



**Written Comments from Merve Hickok
Regarding Local Law 144 of 2021 in relation to Automated Employment Decision Tools**

TO: New York City Department of Consumer and Worker Protection (DCWP)
Rulecomments@dca.nyc.gov

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Dear Chair and Members of DCWP,

As the Founder of Alethicist.org, I appreciate the opportunity to provide public comments regarding Local Law 144 of 2021, amending the administrative code of the city of New York, in relation to automated employment decision (AED) tools.¹ With this law, NYC legislature passed a globally pioneering law which requires automated employment decision tools used for employment or promotion decisions within NYC to undergo an annual independent bias audit.

As professional artificial intelligence (AI) ethicist, and a certified human resource professional with 20 years of HR experience, I am deeply interested in the development, implementation and regulation of technologies incorporating AI into HR products. Through my organization and my affiliated civil society and academic work, I provide research, training, and consulting on how to develop and use these products in a responsible way. My research and civil society activities focus on bias, accountability, governance, human rights and accessibility across AI and algorithmic decision-making tools. I also conduct research and training on AI policy and regulation at Center for AI & Digital Policy, and lecture on data science ethics at University of Michigan.

As DCWP is proposing to add penalty schedules for violations related to AED tools, I would like to take this opportunity to 1) provide feedback to strengthen the legislation's protections, and 2) request further clarification regarding the terminology. These changes would both protect individual's rights and make the expectations from the employers and vendors are clearer. In return, it would make it easier to detect the violations, and prevent different interpretations of the requirements.

Recommendations:

Inclusion of Disability: Law 144 requires AED tools to be audited for disparate impact on individuals based on their race, ethnicity, or sex. However, it notably lacks any audit requirements for people with disabilities, and consideration of impact of these systems on their access to opportunities. Recently, U.S. Equal Employment Opportunity Commission (EEOC) published a technical assistance document detailing how AED tools may violate existing requirements under Title I of the Americans with Disabilities Act ("ADA") and providing tips to employers on how to comply.² A bias audit must include a review of AED tools with respect to their implications on people with disabilities.

¹ Local Law 144 of year 2021: <http://nyc.legistar1.com/nyc/attachments/c5b7616e-2b3d-41e0-a723-cc25bca3c653.pdf>

² U.S. Equal Employment Opportunity Commission (5/12/2022). The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees



Notice and Disclosure: Employers are required to provide candidates minimum 10-day notice about the future use of AEDT and include the specific job qualifications and characteristics the tool will use in determining its outcome. This is to allow a candidate to request an alternative selection process or accommodation. A template or a guidance document establishing the minimum content of such Notice is crucial and necessary. Otherwise, the content can be very vague and high-level, or too long and full of legal and technical terms for it to be beneficial for the candidate.

Summary of the results of the most recent bias audit: Employers are required to disclose the summary of the results of the annual audit on their website. Like above concern, a template or a guidance document establishing the minimum content of such Audit Result is crucial and necessary. Otherwise, such documents can be only a few sentences long and not provide any quantitative or qualitative information to be beneficial for the candidate or public interest.

Requests for Clarification:

Definition of ‘independence’: The NYC law requires an ‘impartial evaluation by an independent auditor’. The legislation does not clarify the conditions of independence or audit. Currently there exists no accreditation scheme in or outside of US of a bias audit of AED tools.

Therefore, it is necessary to clarify

- 1) whether the auditor could be internal to the vendor developing, or employer implementing the AED tool?
- 2) what are the criteria to determine independence if an internal auditor?

In addition, the scope and rules of audit must be developed independent of the auditor conducting the audit to ensure conflict of interest and integrity of audit.

Definition of ‘bias’: In the absence of a definition of bias, the audits can turn into a simple check of disparate impact by using 4/5ths Rule. This is a race to the bottom and can turn the requirements of this legislation into a rubber stamp activity. Responsible AI practices and consideration of bias must be across practical and statistical tests, and across design decisions. The assumptions, decisions and trade-offs made by vendor and employers must be included as audit criteria.

Impacted employers: The legislation suggests ‘In the city, it shall be unlawful for an employer or an employment agency to use an automated employment decision tool to screen a candidate or employee for an employment decision unless’ certain obligations are met. However, it is not clear if impacted employers should be 1)employers based in NYC, or 2)employers based anywhere and hiring NYC ‘residents’, or 3)employers based anywhere and hiring into NYC-based ‘roles.’ Reference to ‘employee or candidate that resides in the city’ is only mentioned under the Notice requirement.

Thank you for your consideration of my views. I would welcome the opportunity to discuss further about these recommendations.

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