

STATE OF NEW YORK

7244

2021-2022 Regular Sessions

IN ASSEMBLY

April 29, 2021

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing criteria for the sale of automated employment decision tools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 203-f to
2 read as follows:

3 § 203-f. Sale of automated employment decision tools. 1. For purposes
4 of this section, the following terms shall have the following meanings:

5 a. "Automated employment decision tool" means any system used to
6 filter employment candidates or prospective candidates for hire in a way
7 that establishes a preferred candidate or candidates without relying on
8 candidate-specific assessments by individual decision-makers. Automated
9 employment decision tools shall include personality tests, cognitive
10 ability tests, resume scoring systems and any system whose function is
11 governed by statistical theory, or whose parameters are defined by such
12 systems, including inferential methodologies, linear regression, neural
13 networks, decision trees, random forests and other learning algorithms.

14 b. "Disparate impact report" means an analysis, including but not
15 limited to testing, of the extent to which use of an automated employ-
16 ment decision tool is likely to result in an adverse impact to the
17 detriment of any group on the basis of sex, race or ethnicity. A dispa-
18 rate impact report shall differentiate between candidates who were
19 selected and candidates who were not selected by the tool and shall
20 include a disparate impact analysis as specified in the uniform guide-
21 lines on employee selection procedures promulgated by the United States
22 equal employment opportunity commission.

23 c. "Disability accommodation policy" means an overview of the proce-
24 dures an automated employment decision tool relies on to ensure that
25 candidates with disabilities can receive reasonable accommodations in

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 the hiring process in accordance with the Americans with Disabilities
2 Act of 1990, as amended (Public Law 101-336).

3 d. "Employment decision" means to screen candidates for employment.

4 2. It shall be unlawful to sell or offer for sale an automated employ-
5 ment decision tool that fails to comply with the following provisions:

6 a. A disparate impact report shall be conducted one year prior to the
7 sale or the offering for sale of an automated employment decision tool.
8 A public disclosure report shall be provided to the department no less
9 than annually and shall include the results of the most recent disparate
10 impact report for each automated employment decision tool available for
11 sale in the state. Such report shall also include the disability accom-
12 modation policy of the vendor.

13 b. Every sale of such tool shall include a copy of the most recent
14 public disclosure report at no additional cost.

15 c. No less than annually, a disparate impact report shall be produced
16 to assess the actual impact of any automated employment decision tool
17 used by any employer to select candidates for jobs within the state.
18 Such disparate impact report shall be provided to the employer but shall
19 not be publicly filed and shall be subject to all applicable privileges.

20 d. Such tool shall be sold or offered for sale with a notice stating
21 that such tool is subject to the provisions of this section.

22 3. A person who uses an automated employment decision tool to screen a
23 candidate for an employment decision shall provide notice to each such
24 candidate that an automated employment decision tool subject to dispa-
25 rate impact reporting was used in connection with assessing the candi-
26 date and shall notify each such candidate of the job qualifications or
27 characteristics that such tool was used to assess.

28 4. a. A person who violates any provision of this section or any rule
29 or regulation promulgated thereunder, shall be subject to a civil penal-
30 ty of up to five hundred dollars for the first violation and for each
31 additional violation occurring on the same day as the first violation,
32 and a civil penalty of not less than five hundred dollars, nor more than
33 one thousand five hundred dollars, for each subsequent violation.

34 b. Violations shall accrue on a daily basis for each automated employ-
35 ment decision tool that is sold or offered for sale in violation of
36 subdivision two of this section.

37 c. Each instance in which notice is not provided to a candidate prior
38 to the use of an automated employment decision tool, in violation of
39 subdivision three of this section, shall constitute a single violation
40 and each thirty day period thereafter in which such notice is not
41 provided to such candidate shall constitute a separate violation.

42 5. The commissioner may initiate an investigation if a preponderance
43 of the evidence establishes a suspicion of a violation, including but
44 not limited to, mandating a third party disparate impact audit. The
45 commissioner may also initiate in a court of competent jurisdiction any
46 action or proceeding that may be appropriate or necessary for the
47 correction of any violation issued pursuant to this section, including
48 mandating compliance with the provisions of this section or such other
49 relief as may be appropriate.

50 6. The department may promulgate rules and regulations as it deems
51 necessary to effectuate the purposes of this section, on or before such
52 effective date.

53 § 2. This act shall take effect immediately.