



VIA E-MAIL

Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection
42 Broadway, 8th Floor
New York, NY 10004

Re: Comments Regarding The Proposed Rules to the Use of Automated Employment Decision Tools Under Local Law 144 of 2021

Dear Commissioner Mayuga:

Working with a broad array of employers, leveraging AI technology for talent acquisition and talent management solutions, retrain.ai has gained a deep knowledge of AI, Responsible AI, and the legal implications of designing, developing and applying sophisticated algorithmic technologies in the workplace.

Our expert data science groups work on Responsible AI requirements across technologies, including the use of artificial intelligence and machine learning algorithms to help with key processes including sourcing, hiring, retention, workforce planning, employee management, talent development and diversity, equity and inclusion (DEI) initiatives.

We submit these comments regarding the proposed rules issued by the Department of Consumer and Worker Protection that stand to implement New York City Local Law 144 regarding automated employment decision tools (AEDT).

1. Though the law is originating in New York City and is directed toward AI in hiring practices here, there needs to be clarity as to the scope of the law, as well as additional specifics around what specifically qualifies as an NYC business or NYC candidate. Especially at a time when remote work is more prevalent than ever, a company in NYC may have remote employees elsewhere; conversely, a company based anywhere in the

world can have an office in NYC or as little as a sole remote employee working from their home in NYC. The reach of the law needs to be defined as it can be interpreted to be quite expansive.

2. In any kind of analysis or technical audit, a robust dataset is necessary for an accurate assessment. When the law takes effect in January, there arguably won't be enough structured data on the gender, race, ethnicity, etc. of NYC "candidates for employment" to build a comparison. If an employer is newly utilizing an AI-based solution, they won't have had time to collect and analyze data for comparison; likewise, if they then don't use the tool, in order to avoid penalty, there will still be no selection rates generated for an audit.
3. As it reads, the law relates to an independent audit of an AEDT once it's been implemented in the screening of candidates. In order to ensure bias prevention, technology should be built from its base as a responsible solution. Bias testing should then be conducted through all stages of development and deployment to ensure that algorithmic tools are designed, developed, trained, tested and deployed with bias prevention intact.
4. In support of transparency for employment candidates, the law requires notice of the use of AI hiring tools as well as an option to decline their use. The proposed rules also state that "Nothing in this subchapter requires an employer or employment agency to provide an alternative selection process," begging the question of what options are available to a candidate who opts out.
5. Furthermore, it is unclear as to what measures are in place to ensure candidates who opt out are given an equal opportunity to demonstrate their competencies. An argument could be made that such candidates are at a disadvantage by being removed from the rest of the talent pool unless equitable methods are provided. Likewise, there may be the risk of selection bias if the alternative method proves too complex or time-consuming than the AI methodology, prompting their removal from the screening process.

6. Reiterating the need for a robust dataset to provide accurate assessment, provisions need to be made to account for insufficient data sample size skewing impact ratio. Put simply, if an employer only has five candidates in their talent pool, they don't have a complete reading of what constitutes bias within that hiring cycle. The law needs further clarification regarding the use of additional calculation methods in such scenarios.
7. There needs to be further refinement of vague terms and broad definitions used within the law. The current wording, for example, makes it difficult for an employer to evaluate with a high degree of certainty which "computational process" falls under the law. By the current definition, almost any recruitment or assessment tool could fall under the law's umbrella. Likewise its references to AI hiring tools that represent "significant weight" on a hiring decision. How does one define significance? Subjective terminology needs to give way to specific parameters if employers are to follow the law.
8. While there are already many businesses claiming to be available to perform AI bias audits, it is unclear what qualifications were met to support such claims; and, likewise, what certification processes were used. The role of the auditor is paramount to the law and needs to be further defined, including the possibility that they may come from within the company that developed the tool being audited. While some may see this as a conflict of interest, it could be argued that given the expertise a company uses to develop the specific functions and methodologies of the machine learning involved, AI experts within said company may be best positioned to conduct an accurate audit, as opposed to an unknown third party vendor.

In closing, we at retrain.ai look forward to the further refinement of Local Law #144 for the betterment of hiring practices not just in New York City, but also beyond our city limits who see the NYC Law as the powerful initiative it is. When used responsibly, AI can empower employers to greatly enhance unbiased hiring practices that lead to the proven benefits of a diverse, inclusive workforce. Conversely, over-emphasis on regulation can run the risk of undermining hiring efforts at a challenging time of talent scarcity by impeding business operations or placing heavy burdens on employers to

revert to manual processes, which may introduce even more unintentional bias. Local Law #144 has the potential to support our collective efforts to remove bias in hiring for New York City as long as measures put in place don't stifle the very innovation that can facilitate it for us. Thank you for including an array of voices in the conversation.

Should the Council have questions or comments about this submission letter, retrain.ai is happy to answer and share our perspective on this important topic.

Sincerely,

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