in this manner.

7   It would be a waste to limit Local Law 144 to only the

8   most extreme cases of automation, because these

9   situations are not the ones affecting New York City

10   job candidates.

11   To repeat another point from my November

12   testimony, I urge DCWP to recognize automated decision

13   making tools have been around for years, and they're

14   not limited to the recent advancements like AI. Just

15   like about -- just about any standardized test that is

16   scored by a computer, the scores are used to sort

17   people out, yes or no piles. Black people in the U.S.

18   have a long history of being evaluated by biased

19   technology in contexts like lending, housing and

20   hiring. The history is not over. The question for

21   New York City is to whether we are going to allow it

22   to continue behind closed doors.

23   The implementation of Local 144 will present

24   an incredible opportunity to differentiate between

25   decision making tools that are built with racial

1   equity in mind, those that are not. As someone who

2   has been waiting for enactment of this law for years,

3   it is my sincere hope that City Council's important

4   work is not stamped out by the, by the final push.

5   Thank you for your time.

6   MS. JUNG: Great. Thank you. Next, we have

7   Council Member Selvena Brooks-Powers.

8   COUNCIL MEMBER SELVENA BROOKS-POWERS: Thank

9   you. Can you hear me?

10   MS. JUNG: Yes, we can hear you.

11   COUNCIL MEMBER BROOKS-POWERS: Perfect. My

12   name, once again, is Selvena Brooks-Powers, Majority

13   Whip with- within the New York City Council, and I

14   represent the 31st Council District, covering parts of

15   Southeast Queens and the Rockaways. I am proud to be

16   one the 38 lawmakers who voted yes on Local Law 144 in

17   December of 2021.

18   During prior testimony on this issue, I

19   spoke about the massive opportunity offered by Local

20   Law 144 to bring about real progress on racial equity

21   in hiring. I believe this law represents a necessary

22   shift in the City's approach to bias in the hiring

23   process, which has, for too long, resulted in de-

24   disparate treatment of Black and Brown people. I am

25   committed to ensuring the implementation of Local Law

1   144 reflects the goals behind its passage -- to make

2   the hiring process less biased and more transparent.

3   Today, I want to discuss concerns I have

4   with the updated rules released last week by DCWP,

5   particularly the proposed definition of automated

6   employment decision tool, or AEDT. If regulators do

7   not revisit this language, the reach of Local Law 144

8   may be diminished and the law will be less effect at

9   reducing racial bias in hiring.

10   In DCWP's most recent draft rules, AEDTs are

11   more narrowly defined only as those types of

12   technologies that fully replace or overrule human

13   decision making in the hiring process. The problem,

14   however, is that this isn't how hiring works. Human

15   decision making always has some role to play in the

16   hiring process. It inter-, if interpreted strictly,

17   this definition may provide employers a loophole that

18   allows them to evade the requirements of this law.

19   When my colleagues and I originally voted

20   yes on Local Law 144, we voted for transparency in the

21   hiring process to support racial equity. We voted to

22   make it clear that certain types of hiring tools

23   systemically disadvantage Black and Brown people. We

24   voted for an employer to stop hiding behind vague

25   claims about their commitments to workforce diversity.

1 ‖   The intentions of the New York City's elected

2 ‖   legislators will not be realized if businesses are

3 ‖   granted a broad invitation to keep hiding the nature

4 ‖   of their hiring practices.

5 ‖   Decades of evidence have already

6 ‖   demonstrated what types of employment tools employers

7 ‖   will use if they are not held accountable for their

8 ‖   choices. In my prior testimony, I also mentioned that

9 ‖   many employers and HR tech vendors already collect

10 ‖   important data about the racial consequences of their

11 ‖   hiring tools and have done so since the civil rights

12 ‖   era. As such, Local Law 144 is only revealing what

13 ‖   such organizations have known about systemic bias for

14 ‖   decades. I strongly urge DCWP to keep the long

15 ‖   history of disparate impact reporting in mind as they

16 ‖   revisit the appropriate breadth of tools to subject to

17 ‖   bias audits.

18 ‖   Finally, I want to reemphasize my

19 ‖   recommendation from my testimony last year. DCWP must

20 ‖   recognize the need for expertise in the enforcement of

21 ‖   this law. Each rule tweak has implications on the

22 ‖   impact of the law and employers' compliance

23 ‖   responsibilities. The Department should ensure that

24 ‖   they are staffed with experts to ensure these

25 ‖   regulations hold bad action -- bad actors accountable,

1   while avoiding, as I mentioned previously, hampering

2   legitimate, inclusive AEDTs that seek to expand the

3   hiring pool in the City. It is my sincere hope that

4   this administration follows through on creating rules

5   that actualize the spirit of this law. Doing so

6   represents an incredible opportunity to disrupt bias

7   in hiring. It would be a shame to squander that

8   opportunity.

9   Thank you so much for the time.

10   MS. JUNG: Great. Thank you. If anyone

11   else is interested in testifying at this hearing and

12   you have not let me know, please use the raise hand

13   function, or just let me know in the chat. Thank you.

14   Once again, if you're interested in

15   testifying, please let me know by raising your hand or

16   letting me know in the chat. If no one else would

17   like to testify, I will just put my camera off and go

18   on mute. Others can do the same, and we'll just keep

19   the hearing open until noon. Thank you.

20   Hi, everyone. At this time, I will be

21   ending the hearing soon. If you're interested in

22   submitting written comments, you can submit them at

23   NYCRules. I will send the website in the chat below.

24   And you can also e-mail us at

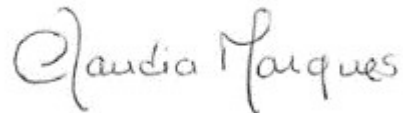25   rulecomments@dcwp.nyc.gov, which I will also put down

1   in the chat.   Thank you to everyone for testifying and

2   listening in.

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CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing

transcript of DCWP Rules Public Hearing - AEDTs on

January 23, 2023, was prepared using the required

transcription equipment and is a true and accurate

record of the proceedings.

  Certified By

Claudia Marques

  Date: February 13, 2023

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