

STATE OF NEW YORK

7623--A

2023-2024 Regular Sessions

IN SENATE

August 4, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- 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 section 203-g to
2 read as follows:

3 § 203-g. Electronic monitoring and automated employment decision
4 tools. 1. For the purposes of this section, the following terms have the
5 following meanings:

6 (a) "Automated employment decision tool" means any computational proc-
7 ess, automated system, or algorithm utilizing machine learning, statis-
8 tistical modeling, data analytics, artificial intelligence, or similar
9 methods that issues a simplified output, including a score, classifica-
10 tion, ranking, or recommendation, that is used to assist or replace
11 decision making for employment decisions that impact natural persons.
12 "Automated employment decision tool" does not include a tool that does
13 not assist or replace employment decision processes and that does not
14 materially impact natural persons, including, but not limited to, a junk
15 email filter, firewall, antivirus software, calculator, spreadsheet,
16 database, data set, or other compilation of data.

17 (b) "Bias audit" means an impartial evaluation by an independent audi-
18 tor, which shall include, at a minimum, the testing of an automated
19 employment decision tool to assess the tool's disparate impact on
20 employees because of their age, race, creed, color, ethnicity, national
21 origin, disability, citizenship or immigration status, marital or fami-
22 lial status, military status, religion, or sex, including sexual orien-

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

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1 tation, gender identity, gender expression, pregnancy, pregnancy
2 outcomes, and reproductive healthcare choices.

3 (c) "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 (d) "Electronic monitoring tool" means any system that facilitates the
8 collection of data concerning worker activities or communications by any
9 means other than direct observation by a natural person, including the
10 use of a computer, telephone, wire, radio, camera, electromagnetic,
11 photoelectronic, or photo-optical system.

12 (e) "Employer" means any person who directly or indirectly, or through
13 an agent or any other person, employs or exercises control over the
14 wages, benefits, other compensation, hours, working conditions, access
15 to work or job opportunities, or other terms or conditions of employ-
16 ment, of any worker. "Employer" includes any of the employer's labor
17 contractors.

18 (f) "Employee" means any natural person or their authorized represen-
19 tative acting for, employed by, or an independent contractor providing
20 service to, or through, a business operating in the state.

21 (g) "Employee data" means any information that identifies, relates to,
22 describes, is reasonably capable of being associated with, or could
23 reasonably be linked, directly or indirectly, with a particular employ-
24 ee, regardless of how the information is collected, inferred, or
25 obtained. Data includes, but is not limited to, the following:

26 (i) personal identity information, including the individual's name,
27 contact information, government-issued identification number, financial
28 information, criminal background, or employment history;

29 (ii) biometric information, including the individual's physiological,
30 biological, or behavioral characteristics, including the individual's
31 deoxyribonucleic acid (DNA), that can be used, singly or in combination
32 with other data, to establish individual identity;

33 (iii) health, medical, lifestyle, and wellness information, including
34 the individual's medical history, physical or mental condition, diet or
35 physical activity patterns, heart rate, medical treatment or diagnosis
36 by a health care professional, health insurance policy number, subscrib-
37 er identification number, or other unique identifier used to identify
38 the individual; and

39 (iv) any data related to workplace activities, including the follow-
40 ing:

41 (A) human resources information, including the contents of an individ-
42 ual's personnel file or performance evaluations;

43 (B) work process information, such as productivity and efficiency
44 data;

45 (C) data that captures workplace communications and interactions,
46 including emails, texts, internal message boards, and customer inter-
47 action and ratings;

48 (D) device usage and data, including calls placed or geolocation
49 information;

50 (E) audio-video data and other information collected from sensors,
51 including movement tracking, thermal sensors, voiceprints, or facial
52 recognition, emotion, and gait recognition;

53 (F) inputs to or outputs generated by an automated employment decision
54 tool that are linked to the individual; and

1 (G) data that is collected or generated on workers to mitigate the
2 spread of infectious diseases, including COVID-19, or to comply with
3 public health measures.

4 (h) "Employment decision" means any decision made by the employer that
5 affects wages, benefits, other compensation, hours, work schedule,
6 performance evaluation, hiring, selecting for recruitment, discipline,
7 promotion, termination, job content, assignment of work, access to work
8 opportunities, productivity requirements, workplace health and safety,
9 and other terms or conditions of employment. For independent contractors
10 or candidates for employment, this means the equivalent of these deci-
11 sions based on their contract with or relationship to the employer.

12 (i) "Vendor" means any person who sells, distributes, or develops for
13 sale an automated employment decision tool to be used in an employment
14 decision made by an employer in the state.

15 2. (a) It shall be unlawful for an employer to use an electronic moni-
16 toring tool to collect employee data unless:

17 (i) the electronic monitoring tool is primarily intended to accomplish
18 any of the following purposes:

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

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

21 (C) periodic assessment of worker performance;

22 (D) ensuring compliance with employment, labor, or other relevant
23 laws;

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

26 (F) administering wages and benefits; or

27 (G) additional purposes to enable business operations as determined by
28 the department;

29 (ii) the specific type of electronic monitoring tool is strictly
30 necessary to accomplish the purpose, exclusively used to accomplish the
31 purpose, and is the least invasive means to the employee that could
32 reasonably be used to accomplish the purpose; and

33 (iii) the specific form of electronic monitoring is limited to the
34 smallest number of workers and collects the least amount of data neces-
35 sary to accomplish the purpose.

36 (b) Any employer that uses an electronic monitoring tool shall give
37 prior written notice to all employees who may be subject to electronic
38 monitoring and post said notice in a conspicuous place which is readily
39 available for viewing by employees, pursuant to subdivision two of
40 section fifty-two-e of the civil rights law. Such notice shall include,
41 at a minimum, the following:

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

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

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

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

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

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

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

7 (viii) an explanation for how the specific electronic monitoring prac-
8 tice is the least invasive means available to accomplish the monitoring
9 purpose.

10 (c) An employer shall destroy any employee data collected via an elec-
11 tronic monitoring tool when the initial purpose for collecting the data
12 has been satisfied or at the end of the employee's relationship with the
13 employer, unless the employee has provided written and informed consent
14 to the retention of their data by the employer.

15 (d) Notice of the specific form of electronic monitoring shall be
16 clear and conspicuous and provide the worker with actual notice of elec-
17 tronic monitoring activities. A notice that states electronic monitoring
18 "may" take place or that the employer "reserves the right" to monitor
19 shall not be considered clear and conspicuous.

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

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

28 3. (a) Notwithstanding the allowable purposes for electronic monitor-
29 ing described in paragraph (a) of subdivision two of this section, an
30 employer shall not:

31 (i) use an electronic monitoring tool in such a manner that results in
32 a violation of labor or employment law;

33 (ii) use an electronic monitoring tool in such a manner as to threaten
34 the health, welfare, safety, or legal rights of employees;

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

37 (iv) use an electronic monitoring tool in order to obtain information
38 about an employee's religious beliefs, health or disability status, or
39 immigration status;

40 (v) use an electronic monitoring tool in order to identify, punish, or
41 obtain information about employees engaging in activity protected under
42 labor and employment law;

43 (vi) use an electronic monitoring tool in order to or with the effect
44 of informing a dynamic wage-setting system;

45 (vii) conduct audio-visual monitoring of bathrooms or other similarly
46 private areas, including locker rooms, changing areas, breakrooms, smok-
47 ing areas, employee cafeterias, lounges, areas designated to express
48 breast milk, or areas designated for prayer or other religious activity,
49 including data collection on the frequency of use of those private
50 areas;

51 (viii) conduct audio-visual monitoring of a workplace in an employee's
52 residence, an employee's personal vehicle, or property owned or leased
53 by an employee, unless that audio-visual monitoring is strictly neces-
54 sary to ensure employee health and safety, to verify the security of
55 company or client data, or to accomplish other similarly compelling
56 purposes;

1 (ix) use an electronic monitoring tool that incorporates facial recog-
2 nitition, gait, or emotion recognition technology;

3 (x) discipline or terminate the employment of an employee solely on
4 the basis of their opposition of or refusal to submit to a practice that
5 the employee believes in good faith that violate this section; or

6 (xi) where employees have union representation, refuse to bargain over
7 the use of electronic monitoring tools.

8 (b) An employer shall not use employee data collected via an electron-
9 ic monitoring tool for purposes other than those specified in the
10 notice provided pursuant to paragraph (b) of subdivision two of this
11 section.

12 (c) An employer shall not sell, transfer, or disclose employee data
13 collected via an electronic monitoring tool to any other entity
14 unless it is required to do so under state or federal law, or necessary
15 to do so to comply with a bias audit of an automated employment decision
16 tool pursuant to subdivision four of this section.

17 (d) An employer shall not require employees to either install applica-
18 tions on personal devices that collect or transmit employee data or to
19 wear, embed, or physically implant those devices, including those that
20 are installed subcutaneously or incorporated into items of clothing or
21 personal accessories, unless the electronic monitoring is strictly
22 necessary to accomplish essential job functions and is narrowly limited
23 to only the activities and times necessary to accomplish essential job
24 functions. Location tracking applications and devices shall be disabled
25 outside the activities and times necessary to accomplish essential job
26 functions.

27 (e) An employer shall not rely solely on employee data collected
28 through electronic monitoring when making hiring, promotion, termi-
29 nation, disciplinary, or compensation decisions.

30 (f) The information and judgments involved in an employer's use of
31 electronic monitoring data shall be documented and communicated to
32 affected employees prior to the hiring, promotion, termination, or
33 disciplinary decision going into effect.

34 (g) Data that provides evidence of criminal activity, when independ-
35 ently corroborated by the employer, or captured through the use of
36 reasonable security measures that comply with paragraph (a) of subdivi-
37 sion two of this section, is exempt from this subdivision.

38 4. (a) It shall be unlawful for an employer to use an automated
39 employment decision tool for an employment decision unless such tool has
40 been the subject of a bias audit. Bias audits for automated employment
41 decision tools must:

42 (i) be conducted no more than one year prior to the use of such tool,
43 or where the tool was in use by the employer before this act became a
44 law, within six months of this act becoming a law; and

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

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

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

54 (v) consider, identify, and describe any disparities in the data used
55 to train or develop the tool and describe how those disparities may
56 result in a disparate impact on persons belonging to a protected class.

1 and what actions may be taken by the employer or vendor of the tool to
2 reduce or remedy any disparate impact;

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

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

12 (viii) identify and describe any other assessment of risks of discrim-
13 ination or a disparate impact of the tool on members of a protected
14 class that arise over the course of the bias audit, and what actions may
15 be taken to reduce or remedy that risk;

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

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

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

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

41 (d) If an initial or subsequent bias audit requires the collection of
42 sensitive employee data to assess a tool's disparate impact on employ-
43 ees, such data shall be collected, processed, stored, and retained in
44 such a manner as to protect the privacy of employees. Employee data
45 provided to auditors for the purpose of a bias audit shall not be shared
46 with the employer, nor shall it be shared with any person, business
47 entity, or other organization unless strictly necessary for the
48 completion of the bias audit.

49 (e) If an initial or subsequent bias audit concludes that a data set,
50 feature, or application of the automated employment decision tool
51 results in a disparate impact on persons belonging to a protected class,
52 or unlawfully limit accessibility for persons with disabilities, an
53 employer shall:

54 (i) take reasonable and appropriate steps to reduce or remedy that
55 disparate impact or limit on accessibility and describe in writing to
56 employees, the auditor, and the department what steps were taken; and

1 (ii) if the employer believes the audit finding of a disparate impact
2 or limit on accessibility is erroneous, or that the steps taken in
3 accordance with subparagraph (i) of this paragraph sufficiently address
4 those findings such that the tool may be lawfully used in accordance
5 with this section, describe in writing to employees, the auditor, and
6 the department how the data set, feature, or application of the tool is
7 the least discriminatory method of assessing an employee's performance
8 or ability to complete essential functions of a position; or

9 (iii) if the employer believes the audit finding of a disparate impact
10 or limit on accessibility is part of a lawful affirmative action plan or
11 other lawful effort to reduce or eliminate bias in employment decisions,
12 describe such plan or effort in writing to employees, the auditor, and
13 the department.

14 (f) It shall be unlawful for an independent auditor, vendor, or
15 employer to manipulate, conceal, or misrepresent the results of a bias
16 audit.

17 5. Any employer that uses an automated employment decision tool shall
18 notify employees and candidates subject to the tool no less than ten
19 business days before such use:

20 (a) that an automated employment decision tool will be used in
21 connection with the assessment or evaluation of such employee or candi-
22 date;

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

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

33 (d) the results of the most recent bias audit of the automated employ-
34 ment decision tool, including any findings of a disparate impact and
35 associated response from the employer, or information about how to
36 access that information if publicly available;

37 (e) information about how an employee or candidate may request an
38 alternative selection process or accommodation that does not involve the
39 use of an automated employment decision tool; and

40 (f) information about how the employee or candidate may (i) request
41 internal review of the employment decision made by the automated employ-
42 ment decision tool in accordance with subdivision seven of this section
43 and (ii) notification of the employee or candidate's right to file a
44 complaint in a civil court in accordance with subdivision eight of this
45 section.

46 6. (a) Notwithstanding the provisions of subdivision four of this
47 section, an employer shall not, alone or in conjunction with an elec-
48 tronic monitoring tool, use an automated employment decision tool:

49 (i) in such a manner that results in a violation of labor or employ-
50 ment law;

51 (ii) in such a manner as to unduly intensify the conditions of work or
52 to harm the health and safety of employees, including by setting unrea-
53 sonable productivity quotas;

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

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

3 (v) to implement a dynamic wage-setting system that pays employees
4 different wages for the same work;

5 (vi) to subtract from an employee's wages time spent exercising their
6 legal rights; or

7 (vii) that involves facial recognition, gait, or emotion recognition
8 technologies.

9 (b) An employer shall not rely solely on output from an automated
10 employment decision tool when making hiring, promotion, termination,
11 disciplinary, or compensation decisions.

12 (i) An employer shall establish meaningful human oversight of hiring,
13 promotion, termination, disciplinary or compensation decisions assisted
14 or replaced by automated employment decision tools. Meaningful human
15 oversight requires:

16 (A) the designation of an internal reviewer with sufficient expertise
17 in the operation of automated employment decision tools, sufficient
18 familiarity with the results of the most recent bias audit of the
19 employer's tool, and sufficient understanding of the outputs of the
20 employer's tool to identify potential errors, discrepancies, or inaccur-
21 racies produced by the tool;

22 (B) that sufficient authority and discretion be granted to the desig-
23 ated internal reviewer to dispute, rerun, or recommend the rejection of
24 an output suspected to be invalid, inaccurate, or discriminatory; and

25 (C) that the designated internal reviewer has the time and resources
26 available to review and evaluate the tool output in accordance with
27 clause (B) of this subparagraph.

28 (ii) An employer shall consider information other than automated
29 employment decision tool outputs when making hiring, promotion, termi-
30 nation, disciplinary, or compensation decisions, such as supervisory or
31 managerial evaluations, personnel files, employee work products, or peer
32 reviews.

33 (c) An employer may not, where employees have union representation,
34 refuse to bargain over the use of automated employment decision tools.

35 (d) An employer shall not require employees or candidates that apply
36 for a position of employment to consent to the use of an automated
37 employment decision tool in an employment decision in order to be
38 considered for an employment decision, nor shall an employer discipline
39 or disadvantage an employee or candidate for employment solely as a
40 result of their request for accommodation.

41 7. (a) An employer shall offer employees and candidates a meaningful
42 opportunity to request a reevaluation of the results of an employment
43 decision made or assisted by an automated employment decision tool, if
44 an employee or candidate believes or suspects that the decision resulted
45 from inaccuracy, error, or bias in the tool, that the tool was used as
46 the sole basis for the decision, or that the employer's use of the tool
47 in some other way violates the provisions of this section, and the
48 employee or candidate was meaningfully harmed by the outcome of the
49 employment decision. An employee or candidate shall within thirty days
50 of being notified of the employment decision provide the employer with a
51 written request for reevaluation. Such written request shall include:

52 (i) the person's name, the employment decision at issue, and how the
53 person was harmed by the outcome of the employment decision;

54 (ii) why the person believes or suspects the employment decision was
55 informed by an inaccurate, erroneous, or biased output, was the result

1 of an unlawful sole reliance on an automated employment decision tool,
2 or otherwise violated the provisions of this section;

3 (iii) any evidence that may support the person's belief or suspicion;
4 and

5 (iv) what reasonable remedial action the person would like the employ-
6 er to take to investigate or remedy the believed or suspected harm,
7 which may include providing the employee or candidate with outputs or
8 documentation associated with the employment decision, providing the
9 employee or candidate with documentation about the tool's most recent
10 bias audit, or reprocessing the employee or candidate's data through the
11 tool.

12 (b) An employer shall respond in writing to an employee or candidate's
13 written request for reevaluation within sixty days of receipt of such
14 request. Such written response shall include:

15 (i) any employment decision tool outputs regarding the person purport-
16 ing to be harmed by the employment decision that were used in the making
17 of the employment decision;

18 (ii) a description of the information other than the automated employ-
19 ment decision tool output that contributed to the employment decision;

20 (iii) whether the employer agrees with the employee or candidate's
21 belief or suspicion that the decision was informed by an inaccurate,
22 erroneous, or biased tool or output, that the tool was the unlawful sole
23 basis for the decision, or that the employer otherwise violated the
24 provisions of this section in its use of the tool, and why or why not;

25 (iv) if the employer disagrees with the employee or candidate's belief
26 or suspicion, any evidence supporting the tool or output's accuracy and
27 validity, the existence of meaningful human oversight, or the use of
28 bases other than the tool in the making of the decision;

29 (v) if the employee or candidate requested the reprocessing of their
30 data through the tool, the results or outputs of that reprocessing, and
31 whether the results of the reprocessing have changed the employer's
32 employment decision, and why or why not; and

33 (vi) if the employer refuses to take any reasonable remedial action
34 requested by the employee or candidate, why they refuse to do so.

35 8. (a) If an employer fails to respond to an employee or candidate's
36 request for reevaluation, or if the employee or candidate continues to
37 have reason to believe they were harmed by the unlawful use of an inac-
38 curate or biased automated employment decision tool or other violation
39 of this section, the employee or candidate may initiate an action in a
40 court of competent jurisdiction to enforce the provisions of this
41 section. An employer that violates this section shall be liable for
42 actual damages to any employee or candidate that has suffered damages
43 due to such violation, reasonable attorneys' fees and costs, and, unless
44 the employer proves a good faith basis to believe that its actions were
45 in compliance with the law, one hundred percent of the total amount of
46 actual damages, except such liquidated damages may be up to three
47 hundred percent if found that the actions were willful.

48 (b) In any civil action claiming that an employer has violated this
49 section in its use of electronic monitoring or automated employment
50 decision tools, any person, employer, vendor, or other business entity
51 that used, sold, distributed, or developed the tool shall be jointly and
52 severally liable to a prevailing plaintiff for all damages awarded to
53 that prevailing plaintiff, except that where a person, employer, vendor,
54 or other business entity knowingly sells, provides, or distributes a
55 tool to an employer with fewer than fifty employees, the vendor, not the
56 small employer, shall be liable for any unlawful acts.

1 9. (a) Any person who violates any provision of this section or any
2 rule promulgated pursuant to this section is liable for a civil penalty
3 of not more than five hundred dollars for a first violation and each
4 additional violation occurring on the same day as the first violation,
5 and not less than five hundred dollars nor more than fifteen hundred
6 dollars for each subsequent violation.

7 (b) Each day on which an electronic monitoring tool or automated
8 employment decision tool is used in violation of this section shall give
9 rise to a separate violation of this section.

10 (c) Failure to provide any notice to a candidate or an employee in
11 violation of subdivision two or five of this section shall constitute a
12 separate violation.

13 (d) A proceeding to recover any civil penalty authorized by this
14 section is returnable to any tribunal established within any agency
15 designated to conduct such proceedings, or, in a city of over one
16 million in population, such hearing may be held by a hearing officer
17 employed within the office of administrative trials and hearings.

18 10. The attorney general may initiate in a court of competent juris-
19 isdiction action that may be appropriate or necessary for correction of
20 any violation of this section, including mandating compliance with the
21 provisions of this section or such other relief as may be appropriate.

22 11. The provisions of this section shall not be construed as to limit
23 the authority of the division of human rights to enforce the provisions
24 of article fifteen of the executive law.

25 § 2. (a) The department of labor shall promulgate any rules and regu-
26 lations necessary to implement the provisions of this section.

27 (b) The department of labor shall within one hundred eighty days of
28 this act becoming a law have established a means of collecting, storing,
29 and making publicly available any bias audits or summaries of bias
30 audits submitted by employers or vendors in the state. Such department
31 shall promulgate rules and regulations by which employers, vendors, or
32 employees may request the redaction of certain information from said
33 bias audits or summaries thereof, if that information is proprietary,
34 sensitive, or poses a threat to the privacy of employees or candidates.

35 § 3. Section 52-c of the civil rights law, as added by chapter 583 of
36 the laws of 2021, is renumbered section 52-e and is amended to read as
37 follows:

38 § 52-e. Employers engaged in electronic monitoring; prior notice
39 required. 1. For purposes of this section, employer means any individ-
40 ual, corporation, partnership, firm, or association with a place of
41 business in the state. It shall not include the state or any political
42 subdivision of the state.

43 2. (a) Any employer who monitors or otherwise intercepts telephone
44 conversations or transmissions, electronic mail or transmissions, or
45 internet access or usage of or by an employee by any electronic device
46 or system, including but not limited to the use of a computer, tele-
47 phone, wire, radio, or electromagnetic, photoelectronic or photo-optical
48 systems, shall give prior written notice upon hiring to all employees
49 who are subject to electronic monitoring. The notice required by this
50 subdivision shall be in writing, in an electronic record, or in another
51 electronic form and acknowledged by the employee either in writing or
52 electronically. Each employer shall also post the notice of electronic
53 monitoring in a conspicuous place which is readily available for viewing
54 by its employees who are subject to electronic monitoring. Such written
55 notice shall comply with the requirements of subdivision two of section
56 two hundred three-g of the labor law.

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

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

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

21 § 4. This act shall take effect on the one hundred eightieth day after
22 it shall have become a law.