

NYC Releases FAQ on City's AEDT Law

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On June 29, 2023, the New York City Department of Consumer and Worker Protection (DCWP) released an [FAQ regarding the city's Automated Employment Decisions Tool \(AEDT\) law](#). As we discussed in [this October 2022 alert on proposed regulations](#) and [this May 2023 alert on final regulations](#), the AEDT law requires NYC employers (and employment agencies) to comply with extensive requirements before using an AEDT, including completing an independent bias audit of the tool and providing notice regarding the tool to candidates and employees. The FAQ clarifies some important points regarding the law, which are outlined below.

AEDTs used 'in the city'

The law applies only to employers that use an AEDT "in the city." The DCWP clarified that this means the law applies only where the job location involves working in 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. Unfortunately, the agency did not provide clarity on how employers should determine whether a remote position is "associated with" an office in NYC.

Outreach and recruitment to potential candidates

The FAQ confirms that the law only applies when an AEDT is used to assess individuals who have actually applied for a specific position. Thus, the law does not apply where an AEDT is used to scan a résumé bank, conduct outreach to potential candidates or invite applications.

Data requirements

Historical data

The FAQ clarifies that multiple employers can rely on a bias audit conducted using historical data of other employers if the employer provided historical data from its own use of the AEDT to the auditor conducting the audit, or it is the employer's first time using the AEDT. The FAQ also clarifies that there is "no additional requirement that the companies providing historical data used the AEDT to hire or promote for the same type of position." The FAQ points out, however, that if historical data is limited "in any way, including to a specific region or time period," the audit should explain why.

Test data

Test data can be used if there is insufficient historical data available to conduct a statistically significant bias audit (e.g., where an employer does not collect demographic data or has minimal historical data from its own use of an AEDT), and the required summary of audit results explains why test data was used and includes the source and description of the data. The agency acknowledged it has not set requirements for test data to "allow for flexibility and development of best practices in this rapidly

developing field,” and it has not set a specific requirement for statistical significance, leaving that determination up to the auditor.

Vendors may conduct bias audits

The FAQ clarifies that a vendor can have an independent auditor conduct a bias audit of its tool or assist in the collection of data for use in conducting a bias audit. However, while a vendor who created an AEDT is permitted to conduct a bias audit, the FAQ makes clear that these vendors are not responsible for the audit, and that employers bear the ultimate responsibility for ensuring a bias audit was done before using the tool.

Notice requirement

The FAQ reminds employers that the law’s notice requirements (unlike the audit requirement) apply only to employees and candidates who are NYC residents. The agency clarified that notices provided in a written policy or procedure, or via an employer’s website, do not have to be position-specific.

Discrimination complaints

The AEDT law does not require any specific actions based on the results of a bias audit. However, individuals can complain to the agency regarding any violations of the law (e.g., an employer’s use of an AEDT without an audit and required notices), and the agency will refer any claims of discrimination (e.g., if the audit results indicate a disparate impact to individuals in protected categories) to the New York City Commission on Human Rights.

Next steps

The DCWP started enforcing this law as of July 5, 2023, and it is critical that employers using qualifying AEDTs comply with its requirements. Employers that have not yet conducted a bias audit should not use an AEDT in hiring or promotion decisions until an audit has been completed. Employers with bias audit results indicating potential disparate impact on individuals in protected categories should consult with counsel regarding best steps forward to mitigate risks.

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