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

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

Dear Commissioner Mayuga:

We submit these comments on January 23, 2023 in response to the second public hearing on New York City Local Law 144. After reviewing the revised version of proposed rules issued by the Department of Consumer and Worker Protection regarding automated employment decision tools (AEDT) following the November public hearing, it's apparent that many of the previously submitted elements were integrated, resulting in a more clear explanation of the law and its parameters. In the interest of continuing to refine such language and define the use of AI audits, our additional feedback is shared below.

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. Likewise, retrain.ai's membership in the World Economic Forum includes working together with public- and private-sector leaders to help define and develop the standards for responsible AI.

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.

1. The law needs to better define what constitutes an adequate data sample size, and include an understanding of what procedural changes will be instituted if a sample size is too small, as with certain ethnicities that have a small representation in the population for example. Without a robust enough data set for analysis, accurate detection of bias is likely impossible. Hence, clearer guidelines for sample size of data are required.

2. The law needs to clarify parameters in the absence of sufficient historical data. The current wording in section 5-302(c) on Data Requirements reads:

   "A bias audit of an AEDT used by multiple employers or employment agencies may use the historical data of any employers or employment agencies that use the AEDT. However, an employer or employment agency may rely on a bias audit of an AEDT that uses the historical data of other employers or employment agencies only if it provided historical data from its use of the AEDT to the independent auditor for the bias audit or if it has never used the AEDT."

   But while the law states that a vendor may use historical data of multiple employers or employment agencies that use the AEDT, it doesn't address the challenge presented when other employers or employment agencies won't provide their consent to share private data. At that point, what happens if there is no data from the employer, nor the other employers, due to either a lack of data or a refusal of employers or agencies to share private data? This could be addressed as a situation when no historical data exists.

The law's guidelines suggest that if there is no historical data, an auditor can use test data; but the definition of test data is vague and doesn't include parameters for what is appropriate:

"'Test data' means data used to conduct a bias audit that is not historical data."

"(a) A bias audit conducted pursuant to section 5-301 of this Chapter must use historical data of the AEDT. If insufficient historical data is available to conduct a statistically significant bias audit, test data may be used instead.

(b) If a bias audit uses test data, the summary of results of the bias audit must explain why historical data was not used and describe how the test data used was generated and obtained."

Data is the basis of the entire audit, therefore 'test data' necessitates a much more detailed definition. Without one, there remains a risk of using an inappropriate dataset during a bias audit. This can affect the ability to facilitate the audit properly in order to accurately expose the actual performance of the AEDT.

We at retrain.ai understand that when used responsibly, AI can empower employers to greatly enhance unbiased hiring practices that lead to the proven benefits of a diverse, inclusive workforce. We 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, as countless national and international companies are linked to NYC through business operations based here, many of which require hiring of personnel within the city's five boroughs. 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,

retrain.ai Inc.