



May 2023 rev. June 2023

Local Law 144 of 2021

Automated Employment Decision Tool

Roundtable with Business Advocates/Employers

Overview of LL 144 of 2021

Enacted December 2021; Rule Effective July 5, 2023

- Regulates the use of **Automated Employment Decision Tools (AEDTs)**, which are computer-based technologies, such as artificial intelligence and data analytics, that assist with hiring and promotion.
- If using AEDT, employers and employment agencies must:
 - Complete a “**bias audit**” of the **AEDT** within a year prior to its use for hiring or promotion.
 - Provide job candidates with a **notice** on the use of AEDTs.

Elements of an AEDT

1. Machine learning, statistical modeling, data analytics, or artificial intelligence
2. Employment decision/screening
3. Substantially assist or replace discretionary decision-making

Elements of an AEDT

1. Machine learning, statistical modeling, data analytics, or artificial intelligence

- Group of mathematical, computer-based techniques:
 - That generate a prediction such as scores, rank, categorization or assessment
 - For which a computer, at least in part, identifies:
 - The inputs;
 - The relative importance placed on those inputs; and
 - If applicable, other parameters for the models in order to improve the accuracy of the prediction or classification.

Elements of an AEDT

2. Employment decision/screening

- Tool assists in determining whether applicant should be selected or advanced in the hiring or promotion process.
- Example:
 - If resume screening software is used to determine which applicants are selected for an interview, it is being used for an “employment decision”.

Elements of an AEDT

3. Substantially assist or replace discretionary decision-making

- Tool is the only factor in employment decision;
 - E.g., resume screening software determines who is selected for an in person interview
- Tool is the highest weighted factor in employment decision; or
 - E.g., resume screening software, along with human review, is used to score applicants to determine who is selected for an interview and the resume screening software is given more weight than the human scores
- Tool overrules employment decision.
 - E.g., humans review resumes and select 10 applicants to interview
 - Prior to scheduling interviews, the resume screening software is used to remove candidates that are not a “good fit”

Requirements Prior to Use of AEDT- Bias Audit

- **Performed by Independent Auditor**

- Bias Audit cannot be conducted by business using or developing the tool.

- **Within one year prior to use**

- An employer or employment agency may not use or continue to use an AEDT if more than one year has passed since the most recent bias audit of the AEDT.

- **Summary of Results**

- Employer or employment agency must post summary of results on the employment section of their website.

Requirements of a Bias Audit

Minimum Calculations

- Selection or Scoring Rate
- Impact Ratio
- Sex Categories, Race/Ethnicity Categories & Intersectional Categories
 - An independent auditor may exclude a category that represents less than 2% of the data being used for the bias audit from the required calculations for impact ratio.

Requirements of a Bias Audit

Data Requirements

- Historical Data
 - Should be used to conduct the bias audit, when available.
 - May be from one or more employers or employment agencies that use the AEDT.
- Test Data
 - Permissible if insufficient historical data is available to conduct a **statistically significant** bias audit.
 - If using test data, the summary of results must explain why historical data was not used and describe how the test data used was generated and obtained.

Requirements Prior to Use of AEDT- Required Notices

Notice must inform employees or candidates that reside in NYC of:

- The use of AEDTs; and
- The job qualifications and characteristics the AEDT will assess.

Notice must:

- Include instructions for how to request a reasonable accommodation under other laws.
- Be provided 10 business days prior to use in one of the following ways:
 - In a job posting;
 - Via U.S. mail or e-mail; or
 - For job applicants, on the employment section of website in a clear and conspicuous manner;
 - For candidates for promotion, documented in a written policy or procedure.

Requirements Prior to Use of AEDT- Required Notices

Notice regarding data collection must:

- Provide information on the employment section of its website in a clear and conspicuous manner about:
 - Its AEDT data retention policy;
 - The type of data collected for the AEDT; and
 - The source of the data.
- Post instructions on the employment section of its website in a clear and conspicuous manner for how to make a written request for such information.
 - If a written request is received, such information should be provided within 30 days.
- Provide an explanation to a job candidate or employee being considered for promotion on why disclosure of such information would violate local, state, or federal law, or interfere with a law enforcement investigation.

Applicability “in the City”

- **Position located in NYC**
 - Bias audit required
 - Notices required for NYC residents
- **Position located outside NYC**
 - Bias audit and notices not required
- **Fully Remote Position**
 - Employer only has a NYC office
 - Bias audit required
 - Notices required for NYC residents
 - Employer does not have a NYC Office
 - Bias audit and notices not required
 - Employer offices in NYC and outside NYC
 - Fact specific analysis

Compliance

Violation Types:

- Failure to comply with requirements for use of an AEDT.
- Failure to comply with notice requirements related to AEDTs.

Compliance

Compliance Tips for Employers and Employment Agencies:

- Consult experts to determine whether tools meet the definition of machine learning, statistical modeling, data analytics, or artificial intelligence.
- Ensure all AEDTs are subject to a bias audit prior to use.

Compliance

Compliance Tips for Employers and Employment Agencies

- Keep records of:
 - All electronic tools used to assist in hiring or promotion;
 - How electronic tools were used, and what other methods were used to evaluate candidates or employees; and
 - All notices and methods of notice provided to candidates or employees.
- For an AEDT that assesses employee performance, best practice would be to inform all staff of the use the AEDT 10 business days prior to ensure sufficient notice given to use output of performance tool as part of the promotion process.

Important Note on Discrimination

- Claims of discrimination that involve the use of an AEDT should be directed to the NYC Commission on Human Rights (CCHR) for investigation under the NYC Human Rights Law.
- DCWP will refer claims of discrimination to CCHR.

Thank you!

- Questions?