

STATE OF NEW YORK

5641--A

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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to 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 article 20-D to
2 read as follows:

ARTICLE 20-D

AUTOMATED EMPLOYMENT DECISION TOOLS

Section 750. Definitions.

6 751. Anti-discrimination.

7 752. Requirements for a deployer of an automated employment
8 decision tool.

9 753. Requirements for a developer of an automated employment
10 decision tool.

11 754. AI governance.

12 755. Transparency.

13 756. Enforcement.

14 757. Compliance.

15 § 750. Definitions. For the purposes of this article, the following
16 terms shall have the following meanings:

17 1. "Artificial intelligence" shall mean a machine-based system that
18 can, for a given set of human-defined objectives, make predictions,
19 recommendations, or decisions influencing real or virtual environments.
20 An artificial intelligence system uses machine and human-based inputs
21 to:

22 (a) perceive real and virtual environments;

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

LBD02768-02-3

1 (b) abstract such perceptions into models through analysis in an auto-
2 mated manner; and

3 (c) use model inference to formulate options for information or
4 action.

5 2. "Automated employment decision tool" shall mean a system or service
6 that uses artificial intelligence and has been specifically developed
7 and marketed to, or specifically modified to be, the controlling factor
8 in making a consequential employment decision.

9 3. "Consequential employment decision" shall mean a determination made
10 by a deployer to hire, promote, or terminate the employment of an indi-
11 vidual.

12 4. "Controlling factor" shall mean a factor that is weighted more than
13 all other factors combined.

14 5. "Deployer" shall mean any person, partnership, or corporation that
15 uses an automated employment decision tool for a consequential employ-
16 ment decision.

17 6. "Developer" shall mean any person, partnership, or corporation that
18 knowingly designs, codes, or produces an automated employment decision
19 tool, or substantially modifies an artificial intelligence system or
20 service for the intended purpose of being the controlling factor in a
21 consequential employment decision, whether for its own use or for use by
22 a third party.

23 7. "Impact assessment" shall mean a documented risk-based evaluation
24 of an automated employment decision tool, in accordance with the minimum
25 requirements in subdivision two of section seven hundred fifty-two of
26 this article and subdivision three of section seven hundred fifty-three
27 of this article, respectively.

28 § 751. Anti-discrimination. 1. A deployer shall not use an automated
29 employment decision tool in a manner that violates article fifteen of
30 the executive law.

31 2. Nothing in this section shall limit a deployer from processing data
32 for the purpose of preventing or addressing unlawful discrimination or
33 complying with this article or otherwise evaluating the effectiveness of
34 an automated employment decision tool.

35 § 752. Requirements for a deployer of an automated employment decision
36 tool. 1. Within one year of the effective date of this section, and
37 annually thereafter, a deployer shall perform an impact assessment for
38 any automated employment decision tool that such deployer uses.

39 2. The impact assessment required pursuant to subdivision one of this
40 section shall include, but not be limited to:

41 (a) A statement of the purpose of the automated employment decision
42 tool and its benefits, uses, and deployment contexts;

43 (b) A description of the automated employment decision tool's output
44 and how such output is the controlling factor in a consequential employ-
45 ment decision;

46 (c) A summary of the type of data collected from an individual and
47 processed by the automated employment decision tool when such tool is
48 the controlling factor in a consequential employment decision;

49 (d) A statement of the extent to which the deployer's use of the auto-
50 mated employment decision tool is consistent with or varies from the
51 developer's statement of intended use provided to such deployer pursuant
52 to subdivision one of section seven hundred fifty-three of this article;

53 (e) An assessment of any reasonably foreseeable risk of unlawful
54 discrimination arising from the deployer's use of the automated employ-
55 ment decision tool and a description of the safeguard implemented or
56 that will be implemented by such deployer to mitigate such risk;

1 (f) A description of how the automated employment decision tool is
2 used and monitored by the deployer when it is the controlling factor in
3 a consequential employment decision; and

4 (g) A description of how the automated employment decision tool has
5 been or will be evaluated for validity or relevance.

6 § 753. Requirements for a developer of an automated employment deci-
7 sion tool. 1. A developer shall provide a deployer with a statement
8 regarding the intended use of the automated employment decision tool and
9 documentation regarding:

10 (a) The known limitations of the consequential automated decision
11 tool, including any reasonably foreseeable risk of unlawful discrimi-
12 nation arising from its intended use;

13 (b) A description of the type of data used to program or train the
14 automated employment decision tool; and

15 (c) A description of how the automated employment decision tool was
16 evaluated for validity and explainability before sale or licensing.

17 2. Within one year of the effective date of this section, and annually
18 thereafter, a developer shall perform an impact assessment for any auto-
19 mated employment decision tool made available for sale or licensing.

20 3. The impact assessment required pursuant to subdivision one of this
21 section shall include, but not be limited to:

22 (a) A statement of the intended purpose of the automated employment
23 decision tool and its intended benefits, uses, and deployment contexts;

24 (b) A description of the automated employment decision tool's output
25 and how such output is intended to be the controlling factor in conse-
26 quential employment decisions;

27 (c) A summary of the type of data the automated employment decision
28 tool is intended to collect from an individual when it is the control-
29 ling factor in a consequential employment decision;

30 (d) An assessment of any reasonably foreseeable risk of unlawful
31 discrimination arising from the intended use of the automated employment
32 decision tool and a description of the safeguard implemented or that
33 will be implemented by the developer to mitigate such risk; and

34 (e) A description of how the automated employment decision tool can be
35 monitored by the deployer when it is the controlling factor in a conse-
36 quential employment decision.

37 4. This section does not require a developer to disclose any trade
38 secret, as defined by section 1839 of title 18 of the United States
39 code, or other privileged or confidential business information to a
40 deployer.

41 § 754. AI governance. 1. A deployer or developer shall establish,
42 document, implement, and maintain a governance program that contains
43 reasonable administrative and technical safeguards to map, measure,
44 manage, and govern the reasonably foreseeable risk of unlawful discrimi-
45 nation associated with the use or intended use of an automated employ-
46 ment decision tool.

47 2. The safeguards required pursuant to subdivision one of this section
48 shall be appropriate to:

49 (a) The use or intended use of the automated employment decision tool;

50 (b) The entity's role as a deployer, developer, or both;

51 (c) The deployer or developer's size, complexity, and resources;

52 (d) The nature, context, and scope of the activities of the deployer
53 or developer in connection with the automated employment decision tool;
54 and

55 (e) The technical feasibility and cost of available tools, assess-
56 ments, and other means used by the deployer or developer to map, meas-

1 ure, manage, and govern the risks associated with an automated employ-
2 ment decision tool.

3 3. A governance program required pursuant to subdivision one of this
4 section shall be designed to, at a minimum:

5 (a) Designate one or more employees to be responsible for overseeing
6 and maintaining the governance program and compliance with this article;

7 (i) An employee designated pursuant to this paragraph may assert to
8 their employer a good faith belief that the design, production, or use
9 of an automated employment decision tool fails to comply with the
10 requirements of this article.

11 (ii) An employer of an employee designated pursuant to this paragraph
12 shall conduct a prompt and complete assessment of any compliance issue
13 raised by such employee.

14 (b) Identify and implement safeguards to address reasonably foreseea-
15 ble risks of unlawful discrimination resulting from the use or intended
16 use of an automated employment decision tool;

17 (c) When acting as a deployer, conduct impact assessments in accord-
18 ance with section seven hundred fifty-two of this article;

19 (d) When acting as a developer, meet all obligations required pursuant
20 to section seven hundred fifty-three of this article;

21 (e) Conduct an annual and comprehensive review of the policies, prac-
22 tices, and procedures to ensure compliance with this article;

23 (f) Maintain the results of the impact assessment required by this
24 article for two years after the completion of such impact assessment;
25 and

26 (g) Evaluate and make reasonable adjustments to administrative and
27 technical safeguards in light of material changes in technology, the
28 risks associated with the automated employment decision tool, the state
29 of technical standards, and changes in the business arrangements or
30 operations of the deployer or developer.

31 § 755. Transparency. 1. A deployer shall, at or before the time of a
32 consequential employment decision, notify the individual that is the
33 subject of the consequential employment decision that an automated
34 employment decision tool is in use.

35 2. A deployer shall provide the following information to an individual
36 notified pursuant to subdivision one of this section:

37 (a) A statement of the purpose of the automated employment decision
38 tool;

39 (b) A plain language description of how the automated employment deci-
40 sion tool is the controlling factor in the consequential employment
41 decision; and

42 (c) Contact information of the deployer.

43 3. A deployer or developer shall make publicly available, in a readily
44 accessible manner, a plain language policy that provides a summary of
45 the following:

46 (a) The type of automated employment decision tool currently in use or
47 made available to others for use; and

48 (b) How the deployer or developer manages any reasonably foreseeable
49 risk of unlawful discrimination that arises from the automated employ-
50 ment decision tool currently in use or made available to others for use.

51 § 756. Enforcement. 1. The attorney general may initiate an investi-
52 gation of a deployer or developer if a preponderance of the evidence
53 establishes a suspicion of a violation of this article.

54 (a) Upon the request of the attorney general, a deployer or developer
55 shall, within forty-five days, provide to the attorney general any
56 impact assessment performed pursuant to this article.

1 (b) The disclosure of an impact assessment pursuant to paragraph (a)
2 of this subdivision does not constitute a waiver of any attorney-client
3 privilege or work-product protection that might otherwise exist with
4 respect to such impact assessment and any information contained therein.

5 (c) A trade secret, as defined by section 1839 of title 18 of the
6 United States code, that is contained in an impact assessment disclosed
7 to the attorney general pursuant to paragraph (a) of this subdivision is
8 exempt from article six of the public officers law.

9 2. (a) The attorney general shall provide written notice to a deployer
10 or developer of an alleged violation of this article at least forty-five
11 days prior to commencing an enforcement action.

12 (b) The deployer or developer may cure the noticed violation within
13 forty-five days of receiving the written notice required by paragraph
14 (a) of this subdivision.

15 § 757. Compliance. A deployer or developer that complies with this
16 article shall be deemed compliant with any law, regulation, rule,
17 requirement, or standard related to the performance of an impact assess-
18 ment, audit, or governance program, or the equivalent thereof, of an
19 automated employment decision tool that is adopted, maintained, or
20 enforced by a political subdivision of New York state.

21 § 2. This act shall take effect immediately.