Engage PEO Client Alert: New York

New York City Finalizes Rules Regarding Artificial Intelligence (AI) Bias in Employment Decisions

WHAT'S NEW: On April 5, 2023, the New York City Department of Consumer and Workplace Protection (DCWP) issued final rules for the regulation of automated decision-making tools in hiring and promotions. Enforcement of the automated employment decision tools (AEDT) law will begin on July 5, 2023.

WHY IT MATTERS: The AEDT prohibits employers from relying on automated decision-making tools to screen applicants and employees for hiring, recruiting, and promotion, unless the employer takes the following actions:

1. conducts a bias audit of the tool;
2. publicly produces a summary of the audit (including the date the tool will be distributed);
3. notifies candidates and employees in New York City of the employer's intent to use the tool (including how the tool will measure qualifications and characteristics);
4. allows candidates and employees to request an accommodation or different process, and;
5. provides information regarding the tool's collection and sourcing data, including data retention.

"**Automated employment decision tools**" are processes based on "machine learning, statistical modeling, data analytics, or artificial intelligence" that issue "simplified output," which includes a score, classification, or recommendation that is used to "substantially assist or replace discretionary decision making" in employment decisions that impact people. Junk email filters, firewalls, antivirus software, calculator spreadsheets, databases, datasets, and other compilations of data are not considered "automated employment decision tools" under the law.

According to the new rules, "substantially assist or replace discretionary decision making" means that the organization:

i. relies exclusively on scores, tags, classifications, or rankings, etc. and does not consider any other factor; or

ii. uses a score, tag, classification, or ranking, etc. as a set of criteria where one factor is weighted more than other criteria considered; or

iii. uses scores, tags, classifications, or rankings, etc. to overrule other conclusions.

Employers that determine their use of AI falls outside of the definitions above should document how the definitions do not apply.

WHAT EMPLOYERS SHOULD DO: In order to comply with the law, prior to July 5, 2023, employers must first determine whether the organization relies on AEDT to make employment decisions regarding hiring and promotions.

Employers that rely on AEDT to make employment decisions regarding hiring and promotion must:

1. commission yearly independent bias audits,
2. publish a summary of the results of the audit,
3. notify affected applicants and employees of the use and function of the tool, and
4. notify affected employees and applicants how they may request an accommodation or alternative selection process.

Employers that have employees in New York City or recruit remote employees that reside in New York City should familiarize themselves with the law and make immediate adjustments necessary to ensure compliance.

Our previous alert discussing the restriction on the use of A.I. decision-making tools is available here (on page 3).

Please contact your Human Resources Consultant for guidance on this developing topic.