

Client Alert

NYC Updates Proposed Rules & Announces Public Hearing Regarding the Automated Employment Decision Tools Law

January 11, 2023

On December 23, 2022, the New York City Department of Consumer and Worker Protection (“DCWP”) updated its proposed rules to implement the new automated employment decision (“AEDT”) tools legislation (Local Law 144), which requires employers using AEDTs to publish the results of a bias audit of such tools on an annual basis. The DCWP issued its initial proposed regulations on September 23, 2022, which was followed by a public hearing on November 4, 2022. After announcing that the enforcement date for the law would be pushed back four months, from January 1, 2023, to April 15, 2023, DCWP released these new proposed rules.

Amongst other proposed changes, the updated rules clarify certain requirements for the ways in which a bias audit must be conducted. For example, the proposed rules provide a new formula by which to calculate the impact ratio and clarify that the selection rate and impact ratios must separately calculate the impact of the AEDT based on sex, race/ethnicity, and intersectional categories. They also specify that a bias audit may only use test data if insufficient historical data is available. Where an AEDT is used by multiple employers, those employers may rely on the same bias audit as long as each has provided its own historical data to the auditor or has never used the AEDT.

The DCWP’s proposed rules also clarify that an “independent auditor” may not be employed by 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.

The DCWP stated that the proposed changes were made in light of comments offered by the public “including from employers, employment agencies, law firms, AEDT developers, and advocacy organizations” regarding the initial set of rules.

In addition to presenting new proposed rules, the DCWP announced it would hold a virtual public hearing on the proposed rules on January 23, 2023, at 11:00 AM ET. Our Labor & Employment and Privacy and Cybersecurity attorneys have been following this legislation closely and are prepared to assist interested parties in drafting and filing public comments in advance of the hearing. Crowell attorneys have also been working with employers, vendors, and auditors to prepare to conduct bias audits in accordance with this new legislation and to otherwise come into compliance with the proposed rules. Please contact us for more information.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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