

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:

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

3 § 203-f. Use 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 artificial intelli-
14 gence or machine learning algorithms. The term "automated employment
15 decision tool" does not include a tool that does not automate, support,
16 substantially assist or replace discretionary decision-making processes
17 and that does not materially impact natural persons.

18 b. "Disparate impact analysis" means an impartial analysis, including
19 but not limited to testing of the extent to which use of an automated
20 employment decision tool is likely to result in an adverse impact to the
21 detriment of any group on the basis of sex, race, ethnicity, or other
22 protected class under article fifteen of the executive law. The results
23 of such analysis shall be reported to the employer implementing or using
24 an automated employment decision tool. A disparate impact analysis
25 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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1 who were not selected by the tool and shall include a disparate impact
2 analysis as specified in the uniform guidelines on employee selection
3 procedures promulgated by the United States equal employment opportunity
4 commission.

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

6 2. It shall be unlawful for an employer to implement or use an auto-
7 mated employment decision tool that fails to comply with the following
8 provisions:

9 a. No less than annually, a disparate impact analysis shall be
10 conducted to assess the actual impact of any automated employment
11 decision tool used by any employer to select candidates for jobs within
12 the state. Such disparate impact analysis shall be provided to the
13 employer but shall not be publicly filed and shall be subject to all
14 applicable privileges.

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

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

22 3. The attorney general may initiate an investigation if a preponder-
23 ance of the evidence, including the summary of the most recent dispa-
24 rate impact analysis establishes a suspicion of a violation. The
25 attorney general may also initiate in any court of competent jurisdic-
26 tion any action or proceeding that may be appropriate or necessary for
27 correction of any violation issued pursuant this section, including
28 mandating compliance with the provisions of this section or such other
29 relief as may be appropriate.

30 4. The commissioner may initiate an investigation if a preponderance
31 of the evidence, including the summary of the most recent disparate
32 impact analysis establishes a suspicion of a violation. The commission-
33 er may also initiate in a court of competent jurisdiction any action or
34 proceeding that may be appropriate or necessary for the correction of
35 any violation issued pursuant to this section, including mandating
36 compliance with the provisions of this section or such other relief as
37 may be appropriate.

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

41 § 2. This act shall take effect immediately.