

# STATE OF NEW YORK

9315--A

## IN ASSEMBLY

February 28, 2024

Introduced by M. of A. ALVAREZ -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 article 36 to read  
2 as follows:

### ARTICLE 36

#### BOSSWARE AND OPPRESSIVE TECHNOLOGY ACT

##### Section 1010. Definitions.

6 1011. Electronic monitoring tools.

7 1012. Automated employment decision tools.

8 1013. Data access and accuracy.

9 1014. Retaliation prohibited.

10 1015. Civil liability.

11 1016. Violations.

12 1017. Powers of the commissioner.

13 § 1010. Definitions. For the purposes of this section, the following  
14 terms have the following meanings:

15 1. "Aggregated employee data" means employee data that an employer has  
16 combined, or collected together, in a summary or other form so that the  
17 employee data cannot be identified with any specific employee.

18 2. "Automated employment decision tool" means any computational proc-  
19 ess, automated system, or algorithm utilizing machine learning, statis-  
20 tical modeling, data analytics, artificial intelligence, or similar  
21 methods that issues an output, including a score, classification, rank-  
22 ing, or recommendation, that is used to assist or replace human decision  
23 making on employment decisions that impact natural persons. "Automated  
24 employment decision tool" does not include a tool that does not assist  
25 or replace employment decision processes and that does not materially  
26 impact natural persons, including, but not limited to, a junk email

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

LBD11940-12-4

1 filter, firewall, antivirus software, calculator, spreadsheet, database,  
2 data set, or other compilation of data.

3 3. "Candidate" means any natural person or their authorized represen-  
4 tative seeking employment through an application, or who is screened or  
5 evaluated for recruitment, for a position of employment by a business  
6 operating in the state.

7 4. "Continuous incremental time-tracking tool" means any system,  
8 application or instrument that continuously measures, records and/or  
9 tallies increments of time within a day during which an employee is or  
10 is not doing a particular activity or set of activities.

11 5. "Electronic monitoring tool" means any system, application, or  
12 instrument that facilitates the collection of data concerning worker  
13 activities or communications by any means other than direct observation  
14 by a natural person, including but not limited to the use of a computer,  
15 telephone, wire, radio, camera, electromagnetic, photoelectronic, or  
16 photo-optical system.

17 6. "Egregious misconduct" means deliberate or grossly negligent  
18 conduct that endangers the safety or well-being of the individual,  
19 co-workers, customers, or other persons, or that causes serious damage  
20 to the employer's or customers' property or business interests, includ-  
21 ing discrimination against or harassment of co-workers, customers, or  
22 other persons or violations of the law.

23 7. "Employer" means any person who directly or indirectly, or through  
24 an agent or any other person, employs or exercises control over the  
25 wages, benefits, other compensation, hours, working conditions, access  
26 to work or job opportunities, or other terms or conditions of employ-  
27 ment, of any worker, including the state, county, town, city, school  
28 district, public authority or other governmental subdivision of any  
29 kind. "Employer" includes any of the employer's agents, contractors, or  
30 subcontractors.

31 8. "Employee" means any natural person or their authorized represen-  
32 tative acting for, employed by, or a person classified as an independent  
33 contractor providing service to, or through, an employer operating in  
34 the state. An employee shall be deemed to be operating in the state for  
35 purposes of deeming an employee to be covered by this article if the  
36 employee works at least part time at a location in the state, or if  
37 fully remote, the employee is associated with an office in the state or  
38 supervised by a person who works at least part time at a location in the  
39 state. Employee can mean a former employee.

40 9. "Employee data" means any information that identifies, relates to,  
41 describes, is reasonably capable of being associated with, or could  
42 reasonably be linked, directly or indirectly, with a particular employ-  
43 ee, regardless of how the information is collected, inferred, or  
44 obtained. Data includes, but is not limited to, the following:

45 (a) personal identity information, including the individual's name,  
46 contact information, government-issued identification number, financial  
47 information, criminal background, or employment history;

48 (b) biometric information, including the individual's physiological,  
49 biological, or behavioral characteristics, including the individual's  
50 deoxyribonucleic acid (DNA), that can be used, singly or in combination  
51 with other data, to establish individual identity;

52 (c) health, medical, lifestyle, and wellness information, including  
53 the individual's medical history, physical or mental condition, diet or  
54 physical activity patterns, heart rate, medical treatment or diagnosis  
55 by a health care professional, health insurance policy number, subscrib-

1 er identification number, or other unique identifier used to identify  
2 the individual; and

3 (d) any data related to workplace activities, including the following:

4 (i) human resources information, including the contents of an individ-  
5 ual's personnel file or performance evaluations;

6 (ii) work process information, such as data relating to an individual  
7 employee's performance, including but not limited to quantities of tasks  
8 performed, quantities of items or materials handled or produced, rates  
9 or speeds of tasks performed, measurements or metrics of employee  
10 performance in relation to a quota, and time categorized as performing  
11 tasks or not performing tasks;

12 (iii) data that captures workplace communications and interactions,  
13 including emails, texts, internal message boards, and customer inter-  
14 action and ratings;

15 (iv) device usage and data, including calls placed or geolocation  
16 information;

17 (v) audio or video data or other information collected from sensors,  
18 including movement tracking, thermal sensors, voiceprints, or facial  
19 recognition, emotion, and gait recognition;

20 (vi) inputs to or outputs generated by an automated employment deci-  
21 sion tool that are linked to the individual;

22 (vii) data collected through electronic monitoring or continuous  
23 incremental time-tracking tools; and

24 (viii) data collected or generated on workers to mitigate the spread  
25 of infectious diseases, including COVID-19, or to comply with public  
26 health measures.

27 10. "Employment decision" means any decision made by the employer that  
28 affects wages, benefits, other compensation, hours, work schedule,  
29 performance evaluation, hiring, selecting for recruitment, discipline,  
30 promotion, termination, job content, assignment of work, access to work  
31 opportunities, productivity requirements, workplace health and safety,  
32 and other terms or conditions of employment. For persons classified as  
33 independent contractors or for candidates for employment, this means the  
34 equivalent of these decisions based on their contract with or relation-  
35 ship to the employer.

36 11. "Impact assessment" means an impartial evaluation by an independ-  
37 ent auditor that complies with section one thousand twelve of this arti-  
38 cle.

39 12. "Independent auditor" means a person or entity that conducts an  
40 impact assessment of an automated employment decision tool in a manner  
41 that exercises objective and impartial judgment on all issues within the  
42 scope of such evaluation or assessment. A person is not an independent  
43 auditor of an automated employment decision tool if they currently or at  
44 any point in the five years preceding the impact assessment:

45 (a) are or were involved in using, developing, offering, licensing, or  
46 deploying the automated employment decision tool;

47 (b) have or had an employment relationship with a developer or deploy-  
48 er that uses, offers, or licenses the automated employment decision  
49 tool; or

50 (c) have or had a direct financial interest or a material indirect  
51 financial interest in a developer or deployer that uses, offers, or  
52 licenses the automated employment decision tool.

53 13. "Meaningful human oversight" means a process that includes, at a  
54 minimum:

55 (a) the designation of an internal reviewer with sufficient expertise  
56 in the operation of automated employment decision tools, sufficient

1 familiarity with the results of the most recent impact assessment of the  
2 employer's tool, and sufficient understanding of the outputs of the  
3 employer's tool to identify potential errors, discrepancies, or inaccur-  
4 racies produced by the tool;

5 (b) that sufficient authority and discretion be granted to the desig-  
6 ated internal reviewer to dispute, rerun, or recommend the rejection of  
7 an output suspected to be invalid, inaccurate, or discriminatory; and

8 (c) that the designated internal reviewer has the time and resources  
9 available to review and evaluate the tool output in accordance with  
10 paragraph (b) of this subdivision.

11 14. "Periodic assessment of worker performance" means assessing worker  
12 performance over the course of units of time equal to or greater than  
13 one calendar day.

14 15. "Protected class" means a class enumerated in section two hundred  
15 ninety-six of the executive law.

16 16. "Vendor" means any person or entity who sells, distributes, or  
17 develops for sale an automated employment decision tool to be used in an  
18 employment decision made by an employer in the state. "Vendor" includes  
19 any of the vendor's agents, contractors, or subcontractors.

20 § 1011. Electronic monitoring tools. 1. (a) It shall be unlawful for  
21 an employer to use an electronic monitoring tool to collect employee  
22 data unless:

23 (i) the electronic monitoring tool is primarily used to accomplish any  
24 of the following purposes:

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

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

27 (C) periodic assessment of worker performance;

28 (D) ensuring compliance with employment, labor, or other relevant  
29 laws;

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

32 (F) administering wages and benefits; or

33 (G) additional purposes to enable business operations as determined by  
34 the department;

35 (ii) the specific type of electronic monitoring tool is strictly  
36 necessary to accomplish the purpose, exclusively used to accomplish the  
37 purpose, and is the least invasive means to the employee that could  
38 reasonably be used to accomplish the purpose; and

39 (iii) the specific form of electronic monitoring is limited to the  
40 smallest number of workers, collects the least amount of data and is  
41 collected no more frequently than is necessary to accomplish the  
42 purpose, and the data collected is deleted once the purpose has been  
43 achieved.

44 (b) Any employer that uses an electronic monitoring tool shall give  
45 prior written notice to all candidates and employees subject to elec-  
46 tronic monitoring and post said notice in a conspicuous place which is  
47 readily available for viewing by candidates and employees, pursuant to  
48 subdivision two of section fifty-two-e of the civil rights law. Such  
49 notice shall include, at a minimum, the following:

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

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

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

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

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

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

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

16 (viii) an explanation for how the specific electronic monitoring prac-  
17 tice is the least invasive means available to accomplish the monitoring  
18 purpose.

19 (c) An employer shall establish, maintain, and preserve for three  
20 years contemporaneous, true, and accurate records of data collected via  
21 an electronic monitoring tool to ensure compliance with employee or  
22 commissioner requests for data. The employer shall destroy any employee  
23 data collected via an electronic monitoring tool no later than thirty-  
24 seven months after collection unless the employee has provided written  
25 and informed consent to the retention of their data by the employer.

26 (d) Notice of the specific form of electronic monitoring shall:

27 (i) be written in clear and plain language;

28 (ii) be provided to each employee, in the language identified by each  
29 employee as the primary language of such employee, at the time of hiring  
30 and at least annually thereafter;

31 (iii) be posted in a clear and conspicuous location in English and in  
32 any other language that the employer regularly uses to communicate with  
33 employees;

34 (iv) be made available in formats that are accessible to employees who  
35 are blind or have other disabilities;

36 (v) provide the worker with actual notice of electronic monitoring  
37 activities. A notice that states electronic monitoring "may" take place  
38 or that the employer "reserves the right" to monitor shall not be  
39 considered actual notice of electronic monitoring activities; and

40 (vi) be otherwise presented in a manner that ensures the notice clear-  
41 ly and effectively communicates the required information to employees.

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

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

50 2. (a) Notwithstanding the allowable purposes for electronic monitor-  
51 ing described in paragraph (a) of subdivision one of this section, an  
52 employer shall not:

53 (i) use an electronic monitoring tool in such a manner that results in  
54 a violation of labor, employment, civil rights, or human rights law or  
55 any other law of this state;

1 (ii) use an electronic monitoring tool or data collected via an elec-  
2 tronic monitoring tool in such a manner as to threaten the health,  
3 welfare, safety, or legal rights of employees or the general public;

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

6 (iv) use an electronic monitoring tool in order to obtain information  
7 about an employee's health, protected-class status, or membership in any  
8 group protected from employment discrimination under section two hundred  
9 ninety-six of the executive law or any other applicable law;

10 (v) use an electronic monitoring tool in order to identify, punish, or  
11 obtain information about employees engaging in activity protected under  
12 labor or employment law;

13 (vi) conduct audio or visual monitoring of bathrooms or other similar-  
14 ly private areas, including locker rooms, changing areas, breakrooms,  
15 smoking areas, employee cafeterias, lounges, areas designated to express  
16 breast milk, or areas designated for prayer or other religious activity,  
17 including data collection on the frequency of use of those private  
18 areas;

19 (vii) conduct audio or visual monitoring of a workplace in an employ-  
20 ee's residence, an employee's personal vehicle, or property owned or  
21 leased by an employee;

22 (viii) use an electronic monitoring tool that incorporates facial  
23 recognition, gait, voice analysis, or emotion recognition technology;

24 (ix) take adverse action against an employee based in whole or in part  
25 on their opposition or refusal to submit to a practice that the employee  
26 believes in good faith violates this article;

27 (x) take adverse employment action against an employee on the basis of  
28 data collected via continuous incremental time-tracking tools except in  
29 the case of egregious misconduct;

30 (xi) take adverse employment action against an employee based on any  
31 data collected via electronic monitoring if such data measures an  
32 employee's performance in relation to a performance standard that has  
33 not been previously disclosed to such employee in violation of subpara-  
34 graph (vi) of paragraph (b) of subdivision one of this section, or if  
35 such data was collected without proper notice to employees or candidates  
36 pursuant to section fifty-two-e of the civil rights law; or

37 (xii) where employees have union representation and where not  
38 preempted by federal law, refuse to bargain over the implementation,  
39 use, and ongoing evaluation of electronic monitoring tools.

40 (b) An employer shall not use employee data collected via an electron-  
41 ic monitoring tool for purposes other than those specified in the  
42 notice provided pursuant to paragraph (b) of subdivision one of this  
43 section.

44 (c) An employer shall not sell, transfer, or disclose employee data  
45 collected via an electronic monitoring tool to any other entity  
46 unless it is required to do so under state or federal law, or necessary  
47 to do so to comply with an impact assessment of an automated employment  
48 decision tool pursuant to section one thousand twelve of this article.

49 (d) An employer shall not require employees to:

50 (i) physically implant devices that collect or transmit data, includ-  
51 ing devices that are installed subcutaneously or incorporated into items  
52 of clothing or personal accessories;

53 (ii) install applications on personal devices that collect or transmit  
54 employee data or to wear or embed those devices; or

55 (iii) carry or use any device with location tracking applications or  
56 services enabled unless the location tracking is:

1 (A) conducted during work hours; and  
2 (B) strictly necessary to accomplish essential job functions and  
3 narrowly limited to only the activities and times necessary to accom-  
4 plish essential job functions.

5 (e) An employer shall not rely primarily on employee data collected  
6 through electronic monitoring when making hiring, promotion, termi-  
7 nation, disciplinary, or compensation decisions. For an employer to  
8 satisfy the requirements of this paragraph:

9 (i) An employer must establish meaningful human oversight of such  
10 decisions based in whole or part on data collected through electronic  
11 monitoring.

12 (ii) A human decision-maker must actually review any information  
13 collected through electronic monitoring, verify that such information is  
14 accurate and up to date, review any pending employee requests to correct  
15 erroneous data, and exercise independent judgment in making each such  
16 decision; and

17 (iii) The human decision-maker must consider information other than  
18 information collected through electronic monitoring when making each  
19 such decision, such as but not limited to supervisory or managerial  
20 evaluations, personnel files, employee work products, or peer reviews.

21 (f) When an employer makes a hiring, promotion, termination, discipli-  
22 nary or compensation decision based in whole or part on data gathered  
23 through the use of electronic monitoring, it shall disclose to affected  
24 employees at least fourteen days prior to the decision going into  
25 effect:

26 (i) that the decision was based in whole or part based on data gath-  
27 ered through electronic monitoring;

28 (ii) the specific electronic monitoring tool or tools used to gather  
29 such data;

30 (iii) the specific data, and judgments based upon such data, used in  
31 the decision-making process; and

32 (iv) any information used in the decision-making process gathered  
33 through sources other than electronic monitoring.

34 § 1012. Automated employment decision tools. 1. (a) It shall be unlaw-  
35 ful for an employer to use an automated employment decision tool for an  
36 employment decision unless such tool has been the subject of an impact  
37 assessment. Impact assessments for automated employment decision tools  
38 must:

39 (i) be conducted no more than one year prior to the use of such tool,  
40 or where the tool was in use by the employer before the effective date  
41 of this article, within six months of the effective date of this arti-  
42 cle;

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

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

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

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

1 (vi) consider, identify, and describe any outputs produced by the tool  
2 that may result in a disparate impact on persons belonging to a  
3 protected class, and what actions may be taken by the employer or vendor  
4 of the tool to reduce or remedy that disparate impact;

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

9 (viii) consider and describe potential sources of adverse impact  
10 against protected classes that may arise after the tool is deployed;

11 (ix) identify and describe any other assessment of risks of discrimi-  
12 nation or a disparate impact of the tool on members of a protected class  
13 that arise over the course of the impact assessment, and what actions  
14 may be taken to reduce or remedy that risk;

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

19 (xi) be submitted in its entirety or an accessible summary form to the  
20 department for inclusion in a public registry of such impact assessments  
21 within sixty days of completion and distributed to employees who may be  
22 subject to the tool.

23 (b) An employer shall conduct or commission subsequent impact assess-  
24 ments each year that the tool is in use to assist or replace employment  
25 decisions. Subsequent impact assessments shall comply with the require-  
26 ments of paragraph (a) of this subdivision, and shall assess and  
27 describe any change in the validity or disparate impact of the tool.

28 (c) An employer or vendor shall retain all documentation pertaining to  
29 the design, development, use, and data of an automated employment deci-  
30 sion tool that may be necessary to conduct an impact assessment. This  
31 includes but is not limited to the source of the data used to develop  
32 the tool, the technical specifications of the tool, individuals involved  
33 in the development of the tool, and historical use data for the tool.  
34 Such documentation must include a historical record of versions of the  
35 tool, such that an employer shall be able to attest in the event of  
36 litigation disputing an employment decision, the nature and specifica-  
37 tions of the tool as it was used at the time of that employment deci-  
38 sion. Such documentation shall be stored in accordance with such record-  
39 keeping, data retention, and security requirements as the commissioner  
40 may specify, and in such a manner as to be legible and accessible to the  
41 party conducting an impact assessment.

42 (d) If an initial or subsequent impact assessment requires the  
43 collection of employee data to assess a tool's disparate impact on  
44 employees, such data shall be collected, processed, stored, and retained  
45 in such a manner as to protect the privacy of employees, and shall  
46 comply with any data retention and security requirements specified by  
47 the commissioner. Employee data provided to auditors for the purpose of  
48 an impact assessment shall not be shared with the employer, nor shall it  
49 be shared with any person, business entity, or other organization unless  
50 strictly necessary for the completion of the impact assessment.

51 (e) If an initial or subsequent impact assessment concludes that a  
52 data set, feature, or application of the automated employment decision  
53 tool results in a disparate impact on persons belonging to a protected  
54 class, or unlawfully limits accessibility for persons with disabilities,  
55 an employer shall refrain from using the tool until it:



1 (i) takes reasonable and appropriate steps to remedy that disparate  
2 impact or limit on accessibility and describe in writing to employees,  
3 the auditor, and the department what steps were taken; and

4 (ii) if the employer believes the impact assessment finding of a  
5 disparate impact or limit on accessibility is erroneous, or that the  
6 steps taken in accordance with subparagraph (i) of this paragraph suffi-  
7 ciently address those findings such that the tool may be lawfully used  
8 in accordance with this article, describes in writing to employees, the  
9 auditor, and the department how the data set, feature, or application of  
10 the tool is the least discriminatory method of assessing an employee's  
11 performance or ability to complete essential functions of a position.

12 (f) It shall be unlawful for an independent auditor, vendor, or  
13 employer to manipulate, conceal, or misrepresent the results of an  
14 impact assessment.

15 (g) Nothing in this article shall be construed as prohibiting an  
16 employer from implementing a lawful affirmative action plan or engaging  
17 in otherwise lawful efforts to reduce or eliminate bias in employment  
18 decisions.

19 2. (a) Any employer that uses an automated employment decision tool to  
20 assess or evaluate an employee or candidate shall notify employees and  
21 candidates subject to the tool no less than ten business days before  
22 such use:

23 (i) that an automated employment decision tool will be used in  
24 connection with the assessment or evaluation of such employee or candi-  
25 date;

26 (ii) the job qualifications and characteristics that such automated  
27 employment decision tool will assess, what employee or candidate data or  
28 attributes the tool will use to conduct that assessment, and what kind  
29 of outputs the tool will produce as an evaluation of such employee or  
30 candidate;

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

36 (iv) the results of the most recent impact assessment of the automated  
37 employment decision tool, including any findings of a disparate impact  
38 and associated response from the employer, or information about how to  
39 access that information if publicly available;

40 (v) information about how an employee or candidate may request an  
41 alternative selection process or accommodation that does not involve the  
42 use of an automated employment decision tool and details about that  
43 alternative process or accommodation process; and

44 (vi) information about how the employee or candidate may:

45 (A) request reevaluation of the employment decision made by the auto-  
46 mated employment decision tool in accordance with section one thousand  
47 thirteen of this article; and

48 (B) notification of the employee or candidate's right to file a  
49 complaint in a civil court in accordance with section one thousand  
50 fifteen of this article.

51 (b) The notice required by this subdivision shall be:

52 (i) written in clear and plain language;

53 (ii) included in each job posting or advertisement for each position  
54 for which the automated employment decision tool will be used;

55 (iii) posted on the employer's website in any language that the  
56 employer regularly uses to communicate with employees;

1 (iv) provided directly to each candidate who applies for a position in  
2 the language with which that candidate communicates with the employer;  
3 (v) made available in formats that are accessible to employees who are  
4 blind or have other disabilities; and  
5 (vi) otherwise presented in a manner that ensures the notice clearly  
6 and effectively communicates the required information to employees.

7 3. (a) Notwithstanding the provisions of subdivision one of this  
8 section, an employer shall not, alone or in conjunction with an elec-  
9 tronic monitoring tool, use an automated employment decision tool:

10 (i) in such a manner that results in a violation of labor, employment,  
11 civil rights or human rights law or any other law of this state;

12 (ii) in a manner that harms or is likely to harm the health or safety  
13 of employees, including by setting productivity quotas in a manner that  
14 is likely to cause physical or mental illness or injury;

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

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

20 (v) to subtract from an employee's wages time spent exercising their  
21 legal rights;

22 (vi) in a manner not consistent with the scope of the impact assess-  
23 ment required by subdivision one of this section; or

24 (vii) that involves facial recognition, gait, or emotion recognition  
25 technologies.

26 (b) An employer shall not rely primarily on output from an automated  
27 employment decision tool when making hiring, promotion, termination,  
28 disciplinary, or compensation decisions. For an employer to satisfy the  
29 requirements of this paragraph:

30 (i) An employer must establish meaningful human oversight of such  
31 decisions based in whole or in part on the output of automated employ-  
32 ment decision tools.

33 (ii) A human decision-maker must actually review any output of an  
34 automated employment decision tool and exercise independent judgment in  
35 making each such decision;

36 (iii) The human decision-maker must consider information other than  
37 automated employment decision tool outputs when making each such deci-  
38 sion, such as but not limited to supervisory or managerial evaluations,  
39 personnel files, employee work products, or peer reviews; and

40 (iv) An employer shall consider information other than automated  
41 employment decision tool outputs when making hiring, promotion, termi-  
42 nation, disciplinary, or compensation decisions, such as supervisory or  
43 managerial evaluations, personnel files, employee work products, or peer  
44 reviews.

45 (c) An employer may not, where employees have union representation and  
46 where not preempted by federal law, refuse to bargain over the use of  
47 automated employment decision tools.

48 (d) An employer shall not require employees or candidates to consent  
49 to the use of an automated employment decision tool in an employment  
50 decision in order to be considered for an employment decision, nor shall  
51 an employer discipline or disadvantage an employee or candidate for  
52 employment as a result of their request for accommodation.

53 § 1013. Data access and accuracy. 1.(a) An employer shall ensure that  
54 any data collected through electronic monitoring that may be used for  
55 the purposes of an employment decision is accurate and, where relevant,  
56 kept up to date.

1 (b) A current or former employee whose data was collected by their  
2 employer through electronic monitoring has the right to request a copy  
3 of the employee's own data, and a copy of the aggregated employee data  
4 for similar employees at the same establishment for the same time  
5 period, if that data may be or was used for the purposes of an employ-  
6 ment decision. A former employee is limited to one request per year  
7 pursuant to this subdivision.

8 (c) An employer that receives a written or oral request for informa-  
9 tion pursuant to this section shall comply with the request as  
10 soon as practicable, but no later than seven calendar days from the date  
11 of the request. An employer shall not take adverse action against an  
12 employee based on their request for their own or aggregated employee  
13 data, nor shall an employer provide those records at a cost to the  
14 current or former employee. An employer shall provide information pursu-  
15 ant to this section in English or, if applicable in the language identi-  
16 fied by the employee as the primary language of such employee.

17 (d) An employer that does not monitor this data has no obligation to  
18 provide it.

19 2. (a) An employer that uses electronic monitoring to collect employee  
20 data to assist in an employment decision must provide employees with the  
21 opportunity to review and request correction of such data both at the  
22 time of its collection and after.

23 (b) An employer that receives an employee request to correct inaccur-  
24 rate data collected through electronic monitoring shall investigate and  
25 determine whether such data is inaccurate.

26 (c) If an employer, upon investigation, determines that such data is  
27 inaccurate, the employer shall:

28 (i) promptly correct the inaccurate data and inform the employee of  
29 the employer's decision and action;

30 (ii) review and adjust, as appropriate, any employment decisions that  
31 were based on the inaccurate data and inform the employee of the adjust-  
32 ment; and

33 (iii) inform any third parties with which the employer shared the  
34 inaccurate data, or from which the employer received the inaccurate  
35 data, and direct them to correct it, and provide the employee with a  
36 copy of such action.

37 (d) If an employer, upon investigation, determines that the data is  
38 accurate, the employer shall inform the employee of the decision not to  
39 amend the data, the steps taken to verify the accuracy of the data, and  
40 any evidence supporting the decision not to amend the data.

41 3. (a) An employer that uses data collected via an electronic monitor-  
42 ing tool or outputs from an automated employment decision tool to make  
43 an employment decision shall provide employees affected by such action  
44 written notice of the decision at least fourteen calendar days before  
45 such action shall take effect. Such notice of adverse employment action  
46 shall contain:

47 (i) any performance standards used to make the employment decision;

48 (ii) any of the employee's data collected through electronic monitor-  
49 ing that was used to make the employment decision;

50 (iii) any aggregated employee data of employees performing the same or  
51 similar functions at the same establishments for ninety days prior to  
52 the employment decision;

53 (iv) any outputs from an automated employment decision tool that was  
54 used to make the employment decision;

1 (v) a copy of the most recent impact assessment of any automated  
2 employment decision tool that was used to make the employment decision;  
3 and

4 (vi) what other information, standards, or data, other than data  
5 collected via electronic monitoring or outputs produced by automated  
6 employment decision tools, was used by the employer to make the employ-  
7 ment decision.

8 (b) An employee subject to an employment decision based on data  
9 collected via an electronic monitoring tool or outputs from an automated  
10 employment decision tool who believes the employment decision to be the  
11 result of inaccurate data or an inaccurate or erroneous output by an  
12 automated employment decision tool may request a reevaluation of the  
13 decision by the employer. Such request shall be in writing, including by  
14 text message or electronic mail, and shall include at a minimum:

15 (i) the employee's name;

16 (ii) the data or output the employee alleges is inaccurate or errone-  
17 ous; and

18 (iii) any evidence the employee has that such data or output is inac-  
19 curate or erroneous.

20 (c) An employer that receives a request for reevaluation of an employ-  
21 ment decision pursuant to this section shall investigate the  
22 employee's claim of inaccurate or erroneous information and respond to  
23 the employee as soon as practicable, but no later than seven calendar  
24 days from the date of the request. If an employer, upon investigation,  
25 concludes that no inaccurate data or erroneous output was used to make  
26 the employment decision, it shall provide the employee with evidence of  
27 such accuracy and validity. If an employer, upon investigation,  
28 concludes that inaccurate data or an erroneous output did contribute to  
29 the employment decision, the employer shall inform the employee in writ-  
30 ing of such error or inaccuracy and take action to reevaluate the  
31 employee with corrected data or without the use of an automated employ-  
32 ment decision tool.

33 § 1014. Retaliation prohibited. 1. It shall be unlawful for a person  
34 to take any retaliatory action, as defined in section seven hundred  
35 forty of the this chapter, against any employee or candidate because:

36 (a) such employee or candidate opposes or discloses, or threatens to  
37 disclose to a supervisor, hiring manager, or public body an activity,  
38 policy or practice of the employer or vendor that the employee or candi-  
39 date reasonably believes is in violation of this article, or any rule or  
40 regulation issued pursuant to this article;

41 (b) such employee or candidate provides information to, or testifies  
42 before, any public body conducting an investigation, hearing or inquiry  
43 into any such activity, policy or practice by such employer or vendor,  
44 or otherwise participates in such investigation, hearing, or inquiry;

45 (c) such employee or candidate objects to, or refuses to participate  
46 in any such activity, policy or practice;

47 (d) such employee or candidate exercises their rights protected under  
48 this section or informs others of such rights; or

49 (e) such person believes that the employee or candidate engaged in any  
50 of the activities described in paragraphs (a), (b), (c) or (d) of this  
51 subdivision.

52 2. A candidate or employee need not make explicit reference to any  
53 section or provision of this article or of any provision of this chapter  
54 or human rights law to trigger the protections of this section.

55 3. An employer or other person violates this section where the employ-  
56 ee's protected activity is found to be a contributing factor for the

1 adverse action. Where the commissioner or a court finds an employer or  
2 other person has violated this section, it may order the relief speci-  
3 fied in section two hundred fifteen of the this chapter.

4 § 1015. Civil liability. 1. If an employer fails to respond to a  
5 current or former employee or candidate's request for reevaluation of an  
6 employment decision pursuant to section one thousand thirteen of this  
7 article, or if a current or former employee or candidate continues to  
8 have reason to believe they were harmed by the unlawful use of an inac-  
9 curate or biased automated employment decision tool or other violation  
10 of this article, the employee or candidate may initiate an action in a  
11 court of competent jurisdiction to enforce the provisions of this arti-  
12 cle. An employer that violates this article shall be liable for liqui-  
13 dated damages in the amount of five hundred dollars for each violation  
14 or, where an employee or candidate has suffered actual damages as a  
15 result of such violation such as reduced pay, worse working conditions,  
16 denial of advancement or access to better pay or working conditions,  
17 discipline, or termination, then the employer shall be liable to an  
18 affected employee or candidate for the greater of liquidated damages or  
19 two times the employee or candidate's actual damages, which shall  
20 include back pay, front pay, and lost benefits, and may be awarded  
21 injunctive, declaratory, and the employee may be awarded damages for  
22 emotional distress and any other reasonable or appropriate relief. An  
23 employer shall also be liable for reasonable attorneys' fees and costs,  
24 except such liquidated damages may be up to the greater of one thousand  
25 dollars for each violation or three times actual damages if found that  
26 the actions were willful, or in the case of violations of section one  
27 thousand fourteen of this article, such relief as is specified in  
28 section two hundred fifteen of this chapter.

29 2. In any civil action claiming that an employer has violated this  
30 article in its use of electronic monitoring or automated employment  
31 decision tools, any person, employer, vendor, or other business entity  
32 that used, sold, distributed, or developed the tool shall be jointly and  
33 severally liable to a prevailing plaintiff for all damages awarded to  
34 that prevailing plaintiff, except that where a person, employer, vendor,  
35 or other business entity knowingly sells, provides, or distributes a  
36 tool to an employer with fewer than fifteen employees, the vendor, not  
37 the small employer, shall be liable for any unlawful acts.

38 § 1016. Violations. 1. (a) Each day on which an electronic monitoring  
39 tool or automated employment decision tool is used in violation of this  
40 article shall give rise to a separate violation of this article.

41 (b) Failure to provide any notice to a candidate or an employee in  
42 violation of section one thousand eleven or one thousand twelve of this  
43 article shall constitute a separate violation.

44 (c) Any person who violates any provision of this article or any rule  
45 promulgated pursuant to this article may be liable for a civil penalty  
46 in the amounts provided under paragraph (b) of subdivision one of  
47 section two hundred fifteen of this chapter in order to punish  
48 violations and deter future violations.

49 2. The attorney general may initiate in a court of competent jurisdic-  
50 tion action that may be appropriate or necessary for correction of any  
51 violation of this article, including mandating compliance with the  
52 provisions of this article, securing any of the remedies authorized  
53 under this article including recovering damages and liquidated damages  
54 as specified in section one thousand fourteen of this article and secur-  
55 ing injunctive, declaratory, or such other relief as may be appropriate,  
56 and ordering payment of civil penalties.

1 3. The provisions of this article shall not be construed as to limit  
2 the authority of the division of human rights to enforce the provisions  
3 of article fifteen of the executive law, or as to preempt any munici-  
4 pality from adopting a local law, rule, or regulation establishing  
5 requirements, standards, or enforcement measures in addition to those  
6 established under this article.

7 § 1017. Powers of the commissioner. 1. The commissioner shall:

8 (a) promulgate rules specifying the data retention, security, and  
9 privacy requirements for all data collected during the course of, and  
10 all results or outputs of, the impact assessments required by this arti-  
11 cle;

12 (b) develop and publish model employer notices for the use of elec-  
13 tronic monitoring and automated employment decision tools that employers  
14 may utilize in their adoption of the notices required by this article;  
15 and

16 (c) promulgate such other rules and regulations as may be necessary to  
17 carry out this article.

18 2. The commissioner shall establish an administrative process for  
19 receiving and investigating complaints from employees and candidates or  
20 their representatives. The commissioner shall have the same powers of  
21 investigation as under article nineteen of this chapter. If after inves-  
22 tigation the commissioner finds that an employer or person has violated  
23 any provision of this section, the commissioner may exercise the same  
24 enforcement powers provided under paragraph (b) of subdivision one of  
25 section two hundred fifteen of this chapter and may order any relief  
26 that may be appropriate or necessary for correction of any violation of  
27 this article, including mandating compliance with the provisions of this  
28 article, securing any of the remedies authorized under this article  
29 including recovering damages and liquidated damages as specified in  
30 section one thousand fourteen of this article and securing injunctive,  
31 declaratory, or other relief as may be appropriate, and ordering payment  
32 of civil penalties or reasonable attorneys' fees and costs.

33 3. The commissioner shall establish a means of collecting, storing,  
34 and making publicly available any impact assessments or summaries of  
35 impact assessments submitted by employers or vendors in the state. The  
36 commissioner shall promulgate rules and regulations by which employers,  
37 vendors, or employees may request the redaction of certain information  
38 from said impact assessments or summaries thereof, if that information  
39 is proprietary, sensitive, or poses a threat to the privacy of employees  
40 or candidates.

41 § 2. Section 52-c of the civil rights law, as added by chapter 583 of  
42 the laws of 2021, is renumbered section 52-e and amended to read as  
43 follows:

44 § 52-e. Employers engaged in electronic monitoring; prior notice  
45 required. 1. For purposes of this section, employer means any individ-  
46 ual, corporation, partnership, firm, or association with a place of  
47 business in the state. It shall not include the state or any political  
48 subdivision of the state.

49 2. (a) Any employer who monitors or otherwise intercepts telephone  
50 conversations or transmissions, electronic mail or transmissions, or  
51 internet access or usage of or by an employee by any electronic device  
52 or system, including but not limited to the use of a computer, tele-  
53 phone, wire, radio, or electromagnetic, photoelectronic or photo-optical  
54 systems, shall give prior written notice upon hiring to all employees  
55 who are subject to electronic monitoring. The notice required by this  
56 subdivision shall be in writing, in an electronic record, or in another

1 electronic form and acknowledged by the employee either in writing or  
2 electronically. Each employer shall also post the notice of electronic  
3 monitoring in a conspicuous place which is readily available for viewing  
4 by its employees who are subject to electronic monitoring. Such written  
5 notice shall comply with the requirements of article thirty-six of the  
6 labor law.

7 (b) For purposes of written notice required by paragraph (a) of this  
8 subdivision, an employee shall be advised that any and all telephone  
9 conversations or transmissions, electronic mail or transmissions, or  
10 internet access or usage by an employee by any electronic device or  
11 system, including but not limited to the use of a computer, telephone,  
12 wire, radio or electromagnetic, photoelectronic or photo-optical systems  
13 may be subject to monitoring at any and all times and by any lawful  
14 means.

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

20 4. The provisions of this section shall not apply to processes that  
21 are designed to manage the type or volume of incoming or outgoing elec-  
22 tronic mail or telephone voice mail or internet usage, that are not  
23 targeted to monitor or intercept the electronic mail or telephone voice  
24 mail or internet usage of a particular individual, and that are  
25 performed solely for the purpose of computer system maintenance and/or  
26 protection.

27 § 3. This act shall take effect on the one hundred eightieth day after  
28 it shall have become a law. Effective immediately, the addition, amend-  
29 ment and/or repeal of any rule or regulation necessary for the implemen-  
30 tation of this act on its effective date are authorized to be made and  
31 completed on or before such effective date.