



January 23, 2023

Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection
42 Broadway, 8th Floor
New York, New York 10004
<http://rules.cityofnewyork.us>
Rulecomments@dcwp.nyc.gov

Re: Comments regarding the revised rule on the Requirement for the Use of Automated Employment Decisionmaking Tools (AEDT)

Dear Commissioner Mayuga:

For over 75 years, [SHRM](#), the Society for Human Resource Management, has been the foremost global thought leader and convener on all issues concerning work, workers, and the workplace. We appreciate the New York City (NYC) Department of Consumer and Worker Protection (DCWP or Department) efforts to revise and clarify the rules governing the use of AEDTs, employer obligations, and bias audit requirements; however, the revisions still leave several concerns, and SHRM respectfully submits the following additional comments.

SHRM previously submitted comments on the original rule proposal on October 24, 2022, commending the Department's efforts to address ambiguities and provide specificity around the requirements and implications of New York City Local Law 144 of 2021 (LL 144). Clear guidance is still needed regarding the scope and coverage of the law. The revised definition of AEDT remains broad and still leaves employers at a disadvantage in guessing what automated processes and systems are encapsulated in the law. SHRM urges the Department to expressly exclude human-directed assessments, such as scheduling tools, skill-screening technologies, and personality or leadership-style assessments from the tools covered by LL 144.

AEDT Definition Clarity

SHRM appreciates the Department's amendments to the definition of AEDT in an effort to provide additional clarity regarding which tools are covered by LL 144. Unfortunately, the proposed definition remains broad and can be interpreted as capturing tools that sort candidates based on demonstrated ability to perform a certain type of work at a given time and place, but where the tool does not perform an analysis or calculation beyond scheduling availability (e.g., unavailable days; unavailable times of day; etc.) and geographic availability (e.g., the ability to work in one particular location versus another). SHRM **recommends** that the proposed rule specifically and clearly define precisely what constitutes an AEDT. Consistent with our previous comment letter, the definition still captures many tools and technologies commonly used for operational efficiencies, optimization, and professional development.

Bias Audits

SHRM commends DCWP's effort to provide employers and AEDT vendors with at least two alternative methods for conducting the bias audit. However, the second standard – *scoring rate for a category/scoring rate of the highest scoring category* – is not a proven or tested method. The first standard is consistent with the U.S. Department of Labor Office of Federal Contract Compliance Programs (OFFCP), but the second proposed standard is an untested and unproven means to calculate the impact ratio. SHRM **recommends** that DCWP revise the second impact ratio to a calculation consistent with one or more methodologies employed by statisticians, labor economists, or industrial-organizational psychologists in the employment context. Calculating adverse impacts on specific communities should be supported by metrics found in interpretative guidance or peer-reviewed literature. Moreover, SHRM submits that employers should be afforded the flexibility needed to select the specific bias audit methodologies that are most relevant when assessing the impact ratio of a given assessment.

With regard to the definition of an independent auditor, SHRM **recommends** that the Department maintain the flexibility included in the previously proposed regulation related to the selection of individuals to perform such an audit. Limiting the ability of an employer or vendor to conduct its own bias audit will only serve to increase costs associated with using AEDTs. Many practitioners are not necessarily “involved in using or developing” an AEDT that can be leveraged to conduct the required review, given their expertise in determining the potential impact and validity of a particular assessment.

Notice to Candidates and Employees

SHRM **recommends** that DCWP amend the rule to allow the job postings to satisfy notification requirements to candidates for employment or promotion. The “10 business days prior” requirement is infeasible because it means AEDT-use notifications would have to be made public before the job posting is available. The requirement negatively impacts innovation and prolongs candidate searches and the time it takes to fill job vacancies. AEDTs can assist employers to save time and create efficiencies to identify the top talent and skills to help their organization thrive.

Extension of Enforcement Period

SHRM **recommends** a further extension in the delayed enforcement period that is currently scheduled to end on April 15, 2023. Since the proposed rules are still under consideration, employers will need additional time to implement the requirements needed to comply with LL 144. Conducting the required bias audits will be a significant undertaking, and employers and vendors simply do not have the requisite clarifications to comply by April 15, 2023.

Conclusion

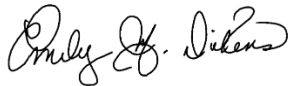
In light of the key benefits that AEDTs offer, SHRM reiterates its prior comments that the requirements and obligations contained in the proposed rules should be viewed through the lens of minimizing limitations on the growth and advancements that could benefit everyone. SHRM

champions the creation of better economic opportunities for overlooked and untapped talent pools. As shared in our initial comments, the availability of AEDTs to better recognize the knowledge, skills, and abilities of these workers provides an important tool for organizations seeking to build a more equitable and inclusive workplace.

SHRM promotes the value of untapped talent as more than a matter of social responsibility or goodwill; these groups of workers are proven to show high returns on investment and skills for employers. SHRM recognizes that appropriate safeguards must be balanced against heavy-handed regulatory restrictions that will set key HR functions back and impede the ability to create and identify broader, more inclusive talent pipelines.

SHRM commends the Department's efforts to get this first-of-its-kind law right and calibrated to best serve the NYC business community. SHRM and our over 5,500 NYC-based members are always ready to work with city policymakers to develop public policies that create better workplaces and opportunities for all New Yorkers. We appreciate the opportunity to comment on the revised rule.

Sincerely,

A handwritten signature in black ink, reading "Emily M. Dickens". The signature is written in a cursive style with a large initial "E" and "D".

Emily M. Dickens
Chief of Staff & Head of Public Affairs