



Happy Early New Year: NYC Postpones Enforcement of Local Law Targeting Automated Employment Screening Tools

Insights

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Employers that use software to help screen candidates or employees in New York City will have a little more time to comply with a local law regulating the use of automated employment decision tools (AEDTs). The law was supposed to take effect on January 1, 2023. To the relief of many, the NYC Department of Consumer and Worker Protection (DCWP) has offered employers a reprieve, postponing enforcement until **April 15, 2023**. The stated reason for the extension is to hold a second public hearing on its proposed rules given the high volume of public comments it received. What do you need to know about the latest developments?

[Editor's Note: The agency will begin enforcement of the law and its final rules on automated employment decision tools on July 5, 2023]

Commenters Note Lack of Clarity

As we have previously written, Local Law 144 of 2021 requires employers in New York City to take the following steps before they use an AEDT to screen a candidate or employee:

- (1) Conduct a bias audit of the AEDT and post a summary of the results; and
- (2) Provide certain notices about the AEDT and the information it considers to NYC residents.

The 170+ pages of public comments submitted in response to the law and its proposed rules — which come from a variety of interested parties, including employers, AEDT providers, bias audit providers, industry groups, and academics — highlight the impact that this first-in-the-nation law will have on hiring and promotion processes.

While some commentators wrote to offer their approval of the law and DCWP's proposed rules, others pointed out the burdensome impacts, inconsistencies, and lack of clarity. These comments include, among other things:

- The scope of the data set to be audited is unclear. For example, must the data reflect all candidates or could a random or NYC-only sample be used? What if demographic information is not available? What if the sample size for a given group is very small? What if the AEDT hasn't been used yet and there is no data to audit?

- The proposed bias audit methodology oversimplifies the math behind a complex issue, potentially requiring employers to publish inaccurate or misleading results.
- The apparent requirement to give a NYC candidate or employee 10 days of notice before using an AEDT imposes a significant slow-down of the recruitment process.
- The specificity required in a notice about the “job qualifications and characteristics” assessed by an AEDT is unclear (and some AI vendors may not be willing to share all data points considered by their model).

In response to the high volume of comments, DCWP announced its intention to have a second public hearing and delayed the enforcement date.

Conclusion

We will continue to monitor developments and provide updates on this local law. Make sure you are subscribed to Fisher Phillips’ Insights to get the most up-to-date information direct to your inbox. If you have any questions on how to comply with this new law, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our New York City office.

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