

STATE OF NEW YORK

3779--A

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

Introduced by M. of A. ALVAREZ, REYES, RAGA -- Multi-Sponsored by -- M. of A. DAVILA -- 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

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 35-A to
2 read as follows:

ARTICLE 35-A

BOUNDARIES ON TECHNOLOGY ACT

Section 1010. Definitions.

6 1011. Automated employment decision tools; impact assessments.

7 1012. Automated employment decision tools; notice and
8 restrictions.

9 1013. Data access, accuracy, and correction.

10 1014. Unlawful retaliation.

11 1015. Vendor notice.

12 1016. Enforcement.

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 the same as defined in
19 section four hundred one of the state technology law.

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

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

LBD00754-04-5

1 4. "Employer" means any person who directly or indirectly, or through
2 an agent or any other person, employs or exercises control over the
3 wages, benefits, other compensation, hours, working conditions, access
4 to work or job opportunities, or other terms or conditions of employ-
5 ment, of any worker. Such term shall not include the state, any poli-
6 tical subdivision of the state, a public authority, or any other govern-
7 mental agency or instrumentality.

8 5. "Employee" means any natural person or their authorized represen-
9 tative acting for, employed by, or a person classified as an independent
10 contractor providing service to, or through, an employer operating in
11 the state. An employee shall be deemed to be operating in the state for
12 purposes of deeming an employee to be covered by this article if the
13 employee works at least part time at a location in the state, or if
14 fully remote, the employee is associated with an office in the state or
15 supervised by a person who works at least part time at a location in the
16 state. Employee can mean a former employee.

17 6. "Employee data" means any information that identifies, relates to,
18 describes, is reasonably capable of being associated with, or could
19 reasonably be linked, directly or indirectly, with a particular employ-
20 ee, regardless of how the information is collected, inferred, or
21 obtained. Data includes, but is not limited to, the following:

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

25 (b) biometric information that can be used to establish individual
26 identity;

27 (c) health information, including the individual's medical history,
28 physical or mental condition, diet or physical activity patterns, heart
29 rate, medical treatment or diagnosis by a health care professional,
30 health insurance policy number, subscriber identification number, or
31 other unique identifier used to identify the individual; and

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

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

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

41 (iii) data that captures workplace communications and interactions,
42 including emails, texts, internal message boards, and customer inter-
43 action and ratings;

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

46 (v) inputs to or outputs generated by an automated employment decision
47 tool that are linked to the individual; and

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

51 7. "Employment decision" means any decision made by the employer that
52 affects wages, benefits, other compensation, hours, work schedule,
53 performance evaluation, hiring, selecting for recruitment, discipline,
54 promotion, termination, job content, assignment of work, access to work
55 opportunities, productivity requirements, and workplace health and safe-
56 ty. For persons classified as independent contractors or for candidates

1 for employment, this means the equivalent of these decisions based on
2 their contract with or relationship to the employer.

3 8. "Impact assessment" means an evaluation by an impartial auditor
4 that complies with section one thousand eleven of this article.

5 9. "Impartial auditor" means a person or entity that conducts an
6 impact assessment of an automated employment decision tool in a manner
7 that exercises objective and impartial judgment on all issues within the
8 scope of such evaluation or assessment.

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

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

15 § 1011. Automated employment decision tools; impact assessments. 1. It
16 shall be unlawful for an employer with one hundred or more employees to
17 use an automated employment decision tool for an employment decision
18 unless such tool has been the subject of an impact assessment. Impact
19 assessments for automated employment decision tools must:

20 (a) be conducted no more than one year prior to the use of such tool,
21 or where the tool was in use by the employer before the effective date
22 of this article, within six months of the effective date of this arti-
23 cle;

24 (b) be conducted by an impartial party with no financial or legal
25 conflicts of interest;

26 (c) identify and describe the attributes and modeling techniques that
27 the tool uses to produce outputs;

28 (d) consider, identify, and describe any outputs produced by the tool
29 that may result in a disparate impact on persons belonging to a
30 protected class, and what actions may be taken by the employer or vendor
31 of the tool to reduce or remedy that disparate impact;

32 (e) consider and describe potential sources of adverse impact against
33 protected classes that may arise after the tool is deployed;

34 (f) identify and describe any other assessment of risks of discrimi-
35 nation or a disparate impact of the tool on members of a protected class
36 that arise over the course of the impact assessment, and what actions
37 may be taken to reduce or remedy that risk;

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

42 (h) be submitted in its entirety or an accessible summary form to the
43 department for inclusion in a public registry of such impact assessments
44 within sixty days of completion, and distributed to employees who may be
45 subject to the tool.

46 2. An employer subject to the provisions of this section shall conduct
47 or commission subsequent impact assessments each year that the tool is
48 in use for employment decisions. Subsequent impact assessments shall
49 comply with the requirements of subdivision one of this section, and
50 shall assess and describe any change in the validity or disparate impact
51 of the tool.

52 3. An employer or vendor subject to the provisions of this section
53 shall retain all documentation pertaining to the design, development,
54 use, and data of an automated employment decision tool that may be
55 necessary to conduct an impact assessment for a period of three years to
56 ensure compliance with commissioner requests for data.

1 4. If an initial or subsequent impact assessment requires the
2 collection of employee data to assess a tool's disparate impact on
3 employees, such data shall be collected, processed, stored, and retained
4 in such a manner as to protect the privacy of employees, and shall
5 comply with any data retention and security requirements specified by
6 the commissioner. Employee data provided to auditors for the purpose of
7 an impact assessment shall not be shared with the employer, nor shall it
8 be shared with any person, business entity, or other organization unless
9 strictly necessary for the completion of the impact assessment.

10 5. If an initial or subsequent impact assessment concludes that a data
11 set, feature, or application of the automated employment decision tool
12 results in a disparate impact on persons belonging to a protected class,
13 an employer shall refrain from using the tool until it:

14 (a) takes reasonable and appropriate steps to remedy that disparate
15 impact; and

16 (b) where the employer believes the impact assessment finding of a
17 disparate impact is erroneous, or that the steps taken in accordance
18 with paragraph (a) of this subdivision sufficiently address those find-
19 ings such that the tool may be lawfully used in accordance with this
20 article, the employer shall submit to the commissioner how the data set,
21 feature, or application of the tool is the least discriminatory method
22 of assessing an employee's performance or ability to complete essential
23 functions of a position.

24 6. It shall be unlawful for an impartial auditor, vendor, or employer
25 to manipulate, conceal, or misrepresent the results of an impact assess-
26 ment.

27 7. Nothing in this article shall be construed as prohibiting an
28 employer from implementing a lawful affirmative action plan or engaging
29 in otherwise lawful efforts to reduce or eliminate bias in employment
30 decisions.

31 § 1012. Automated employment decision tools; notice and restrictions.

32 1. (a) Any employer that uses an automated employment decision tool to
33 assess or evaluate an employee or candidate shall notify employees and
34 candidates subject to the tool before or at the time an employment deci-
35 sion is made:

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

39 (ii) the job qualifications and characteristics that such automated
40 employment decision tool will assess, what employee or candidate data or
41 attributes the tool will use to conduct that assessment, and what kind
42 of outputs the tool will produce as an evaluation of such employee or
43 candidate;

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

49 (iv) for employers subject to the provisions of section one thousand
50 eleven of this article, the results of the most recent impact assessment
51 of the automated employment decision tool, including any findings of a
52 disparate impact and associated response from the employer, or informa-
53 tion about how to access that information if publicly available.

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

55 (i) written in clear and plain language;

1 (ii) included in each job posting or advertisement for each position
2 for which the automated employment decision tool will be used; and
3 (iii) posted on the employer's website in English and the ten most
4 commonly spoken non-English languages in the state.

5 2. (a) Notwithstanding the provisions of section one thousand ten of
6 this article, an employer shall not use an automated employment decision
7 tool:

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

10 (ii) in a manner not consistent with the scope of the impact assess-
11 ment required by section one thousand ten of this article.

12 (b) An employer shall not solely rely on output from an automated
13 employment decision tool when making hiring, promotion, termination,
14 disciplinary, or compensation decisions. For an employer to satisfy the
15 requirements of this paragraph:

16 (i) An employer shall establish meaningful human oversight of such
17 decisions based in whole or in part on the output of automated employ-
18 ment decision tools. Such meaningful human oversight of such decisions
19 shall require consideration of information other than automated
20 employment decision tool outputs, including but not limited to: supervi-
21 sory or managerial evaluations, personnel files, employee work products,
22 or peer reviews.

23 (c) An employer shall not require employees or candidates to consent
24 to the use of an automated employment decision tool in an employment
25 decision in order to be considered for an employment decision, nor shall
26 an employer discipline or disadvantage an employee or candidate for
27 employment as a result of their request for accommodation.

28 § 1013. Data access, accuracy, and correction. 1. (a) An employer
29 shall ensure that any employee data that is used by an automated employ-
30 ment decision tool for an employment decision is accurate and, where
31 relevant, kept up to date for a period of three years.

32 (b) A current or former employee whose data was used by an automated
33 employment decision tool for an employment decision has the right to
34 request, and the employer shall provide, a copy of the employee's own
35 data.

36 (c) Such requested records pursuant to this section shall be provided
37 at no cost to the current or former employee. A former employee is
38 limited to one request per year pursuant to this subdivision.

39 (d) An employer that receives a written or oral request for informa-
40 tion pursuant to this section shall comply with the request as
41 soon as practicable, but no later than fourteen calendar days from the
42 date of the request.

43 (e) An employer shall provide information pursuant to this section in
44 English or, if applicable, in the language identified by the employee as
45 the primary language of such employee.

46 (f) An employer that does not monitor this data has no obligation to
47 provide it.

48 2. (a) An employer that receives an employee request to correct inac-
49 curate data shall investigate and determine whether such data is inaccur-
50 rate.

51 (b) If an employer, upon investigation, determines that such data is
52 inaccurate, the employer shall:

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

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

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

8 (c) If an employer, upon investigation, determines that the data is
9 accurate, the employer shall inform the employee of the decision not to
10 amend the data, the steps taken to verify the accuracy of the data, and
11 any evidence supporting the decision not to amend the data.

12 § 1014. Unlawful retaliation. For purposes of this article, there
13 shall be a rebuttable presumption of unlawful retaliation if an employer
14 in any manner discriminates, retaliates, or takes any adverse action
15 against any employee within ninety days of the employee doing either of
16 the following:

17 1. Initiating the employee's first request in a calendar year for
18 information pursuant to section one thousand thirteen of this article.

19 2. Making a complaint related to any violation of this article, inclu-
20 sive, to the commissioner, the department, other local or state govern-
21 mental agency, or the employer.

22 § 1015. Vendor notice. 1. Any vendor who sells, distributes, or offers
23 for use to an employer an automated employment decision tool shall noti-
24 fy employers that use of such tool is subject to the requirements of
25 this article. Such notice shall include:

26 (a) information about the requirements of the employer under this
27 article and the exemption from certain requirements or liability under
28 this article according to the employer's size;

29 (b) information about the penalties for non-compliance with this arti-
30 cle and liability imposed on the employer by this article;

31 (c) a copy of or directions on how to access any assessments of dispa-
32 rate impact or bias conducted by the vendor on the automated employment
33 decision tool; and

34 (d) information on or directions on how to access more information
35 regarding the employer's responsibility and liability under this arti-
36 cle.

37 2. The notice required by this section shall be:

38 (a) written in clear and plain language;

39 (b) provided before an employer may begin use of the automated employ-
40 ment decision tool; and

41 (c) otherwise presented in a manner that ensures the notice clearly
42 and effectively communicates the required information to employers.

43 § 1016. Enforcement. 1. The commissioner shall adopt rules and regu-
44 lations implementing the provisions of this article. The commissioner
45 shall be authorized to enforce the provisions of this article and to
46 assess civil penalties as provided in sections two hundred fifteen and
47 two hundred eighteen of this chapter. The civil penalties provided
48 for in this section shall be in addition to and may be imposed concu-
49 rently with any other remedy or penalty provided for in this chapter.

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

1 § 2. The opening paragraph of subdivision 1 of section 218 of the
2 labor law, as amended by chapter 43 of the laws of 2023, is amended to
3 read as follows:

4 If the commissioner determines that an employer has violated a
5 provision of article six (payment of wages), article nineteen (minimum
6 wage act), article nineteen-A (minimum wage standards and protective
7 labor practices for farm workers), article twenty-one-A (warehouse work-
8 er protection act), article thirty-five-A (boundaries on technology
9 act), section two hundred twelve-a, section two hundred twelve-b,
10 section one hundred sixty-one (day of rest) or section one hundred
11 sixty-two (meal periods) of this chapter, or a rule or regulation
12 promulgated thereunder, the commissioner shall issue to the employer an
13 order directing compliance therewith, which shall describe particularly
14 the nature of the alleged violation. A copy of such order shall be
15 provided to any employee who has filed a complaint and any authorized
16 representative of [~~him or her~~] such employee. In addition to directing
17 payment of wages, benefits or wage supplements found to be due, and
18 liquidated damages in the amount of one hundred percent of unpaid wages,
19 such order, if issued to an employer who previously has been found in
20 violation of those provisions, rules or regulations, or to an employer
21 whose violation is willful or egregious, shall direct payment to the
22 commissioner of an additional sum as a civil penalty in an amount not to
23 exceed double the total amount of wages, benefits, or wage supplements
24 found to be due. In no case shall the order direct payment of an amount
25 less than the total wages, benefits or wage supplements found by the
26 commissioner to be due, plus the liquidated damages in the amount of one
27 hundred percent of unpaid wages, the appropriate civil penalty, and
28 interest at the rate of interest then in effect, as prescribed by the
29 superintendent of financial services pursuant to section fourteen-a of
30 the banking law per annum from the date of the underpayment to the date
31 of the payment. Where the violation is for a reason other than the
32 employer's failure to pay wages, benefits or wage supplements found to
33 be due, the order shall direct payment to the commissioner of a civil
34 penalty in an amount not to exceed one thousand dollars for a first
35 violation, two thousand dollars for a second violation or three thousand
36 dollars for a third or subsequent violation. In assessing the amount of
37 the penalty, the commissioner shall give due consideration to the size
38 of the employer's business, the good faith basis of the employer to
39 believe that its conduct was in compliance with the law, the gravity of
40 the violation, the history of previous violations and, in the case of
41 wages, benefits or supplements violations, the failure to comply with
42 recordkeeping or other non-wage requirements.

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