

**March 15, 2022**

**New York City to Require Bias Audit, Applicant Notification of Artificial Intelligence Hiring Tools Starting 2023**

Increasingly, government officials have discussed the potential for bias in artificial intelligence and other automated employment technology. New York City is no exception, and beginning on January 2, 2023, employers operating in New York City will be prohibited from using automated employment decision tools, including computational processes derived from machine learning, statistical modeling, data analytics and artificial intelligence, unless the technology has undergone a “bias audit” within one year prior to its use.<sup>1</sup> Employers who currently use automated employment decisions tools should begin preparations now to ensure they will be in compliance with the law once it takes effect.

The required bias audit must be an impartial evaluation that is conducted by an independent auditor who measures the disparate impact of the automated employment decision tool on individuals based on race, ethnicity, and sex. The results of the bias audit and the distribution date of the tool must be made public prior to an employer using the tool and should be available on the employer’s website.

Employers who choose to use automated employment decision tools are also subject to notification requirements. At least ten business days prior to using the tools, the employer must notify each employee or candidate (i) that an automated employment decision tool will be used and that the employee or candidate is allowed to request an alternative selection process or accommodation and (ii) what job qualifications and characteristics the tool will use to make an assessment. In the absence of any guidance on acceptable forms of notice as of the date of this Alert, job postings and application portals provide one route to satisfy this notification requirement and employers should comply with any future regulations or guidance on notification.

Candidates or employees are also able to submit a written request for certain information, to the extent it is not previously disclosed on the employer’s website, including (i) the type of data collected, (ii) the source of the data and (iii) the employer’s data retention policy. Employers have 30 days to respond to the written request.

The law empowers New York City’s corporation counsel (or its designee) to seek penalties for violation of law by allowing the corporation counsel (or its designee) to file suit in any court of competent jurisdiction. Employers who fail to comply with the law will face increasing monetary penalties. A penalty of up to \$500 for an initial violation, as well as any additional violations occurring on the same day, may be imposed, and subsequent violations are subject to penalties of between \$500 and \$1,000. Penalties can add up quickly as each day on which an automated decision is improperly used is a separate violation, as is each instance of an employer’s failure to provide appropriate notice. The New York City Human rights Commission is expected to be responsible for enforcement of the law, although

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<sup>1</sup> Local Law No. 144 (2021) of City of New York.

its website does not yet address these new hiring requirements as of the date of this Alert. Under the law, employees or candidates do not have a private right of action but the law does not limit an employee or candidate's ability to bring a private civil action under a different statute.

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at [jmoldover@lawyersalliance.org](mailto:jmoldover@lawyersalliance.org) or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information. To become a client, visit [www.lawyersalliance.org/becoming-a-client](http://www.lawyersalliance.org/becoming-a-client).***

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