



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

RE : Local Law 144 of 2021

DATE: 6/6/2022

Dear Chair and Members of DCWP,

As Credo AI, an organization focused on empowering organizations to deliver Responsible AI at scale, we welcome the chance to provide public comments regarding Local Law 144 of 2021, in relation to Automated Employment Decision Tools (AEDT).¹ With this regulation, NYC Council has taken a lead in regulating the automated employment decision tools before any other jurisdiction in the US or Europe. It sets a precedent by which other similar government entities at city, state, federal or national levels can require employers to have similar controls. It also brings a certain level of transparency to vendor and employer practices by way of requiring audit results to be disclosed by employers.

To ensure responsible AI development and use is embedded within an AEDT, design decisions, changes to data and model, and results of tests must be documented, and a robust governance structure must be in place. At Credo AI, we have been working on these challenges for years to ensure that AI is always in service to humanity. Our mission is to ensure that an increasingly AI-embedded society will have more equitable access to healthcare, education, and employment - not less. Our Responsible AI (RAI) Governance Platform provides context-driven governance and risk assessment to ensure compliant, fair, and auditable development and use of AI. We operationalize industry best practices, standards, and regulations into actionable Policy Packs that our customers use to assess whether their ML models, datasets, and development processes are meeting business, regulatory, and ethical requirements.

¹ NYC Local Law 144 of year 2021:

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



In response to DCWP's request for input regarding the proposal to add penalty schedules for violations related to AEDT, we would like to provide the following recommendations and request more detail on certain terminology within the legislation.

Bias Audit: The most significant lack of guidance within legislation is what is meant by a *bias audit*. The law specifies neither *bias* nor *audit* beyond the requirement for an assessment of disparate impact for sex, race, and ethnicity.

Independent audit rules: If an auditor (internal or external) determines what the rules and content of a bias audit should be, and then conducts an audit according to these self-determined rules, a conflict arises. The set of audit rules to be used for the purposes of this legislation must be objectively and independently crafted by a party outside of the AEDT vendor and employer in question. Only then an objective examination can be guaranteed.

Independent auditor: The new law states that a bias audit means “ an impartial evaluation by an independent auditor” but fails to deliver clarity on what is acceptable. For example if a company chooses to do the audit internally, would the results of the bias audit be acceptable ? If a company chooses to engage with a big 4, would it need to have the advisory separate from the audit for algorithmic auditing ?

Disparate Impact: Legislation requires ‘bias audit shall include but not be limited to the testing of an automated employment decision tool to assess the tool’s disparate impact’. However, since no further requirement is set for testing, the audit might be limited to checking of outcomes against a practical test of 4/5ths Rule. Such simplistic approaches would take away from the spirit of the legislation and add no value to the protection of candidates or employees impacted by these decisions. It means no further consideration is necessary for the new risks introduced by algorithmic systems. Though some progress has been made in confronting discrimination in the hiring process in the past few decades, there is still much work to do addressing systemic bias that obstructs more equitable employment opportunities.

Other protected categories: Comparing the first draft of the bill made public by the NYC Council with the final version, the scope of class attributes covered is reduced to disparate impact based on race, ethnicity, and sex. By leaving out explicit mention of

discrimination based on disability, age, or sexual orientation - many people who suffer the consequences of bias are still left unprotected and further disadvantaged. We recommend these categories to be added to a mandated bias audit.

Access to data: An AEDT could be developed by a vendor or inhouse by the employer itself. Similarly, the vendor might be providing the model to a client, but the employer could have full control over the demographic data. For a robust disparate impact analysis, an auditor requires access to both the model and the demographic data, and the outcomes across different protected categories/groups.

Disclosure of audit results: The bill also requires employers to post a *summary* of the bias audit on their website but gives no outline for what that summary must contain. We believe a detailed version of the audit results must be retained by both employers and vendors as per their data retention policies. We also recommend the summary of the audit to be detailed and actionable enough to ensure public and candidate understanding of how these systems work, and for which groups they work better.

Credo AI is honored to provide this feedback for your consideration. We would welcome the opportunity to discuss these recommendations and share our work in support of the Local Law 144 of 2021.

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