

# STATE OF NEW YORK

9315

## IN ASSEMBLY

February 28, 2024

Introduced by M. of A. ALVAREZ -- 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 tistical 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.

25 (c) "Candidate" means any natural person or their authorized represen-  
26 tative seeking employment through an application, or who is screened or

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

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1 evaluated for recruitment, for a position of employment by a business  
2 operating in the state.

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

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

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

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

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

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

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

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

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

39 (B) work process information, such as productivity and efficiency  
40 data;

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

44 (D) device usage and data, including calls placed or geolocation  
45 information;

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

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

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

54 (h) "Employment decision" means any decision made by the employer that  
55 affects wages, benefits, other compensation, hours, work schedule,  
56 performance evaluation, hiring, selecting for recruitment, discipline,

1 promotion, termination, job content, assignment of work, access to work  
2 opportunities, productivity requirements, workplace health and safety,  
3 and other terms or conditions of employment. For independent contractors  
4 or candidates for employment, this means the equivalent of these deci-  
5 sions based on their contract with or relationship to the employer.

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

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

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

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

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

15 (C) periodic assessment of worker performance;

16 (D) ensuring compliance with employment, labor, or other relevant  
17 laws;

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

20 (F) administering wages and benefits; or

21 (G) additional purposes to enable business operations as determined by  
22 the department;

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

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

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

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

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

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

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

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

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

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

1 (viii) an explanation for how the specific electronic monitoring prac-  
2 tice is the least invasive means available to accomplish the monitoring  
3 purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (ix) use an electronic monitoring tool that incorporates facial recog-  
52 nition, gait, or emotion recognition technology;

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

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

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

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

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

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

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

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

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

37 (i) be conducted no more than one year prior to the use of such tool,  
38 or where the tool was in use by the employer before the effective date  
39 of this section, within six months of the effective date of this  
40 section; and

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

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

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

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

55 (vi) consider, identify, and describe any disparities in the outputs  
56 produced by the tool that may result in a disparate impact on persons



1 belonging to a protected class, and what actions may be taken by the  
2 employer or vendor of the tool to reduce or remedy that disparate  
3 impact;

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

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

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

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

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

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

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

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

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

53 (ii) if the employer believes the audit finding of a disparate impact  
54 or limit on accessibility is erroneous, or that the steps taken in  
55 accordance with subparagraph (i) of this paragraph sufficiently address  
56 those findings such that the tool may be lawfully used in accordance

1 with this section, describe in writing to employees, the auditor, and  
2 the department how the data set, feature, or application of the tool is  
3 the least discriminatory method of assessing an employee's performance  
4 or ability to complete essential functions of a position; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (vii) that involves facial recognition, gait, or emotion recognition  
4 technologies.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

53 9. (a) Any person who violates any provision of this section or any  
54 rule promulgated pursuant to this section is liable for a civil penalty  
55 of not more than five hundred dollars for a first violation and each  
56 additional violation occurring on the same day as the first violation.

1 and not less than five hundred dollars nor more than fifteen hundred  
2 dollars for each subsequent violation.

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

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

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

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

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

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

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

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

34 § 52-e. Employers engaged in electronic monitoring; prior notice  
35 required. 1. For purposes of this section, employer means any individ-  
36 ual, corporation, partnership, firm, or association with a place of  
37 business in the state. It shall not include the state or any political  
38 subdivision of the state.

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

53 (b) For purposes of written notice required by paragraph (a) of this  
54 subdivision, an employee shall be advised that any and all telephone  
55 conversations or transmissions, electronic mail or transmissions, or  
56 internet access or usage by an employee by any electronic device or

1 system, including but not limited to the use of a computer, telephone,  
2 wire, radio or electromagnetic, photoelectronic or photo-optical systems  
3 may be subject to monitoring at any and all times and by any lawful  
4 means.

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

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

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