

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.

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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-

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

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

(i) human resources information, including the contents of an individual's personnel file or performance evaluations;

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

(iii) data that captures workplace communications and interactions, including emails, texts, internal message boards, and customer interaction and ratings;

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

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

(vi) inputs to or outputs generated by an automated employment decision tool that are linked to the individual;

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

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

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

11. "Impact assessment" means an impartial evaluation by an independent auditor that complies with section one thousand twelve of this article.

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

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

(b) have or had an employment relationship with a developer or deployer that uses, offers, or licenses the automated employment decision tool; or

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

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

(a) the designation of an internal reviewer with sufficient expertise 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 nated 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 inaccu-
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.