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NYC issues FAQs on automated employment decision tools

The New York City Department of Consumer and Worker Protection (“DCWP”) has released additional guidance to employers on Local Law 144. New FAQs address some of the open questions surrounding the use of automated employment decision tools (“AEDTs”) in the hiring or promotion process.

Volume 46

Issue 10

July 31, 2023

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Background

In late 2021, New York City enacted Local Law 144 — a first-in-the-nation law regulating the use of AEDTs in employment decision-making. Intended to prevent bias in employment decisions, the law makes it unlawful for an employer or an employment agency to use AEDTs in NYC to screen candidates for hire or promotion unless the tools satisfy certain criteria. Final rules issued by the DCWP on April 6, 2023 implemented the new law and clarified requirements for bias audits, notices, and disclosures. (See our [June 29, 2023 FYI](#).) NYC began enforcement on July 5, 2023.

FAQs provide additional guidance for employers

The DWCP recently released a set of frequently asked questions ([FAQs](#)) to supplement the final rules and address some of the open questions surrounding the use of AEDTs in employment decision-making.

Employment decisions

The FAQs confirm that employers or employment agencies using an AEDT to substantially help them assess or screen candidates at any point in the hiring or promotion process must comply with the law’s requirements before using the tool.

AEDTs used “in the city”

According to the DWCP, the new law applies only to employers and employment agencies that use an AEDT “in the city.” The FAQs clarify that used “in the city” means:

- The job location is at 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 NYC residents must receive notice that the employer or employment agency uses an AEDT.

Recruitment and outreach

The FAQs confirm that the law covers AEDT use to assess candidates for hiring or promotion — but only after they have applied for a specific position. The law’s requirements would not apply to the use of an AEDT to scan a resume bank, conduct outreach to potential candidates, or invite applications.

Data requirements

As the FAQs explain, with certain exceptions, historical data of the AEDT (i.e., the data collected during an employer’s or employment agency’s use of an AEDT to assess candidates for employment or employees for promotion) must be used to conduct a bias audit. Employers and employment agencies cannot impute demographic information to applicants or use algorithmic software to infer it. If there is insufficient historical data available to conduct a statistically significant bias audit, test data or the historical data of other employers or employment agencies may be used. An employer or employment agency may rely on an independent auditor to make that determination. Whether historical or test data is used to conduct the bias audit, the results summary of the bias audit must include the source and explanation of the data used.

Bias audits

As the FAQs make clear, AEDT vendors can have an independent auditor conduct a bias audit or coordinate the collection of data for the audit but employers and employment agencies are ultimately responsible for ensuring that a compliant bias audit was done before using the AEDT.

While the law requires employers and employment agencies to do a bias audit, it does not require any specific actions based on audit results. However, the DWCP reminds employers and employment agencies to determine whether any actions may be needed to ensure compliance with federal, state and city antidiscrimination laws.

Notice to employees and job candidates

The new law requires notice to employees and job candidates who are residents of New York City that an AEDT will be used and the job qualifications or characteristics that the AEDT will assess but it does not require specific language to be used. According to the FAQs, notice posted on an employer's website for job applicants or provided in a written policy or procedure for candidates for promotion need not be position specific. Employers and employment agencies may begin using the AEDT ten business days after providing notice on their website, regardless of when a specific job was posted.

Complaints and enforcement

The FAQs confirm that AEDT-related complaints may be submitted by contacting 311 or via the DCWP's website. Complaints must include: (i) details of the job posting or position, (ii) the name and type of AEDT, (iii) notice provided, if any, and (iv) an explanation of the suspected violation (for example, AEDT used without notice).

While DCWP enforces the law's prohibition on AEDT use without a bias audit and required notices, AEDT-related discrimination claims should go to the NYC Commission on Human Rights, which enforces the NYC Human Rights Law. DCWP will refer any discrimination claims to the City Commission.

In closing

Employers who are currently using — or plan to use — automated tools in the hiring or promotion process should review their current practices to determine what, if any, steps may be necessary to ensure compliance with the new NYC bias audit, posting and notice requirements.

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Omit from "time" metrics*	No
Blurb* (max 250 characters – check count by selecting text and clicking on “Words” at bottom left)	FAQs released by the New York City Department of Consumer and Worker Protection (“DCWP”) address some of the open questions surrounding the use of automated employment decision tools (“AEDTs”) in the hiring or promotion process.
Action blurb	Employers who are currently using — or plan to use — automated tools in the hiring or promotion process should review their current practices to determine what, if any, steps may be necessary to ensure compliance with NYC’s new bias audit, posting and notice requirements.
Notes/comments	

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