# 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:**

Section 1. The labor law is amended by adding a new article 20-D to read as follows:

**ARTICLE 20-D**

**AUTOMATED EMPLOYMENT DECISION TOOLS**


**Section 750. Definitions.**

**751. Anti-discrimination.**

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

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

**754. AI governance.**

**755. Transparency.**

**756. Enforcement.**

**757. Compliance.**


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

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

**(a) perceive real and virtual environments;**

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

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(b) abstract such perceptions into models through analysis in an automated manner; and

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

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

3. "Consequential employment decision" shall mean a determination made by a deployer to hire, promote, or terminate the employment of an individual.

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

5. "Deployer" shall mean any person, partnership, or corporation that uses an automated employment decision tool for a consequential employment decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 753. Requirements for a developer of an automated employment decision tool. 1. A developer shall provide a deployer with a statement regarding the intended use of the automated employment decision tool and documentation regarding:

(a) The known limitations of the consequential automated decision tool, including any reasonably foreseeable risk of unlawful discrimination arising from its intended use;

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

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

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

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

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

(b) A description of the automated employment decision tool's output and how such output is intended to be the controlling factor in consequential employment decisions;

(c) A summary of the type of data the automated employment decision tool is intended to collect from an individual when it is the controlling factor in a consequential employment decision;

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

(e) A description of how the automated employment decision tool can be monitored by the deployer when it is the controlling factor in a consequential employment decision.

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

§ 754. AI governance. 1. A deployer or developer shall establish, document, implement, and maintain a governance program that contains reasonable administrative and technical safeguards to map, measure, manage, and govern the reasonably foreseeable risk of unlawful discrimination associated with the use or intended use of an automated employment decision tool.

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

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

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

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

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

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

ure, manage, and govern the risks associated with an automated employment decision tool.

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

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

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

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

(b) Identify and implement safeguards to address reasonably foreseeable risks of unlawful discrimination resulting from the use or intended use of an automated employment decision tool;

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

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

(e) Conduct an annual and comprehensive review of the policies, practices, and procedures to ensure compliance with this article;

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

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

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

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

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

(b) A plain language description of how the automated employment decision tool is the controlling factor in the consequential employment decision; and

(c) Contact information of the deployer.

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

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

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

§ 756. Enforcement. 1. The attorney general may initiate an investigation of a deployer or developer if a preponderance of the evidence establishes a suspicion of a violation of this article.

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

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

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

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

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

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

§ 2. This act shall take effect immediately.