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New York City Enacts Law to Regulate Use of Automated Hiring Tools

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Over the past decade many employers have adopted Artificial Intelligence driven tools to automate various aspects of the workplace, including the recruiting and hiring process. These tools have come under scrutiny by federal, state and local governments based on research that has suggested the possibility of bias or discrimination arising from the widespread use of such tools. Due to a new law in New York City, effective January 1, 2023, New York City employers will be prohibited from using automated employment decision tools to screen applicants and employees, unless the tool has been subject to a bias audit and the employer satisfies a series of potentially burdensome notice requirements.

Under the law, it is unlawful for an employer or an employment agency to use an automated employment decision tool to screen a candidate or employee for an employment decision unless: (i) the tool has been the subject of a bias audit conducted no more than one year prior to the use of such tool; and (ii) a summary of the results of the most recent bias audit (as well as the distribution date of the tool to which such audit applies) has been made publicly available on the employer's website prior to the use of such tool. The audit must be conducted by an independent auditor and assess whether the tool has a disparate impact on race, ethnicity and gender.

Automated employment decision tools include "any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons." However, this does not include any tool "that does not automate, support, substantially assist or replace discretionary decision-making processes and that does not materially impact natural persons, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other compilation of data."

In addition, if an automated employment decision tool will be used to substantially assist the employer in making job decisions, employers are required to inform affected employees or applicants who reside in the city of the following:

- that an automated employment decision tool will be used in connection with the assessment or evaluation of such employee or candidate (this notice must be made no less than ten business days before such use and allow a candidate to request an alternative selection process or accommodation);
- the job qualifications and characteristics that the automated employment decision tool will use in the assessment of the candidate or employee (this notice must be made no less than ten business days before such use); and
- if not disclosed on the employer or employment agency's website, information about the type of data collected for the automated employment decision tool, the source of such data and the employer or employment agency's data retention policy must be available within 30 days of a written request by a candidate or employee (unless disclosure would violate local, state, or federal law, or interfere with a law enforcement investigation).

Employers who violate the law will be subject to fines of up to $500 for a first violation and each additional violation occurring on the same day as the first violation, and between $500 and $1,500 for each subsequent offense. The city's corporation counsel is also authorized to initiate court proceedings to seek injunctive relief or such other relief as may be appropriate.

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