

City of New York, Local Law 144 of 2021, Automated Employment Decision Tools (N.Y.C. Admin. Code Title 20, Ch. 5, Sub. 25)

City of New York

Including regulations and FAQs.

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 144

Introduced by Council Members Cumbo, Ampry-Samuel, Rosenthal, Cornegy, Kallos, Adams, Louis, Chin, Cabrera, Rose, Gibson, Brannan, Rivera, Levine, Ayala, Miller, Levin and Barron. Passed under a Message of Necessity from the Mayor.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to automated employment decision tools

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 25 to read as follows:

Subchapter 25

Automated Employment Decision Tools

§ 20-870 Definitions. For the purposes of this subchapter, the following terms have the following meanings:

Automated employment decision tool. The term “automated employment decision tool” means any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons. The term “automated employment decision tool” does not include a tool that does not automate, support, substantially assist or replace discretionary decision-making processes and that does not materially impact natural

persons, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other compilation of data.

Bias audit. The term “bias audit” means an impartial evaluation by an independent auditor. Such bias audit shall include but not be limited to the testing of an automated employment decision tool to assess the tool’s disparate impact on persons of any component 1 category required to be reported by employers pursuant to subsection (c) of section 2000e-8 of title 42 of the United States code as specified in part 1602.7 of title 29 of the code of federal regulations.

Employment decision. The term “employment decision” means to screen candidates for employment or employees for promotion within the city.

§ 20-871 Requirements for automated employment decision tools. a. 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:

1. Such tool has been the subject of a bias audit conducted no more than one year prior to the use of such tool; and

2. A summary of the results of the most recent bias audit of such tool as well as the distribution date of the tool to which such audit applies has been made publicly available on the website of the employer or employment agency prior to the use of such tool.

b. Notices required. In the city, any employer or employment agency that uses an automated employment decision tool to screen an employee or a candidate who has applied for a position for an employment decision shall notify each such employee or candidate who resides in the city of the following:

1. That an automated employment decision tool will be used in connection with the assessment or evaluation of such employee or candidate that resides in the city. Such notice shall be made no less than ten business days before such use and allow a candidate to request an alternative selection process or accommodation;

2. The job qualifications and characteristics that such automated employment decision tool will use in the assessment of such candidate or employee. Such notice shall be made no less than 10 business days before such use; and

3. If not disclosed on the employer or employment agency's website, information about the type of data collected for the automated employment decision tool, the source of such data and the employer or employment agency's data retention policy shall be available upon written request by a candidate or employee. Such information shall be provided within 30 days of the written request. Information pursuant to this section shall not be disclosed where such disclosure would violate local, state, or federal law, or interfere with a law enforcement investigation.

§ 20-872 Penalties. a. Any person that violates any provision of this subchapter or any rule promulgated pursuant to this subchapter is liable for a civil penalty of not more than \$500 for a first violation and each additional violation occurring on the same day as the first violation, and not less than \$500 nor more than \$1,500 for each subsequent violation.

b. Each day on which an automated employment decision tool is used in violation of this section shall give rise to a separate violation of subdivision a of section 20-871.

c. Failure to provide any notice to a candidate or an employee in violation of paragraphs 1, 2 or 3 of subdivision b of section 20-871 shall constitute a separate violation.

d. A proceeding to recover any civil penalty authorized by this subchapter is returnable to any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings.

§ 20-873 Enforcement. The corporation counsel or such other persons designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant this subchapter, including mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

§ 20-874 Construction. The provisions of this subchapter shall not be construed to limit any right of any candidate or employee for an employment decision to bring a civil action in any court of competent jurisdiction, or to limit the authority of the commission on human rights to enforce the provisions of title 8, in accordance with law.

§ 2. This local law takes effect on January 1, 2023.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on November 10, 2021 and returned unsigned by the Mayor on December 13, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 144 of 2021, Council Int. No. 1894-A of 2020) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.

New York City Department of Consumer and Worker Protection

Notice of Adoption of Final Rule

Pursuant to the authority vested in the Commissioner of the Department of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, the Department amends Title 6 of the Rules of the City of New York.

An initial version of this rule was proposed and published on September 23, 2022. A public hearing was held on November 4, 2022, and comments regarding the rule were received. DCWP proposed a second version of this rule on December 23, 2022. A public hearing was held on January 23, 2023, and comments regarding the rule were received.

Statement of Basis and Purpose

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is adding rules to implement new legislation regarding automated employment decision tools (“AEDT”). Local Law 144 of 2021 prohibits employers and employment agencies from using an automated employment decision tool unless the tool has been subject to a bias audit within one year of the use of the tool, information about the bias audit is publicly available, and certain notices have been provided to employees or job candidates.

These rules establish that a bias audit of an AEDT must calculate the selection rate for each race/ethnicity and sex category that is required to be reported on to the U.S. Equal Employment Opportunity Commission (“EEOC”) pursuant to the EEO Component 1 report, and compare the selection rates to the most selected category to determine an impact ratio. These calculations are consistent with Section 1607.4 of the EEOC Uniform Guidelines on Employee Selection Procedures. See 29 C.F.R. § 1607.4. These rules generally clarify obligations of employers and employment agencies under the new law.

Specifically, these new rules will:

- Define terms;
- Clarify the requirements for a bias audit;
- Clarify the requirements for the published results of the required bias audit;
- Clarify the requirements for notices that employers and employment agencies must provide to employees and candidates for employment; and
- Clarify other obligations for the employer or employment agency.

The Department initially proposed a version of these rules in September 2022. The Department received comments from the public, including from employers, employment agencies, law firms, AEDT developers, and advocacy organizations. Various issues raised in the comments led to a second version of the proposed rules, published in December 2022. Those changes included:

- Modifying the definition of AEDT to ensure greater focus;
- Clarifying that an “independent auditor” may not be employed or have a financial interest in an employer or employment agency that seeks to use or continue to use an AEDT or in a vendor that developed or distributed the AEDT;
- Revising the required calculation to be performed where an AEDT scores candidates;

- Clarifying that the required “impact ratio” must be calculated separately to compare sex categories, race/ethnicity categories, and intersectional categories;
- Clarifying the types of data that may be used to conduct a bias audit;
- Clarifying that multiple employers using the same AEDT may rely on the same bias audit so long as they provide historical data, if available, for the independent auditor to consider in such bias audit; and
- Clarifying that an AEDT may not be used if its most recent bias audit is more than a year old;

The Department received comments about the second version of the proposed rule from the public, including from employers, employment agencies, law firms, AEDT developers, and advocacy organizations. Various issues raised in the comments resulted in changes that are present in these final rules. These changes include:

- Modifying the definition of “machine learning, statistical modeling, data analytics, or artificial intelligence” to expand its scope;
- Adding a requirement that the bias audit indicate the number of individuals the AEDT assessed that are not included in the calculations because they fall within an unknown category, and requiring that number be included in the summary of results;
- Allowing an independent auditor to exclude a category that comprises less than 2% of the data being used for the bias audit from the calculations of impact ratio;
- Clarifying the examples of a bias audit;
- Clarifying when an employer or employment agency may rely on a bias audit conducted using the historical data of other employers or employment agencies;
- Providing examples of when an employer or employment agency may rely on a bias audit conducted with historical data, test data, or historical data from other employers and employment agencies;
- Clarifying that the number of applicants in a category and scoring rate of a category, if applicable, must be included in the summary of results.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Chapter 5 of Title 6 of the Rules of the City of New York is amended to add Subchapter T to read as follows:

Subchapter T: Automated Employment Decision Tools

§ 5-300. Definitions.

As used in this subchapter, the following terms have the following meanings:

Automated Employment Decision Tool. “Automated employment decision tool” or “AEDT” means “Automated employment decision tool” as defined by § 20-870 of the Code where the phrase “to substantially assist or replace discretionary decision making” means:

- i. to rely solely on a simplified output (score, tag, classification, ranking, etc.), with no other factors considered; or
- ii. to use a simplified output as one of a set of criteria where the simplified output is weighted more than any other criterion in the set; or
- iii. to use a simplified output to overrule conclusions derived from other factors including human decision-making.

Bias Audit. “Bias audit” means “Bias audit” as defined by § 20-870 of the Code.

Candidate for Employment. “Candidate for employment” means a person who has applied for a specific employment position by submitting the necessary information or items in the format required by the employer or employment agency.

Category. “Category” means any component 1 category required to be reported by employers pursuant to subsection (c) of section 2000e-8 of title 42 of the United States Code as specified in part 1602.7 of title 29 of the Code of Federal Regulations, as designated on the Equal Employment Opportunity Commission Employer Information Report EEO-1.

Code. “Code” means the Administrative Code of the City of New York.

Distribution Date. “Distribution date” means the date the employer or employment agency began using a specific AEDT.

Employment Decision. “Employment decision” means “Employment decision” as defined by § 20-870 of the Code.

Employment Agency. “Employment agency” means “Employment agency” as defined by 6 RCNY § 5-249.

Historical data. “Historical data” means data collected during an employer or employment agency’s use of an AEDT to assess candidates for employment or employees for promotion.

Independent Auditor. “Independent auditor” means a person or group that is capable of exercising objective and impartial judgment on all issues within the scope of a bias audit of an AEDT. An auditor is not an independent auditor of an AEDT if the auditor:

- i. is or was involved in using, developing, or distributing the AEDT;
- ii. at any point during the bias audit, has an employment relationship with an employer or employment agency that seeks to use or continue to use the AEDT or with a vendor that developed or distributes the AEDT; or

- iii. at any point during the bias audit, has a direct financial interest or a material indirect financial interest in an employer or employment agency that seeks to use or continue to use the AEDT or in a vendor that developed or distributed the AEDT.

Impact Ratio. “Impact ratio” means either (1) the selection rate for a category divided by the selection rate of the most selected category or (2) the scoring rate for a category divided by the scoring rate for the highest scoring category.

$$\text{Impact Ratio} = \frac{\text{selection rate for a category}}{\text{selection rate of the most selected category}}$$

OR

$$\text{Impact Ratio} = \frac{\text{scoring rate for a category}}{\text{scoring rate of the highest scoring category}}$$

Machine learning, statistical modeling, data analytics, or artificial intelligence. “Machine learning, statistical modeling, data analytics, or artificial intelligence” means a group of mathematical, computer-based techniques:

- i. that generate a prediction, meaning an expected outcome for an observation, such as an assessment of a candidate’s fit or likelihood of success, or that generate a classification, meaning an assignment of an observation to a group, such as categorizations based on skill sets or aptitude; and
- ii. for which a computer at least in part identifies the inputs, the relative importance placed on those inputs, and, if applicable, other parameters for the models in order to improve the accuracy of the prediction or classification.

Scoring Rate. “Scoring Rate” means the rate at which individuals in a category receive a score above the sample’s median score, where the score has been calculated by an AEDT.

Screen. “Screen” means to make a determination about whether a candidate for employment or employee being considered for promotion should be selected or advanced in the hiring or promotion process.

Selection Rate. “Selection rate” means the rate at which individuals in a category are either selected to move forward in the hiring process or assigned a classification by an AEDT. Such rate may be calculated by dividing the number of individuals in the category moving forward or assigned a classification by the total number of individuals in the category who applied for a position or were considered for promotion.

Example. If 100 Hispanic women apply for a position and 40 are selected for an interview after use of an AEDT, the selection rate for Hispanic women is 40/100 or 40%.

Simplified output. “Simplified output” means a prediction or classification as specified in the definition for “machine learning, statistical modelling, data analytics, or artificial intelligence.” A simplified output may take the form of a score (e.g., rating a candidate’s estimated technical skills), tag or categorization (e.g., categorizing a candidate’s resume based on key words, assigning a skill or trait to a candidate), recommendation (e.g., whether a candidate should be given an interview), or ranking (e.g., arranging a list of candidates based on how well their cover letters match the job description). It does not refer to the output from analytical tools that translate or transcribe existing text, e.g., convert a resume from a PDF or transcribe a video or audio interview.

Test data. “Test data” means data used to conduct a bias audit that is not historical data.

§ 5-301 Bias Audit.

- (a) An employer or employment agency may not use or continue to use an AEDT if more than one year has passed since the most recent bias audit of the AEDT.
- (b) Where an AEDT selects candidates for employment or employees being considered for promotion to move forward in the hiring process or classifies them into groups, a bias audit must, at a minimum:
 - (1) Calculate the selection rate for each category;
 - (2) Calculate the impact ratio for each category;
 - (3) Ensure that the calculations required in paragraphs (1) and (2) of this subdivision separately calculate the impact of the AEDT on:
 - i. Sex categories (e.g., impact ratio for selection of male candidates vs female candidates),
 - ii. Race/Ethnicity categories (e.g., impact ratio for selection of Hispanic or Latino candidates vs Black or African American [Not Hispanic or Latino] candidates), and
 - iii. intersectional categories of sex, ethnicity, and race (e.g., impact ratio for selection of Hispanic or Latino male candidates vs. Not Hispanic or Latino Black or African American female candidates).
 - (4) Ensure that the calculations in paragraphs (1), (2), and (3) of this subdivision are performed for each group, if an AEDT classifies candidates for employment or employees being considered for promotion into specified groups (e.g., leadership styles); and
 - (5) Indicate the number of individuals the AEDT assessed that are not included in the required calculations because they fall within an unknown category.

Example: An employer wants to use an AEDT to screen resumes and schedule interviews for a job posting. To do so, the employer must ensure that a bias audit of the AEDT was conducted no more than a year before the planned use of the AEDT. This bias audit is necessary even though the employer is not using the AEDT to make the final hiring decision, but only to screen at an early point in the application process. The employer asks the vendor for a bias audit. The vendor provides historical data regarding applicant selection that the vendor has collected from multiple employers to an independent auditor who will conduct a bias audit as follows:

Sex Categories				
	# of Applicants	# Selected	Selection Rate	Impact Ratio
Male	1390	667	48%	1.00
Female	1181	555	47%	0.979

<u>Race/Ethnicity Categories</u>				
	<u># of Applicants</u>	<u># Selected</u>	<u>Selection Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>	<u>408</u>	<u>204</u>	<u>50%</u>	<u>0.97</u>
<u>White (Not Hispanic or Latino)</u>	<u>797</u>	<u>412</u>	<u>52%</u>	<u>1.00</u>
<u>Black or African American (Not Hispanic or Latino)</u>	<u>390</u>	<u>170</u>	<u>44%</u>	<u>0.84</u>
<u>Native Hawaiian or Pacific Islander (Not Hispanic or Latino)</u>	<u>119</u>	<u>52</u>	<u>44%</u>	<u>0.85</u>
<u>Asian (Not Hispanic or Latino)</u>	<u>616</u>	<u>302</u>	<u>49%</u>	<u>0.95</u>
<u>Native American or Alaska Native (Not Hispanic or Latino)</u>	<u>41</u>	<u>18</u>	<u>44%</u>	<u>0.85</u>
<u>Two or More Races (Not Hispanic or Latino)</u>	<u>213</u>	<u>96</u>	<u>45%</u>	<u>0.87</u>

<u>Intersectional Categories</u>						
			<u># of Applicants</u>	<u># Selected</u>	<u>Selection Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>		<u>Male</u>	<u>205</u>	<u>90</u>	<u>43.9%</u>	<u>0.841</u>
		<u>Female</u>	<u>190</u>	<u>82</u>	<u>43.2%</u>	<u>0.827</u>
<u>Non/Hispanic or Latino</u>	<u>Male</u>	<u>White</u>	<u>412</u>	<u>215</u>	<u>52.2%</u>	<u>1.000</u>
		<u>Black or African American</u>	<u>226</u>	<u>95</u>	<u>42.0%</u>	<u>0.806</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>87</u>	<u>37</u>	<u>42.5%</u>	<u>0.815</u>
		<u>Asian</u>	<u>321</u>	<u>167</u>	<u>52.0%</u>	<u>0.997</u>
		<u>Native American or Alaska Native</u>	<u>24</u>	<u>11</u>	<u>45.8%</u>	<u>0.878</u>
		<u>Two or More Races</u>	<u>115</u>	<u>52</u>	<u>45.2%</u>	<u>0.866</u>
	<u>Female</u>	<u>White</u>	<u>385</u>	<u>197</u>	<u>51.2%</u>	<u>0.981</u>
		<u>Black or African American</u>	<u>164</u>	<u>75</u>	<u>45.7%</u>	<u>0.876</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>32</u>	<u>15</u>	<u>46.9%</u>	<u>0.898</u>
		<u>Asian</u>	<u>295</u>	<u>135</u>	<u>45.8%</u>	<u>0.877</u>
		<u>Native American or Alaska Native</u>	<u>17</u>	<u>7</u>	<u>41.2%</u>	<u>0.789</u>
		<u>Two or More Races</u>	<u>98</u>	<u>44</u>	<u>44.9%</u>	<u>0.860</u>

Note: The AEDT was also used to assess 250 individuals with an unknown sex or race/ethnicity category. Data on those individuals was not included in the calculations above.

(c) Where an AEDT scores candidates for employment or employees being considered for promotion, a bias audit must, at a minimum:

- (1) Calculate the median score for the full sample of applicants;
- (2) Calculate the scoring rate for individuals in each category;

(3) Calculate the impact ratio for each category;

(4) Ensure that the calculations required in paragraphs (1), (2), and (3) of this subdivision separately calculate the impact of the AEDT on:

- i. Sex categories (i.e., impact ratio for selection of male candidates vs female candidates),
- ii. Race/Ethnicity categories (e.g., impact ratio for selection of Hispanic or Latino candidates vs Black or African American [Not Hispanic or Latino] candidates), and
- iii. intersectional categories of sex, ethnicity, and race (e.g., impact ratio for selection of Hispanic or Latino male candidates vs. Not Hispanic or Latino Black or African American female candidates); and

(5) Indicate the number of individuals the AEDT assessed that are not included in the required calculations because they fall within an unknown category.

(d) Notwithstanding the requirements of paragraphs (2) and (3) of subdivision (b) and paragraphs (3) and (4) of subdivision (c), an independent auditor may exclude a category that represents less than 2% of the data being used for the bias audit from the required calculations for impact ratio. Where such a category is excluded, the summary of results must include the independent auditor's justification for the exclusion, as well as the number of applicants and scoring rate or selection rate for the excluded category.

Example: An employer uses an AEDT to score applicants for "culture fit." To do so, the employer must ensure that a bias audit of the AEDT was conducted no more than a year before the use of the AEDT. The employer provides historical data on "culture fit" score of applicants for each category to an independent auditor to conduct a bias audit as follows:

<u>Sex Categories</u>			
	<u># of Applicants</u>	<u>Scoring Rate</u>	<u>Impact Ratio</u>
Male	<u>92</u>	<u>54.3%</u>	<u>1.00</u>
Female	<u>76</u>	<u>44.7%</u>	<u>0.82</u>

<u>Race/Ethnicity Categories</u>			
	<u># of Applicants</u>	<u>Scoring Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>	<u>28</u>	<u>64.2%</u>	<u>1.00</u>
<u>White (Not Hispanic or Latino)</u>	<u>40</u>	<u>37.5%</u>	<u>0.58</u>
<u>Black or African American (Not Hispanic or Latino)</u>	<u>32</u>	<u>50.0%</u>	<u>0.78</u>
<u>Native Hawaiian or Pacific Islander (Not Hispanic or Latino)</u>	<u>8</u>	<u>62.5%</u>	<u>0.97</u>
<u>Asian (Not Hispanic or Latino)</u>	<u>24</u>	<u>41.7%</u>	<u>0.65</u>
<u>Native American or Alaska Native (Not Hispanic or Latino)</u>	<u>16</u>	<u>62.5%</u>	<u>0.97</u>
<u>Two or More Races (Not Hispanic or Latino)</u>	<u>20</u>	<u>50.0%</u>	<u>0.78</u>

<u>Intersectional Categories</u>					
			<u># of Applicants</u>	<u>Scoring Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>		<u>Male</u>	<u>16</u>	<u>75%</u>	<u>1.00</u>
		<u>Female</u>	<u>12</u>	<u>50%</u>	<u>0.67</u>
<u>Non/Hispanic or Latino</u>	<u>Male</u>	<u>White</u>	<u>20</u>	<u>35%</u>	<u>0.47</u>
		<u>Black or African American</u>	<u>20</u>	<u>50%</u>	<u>0.67</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>4</u>	<u>75%</u>	<u>1.00</u>
		<u>Asian</u>	<u>12</u>	<u>58.3%</u>	<u>0.78</u>
		<u>Native American or Alaska Native</u>	<u>8</u>	<u>62.5</u>	<u>0.83</u>
		<u>Two or More Races</u>	<u>12</u>	<u>50%</u>	<u>0.67</u>
	<u>Female</u>	<u>White</u>	<u>20</u>	<u>40%</u>	<u>0.53</u>
		<u>Black or African American</u>	<u>12</u>	<u>50%</u>	<u>.67</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>4</u>	<u>50%</u>	<u>0.67</u>
		<u>Asian</u>	<u>12</u>	<u>25%</u>	<u>0.33</u>
		<u>Native American or Alaska Native</u>	<u>8</u>	<u>62.5%</u>	<u>0.83</u>
		<u>Two or More Races</u>	<u>8</u>	<u>50%</u>	<u>0.67</u>

Note: The AEDT was used to assess 15 individuals with an unknown sex or race/ethnicity category. Data on these individuals was not included in the calculations above.

§ 5-302 Data Requirements.

- (a) **Historical Data.** A bias audit conducted pursuant to section 5-301 of this Chapter must use historical data of the AEDT. The historical data used to conduct a bias audit may be from one or more employers or employment agencies that use the AEDT. However, an individual 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 in the following circumstances: if such employer or employment agency provided historical data from its own use of the AEDT to the independent auditor conducting the bias audit or if such employer or employment agency has never used the AEDT.
- (b) **Test Data.** Notwithstanding the requirements of subdivision (a) of this section, an employer or employment agency may rely on a bias audit that uses test data if insufficient historical data is available to conduct a statistically significant bias audit. 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.

Example 1: An employer is planning to use an AEDT for the first time. The employer may rely on a bias audit conducted using the historical data of other employers or employment agencies, or on a bias audit conducted using test data.

Example 2: An employment agency has been using an AEDT for 6 months. The bias audit the employment agency relied on before its first use of the AEDT was conducted 10 months ago using test data. The employment agency will need an updated bias audit if it will continue to use the AEDT once 12 months have passed since the bias audit it first relied on was conducted. The employment agency's data from 6 months of use of the AEDT is not sufficient on its own to conduct a statistically significant bias audit. The employment agency may rely on a bias audit using the historical data of other employers and employment agencies if it provides its 6 months of historical data to the independent auditor for use and consideration. The employment agency may also rely on a bias audit that uses test data.

Example 3: An employer has been using an AEDT for 3 years and will soon need an updated bias audit. The employer has statistically significant data from its 3 years of use of the AEDT. The employer may rely on a bias audit conducted using historical data from multiple employers if it provides its 3 years of historical data to the independent auditor for use and consideration. The employer may also rely on a bias audit conducted using historical data from its own use of the AEDT, without any data from other employers or employment agencies. The employer may not rely on a bias audit conducted using test data.

§ 5-303 Published Results.

- (a) Before the use of an AEDT, an employer or employment agency in the city must make the following publicly available on the employment section of their website in a clear and conspicuous manner:
 - (1) The date of the most recent bias audit of the AEDT and a summary of the results, which shall include the source and explanation of the data used to conduct the bias audit, the number of individuals the AEDT assessed that fall within an unknown category, and the number of applicants or candidates, the selection or scoring rates, as applicable, and the impact ratios for all categories; and,
 - (2) The distribution date of the AEDT.
- (b) The requirements of subdivision (a) of this section may be met with an active hyperlink to a website containing the required summary of results and distribution date, provided that the link is clearly identified as a link to results of the bias audit.
- (c) An employer or employment agency must keep the summary of results and distribution date posted for at least 6 months after its latest use of the AEDT for an employment decision.

§ 5-304 Notice to Candidates and Employees.

- (a) The notice required by § 20-871(b)(1) of the Code must include instructions for how an individual can request an alternative selection process or a reasonable accommodation under other laws, if available. Nothing in this subchapter requires an employer or employment agency to provide an alternative selection process.
- (b) To comply with § 20-871(b)(1) and (2) of the Code, an employer or employment agency may provide notice to a candidate for employment who resides in the city by doing any of the following:
 - (1) Provide notice on the employment section of its website in a clear and conspicuous manner at least 10 business days before use of an AEDT;
 - (2) Provide notice in a job posting at least 10 business days before use of an AEDT; or,
 - (3) Provide notice to candidates for employment via U.S. mail or e-mail at least 10 business days before use of an AEDT.
- (c) To comply with § 20-871(b)(1) and (2) of the Code, an employer or employment agency may provide notice to an employee being considered for promotion who resides in the city by doing any of the following:
 - (1) Provide notice in a written policy or procedure that is provided to employees at least 10 business days before use of an AEDT;

- (2) Provide notice in a job posting at least 10 business days before use of an AEDT; or,
- (3) Provide notice via U.S. mail or e-mail at least 10 business days before use of an AEDT.
- (d) To comply with § 20-871(b)(3) of the Code, an employer or employment agency must:
 - (1) Provide information on the employment section of its website in a clear and conspicuous manner about its AEDT data retention policy, the type of data collected for the AEDT, and the source of the data;
 - (2) Post instructions on the employment section of its website in a clear and conspicuous manner for how to make a written request for such information, and if a written request is received, provide such information within 30 days; and
 - (3) Provide an explanation to a candidate for employment or employee being considered for promotion why disclosure of such information would violate local, state, or federal law, or interfere with a law enforcement investigation.

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement Local Law 202 of 2019, Local Law 144 of 2021, and Local Law 37 of 2022. These proposed new rules would add penalty schedules for violations related to keeping or selling any force-fed products, open captioning in motion picture theaters, and automated employment decision tools.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on June 6, 2022. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646-558-8656.
 - o Meeting ID: 854 8288 6473
- To participate in the public hearing via videoconference, please follow the online link:
<https://us02web.zoom.us/j/85482886473?pwd=ZU51Mi9XUIk3OSswWGRZKzFpSURmUT09>
 - o Meeting ID: 854 8288 6473

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 11:00am on June 6, 2022. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before 11:59pm on June 6, 2022.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by June 1, 2022.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in the Department of Consumer and Worker Protection’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCWP’s rules? The Department’s rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement Local Law 202 of 2019, Local Law 144 of 2021, and Local Law 37 of 2022. These proposed new rules would add penalty schedules for violations related to keeping or selling any force-fed products, open captioning in motion picture theaters, and automated employment decision tools.

Local Law 202 of 2019 prohibits any food service establishment or retail food establishment from keeping or selling any force-fed products such as foie gras or any items that contain any force-fed products.

Local Law 144 of 2021 prohibits employers and employment agencies from using an automated employment decision tool unless such tool has been subject to a bias audit within one year of the use of the tool, information about such audit is publicly available, and certain notices have been provided to employees or job candidates. An automated employment decision tool means a computational process that issues simplified scores or recommendations used to assist in making employment decisions.

Local Law 37 of 2022 requires certain motion picture theaters to provide open motion picture captioning for a certain number of movie showings. Open motion picture captioning means the written display of dialogue and non-speech information such as music, the identity of the character who is speaking, and other sounds and sound effects. Open captioning is always displayed, distinguishing it from “closed captioning”, which can be turned off by the viewer.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. A new section 6-80 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is added to read as follows:

§ 6-80 Open Captioning at Motion Picture Theaters Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin. Code § 20-699.7(b)	Failure to provide open motion picture captioning	\$375	\$500	\$450	\$500	\$500	\$500
Admin. Code § 20-699.7(d)	Failure to comply with timing requirements for open motion picture captioning	\$375	\$500	\$450	\$500	\$500	\$500
Admin. Code § 20-699.7(e)	Failure to comply with public notice requirements for open motion picture captioning	\$375	\$500	\$450	\$500	\$500	\$500
Admin. Code § 20-699.7(f)	Failure to comply with records requirements	\$375	\$500	\$450	\$500	\$500	\$500

§ 2. A new section 6-81 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is added to read as follows:

§ 6-81 Automated Employment Decision Tools Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Each day on which an automated employment decision tool is used in violation of this section gives rise to a separate violation of subdivision a of section 20-871 of the Administrative Code.

Failure to provide any notice to a candidate or an employee in violation of paragraphs 1, 2 or 3 of subdivision b of section 20-871 of the Administrative Code shall constitute a separate violation.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin. Code § 20-871(a)	Failure to comply with requirements for use of an automated employment decision tool	\$375	\$500	\$1,350	\$1,500	\$1,500	\$1,500
Admin. Code § 20-871(b)	Failure to comply with notice requirements related to automated employment decision tools	\$375	\$500	\$1,350	\$1,500	\$1,500	\$1,500

Section 1. A new section 6-82 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is added to read as follows:

§ 6-82 Force-Fed Products Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Each violation may be treated as a separate and distinct offense. Each day on which a respondent commits a violation may be treated as a separate and distinct offense.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin. Code § 17-1902	Failure to comply with prohibition on force-fed products or food containing force-fed products	\$1,500	\$2,000	\$1,800	\$2,000	\$2,000	\$2,000

NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028

CERTIFICATION PURSUANT TO
CHARTER §1043(d)

RULE TITLE: Penalties for Violations Relating to Open Captioning in Motion Picture Theaters and Automated Employment Decision Tools

REFERENCE NUMBER: 2022 RG 012

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 27, 2022

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Penalties for Violations Relating to Open Captioning in Motion Picture Theaters and Automated Employment Decision Tools

REFERENCE NUMBER: DCWP-16

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

April 28, 2022
Date

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement new legislation related to the use of automated employment decision tools. The proposed rules would clarify the requirements for the use of automated employment decision tools within New York City, the notices to employees and candidates for employment regarding the use of the tool, the bias audit for the tool, and the required published results of the bias audit.

When and where is the hearing? DCWP will hold a public hearing on the proposed rules. The public hearing will take place at 11:00am on Monday, October 24, 2022. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646 558 8656
 - o Meeting ID: 874 1701 0175
 - o Password: 448584
- To participate in the public hearing via videoconference, please follow the online link:
<https://us02web.zoom.us/j/87417010175?pwd=SFNHVjY4aThLMUE1RXIIV2x0SVZQdz09>
 - o Meeting ID: 874 1701 0175
 - o Password: 448584

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dcwp.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00am on Monday, October 24, 2022. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rules on or before Monday, October 24, 2022.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0396 or by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Monday, October 17, 2022.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rules will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in the Department of Consumer and Worker Protection’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCWP's rules? The Department's rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection ("DCWP" or "Department") is proposing to add rules to implement new legislation regarding automated employment decision tools ("AEDT"). Local Law 144 of 2021 ("LL 144") prohibits employers and employment agencies from using an automated employment decision tool unless such tool has been subject to a bias audit within one year of the use of the tool, information about such audit is publicly available, and certain notices have been provided to employees or job candidates.

The proposed rules establish that a bias audit of an AEDT must calculate the selection rate for each race/ethnicity and sex category that is required to be reported on to the U.S. Equal Employment Opportunity Commission ("EEOC") pursuant to the EEO Component 1 report, and compare such selection rates to the most selected category to determine an impact ratio. These calculations are consistent with Section 1607.4 of the EEOC Uniform Guidelines on Employee Selection Procedures. See 29 CFR § 1607.4.

These proposed rules generally clarify obligations of employers and employment agencies under the new law.

Specifically, these proposed new rules would:

- Define terms;
- Clarify the requirements for a bias audit;
- Clarify the requirements for the published results of the required bias audit;
- Clarify the requirements for notices that employers and employment agencies must provide to employees and candidates for employment; and
- Clarify other obligations for the employer or employment agency.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Chapter 5 of Title 6 of the Rules of the City of New York is amended to add Subchapter T as follows:

Subchapter T: Automated Employment Decision Tools

§ 5-300. Definitions.

As used in this subchapter, the following terms have the following meanings:

Automated Employment Decision Tool. “Automated employment decision tool” or “AEDT” means “Automated employment decision tool” as defined by § 20-870 of the Code where the phrase “to substantially assist or replace discretionary decision making” means to rely solely on a simplified output (score, tag, classification, ranking, etc.), with no other factors considered, or to use a simplified output as one of a set of criteria where the output is weighted more than any other criterion in the set, or to use a simplified output to overrule or modify conclusions derived from other factors including human decision-making.

Bias Audit. “Bias audit” means “Bias audit” as defined by § 20-870 of the Code.

Candidate for Employment. “Candidate for employment” means a person who has applied for a specific employment position by submitting the necessary information and/or items in the format required by the employer or employment agency.

Category: “Category” means any component 1 category required to be reported by employers pursuant to subsection (c) of section 2000e-8 of title 42 of the United States code as specified in part 1602.7 of title 29 of the code of federal regulations, as designated on the Equal Employment Opportunity Commission Employer Information Report EEO-1.

Distribution Date. “Distribution date” means the date the employer or employment agency began using a specific AEDT.

Employment Decision. “Employment decision” means “Employment decision” as defined by § 20-870 of the Code.

Employment Agency. “Employment agency” means “Employment agency” as defined by 6 RCNY § 5-249.

Independent Auditor. “Independent auditor” means a person or group that is not involved in using or developing an AEDT that is responsible for conducting a bias audit of such AEDT.

Impact Ratio. “Impact ratio” means either (1) the selection rate for a category divided by the selection rate of the most selected category or (2) the average score of all individuals in a category divided by the average score of individuals in the highest scoring category.

Impact Ratio =
$$\frac{\text{selection rate for a category}}{\text{selection rate of the most selected category}}$$

OR

Impact Ratio =
$$\frac{\text{average score of individuals in a category}}{\text{average score of individuals in the highest scoring category}}$$

Machine learning, statistical modelling, data analytics, or artificial intelligence. “Machine learning, statistical modelling, data analytics, or artificial intelligence” means a group of mathematical, computer-based techniques:

- i. that generate a prediction, meaning an expected outcome for an observation, such as an assessment of a candidate’s fit or likelihood of success, or that generate a classification, meaning

- an assignment of an observation to a group, such as categorizations based on skill sets or aptitude; and
- ii. for which a computer at least in part identifies the inputs, the relative importance placed on those inputs, and other parameters for the models in order to improve the accuracy of the prediction or classification; and
- iii. for which the inputs and parameters are refined through cross-validation or by using training and testing data.

Screen. “Screen” means to make a determination about whether someone should be selected or advanced in the hiring or promotion process.

Selection Rate. “Selection rate” means the rate at which individuals in a category are either selected to move forward in the hiring process or assigned a classification by an AEDT. Such rate may be calculated by dividing the number of individuals in the category moving forward or assigned a classification by the total number of individuals in the category who applied for a position or were considered for promotion.

Example. If 100 Hispanic women apply for a position and 40 are selected for an interview after use of an AEDT, the selection rate for Hispanic women is 40/100 or 40%.

Simplified output. “Simplified output” means a prediction or classification as specified in the definition for “machine learning, statistical modelling, data analytics, or artificial intelligence”. A simplified output may take the form of a score (e.g., rating a candidate’s estimated technical skills), tag or categorization (e.g., categorizing a candidate’s resume based on key words, assigning a skill or trait to a candidate), recommendation (e.g., whether a candidate should be given an interview), or ranking (e.g., arranging a list of candidates based on how well their cover letters match the job description). It does not refer to the output from analytical tools that translate or transcribe existing text, e.g., convert a resume from a PDF or transcribe a video or audio interview.

§ 5-301 Bias Audit

(a) Where an AEDT selects individuals to move forward in the hiring process or classifies individuals into groups, a bias audit required by § 20-871 of the Code must, at a minimum:

- (1) Calculate the selection rate for each category;
- (2) Calculate the impact ratio for each category; and
- (3) Where an AEDT classifies individuals into groups, the calculations in paragraphs (1) and (2) of this subdivision must be performed for each such classification.

Example: An employer wants to use an AEDT to screen resumes and schedule interviews for a job posting. To do so, the employer must ensure that a bias audit of the AEDT was conducted within a year from the use of the AEDT. The employer asks the vendor for a bias audit. The vendor uses historical data it has collected from employers on applicants selected for each category to conduct a bias audit as follows:

-	-	-	<u># of Applicants</u>	<u># Selected</u>	<u>Selection Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>	<u>Male</u>		<u>205</u>	<u>90</u>	<u>43.9%</u>	<u>0.841</u>
	<u>Female</u>		<u>190</u>	<u>82</u>	<u>43.2%</u>	<u>0.827</u>

<u>Non/Hispanic or Latino</u>	<u>Male</u>	<u>White</u>	<u>412</u>	<u>215</u>	<u>52.2%</u>	<u>1.000</u>
		<u>Black or African American</u>	<u>226</u>	<u>95</u>	<u>42.0%</u>	<u>0.806</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>87</u>	<u>37</u>	<u>42.5%</u>	<u>0.815</u>
		<u>Asian</u>	<u>321</u>	<u>167</u>	<u>52.0%</u>	<u>0.997</u>
		<u>Native American or Alaska Native</u>	<u>24</u>	<u>11</u>	<u>45.8%</u>	<u>0.878</u>
		<u>Two or More Races</u>	<u>115</u>	<u>52</u>	<u>45.2%</u>	<u>0.866</u>
	<u>Female</u>	<u>White</u>	<u>385</u>	<u>197</u>	<u>51.2%</u>	<u>0.981</u>
		<u>Black or African American</u>	<u>164</u>	<u>75</u>	<u>45.7%</u>	<u>0.876</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>32</u>	<u>15</u>	<u>46.9%</u>	<u>0.898</u>
		<u>Asian</u>	<u>295</u>	<u>135</u>	<u>45.8%</u>	<u>0.877</u>
		<u>Native American or Alaska Native</u>	<u>17</u>	<u>7</u>	<u>41.2%</u>	<u>0.789</u>
		<u>Two or More Races</u>	<u>98</u>	<u>44</u>	<u>44.9%</u>	<u>0.860</u>

(b) Where an AEDT scores applicants or candidates, a bias audit required by § 20-871 of the Code must, at a minimum:

- (1) Calculate the average score for individuals in each category;
- (2) Calculate the impact ratio for each category;

Example: An employer uses an AEDT to score applicants for “culture fit”. To do so, the employer must ensure that a bias audit of the AEDT was conducted within a year from the planned use of the AEDT. The employer uses historical data on average “culture fit” score of applicants for each category to conduct a bias audit as follows:

-	-	-	<u>Average Score</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>		<u>Male</u>	<u>76</u>	<u>0.884</u>
		<u>Female</u>	<u>47</u>	<u>0.547</u>
<u>Non/Hispanic or Latino</u>	<u>Male</u>	<u>White</u>	<u>86</u>	<u>1.000</u>
		<u>Black or African American</u>	<u>76</u>	<u>0.884</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>65</u>	<u>0.756</u>
		<u>Asian</u>	<u>71</u>	<u>0.826</u>
		<u>Native American or Alaska Native</u>	<u>69</u>	<u>0.802</u>
		<u>Two or More Races</u>	<u>84</u>	<u>0.977</u>
	<u>Female</u>	<u>White</u>	<u>68</u>	<u>0.791</u>
		<u>Black or African American</u>	<u>56</u>	<u>0.651</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>74</u>	<u>0.860</u>
		<u>Asian</u>	<u>67</u>	<u>0.779</u>
		<u>Native American or Alaska Native</u>	<u>52</u>	<u>0.605</u>
		<u>Two or More Races</u>	<u>86</u>	<u>1.000</u>

§ 5-302 Published Results

- (a) Prior to the use of an AEDT, employers and employment agencies in the city must make the following publicly available on the careers or jobs section of their website in a clear and conspicuous manner:
 - (1) the date of the most recent bias audit of such AEDT and a summary of the results, which shall include the selection rates and impact ratios for all categories; and,
 - (2) the distribution date of the AEDT to which such bias audit applies.
- (b) The requirements of subdivision (a) of this section may be met with an active hyperlink to a website containing the required summary of results and distribution date, provided that such link is clearly identified as a link to results of the bias audit.
- (c) Employers and employment agencies must keep the summary of results and distribution date posted for at least 6 months after last using such AEDT for an employment decision.

§ 5-303 Notice to Candidates and Employees

- (a) For the purpose of compliance with § 20-871(b)(1) and (2) of the Code, an employer or employment agency may provide notice to a candidate for employment who resides in the city by:
 - (1) Including notice on the careers or jobs section of its website in a clear and conspicuous manner at least 10 business days prior to use of an AEDT;
 - (2) Including notice in a job posting at least 10 business days prior to use of an AEDT; or,
 - (3) Providing notice to candidates for employment via U.S. mail or e-mail at least 10 business days prior to use of an AEDT.
- (b) For the purpose of compliance with § 20-871(b)(1) and (2) of the Code, an employer or employment agency may provide notice to an employee who resides in the city by:
 - (1) Including notice in a written policy or procedure that is provided to employees at least 10 business days prior to use of an AEDT;
 - (2) Including notice in a job posting at least 10 business days prior to use of an AEDT; or,
 - (3) Providing written notice in person, via U.S. mail or e-mail at least 10 business days prior to use of an AEDT.
- (c) The notice required by § 20-871(b)(1) of the Code must include instructions for how to request an alternative selection process or accommodation.
- (d) For the purpose of compliance with § 20-871(b)(3) of the Code, an employer or employment agency must:
 - (1) provide notice to an employee or candidate who resides in the city by:
 - i. Including notice on the careers or jobs section of its website in a clear and conspicuous manner; or,
 - ii. Providing written notice in person, via U.S. mail or e-mail within 30 days of receipt of a written request for such information.
 - (2) where notice is not included on its website, post instructions for how to make a written request for such information on the careers or jobs section of the employer or employment agency's website in a clear and conspicuous manner.
 - (3) Provide an explanation to a candidate or employee for refusing to provide information pursuant to § 20-871(b)(3) of the Code where disclosure of information required by the notice would violate local, state, or federal law, or interfere with a law enforcement investigation.
- (e) Nothing in this subchapter requires an employer or employment agency to provide an alternative selection process.

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

100 CHURCH STREET

NEW YORK, NY 10007

212-356-4028

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Requirement for Use of Automated Employment Decisionmaking Tools

REFERENCE NUMBER: 2022 RG 061

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Acting Corporation Counsel

Date: September 19, 2022

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1400

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Requirement for Use of Automated Employment Decisionmaking Tools

REFERENCE NUMBER: DCWP-21

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

September 19, 2022

Date

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement new legislation clarifying the requirements for the use of automated employment decision tools within New York City, the notices to employees and candidates for employment regarding the use of the tool, the bias audit for the tool, and the required published results of the bias audit.

When and where is the hearing? DCWP will hold a public hearing on the proposed rules. The public hearing will take place at 11:00AM on Monday, January 23, 2023. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646-893-7101
 - Meeting ID: 228 381 285 379
 - Password: TG5jkM
- To participate in the public hearing via videoconference, please follow the online link:
<https://tinyurl.com/59fjw928>
 - Meeting ID: 228 381 285 379
 - Password: TG5jkM

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dcwp.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00AM on Monday, January 23, 2023. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rules on or before Monday, January 23, 2023.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0210 or by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Monday, January 16, 2023.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rules will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in the Department of Consumer and Worker Protection’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCWP’s rules? The Department’s rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement new legislation regarding automated employment decision tools (“AEDT”). Local Law 144 of 2021 (“LL 144”) prohibits employers and employment agencies from using an automated employment decision tool unless the tool has been subject to a bias audit within one year of the use of the tool, information about the bias audit is publicly available, and certain notices have been provided to employees or job candidates.

These proposed rules establish that a bias audit of an AEDT must calculate the selection rate for each race/ethnicity and sex category that is required to be reported on to the U.S. Equal Employment Opportunity Commission (“EEOC”) pursuant to the EEO Component 1 report, and compare the selection rates to the most selected category to determine an impact ratio. These calculations are consistent with Section 1607.4 of the EEOC Uniform Guidelines on Employee Selection Procedures. See 29 CFR § 1607.4. These proposed rules generally clarify obligations of employers and employment agencies under the new law.

Specifically, these proposed new rules would:

- Define terms;
- Clarify the requirements for a bias audit;
- Clarify the requirements for the published results of the required bias audit;
- Clarify the requirements for notices that employers and employment agencies must provide to employees and candidates for employment; and
- Clarify other obligations for the employer or employment agency.

The Department published an initial version of these rules in September 2022. The Department received comments about that version from the public, including from employers, employment agencies, law firms, AEDT developers, and advocacy organizations. Various issues raised in the comments have resulted in changes to the proposed rules. These changes include:

1. Modifying the definition of AEDT to ensure it is focused;
2. Clarifying that an “independent auditor” may not be employed or have a financial interest in an employer or employment agency that seeks to use or continue to use an AEDT or in a vendor that developed or distributed the AEDT;
3. Revising the required calculation to be performed where an AEDT scores candidates;
4. Clarifying that the required “impact ratio” must be calculated separately to compare sex categories, race/ethnicity categories, and intersectional categories;
5. Clarifying the types of data that may be used to conduct a bias audit;
6. Clarifying that multiple employers using the same AEDT may rely upon the same bias audit so long as they provide historical data, if available, for the independent auditor to consider in such bias audit; and
7. Clarifying that an AEDT may not be used if its most recent bias audit is more than one year old;

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Chapter 5 of Title 6 of the Rules of the City of New York is amended to add Subchapter T as follows:

Subchapter T: Automated Employment Decision Tools

§ 5-300. Definitions.

As used in this subchapter, the following terms have the following meanings:

Automated Employment Decision Tool. “Automated employment decision tool” or “AEDT” means “Automated employment decision tool” as defined by § 20-870 of the Code where the phrase “to substantially assist or replace discretionary decision making” means (i) to rely solely on a simplified output (score, tag, classification, ranking, etc.), with no other factors considered; (ii) to use a simplified output as one of a set of criteria where the simplified output is weighted more than any other criterion in the set; or (iii) to use a simplified output to overrule conclusions derived from other factors including human decision-making.

Bias Audit. “Bias audit” means “Bias audit” as defined by § 20-870 of the Code.

Candidate for Employment. “Candidate for employment” means a person who has applied for a specific employment position by submitting the necessary information or items in the format required by the employer or employment agency.

Category. “Category” means any component 1 category required to be reported by employers pursuant to subsection (c) of section 2000e-8 of title 42 of the United States code as specified in part 1602.7 of title 29 of the code of federal regulations, as designated on the Equal Employment Opportunity Commission Employer Information Report EEO-1.

Code. “Code” means the Administrative Code of the City of New York.

Distribution Date. “Distribution date” means the date the employer or employment agency began using a specific AEDT.

Employment Decision. “Employment decision” means “Employment decision” as defined by § 20-870 of the Code.

Employment Agency. “Employment agency” means “Employment agency” as defined by 6 RCNY § 5-249.

Historical data. “Historical data” means data collected during an employer or employment agency’s use of an AEDT to assess candidates for employment or employees for promotion.

Independent Auditor. “Independent auditor” means a person or group that is capable of exercising objective and impartial judgment on all issues within the scope of a bias audit of an AEDT. An auditor is not an independent auditor of an AEDT if the auditor:

- i. is or was involved in using, developing, or distributing the AEDT;
- ii. at any point during the bias audit, has an employment relationship with an employer or employment agency that seeks to use or continue to use the AEDT or with a vendor that developed or distributes the AEDT; or
- iii. at any point during the bias audit, has a direct financial interest or a material indirect financial interest in an employer or employment agency that seeks to use or continue to use the AEDT or in a vendor that developed or distributed the AEDT.

Impact Ratio. “Impact ratio” means either (1) the selection rate for a category divided by the selection rate of the most selected category or (2) the scoring rate for a category divided by the scoring rate for the highest scoring category.

$$\text{Impact Ratio} = \frac{\text{selection rate for a category}}{\text{selection rate of the most selected category}}$$

OR

$$\text{Impact Ratio} = \frac{\text{scoring rate for a category}}{\text{scoring rate of the highest scoring category}}$$

Machine learning, statistical modelling, data analytics, or artificial intelligence. “Machine learning, statistical modelling, data analytics, or artificial intelligence” means a group of mathematical, computer-based techniques:

- i. that generate a prediction, meaning an expected outcome for an observation, such as an assessment of a candidate’s fit or likelihood of success, or that generate a classification, meaning an assignment of an observation to a group, such as categorizations based on skill sets or aptitude; and
- ii. for which a computer at least in part identifies the inputs, the relative importance placed on those inputs, and other parameters for the models in order to improve the accuracy of the prediction or classification; and
- iii. for which the inputs and parameters are refined through cross-validation or by using training and testing data.

Scoring Rate. “Scoring Rate” means the rate at which individuals in a category receive a score above the sample’s median score, where the score has been calculated by an AEDT.

Screen. “Screen” means to make a determination about whether a candidate for employment or employee being considered for promotion should be selected or advanced in the hiring or promotion process.

Selection Rate. “Selection rate” means the rate at which individuals in a category are either selected to move forward in the hiring process or assigned a classification by an AEDT. Such rate may be calculated by dividing the number of individuals in the category moving forward or assigned a classification by the total number of individuals in the category who applied for a position or were considered for promotion.

Example. If 100 Hispanic women apply for a position and 40 are selected for an interview after use of an AEDT, the selection rate for Hispanic women is 40/100 or 40%.

Simplified output. “Simplified output” means a prediction or classification as specified in the definition for “machine learning, statistical modelling, data analytics, or artificial intelligence.” A simplified output may take the form of a score (e.g., rating a candidate’s estimated technical skills), tag or categorization (e.g., categorizing a candidate’s resume based on key words, assigning a skill or trait to a candidate), recommendation (e.g., whether a candidate should be given an interview), or ranking (e.g., arranging a list of candidates based on how well their cover letters match the job description). It does not refer to the output from analytical tools that translate or transcribe existing text, e.g., convert a resume from a PDF or transcribe a video or audio interview.

Test data. “Test data” means data used to conduct a bias audit that is not historical data.

§ 5-301 Bias Audit.

- (a) An employer or employment agency may not use or continue to use an AEDT if more than one year has passed since the most recent bias audit of the AEDT.

(b) Where an AEDT selects candidates for employment or employees being considered for promotion to move forward in the hiring process or classifies them into groups, a bias audit must, at a minimum:

- (1) Calculate the selection rate for each category;
- (2) Calculate the impact ratio for each category; and
- (3) The calculations required in paragraphs (1) and (2) of this section must separately calculate the impact of the AEDT on:
 - i. Sex categories (i.e., impact ratio for selection of male candidates vs female candidates),
 - ii. Race/Ethnicity categories (e.g., impact ratio for selection of Hispanic or Latino candidates vs Black or African American [Not Hispanic or Latino] candidates)
 - iii. intersectional categories of sex, ethnicity, and race (e.g., impact ratio for selection of Hispanic or Latino male candidates vs. Not Hispanic or Latino Black or African American female candidates).
- (4) Where an AEDT classifies candidates for employment or employees being considered for promotion into groups (e.g., leadership styles), the calculations in paragraphs (1), (2), and (3) of this subdivision must be performed for each group.

Example: An employer wants to use an AEDT to screen resumes and schedule interviews for a job posting. To do so, the employer must ensure that a bias audit of the AEDT was conducted no more than a year prior to the planned use of the AEDT. The employer asks the vendor for a bias audit. The vendor provides historical data regarding applicant selection that the vendor has collected from multiple employers to an independent auditor who will conduct a bias audit as follows:

<u>Sex Categories</u>				
	<u># of Applicants</u>	<u># Selected</u>	<u>Selection Rate</u>	<u>Impact Ratio</u>
Male	1390	667	48%	1.00
Female	1181	555	47%	0.979

<u>Race/Ethnicity Categories</u>				
	<u># of Applicants</u>	<u># Selected</u>	<u>Selection Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>	408	204	50%	0.97
<u>White (Not Hispanic or Latino)</u>	797	412	52%	1.00
<u>Black or African American (Not Hispanic or Latino)</u>	390	170	44%	0.84
<u>Native Hawaiian or Pacific Islander (Not Hispanic or Latino)</u>	119	52	44%	0.85
<u>Asian (Not Hispanic or Latino)</u>	616	302	49%	0.95
<u>Native American or Alaska Native (Not Hispanic or Latino)</u>	41	18	44%	0.85
<u>Two or More Races (Not Hispanic or Latino)</u>	213	96	45%	0.87

<u>Intersectional Categories</u>						
-	-	-	<u># of Applicants</u>	<u># Selected</u>	<u>Selection Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>		<u>Male</u>	<u>205</u>	<u>90</u>	<u>43.9%</u>	<u>0.841</u>
		<u>Female</u>	<u>190</u>	<u>82</u>	<u>43.2%</u>	<u>0.827</u>
<u>Non/Hispanic or Latino</u>	<u>Male</u>	<u>White</u>	<u>412</u>	<u>215</u>	<u>52.2%</u>	<u>1.000</u>
		<u>Black or African American</u>	<u>226</u>	<u>95</u>	<u>42.0%</u>	<u>0.806</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>87</u>	<u>37</u>	<u>42.5%</u>	<u>0.815</u>
		<u>Asian</u>	<u>321</u>	<u>167</u>	<u>52.0%</u>	<u>0.997</u>
		<u>Native American or Alaska Native</u>	<u>24</u>	<u>11</u>	<u>45.8%</u>	<u>0.878</u>
		<u>Two or More Races</u>	<u>115</u>	<u>52</u>	<u>45.2%</u>	<u>0.866</u>
	<u>Female</u>	<u>White</u>	<u>385</u>	<u>197</u>	<u>51.2%</u>	<u>0.981</u>
		<u>Black or African American</u>	<u>164</u>	<u>75</u>	<u>45.7%</u>	<u>0.876</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>32</u>	<u>15</u>	<u>46.9%</u>	<u>0.898</u>
		<u>Asian</u>	<u>295</u>	<u>135</u>	<u>45.8%</u>	<u>0.877</u>
		<u>Native American or Alaska Native</u>	<u>17</u>	<u>7</u>	<u>41.2%</u>	<u>0.789</u>
		<u>Two or More Races</u>	<u>98</u>	<u>44</u>	<u>44.9%</u>	<u>0.860</u>

(c) Where an AEDT scores candidates for employment or employees being considered for promotion, a bias audit must, at a minimum:

- (1) Calculate the median score for the full sample of applicants;
- (2) Calculate the scoring rate for individuals in each category;
- (3) Calculate the impact ratio for each category;
- (4) The calculations required in paragraphs (1), (2), and (3) of this section must separately calculate the impact of the AEDT on:
 - i. Sex categories (i.e., impact ratio for selection of male candidates vs female candidates),
 - ii. Race/Ethnicity categories (e.g., impact ratio for selection of Hispanic or Latino candidates vs Black or African American [Not Hispanic or Latino] candidates)
 - iii. intersectional categories of sex, ethnicity, and race (e.g., impact ratio for selection of Hispanic or Latino male candidates vs. Not Hispanic or Latino Black or African American female candidates).

Example: An employer uses an AEDT to score applicants for “culture fit.” To do so, the employer must ensure that a bias audit of the AEDT was conducted no more than a year from the planned use of the AEDT. The employer provides historical data on “culture fit” score of applicants for each category to an independent auditor to conduct a bias audit as follows:

<u>Sex Categories</u>		
	<u>Scoring Rate</u>	<u>Impact Ratio</u>

Male	<u>54.3%</u>	<u>1.00</u>
Female	<u>44.7%</u>	<u>0.82</u>

<u>Race/Ethnicity Categories</u>		
	<u>Scoring Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>	<u>64.2%</u>	<u>1.00</u>
<u>White (Not Hispanic or Latino)</u>	<u>37.5%</u>	<u>0.58</u>
<u>Black or African American (Not Hispanic or Latino)</u>	<u>50.0%</u>	<u>0.78</u>
<u>Native Hawaiian or Pacific Islander (Not Hispanic or Latino)</u>	<u>62.5%</u>	<u>0.97</u>
<u>Asian (Not Hispanic or Latino)</u>	<u>41.7%</u>	<u>0.65</u>
<u>Native American or Alaska Native (Not Hispanic or Latino)</u>	<u>62.5%</u>	<u>0.97</u>
<u>Two or More Races (Not Hispanic or Latino)</u>	<u>50.0%</u>	<u>0.78</u>

<u>Intersectional Categories</u>				
-	-	-	<u>Scoring Rate</u>	<u>Impact Ratio</u>
<u>Hispanic or Latino</u>	<u>Male</u>		<u>75%</u>	<u>1.00</u>
	<u>Female</u>		<u>50%</u>	<u>0.67</u>
<u>Non/Hispanic or Latino</u>	<u>Male</u>	<u>White</u>	<u>35%</u>	<u>0.47</u>
		<u>Black or African American</u>	<u>50%</u>	<u>0.67</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>75%</u>	<u>1.00</u>
		<u>Asian</u>	<u>58.3%</u>	<u>0.78</u>
		<u>Native American or Alaska Native</u>	<u>62.5</u>	<u>0.83</u>
		<u>Two or More Races</u>	<u>50%</u>	<u>0.67</u>
	<u>Female</u>	<u>White</u>	<u>40%</u>	<u>0.53</u>
		<u>Black or African American</u>	<u>50%</u>	<u>.67</u>
		<u>Native Hawaiian or Pacific Islander</u>	<u>50%</u>	<u>0.67</u>
		<u>Asian</u>	<u>25%</u>	<u>0.33</u>
		<u>Native American or Alaska Native</u>	<u>62.5%</u>	<u>0.83</u>
		<u>Two or More Races</u>	<u>50%</u>	<u>0.67</u>

§ 5-302 Data Requirements.

- (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.

- (c) 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.

§ 5-303 Published Results.

- (a) Prior to the use of an AEDT, an employer or employment agency in the city must make the following publicly available on the employment section of their website in a clear and conspicuous manner:
- (1) The date of the most recent bias audit of the AEDT and a summary of the results, which shall include the source and explanation of the data used to conduct the bias audit and the selection rates and impact ratios for all categories; and,
 - (2) The distribution date of the AEDT.
- (b) The requirements of subdivision (a) of this section may be met with an active hyperlink to a website containing the required summary of results and distribution date, provided that the link is clearly identified as a link to results of the bias audit.
- (c) An employer or employment agency must keep the summary of results and distribution date posted for at least 6 months after last using the AEDT for an employment decision.

§ 5-304 Notice to Candidates and Employees.

- (a) The notice required by § 20-871(b)(1) of the Code must include instructions for how an individual can request an alternative selection process or a reasonable accommodation under other laws, if available. Nothing in this subchapter requires an employer or employment agency to provide an alternative selection process.
- (b) To comply with § 20-871(b)(1) and (2) of the Code, an employer or employment agency may provide notice to a candidate for employment who resides in the city by doing any of the following:
- (1) Provide notice on the employment section of its website in a clear and conspicuous manner at least 10 business days prior to use of an AEDT;
 - (2) Provide notice in a job posting at least 10 business days prior to use of an AEDT; or,
 - (3) Provide notice to candidates for employment via U.S. mail or e-mail at least 10 business days prior to use of an AEDT.
- (c) To comply with § 20-871(b)(1) and (2) of the Code, an employer or employment agency may provide notice to an employee being considered for promotion who resides in the city by doing any of the following:
- (1) Provide notice in a written policy or procedure that is provided to employees at least 10 business days prior to use of an AEDT;
 - (2) Provide notice in a job posting at least 10 business days prior to use of an AEDT; or,
 - (3) Provide notice via U.S. mail or e-mail at least 10 business days prior to use of an AEDT.
- (d) To comply with § 20-871(b)(3) of the Code, an employer or employment agency must:
- (1) Provide information on the employment section of its website in a clear and conspicuous manner about its AEDT data retention policy, the type of data collected for the AEDT, and the source of the data;
 - (2) Post instructions on the employment section of its website in a clear and conspicuous manner for how to make a written request for such information, and if a written request is received, provide such information within 30 days; or,
 - (3) Provide an explanation to a candidate for employment or employee being considered for promotion why disclosure of such information would violate local, state, or federal law, or interfere with a law enforcement investigation.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Requirement for Use of Automated Employment Decisionmaking Tools

REFERENCE NUMBER: 2022 RG 061

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: December 15, 2022

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Requirement for Use of Automated Employment Decisionmaking Tools

REFERENCE NUMBER: DCWP-21

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

December 15, 2022
Date



Automated Employment Decision Tools: Frequently Asked Questions

The NYC Department of Consumer and Worker Protection (DCWP) enforces Local Law 144 of 2021 which regulates automated employment decision tools. These FAQ provide general information and guidance. Sections include:

- I. Overview of the Law
- II. General Bias Audit Requirements
- III. Data Requirements
- IV. Independent Auditors
- V. Responsibility for Bias Audits
- VI. Notice Requirements
- VII. Complaints

I. Overview of the Law

1. What is Local Law 144 of 2021?

The Law prohibits employers and employment agencies from using an automated employment decision tool (AEDT) in New York City unless they ensure a bias audit was done and provide required notices.

The Law was enacted in 2021. It took effect on January 1, 2023. Enforcement begins on July 5, 2023.

2. What is an AEDT?

An AEDT is a computer-based tool that:

- Uses machine learning, statistical modeling, data analytics, or artificial intelligence. AND
- Helps employers and employment agencies make employment decisions. AND
- Substantially assists or replaces discretionary decision-making.

3. How can you tell if a tool uses machine learning, statistical modeling, data analytics, or artificial intelligence?

Machine learning, statistical modeling, data analytics, or artificial intelligence are mathematical, computer-based techniques used to:

- Generate a prediction or a classification. AND
- Identify the inputs, the relative importance of the identified inputs, and any other parameters to improve the accuracy of the generated prediction or classification.

A prediction includes but is not limited to an assessment of a candidate's fit for the job or likelihood of success.

A classification is an assignment of an observation to a group, such as categorizations based on skill sets or aptitude.

See [The Rules of the City of New York](#)¹ for additional guidance.

¹ Visit <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-138393>

4. What are the Law's requirements and how do they apply to an AEDT used "in the city"?

The Law applies only to employers and employment agencies that use an AEDT "in the city." This means:

- The job location is an office in NYC, at least part time. OR
- The job is fully remote but the location associated with it is an office in NYC. OR
- The location of the employment agency using the AEDT is NYC or, if the location of the employment agency is outside NYC, one of the bullets above is true.

If the Law applies:

- A bias audit of the AEDT must be completed before its use. AND
- Job candidates who are New York City residents must receive notice that the employer or employment agency uses an AEDT.

5. Is an "employment decision" just the final hiring or promotion decision?

No. The Law defines employment decision more broadly to include screening.

If employers or employment agencies use an AEDT to substantially help them assess or screen candidates at any point in the hiring or promotion process, they must comply with the Law's requirements before using an AEDT.

6. Do the Law's requirements apply if an employer or employment agency uses an AEDT to scan a resume bank, conduct outreach to potential candidates, or invite applications?

No. The requirements apply to AEDT use to assess candidates for hiring or promotion only. A candidate for employment is a person who has applied for a specific position by submitting the necessary information or items in the format required by the employer or employment agency.

If AEDT use is to assess someone who is not an employee being considered for promotion and who has not applied for a specific position for employment, the bias audit and notice requirements do not apply.

II. General Bias Audit Requirements

1. What is a bias audit?

A bias audit is an impartial evaluation by an independent auditor.

At a minimum, an independent auditor's evaluation must include calculations of selection or scoring rates and the impact ratio across sex categories, race/ethnicity categories, and intersectional categories.

See [The Rules of the City of New York](#)² for examples of what must be in a bias audit.

2. Do employers and employment agencies have to stop using an AEDT if the results of a bias audit seem to indicate a disparate impact?

The Law requires employers and employment agencies to do a bias audit; however, the Law does not require any specific actions based on the results of a bias audit.

Important: Federal, state, and New York City laws prohibit discrimination. Employers and employment agencies must comply with all relevant Anti-Discrimination laws and rules to determine any necessary actions based on the results of a bias audit.

Visit nyc.gov/humanrights for more information about the NYC Human Rights Law.

² Visit <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-138530>

3. Do employers and employment agencies have to publicly share the results of a bias audit?

Yes. Employers and employment agencies must publish:

- A summary of the results of the most recent bias audit. AND
- The distribution date of the AEDT.

Distribution date is the date employers and employment agencies began using the AEDT.

They can:

- Post this information on the employment section of their website. AND/OR
- Provide an active hyperlink to a website with this information.

The summary of results must include:

- The date of the most recent bias audit of the AEDT. AND
- The source and explanation of the data used to conduct the bias audit. AND
- The number of individuals the AEDT assessed that fall within an unknown category. AND
- The number of applicants or candidates, the selection or scoring rates, as applicable, and the impact ratios for all categories.

4. How often must employers and employment agencies perform a bias audit?

Every year. Employers and employment agencies can only rely on a bias audit for one year from the date it was conducted. To be able to use an AEDT, they must ensure the AEDT has had a bias audit within the past year.

III. Data Requirements

1. What data should employers and employment agencies use to conduct a bias audit?

Historical data of the AEDT must be used to conduct a bias audit. “Historical data” is the data collected during an employer’s or employment agency’s use of an AEDT to assess candidates for employment or employees for promotion.

There are exceptions for test data. See the FAQ that follow.

2. Can a bias audit use historical data from another employer’s or employment agency’s use of the same AEDT?

Yes. A bias audit can use the historical data of multiple employers or employment agencies that use the same AEDT; however, employers and employment agencies can only rely on it if:

- They provided historical data from their use of the AEDT to the independent auditor conducting the bias audit. OR
- It is the first time they are using the AEDT.

3. Can employers and employment agencies limit the historical data—for example, time periods—used for a bias audit?

The Law has no specific requirement about the historical data used for a bias audit. However, the summary of the results of a bias audit must include the source and explanation of the data used to conduct the bias audit. If the historical data was limited in any way, including to a specific region or time period, the audit should explain why.

4. Can companies that hire for different positions rely on a bias audit based on the historical data of multiple employers or employment agencies?

Yes. However, companies can only rely on it if:

- They provided historical data from their use of the AEDT to the independent auditor conducting the bias audit. OR
- It is the first time they are using the AEDT.

There is no additional requirement that the companies providing historical data used the AEDT to hire or promote for the same type of position.

5. What should employers and employment agencies do if they do not collect demographic data from applicants or if they have minimal historical data from their use of an AEDT?

If there is insufficient historical data available to conduct a statistically significant bias audit, test data can be used to conduct a bias audit.

See [The Rules of the City of New York](#)³ for specific examples of data use.

6. Can employers and employment agencies impute⁴ demographic information to applicants or use algorithmic software to infer it?

No. Imputed or inferred data cannot be used to conduct a bias audit.

Historical data must be used to conduct a bias audit. Historical data is data collected during an employer's or employment agency's use of an AEDT to assess candidates for employment or employees for promotion.

If there is insufficient historical data available to conduct a statistically significant bias audit, the following can be used to conduct a bias audit:

- Historical data of other employers or employment agencies. OR
- Test data.

7. What is a “statistically significant bias audit”?

DCWP has not set a specific requirement for statistical significance. If an independent auditor determines there is insufficient historical data to conduct a statistically significant bias audit, test data may be used to conduct the bias audit. The summary of results of the bias audit must explain why test data was used and include the source and description of the data.

8. What are the requirements for test data?

To allow for flexibility and development of best practices in this rapidly developing field, DCWP has not set requirements for test data. However, the summary of results of the bias audit must include the source and explanation of the data used to conduct the bias audit. In addition, if the bias audit used test data, the summary should explain how the data was sourced or developed.

9. When can the calculations in a bias audit exclude a sex, race/ethnicity, or intersectional category?

If a category represents less than 2% of the data used for the bias audit, it can be excluded from the required calculations. However, the calculations must include all other categories.

Note: The requirements for the bias audit are minimum requirements. An independent auditor can provide further explanation of the data or calculations.

³ Visit <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-138529>

⁴ In statistics, imputation is the process of replacing missing data with substituted values.

IV. Independent Auditors

1. Does DCWP have a list of approved independent auditors?

No. The Law does not require independent auditors to be approved by DCWP.

2. Who can be an independent auditor?

An independent auditor is someone who exercises objective and impartial judgment in the performance of a bias audit.

Auditors are NOT independent if they:

- Work for the employer or employment agency that will use the AEDT or the vendor that developed or distributes the AEDT. OR
- Were involved in using, developing, or distributing the AEDT regardless of where they work currently. OR
- Have a direct financial interest or a material indirect financial interest in the employer or employment agency that will use the AEDT or the vendor that developed or distributed the AEDT.

V. Responsibility for Bias Audits

1. Who is responsible for complying with the Law's bias audit requirement?

Employers and employment agencies are responsible for ensuring they do not use an AEDT unless a bias audit was done.

The vendor that created the AEDT is not responsible for a bias audit of the tool.

2. Can a vendor do a bias audit of its own tool?

Yes. A vendor can have an independent auditor do a bias audit of its tool. The Law does not prohibit a vendor from having a bias audit done or coordinating the collection of data to use to conduct a bias audit.

Important: Employers and employment agencies are ultimately responsible for ensuring a bias audit was done before using an AEDT.

VI. Notice Requirements

1. How must employers and employment agencies provide notice of AEDT use?

Employers and employment agencies must notify employees and job candidates who are residents of New York City that they are using an AEDT and the job qualifications or characteristics the AEDT will assess. Employers and employment agencies must:

- Include in the notice instructions to request a reasonable accommodation under other laws. AND
- Provide the notice 10 business days before using an AEDT. AND
- Provide the notice in a job posting or by mail or email. Note:
 - *For job applicants:* As an alternative, employers and employment agencies can provide notice on the employment section of their website. Notice on a website does not have to be position-specific.
 - *For candidates for promotion:* As an alternative, employers and employment agencies can include notice in a written policy or procedure. Notice provided in this way does not have to be position-specific.

2. If employers and employment agencies provide notice on their website, when can they start using an AEDT to assess applicants for a position?

Employers and employment agencies can begin using an AEDT 10 business days after posting notice on their website regardless of when a specific job posted.

VII. Complaints

1. How can someone make a complaint about violations of the Law?

To submit a complaint, contact 311 or visit the DCWP website at nyc.gov/dcwp.

Complaints should include all of the following:

- Details of the job posting or position
- Name and type of AEDT
- Notice provided, if any
- Explanation of suspected violation (for example, AEDT used without notice)

2. How will DCWP handle discrimination complaints involving AEDT use?

DCWP enforces the Law's prohibition on AEDT use without a bias audit and required notices.

Claims of discrimination involving AEDT use should go to the NYC Commission on Human Rights (Commission) which enforces the NYC Human Rights Law.

DCWP will refer any claims of discrimination to the Commission.