STATE OF NEW YORK

6852

2021-2022 Regular Sessions

IN SENATE

May 19, 2021

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

b. "Disparate impact report" means an analysis, including but not limited to testing, of the extent to which use of an automated employment decision tool is likely to result in an adverse impact to the detriment of any group on the basis of sex, race or ethnicity. A disparate impact report shall differentiate between candidates who were selected and candidates who were not selected by the tool and shall include a disparate impact analysis as specified in the uniform guidelines on employee selection procedures promulgated by the United States equal employment opportunity commission.

c. "Disability accommodation policy" means an overview of the procedures an automated employment decision tool relies on to ensure that 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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the hiring process in accordance with the Americans with Disabilities Act of 1990, as amended (Public Law 101-336).

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

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

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

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

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

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

3. A person who uses an automated employment decision tool to screen a candidate for an employment decision shall provide notice to each such candidate that an automated employment decision tool subject to disparate impact reporting was used in connection with assessing the candidate and shall notify each such candidate of the job qualifications or characteristics that such tool was used to assess.

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

b. Violations shall accrue on a daily basis for each automated employment decision tool that is sold or offered for sale in violation of subdivision two of this section.

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

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

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

§ 2. This act shall take effect immediately.