

STATE OF NEW YORK

8328

2023-2024 Regular Sessions

IN ASSEMBLY

December 13, 2023

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 restricting the use of electronic monitoring and automated employment decision tools; and to amend the civil rights law, in relation to making a conforming change

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-g to
2 read as follows:

3 § 203-g. Electronic monitoring and automated employment decision
4 tools. 1. For the purposes of this section, the following terms have the
5 following meanings:

6 (a) "Automated employment decision tool" means any computational proc-
7 ess, automated system, or algorithm utilizing machine learning, statis-
8 tical modeling, data analytics, artificial intelligence, or similar
9 methods that issues a simplified output, including a score, classifica-
10 tion, ranking, or recommendation, that is used to assist or replace
11 decision making for employment decisions that impact natural persons.
12 "Automated employment decision tool" does not include a tool that does
13 not assist or replace employment decision processes and that does not
14 materially impact natural persons, including, but not limited to, a junk
15 email filter, firewall, antivirus software, calculator, spreadsheet,
16 database, data set, or other compilation of data.

17 (b) "Bias audit" means an impartial evaluation by an independent audi-
18 tor, which shall include, at a minimum, the testing of an automated
19 employment decision tool to assess the tool's disparate impact on
20 employees because of their age, race, creed, color, ethnicity, national
21 origin, disability, citizenship or immigration status, marital or fami-
22 lial status, military status, religion, or sex, including sexual orien-
23 tation, gender identity, gender expression, pregnancy, pregnancy
24 outcomes, and reproductive healthcare choices.

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

LBD11940-04-3

1 (c) "Candidate" means any natural person or their authorized represen-
2 tative seeking employment through an application, or who is screened or
3 evaluated for recruitment, for a position of employment by a business
4 operating in the state.

5 (d) "Electronic monitoring tool" means any system that facilitates the
6 collection of data concerning worker activities or communications by any
7 means other than direct observation by a natural person, including the
8 use of a computer, telephone, wire, radio, camera, electromagnetic,
9 photoelectronic, or photo-optical system.

10 (e) "Employer" means any person who directly or indirectly, or through
11 an agent or any other person, employs or exercises control over the
12 wages, benefits, other compensation, hours, working conditions, access
13 to work or job opportunities, or other terms or conditions of employ-
14 ment, of any worker. "Employer" includes any of the employer's labor
15 contractors.

16 (f) "Employee" means any natural person or their authorized represen-
17 tative acting for, employed by, or an independent contractor providing
18 service to, or through, a business operating in the state.

19 (g) "Employee data" means any information that identifies, relates to,
20 describes, is reasonably capable of being associated with, or could
21 reasonably be linked, directly or indirectly, with a particular employ-
22 ee, regardless of how the information is collected, inferred, or
23 obtained. Data includes, but is not limited to, the following:

24 (i) personal identity information, including the individual's name,
25 contact information, government-issued identification number, financial
26 information, criminal background, or employment history;

27 (ii) biometric information, including the individual's physiological,
28 biological, or behavioral characteristics, including the individual's
29 deoxyribonucleic acid (DNA), that can be used, singly or in combination
30 with other data, to establish individual identity;

31 (iii) health, medical, lifestyle, and wellness information, including
32 the individual's medical history, physical or mental condition, diet or
33 physical activity patterns, heart rate, medical treatment or diagnosis
34 by a health care professional, health insurance policy number, subscrib-
35 er identification number, or other unique identifier used to identify
36 the individual; and

37 (iv) any data related to workplace activities, including the follow-
38 ing:

39 (A) human resources information, including the contents of an individ-
40 ual's personnel file or performance evaluations;

41 (B) work process information, such as productivity and efficiency
42 data;

43 (C) data that captures workplace communications and interactions,
44 including emails, texts, internal message boards, and customer inter-
45 action and ratings;

46 (D) device usage and data, including calls placed or geolocation
47 information;

48 (E) audio-video data and other information collected from sensors,
49 including movement tracking, thermal sensors, voiceprints, or facial
50 recognition, emotion, and gait recognition;

51 (F) inputs to or outputs generated by an automated employment decision
52 tool that are linked to the individual; and

53 (G) data that is collected or generated on workers to mitigate the
54 spread of infectious diseases, including COVID-19, or to comply with
55 public health measures.

1 (h) "Employment decision" means any decision made by the employer that
2 affects wages, benefits, other compensation, hours, work schedule,
3 performance evaluation, hiring, selecting for recruitment, discipline,
4 promotion, termination, job content, assignment of work, access to work
5 opportunities, productivity requirements, workplace health and safety,
6 and other terms or conditions of employment. For independent contractors
7 or candidates for employment, this means the equivalent of these deci-
8 sions based on their contract with or relationship to the employer.

9 (i) "Vendor" means any person who sells, distributes, or develops for
10 sale an automated employment decision tool to be used in an employment
11 decision made by an employer in the state.

12 2. (a) It shall be unlawful for an employer to use an electronic moni-
13 toring tool to collect employee data unless:

14 (i) the electronic monitoring tool is primarily intended to accomplish
15 any of the following purposes:

16 (A) allowing a worker to accomplish an essential job function;

17 (B) ensuring the quality of goods and services;

18 (C) periodic assessment of worker performance;

19 (D) ensuring compliance with employment, labor, or other relevant
20 laws;

21 (E) protecting the health, safety, or security of workers, or the
22 security of the employer's facilities or computer networks;

23 (F) administering wages and benefits; or

24 (G) additional purposes to enable business operations as determined by
25 the department;

26 (ii) the specific type of electronic monitoring tool is strictly
27 necessary to accomplish the purpose, exclusively used to accomplish the
28 purpose, and is the least invasive means to the employee that could
29 reasonably be used to accomplish the purpose; and

30 (iii) the specific form of electronic monitoring is limited to the
31 smallest number of workers and collects the least amount of data neces-
32 sary to accomplish the purpose.

33 (b) Any employer that uses an electronic monitoring tool shall give
34 prior written notice to all employees who may be subject to electronic
35 monitoring and post said notice in a conspicuous place which is readily
36 available for viewing by employees, pursuant to subdivision two of
37 section fifty-two-e of the civil rights law. Such notice shall include,
38 at a minimum, the following:

39 (i) a description of the purpose for which the electronic monitoring
40 tool will be used, as specified in subparagraph (i) of paragraph (a) of
41 this subdivision;

42 (ii) a description of the specific employee data to be collected, and
43 the activities, locations, communications, and job roles that will be
44 electronically monitored by the tool;

45 (iii) a description of the dates, times, and frequency that electronic
46 monitoring will occur;

47 (iv) whether and how any employee data collected by the electronic
48 monitoring tool will be used as an input in an automated employment
49 decision tool;

50 (v) whether and how any employee data collected by the electronic
51 monitoring tool will alone or in conjunction with an automated employ-
52 ment decision tool be used to make an employment decision by the employ-
53 er or employment agency;

54 (vi) whether any employee data collected by the electronic monitoring
55 tool will be used to assess employees' productivity performance or to
56 set productivity standards, and if so, how;

1 (vii) a description of where any employee data collected by the elec-
2 tronic monitoring tool will be stored and the length of time it will be
3 retained; and

4 (viii) an explanation for how the specific electronic monitoring prac-
5 tice is the least invasive means available to accomplish the monitoring
6 purpose.

7 (c) An employer shall destroy any employee data collected via an elec-
8 tronic monitoring tool when the initial purpose for collecting the data
9 has been satisfied or at the end of the employee's relationship with the
10 employer, unless the employee has provided written and informed consent
11 to the retention of their data by the employer.

12 (d) Notice of the specific form of electronic monitoring shall be
13 clear and conspicuous and provide the worker with actual notice of elec-
14 tronic monitoring activities. A notice that states electronic monitoring
15 "may" take place or that the employer "reserves the right" to monitor
16 shall not be considered clear and conspicuous.

17 (e) (i) An employer who engages in random or periodic electronic moni-
18 toring of employees shall inform the affected employees of the specific
19 events which are being monitored at the time the monitoring takes place.
20 Notice shall be clear and conspicuous.

21 (ii) Notice of random or periodic electronic monitoring may be given
22 after electronic monitoring has occurred only if necessary to preserve
23 the integrity of an investigation of illegal activity or protect the
24 immediate safety of employees, customers, or the public.

25 3. (a) Notwithstanding the allowable purposes for electronic monitor-
26 ing described in paragraph (a) of subdivision two of this section, an
27 employer shall not:

28 (i) use an electronic monitoring tool in such a manner that results in
29 a violation of labor or employment law;

30 (ii) use an electronic monitoring tool in such a manner as to threaten
31 the health, welfare, safety, or legal rights of employees;

32 (iii) use an electronic monitoring tool to monitor employees who are
33 off-duty and not performing work-related tasks;

34 (iv) use an electronic monitoring tool in order to obtain information
35 about an employee's religious beliefs, health or disability status, or
36 immigration status;

37 (v) use an electronic monitoring tool in order to identify, punish, or
38 obtain information about employees engaging in activity protected under
39 labor and employment law;

40 (vi) use an electronic monitoring tool in order to or with the effect
41 of informing a dynamic wage-setting system;

42 (vii) conduct audio-visual monitoring of bathrooms or other similarly
43 private areas, including locker rooms, changing areas, breakrooms, smok-
44 ing areas, employee cafeterias, lounges, areas designated to express
45 breast milk, or areas designated for prayer or other religious activity,
46 including data collection on the frequency of use of those private
47 areas;

48 (viii) conduct audio-visual monitoring of a workplace in an employee's
49 residence, an employee's personal vehicle, or property owned or leased
50 by an employee, unless that audio-visual monitoring is strictly neces-
51 sary to ensure employee health and safety, to verify the security of
52 company or client data, or to accomplish other similarly compelling
53 purposes;

54 (ix) use an electronic monitoring tool that incorporates facial recog-
55 nitition, gait, or emotion recognition technology;

1 (x) discipline or terminate the employment of an employee solely on
2 the basis of their opposition of or refusal to submit to a practice that
3 the employee believes in good faith that violate this section; or

4 (xi) where employees have union representation, refuse to bargain over
5 the use of electronic monitoring tools.

6 (b) An employer shall not use employee data collected via an electron-
7 ic monitoring tool for purposes other than those specified in the
8 notice provided pursuant to paragraph (b) of subdivision two of this
9 section.

10 (c) An employer shall not sell, transfer, or disclose employee data
11 collected via an electronic monitoring tool to any other entity
12 unless it is required to do so under state or federal law, or necessary
13 to do so to comply with a bias audit of an automated employment decision
14 tool pursuant to subdivision four of this section.

15 (d) An employer shall not require employees to either install applica-
16 tions on personal devices that collect or transmit employee data or to
17 wear, embed, or physically implant those devices, including those that
18 are installed subcutaneously or incorporated into items of clothing or
19 personal accessories, unless the electronic monitoring is strictly
20 necessary to accomplish essential job functions and is narrowly limited
21 to only the activities and times necessary to accomplish essential job
22 functions. Location tracking applications and devices shall be disabled
23 outside the activities and times necessary to accomplish essential job
24 functions.

25 (e) An employer shall not rely solely on employee data collected
26 through electronic monitoring when making hiring, promotion, termi-
27 nation, disciplinary, or compensation decisions.

28 (f) The information and judgments involved in an employer's use of
29 electronic monitoring data shall be documented and communicated to
30 affected employees prior to the hiring, promotion, termination, or
31 disciplinary decision going into effect.

32 (g) Data that provides evidence of criminal activity, when independ-
33 ently corroborated by the employer, or captured through the use of
34 reasonable security measures that comply with paragraph (a) of subdivi-
35 sion two of this section, is exempt from this subdivision.

36 4. (a) It shall be unlawful for an employer to use an automated
37 employment decision tool for an employment decision unless such tool has
38 been the subject of a bias audit. Bias audits for automated employment
39 decision tools must:

40 (i) be conducted no more than one year prior to the use of such tool,
41 or where the tool was in use by the employer before this act became a
42 law, within six months of this act becoming a law; and

43 (ii) be conducted by an independent and impartial party with no finan-
44 cial or legal conflicts of interest;

45 (iii) identify and describe the attributes and modeling techniques
46 that the tool uses to produce outputs;

47 (iv) evaluate whether those attributes and techniques are a scientif-
48 ically valid means of evaluating an employee or candidate's performance
49 or ability to perform the essential functions of a role, and whether
50 those attributes may function as a proxy for belonging to a protected
51 class;

52 (v) consider, identify, and describe any disparities in the data used
53 to train or develop the tool and describe how those disparities may
54 result in a disparate impact on persons belonging to a protected class,
55 and what actions may be taken by the employer or vendor of the tool to
56 reduce or remedy any disparate impact;

1 (vi) consider, identify, and describe any disparities in the outputs
2 produced by the tool that may result in a disparate impact on persons
3 belonging to a protected class, and what actions may be taken by the
4 employer or vendor of the tool to reduce or remedy that disparate
5 impact;

6 (vii) evaluate whether the use of the tool may limit accessibility for
7 persons with disabilities, or for persons with any specific disability,
8 and what actions may be taken by the employer or vendor of the tool to
9 reduce or remedy the concern;

10 (viii) identify and describe any other assessment of risks of discrim-
11 ination or a disparate impact of the tool on members of a protected
12 class that arise over the course of the bias audit, and what actions may
13 be taken to reduce or remedy that risk;

14 (ix) for any finding of a disparate impact or limit on accessibility,
15 evaluate whether the data set, attribute, or feature of the tool at
16 issue is the least discriminatory method of assessing a candidate's
17 performance or ability to perform job functions; and

18 (x) be submitted in its entirety or an accessible summary form to the
19 department for inclusion in a public registry of such audits within
20 sixty days of completion and distributed to employees who may be subject
21 to the tool.

22 (b) An employer shall conduct or commission subsequent audits each
23 year that the tool is in use to assist or replace employment decisions.
24 Subsequent audits shall comply with the requirements of paragraph (a) of
25 this subdivision, and shall assess and describe any change in the valid-
26 ity or disparate impact of the tool.

27 (c) An employer or vendor shall retain all documentation pertaining to
28 the design, development, use, and data of an automated employment deci-
29 sion tool that may be necessary to conduct a bias audit. This includes
30 but is not limited to the source of the data used to develop the tool,
31 the technical specifications of the tool, individuals involved in the
32 development of the tool, and historical use data for the tool. Such
33 documentation must include a historical record of versions of the tool,
34 such that an employer shall be able to attest in the event of litigation
35 disputing an employment decision, the nature and specifications of the
36 tool as it was used at the time of that employment decision. Such
37 documentation shall be stored in such a manner as to be legible and
38 accessible to the party conducting a bias audit.

39 (d) If an initial or subsequent bias audit requires the collection of
40 sensitive employee data to assess a tool's disparate impact on employ-
41 ees, such data shall be collected, processed, stored, and retained in
42 such a manner as to protect the privacy of employees. Employee data
43 provided to auditors for the purpose of a bias audit shall not be shared
44 with the employer, nor shall it be shared with any person, business
45 entity, or other organization unless strictly necessary for the
46 completion of the bias audit.

47 (e) If an initial or subsequent bias audit concludes that a data set,
48 feature, or application of the automated employment decision tool
49 results in a disparate impact on persons belonging to a protected class,
50 or unlawfully limit accessibility for persons with disabilities, an
51 employer shall:

52 (i) take reasonable and appropriate steps to reduce or remedy that
53 disparate impact or limit on accessibility and describe in writing to
54 employees, the auditor, and the department what steps were taken; and

55 (ii) if the employer believes the audit finding of a disparate impact
56 or limit on accessibility is erroneous, or that the steps taken in

1 accordance with subparagraph (i) of this paragraph sufficiently address
2 those findings such that the tool may be lawfully used in accordance
3 with this section, describe in writing to employees, the auditor, and
4 the department how the data set, feature, or application of the tool is
5 the least discriminatory method of assessing an employee's performance
6 or ability to complete essential functions of a position; or

7 (iii) if the employer believes the audit finding of a disparate impact
8 or limit on accessibility is part of a lawful affirmative action plan or
9 other lawful effort to reduce or eliminate bias in employment decisions,
10 describe such plan or effort in writing to employees, the auditor, and
11 the department.

12 (f) It shall be unlawful for an independent auditor, vendor, or
13 employer to manipulate, conceal, or misrepresent the results of a bias
14 audit.

15 5. Any employer that uses an automated employment decision tool shall
16 notify employees and candidates subject to the tool no less than ten
17 business days before such use:

18 (a) that an automated employment decision tool will be used in
19 connection with the assessment or evaluation of such employee or candi-
20 date;

21 (b) the job qualifications and characteristics that such automated
22 employment decision tool will assess, what employee or candidate data or
23 attributes the tool will use to conduct that assessment, and what kind
24 of outputs the tool will produce as an evaluation of such employee or
25 candidate;

26 (c) what employee or candidate data is collected for the automated
27 employment decision tool, the source of such data and the employer's
28 data retention policy. Information pursuant to this section shall not
29 be disclosed where such disclosure would violate local, state, or feder-
30 al law, or interfere with a law enforcement investigation;

31 (d) the results of the most recent bias audit of the automated employ-
32 ment decision tool, including any findings of a disparate impact and
33 associated response from the employer, or information about how to
34 access that information if publicly available;

35 (e) information about how an employee or candidate may request an
36 alternative selection process or accommodation that does not involve the
37 use of an automated employment decision tool; and

38 (f) information about how the employee or candidate may (i) request
39 internal review of the employment decision made by the automated employ-
40 ment decision tool in accordance with subdivision seven of this section
41 and (ii) notification of the employee or candidate's right to file a
42 complaint in a civil court in accordance with subdivision eight of this
43 section.

44 6. (a) Notwithstanding the provisions of subdivision four of this
45 section, an employer shall not, alone or in conjunction with an elec-
46 tronic monitoring tool, use an automated employment decision tool:

47 (i) in such a manner that results in a violation of labor or employ-
48 ment law;

49 (ii) in such a manner as to unduly intensify the conditions of work or
50 to harm the health and safety of employees, including by setting unrea-
51 sonable productivity quotas;

52 (iii) to make predictions about an employee or candidate for employ-
53 ment's behavior, beliefs, intentions, personality, emotional state, or
54 other characteristic or behavior;

55 (iv) to predict, interfere with, restrain, or coerce employees engag-
56 ing in activity protected under labor and employment law;

1 (v) to implement a dynamic wage-setting system that pays employees
2 different wages for the same work;

3 (vi) to subtract from an employee's wages time spent exercising their
4 legal rights; or

5 (vii) that involves facial recognition, gait, or emotion recognition
6 technologies.

7 (b) An employer shall not rely solely on output from an automated
8 employment decision tool when making hiring, promotion, termination,
9 disciplinary, or compensation decisions.

10 (i) An employer shall establish meaningful human oversight of hiring,
11 promotion, termination, disciplinary or compensation decisions assisted
12 or replaced by automated employment decision tools. Meaningful human
13 oversight requires:

14 (A) the designation of an internal reviewer with sufficient expertise
15 in the operation of automated employment decision tools, sufficient
16 familiarity with the results of the most recent bias audit of the
17 employer's tool, and sufficient understanding of the outputs of the
18 employer's tool to identify potential errors, discrepancies, or inaccur-
19 racies produced by the tool;

20 (B) that sufficient authority and discretion be granted to the desig-
21 nated internal reviewer to dispute, rerun, or recommend the rejection of
22 an output suspected to be invalid, inaccurate, or discriminatory; and

23 (C) that the designated internal reviewer has the time and resources
24 available to review and evaluate the tool output in accordance with
25 clause (B) of this subparagraph.

26 (ii) An employer shall consider information other than automated
27 employment decision tool outputs when making hiring, promotion, termi-
28 nation, disciplinary, or compensation decisions, such as supervisory or
29 managerial evaluations, personnel files, employee work products, or peer
30 reviews.

31 (c) An employer may not, where employees have union representation,
32 refuse to bargain over the use of automated employment decision tools.

33 (d) An employer shall not require employees or candidates that apply
34 for a position of employment to consent to the use of an automated
35 employment decision tool in an employment decision in order to be
36 considered for an employment decision, nor shall an employer discipline
37 or disadvantage an employee or candidate for employment solely as a
38 result of their request for accommodation.

39 7. (a) An employer shall offer employees and candidates a meaningful
40 opportunity to request a reevaluation of the results of an employment
41 decision made or assisted by an automated employment decision tool, if
42 an employee or candidate believes or suspects that the decision resulted
43 from inaccuracy, error, or bias in the tool, that the tool was used as
44 the sole basis for the decision, or that the employer's use of the tool
45 in some other way violates the provisions of this section, and the
46 employee or candidate was meaningfully harmed by the outcome of the
47 employment decision. An employee or candidate shall within thirty days
48 of being notified of the employment decision provide the employer with a
49 written request for reevaluation. Such written request shall include:

50 (i) the person's name, the employment decision at issue, and how the
51 person was harmed by the outcome of the employment decision;

52 (ii) why the person believes or suspects the employment decision was
53 informed by an inaccurate, erroneous, or biased output, was the result
54 of an unlawful sole reliance on an automated employment decision tool,
55 or otherwise violated the provisions of this section;

1 (iii) any evidence that may support the person's belief or suspicion;
2 and

3 (iv) what reasonable remedial action the person would like the employ-
4 er to take to investigate or remedy the believed or suspected harm,
5 which may include providing the employee or candidate with outputs or
6 documentation associated with the employment decision, providing the
7 employee or candidate with documentation about the tool's most recent
8 bias audit, or reprocessing the employee or candidate's data through the
9 tool.

10 (b) An employer shall respond in writing to an employee or candidate's
11 written request for reevaluation within sixty days of receipt of such
12 request. Such written response shall include:

13 (i) any employment decision tool outputs regarding the person purport-
14 ing to be harmed by the employment decision that were used in the making
15 of the employment decision;

16 (ii) a description of the information other than the automated employ-
17 ment decision tool output that contributed to the employment decision;

18 (iii) whether the employer agrees with the employee or candidate's
19 belief or suspicion that the decision was informed by an inaccurate,
20 erroneous, or biased tool or output, that the tool was the unlawful sole
21 basis for the decision, or that the employer otherwise violated the
22 provisions of this section in its use of the tool, and why or why not;

23 (iv) if the employer disagrees with the employee or candidate's belief
24 or suspicion, any evidence supporting the tool or output's accuracy and
25 validity, the existence of meaningful human oversight, or the use of
26 bases other than the tool in the making of the decision;

27 (v) if the employee or candidate requested the reprocessing of their
28 data through the tool, the results or outputs of that reprocessing, and
29 whether the results of the reprocessing have changed the employer's
30 employment decision, and why or why not; and

31 (vi) if the employer refuses to take any reasonable remedial action
32 requested by the employee or candidate, why they refuse to do so.

33 8. (a) If an employer fails to respond to an employee or candidate's
34 request for reevaluation, or if the employee or candidate continues to
35 have reason to believe they were harmed by the unlawful use of an inac-
36 curate or biased automated employment decision tool or other violation
37 of this section, the employee or candidate may initiate an action in a
38 court of competent jurisdiction to enforce the provisions of this
39 section. An employer that violates this section shall be liable for
40 actual damages to any employee or candidate that has suffered damages
41 due to such violation, reasonable attorneys' fees and costs, and, unless
42 the employer proves a good faith basis to believe that its actions were
43 in compliance with the law, one hundred percent of the total amount of
44 actual damages, except such liquidated damages may be up to three
45 hundred percent if found that the actions were willful.

46 (b) In any civil action claiming that an employer has violated this
47 section in its use of electronic monitoring or automated employment
48 decision tools, any person, employer, vendor, or other business entity
49 that used, sold, distributed, or developed the tool shall be jointly and
50 severally liable to a prevailing plaintiff for all damages awarded to
51 that prevailing plaintiff, except that where a person, employer, vendor,
52 or other business entity knowingly sells, provides, or distributes a
53 tool to an employer with fewer than fifty employees, the vendor, not the
54 small employer, shall be liable for any unlawful acts.

55 9. (a) Any person who violates any provision of this section or any
56 rule promulgated pursuant to this section is liable for a civil penalty

1 of not more than five hundred dollars for a first violation and each
2 additional violation occurring on the same day as the first violation,
3 and not less than five hundred dollars nor more than fifteen hundred
4 dollars for each subsequent violation.

5 (b) Each day on which an electronic monitoring tool or automated
6 employment decision tool is used in violation of this section shall give
7 rise to a separate violation of this section.

8 (c) Failure to provide any notice to a candidate or an employee in
9 violation of subdivision two or five of this section shall constitute a
10 separate violation.

11 (d) A proceeding to recover any civil penalty authorized by this
12 section is returnable to any tribunal established within any agency
13 designated to conduct such proceedings, or, in a city of over one
14 million in population, such hearing may be held by a hearing officer
15 employed within the office of administrative trials and hearings.

16 10. The attorney general may initiate in a court of competent juris-
17 isdiction action that may be appropriate or necessary for correction of
18 any violation of this section, including mandating compliance with the
19 provisions of this section or such other relief as may be appropriate.

20 11. The provisions of this section shall not be construed as to limit
21 the authority of the division of human rights to enforce the provisions
22 of article fifteen of the executive law.

23 § 2. (a) The department of labor shall promulgate any rules and regu-
24 lations necessary to implement the provisions of this section.

25 (b) The department of labor shall within one hundred eighty days of
26 this act becoming a law have established a means of collecting, storing,
27 and making publicly available any bias audits or summaries of bias
28 audits submitted by employers or vendors in the state. Such department
29 shall promulgate rules and regulations by which employers, vendors, or
30 employees may request the redaction of certain information from said
31 bias audits or summaries thereof, if that information is proprietary,
32 sensitive, or poses a threat to the privacy of employees or candidates.

33 § 3. Section 52-c of the civil rights law, as added by chapter 583 of
34 the laws of 2021, is renumbered section 52-e and is amended to read as
35 follows:

36 § 52-e. Employers engaged in electronic monitoring; prior notice
37 required. 1. For purposes of this section, employer means any individ-
38 ual, corporation, partnership, firm, or association with a place of
39 business in the state. It shall not include the state or any political
40 subdivision of the state.

41 2. (a) Any employer who monitors or otherwise intercepts telephone
42 conversations or transmissions, electronic mail or transmissions, or
43 internet access or usage of or by an employee by any electronic device
44 or system, including but not limited to the use of a computer, tele-
45 phone, wire, radio, or electromagnetic, photoelectronic or photo-optical
46 systems, shall give prior written notice upon hiring to all employees
47 who are subject to electronic monitoring. The notice required by this
48 subdivision shall be in writing, in an electronic record, or in another
49 electronic form and acknowledged by the employee either in writing or
50 electronically. Each employer shall also post the notice of electronic
51 monitoring in a conspicuous place which is readily available for viewing
52 by its employees who are subject to electronic monitoring. Such written
53 notice shall comply with the requirements of subdivision two of section
54 two hundred three-g of the labor law.

55 (b) For purposes of written notice required by paragraph (a) of this
56 subdivision, an employee shall be advised that any and all telephone

1 conversations or transmissions, electronic mail or transmissions, or
2 internet access or usage by an employee by any electronic device or
3 system, including but not limited to the use of a computer, telephone,
4 wire, radio or electromagnetic, photoelectronic or photo-optical systems
5 may be subject to monitoring at any and all times and by any lawful
6 means.

7 3. The attorney general may enforce the provisions of this section.
8 Any employer found to be in violation of this section shall be subject
9 to a maximum civil penalty of five hundred dollars for the first
10 offense, one thousand dollars for the second offense and three thousand
11 dollars for the third and each subsequent offense.

12 4. The provisions of this section shall not apply to processes that
13 are designed to manage the type or volume of incoming or outgoing elec-
14 tronic mail or telephone voice mail or internet usage, that are not
15 targeted to monitor or intercept the electronic mail or telephone voice
16 mail or internet usage of a particular individual, and that are
17 performed solely for the purpose of computer system maintenance and/or
18 protection.

19 § 4. This act shall take effect on the one hundred eightieth day after
20 it shall have become a law.