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From: **Shea Brown, Ph.D.**
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To: **NYC Department of Consumer and Worker Protection**
Rulecomments@dca.nyc.gov

Re: **Local Law 144 of 2021**

June 3, 2022

To Whom It May Concern:

On behalf of the team at BABL AI, I welcome the opportunity to provide public comments on Local Law 144 of 2021¹, which requires yearly “bias audits” of automated employment decision tools (AEDTs) and mandatory notifications to employees and candidates subject to such AEDTs. This law is a welcome attempt to mitigate potential harm that such systems could cause, while strengthening the market position of vendors that invest in thorough due diligence to tackle these issues head on. As a company that audits algorithms for ethical risk, effective governance, bias, and disparate impact, BABL AI believes that the spirit of this law furthers our mission to promote and protect human flourishing in the age of AI.

However, as the Department now is considering new rules that would add penalty schedules for violations of this law, we encourage the Department to clarify several ambiguities in Local Law 144 that pose barriers for companies wishing to make good-faith efforts to comply. Below we outline some ambiguous concepts in the law, as well as questions that we feel need to be answered in order to understand how to navigate effective compliance.

¹ <http://nyc.legistar1.com/nyc/attachments/c5b7616e-2b3d-41e0-a723-cc25bca3c653.pdf>

Independent Auditor: The new law states that a bias audit “means an impartial evaluation by an independent auditor.” In financial auditing, the notion of independence has been codified by the Sarbanes–Oxley Act of 2002 (“SOX”).² But such clarity does not exist for algorithm auditing. This lack of clarity will lead to uncertainty in the audit results, and confusion for companies trying to decide where to allocate time and resources for compliance. In particular, clarity on two topics would immediately provide substantial benefits to companies seeking to comply with the new law:

- **Internal vs. external** – Would an internal audit function be considered sufficiently independent?
- **Conflict of interest** – Should there be restrictions on non-audit remunerations as in SOX?³ Or, can a single firm provide both advisory and bias audit services to the same client?

Testing for Disparate Impact: The new law states that the bias audit must “assess the [AEDTs] disparate impact” on certain persons. In a field as new as algorithm auditing, especially in the dynamic space of AEDTs, the notion of testing for disparate impact can mean many things depending on the use-case, the data available, and who is doing the testing. Below are some of the key uncertainties that we see when trying to engage with clients on these issues:

- **Vendor vs. employer** – if the vendor conducts an audit, is it sufficient for employers to reference the vendor’s public “summary of the results” of the bias audit to satisfy their obligations under the new law? Since many vendors offer customization for large clients or when integrating into large platforms, the potential for disparate impact may lay outside the vendor’s part of the product chain. Given this, we urge the Department to consider the practical and ethical responsibilities employers and platform owners have when relying on a vendor’s public summary of audit results.
- **Access to demographic data** – in many cases, the availability of demographic data from employees and candidates that interact with these systems is extremely limited. This is also true of the data used to train, validate, and test machine learning AEDTs. The reasons for this are varied, including a lack of resources and privacy, bias, and regulatory concerns.⁵ In these cases, we encourage the Department to permit employers to use proxy variables and imputation of demographic data, as long as the statistical limitations of these methods are rigorously quantified and justified.
- **Actual vs. expected disparate impact** – in some cases, demographic data for the production AEDT is unavailable or woefully incomplete. In these cases, we

² <https://www.govinfo.gov/content/pkg/PLAW-107publ204/pdf/PLAW-107publ204.pdf>

³ See “Taxonomy: AI Audit, Assurance and Assessment” for a detailed discussion:

<https://forhumanity.center/bok/taxonomy-ai-audit-assurance-assessment/>

⁵ <https://partnershiponai.org/workstream/demographic-data/>

recommend that the Department permit the use of offline testing data (either historical, synthetic, or with variables that are proxies for protected categories) to serve as sufficient for testing the expected disparate impact.

- **Direct testing vs. independent verification of testing** – in many cases, employers or vendors have conducted disparate impact testing and monitoring of their AEDTs. Can an independent auditor verify that that testing has been done and meets a certain publicly available standard?⁶ Or, does the auditor need to directly access the system and run the disparate impact tests?

I'd like to thank the Department for providing us the opportunity to comment on Local Law 144, and we would be happy to provide further clarification on any of the above questions.

Contact

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⁶ e.g., non-profits like [ForHumanity](#) have binary criteria-based audits for these purposes.