STATE OF NEW YORK

5641

2023-2024 Regular Sessions

IN SENATE

March 10, 2023

Introduced by Sen. COMRIE -- 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 use 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. Use 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 artificial intelligence or machine learning algorithms. The term "automated employment decision tool" does not include a tool that does not automate, support, substantially assist or replace discretionary decision-making processes and that does not materially impact natural persons.

b. "Disparate impact analysis" means an impartial 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, ethnicity, or other protected class under article fifteen of the executive law. The results of such analysis shall be reported to the employer implementing or using an automated employment decision tool. A disparate impact analysis shall differentiate between candidates who were selected and candidates

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

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

2. It shall be unlawful for an employer to implement or use an automated employment decision tool that fails to comply with the following provisions:

a. No less than annually, a disparate impact analysis shall be conducted 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 analysis shall be provided to the employer but shall not be publicly filed and shall be subject to all applicable privileges.

b. A summary of the most recent disparate impact analysis of such tool as well as the distribution date of the tool to which the analysis applies has been made publicly available on the website of the employer or employment agency prior to the implementation or use of such tool.

c. No less than annually, any employer using an automated employment decision tool shall provide to the department such summary of the most recent disparate impact analysis provided to the employer on that tool.

3. The attorney general may initiate an investigation if a preponderance of the evidence, including the summary of the most recent disparate impact analysis establishes a suspicion of a violation. The attorney general may also initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant this section, including mandating compliance with the provisions of this section or such other relief as may be appropriate.

4. The commissioner may initiate an investigation if a preponderance of the evidence, including the summary of the most recent disparate impact analysis establishes a suspicion of a violation. 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.

5. 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.