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Mapping Requirements of the NYC Local Law 144 and the Data & Trust Alliance Algorithmic Bias Safeguards for Workforce

This document provides a comparison of the requirements under New York City's Local Law 144 relating to the use of automated employment decision tools, including the rules promulgated by the Department of Consumer and Worker Protection, and the screening questions in the Algorithmic Bias Safeguards for Workforce ("Safeguards") developed by the Data & Trust Alliance. This is to demonstrate the likely readiness of a company using the Safeguards to more easily comply with the law's requirements due to the alignment of certain information and priorities around AI systems in an employment context that are addressed by each.

The document is divided into three sections. The first section briefly outlines the requirements under Local Law 144 and the associated rules (collectively, the "Law"). The second section directly maps each requirement under the Law to related questions found in the Safeguards. The third section briefly identifies parts of the Safeguards which may assist with further compliance with the Law even if there is no one-to-one correspondence with explicit requirements in the Law.

I. Summary of the Law

New York City passed Local Law 144 regarding the use of automated employment decision tools (AEDT)[1] in December 2021.[2] The Department of Consumer and Worker Protection (DCWP) proposed draft rules in September 2022 to provide more detailed guidance on how to

[1] An "automated employment decision tool" is defined as "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."

[2] The full text of Local Law 144 is available here.

implement Local Law 144.[3] These rules were amended in December 2022[4] and eventually finalized in April 2023 with the issue of a Notice of Adoption.[5]

The Law requires employers and employment agencies to perform a bias audit on an AEDT no more than one year prior to using it for screening candidates or employees for employment or promotion, respectively, within the city. The bias audit must be an "impartial evaluation by an independent auditor" and must at minimum include disparate impact testing with respect to EEOC component 1 categories, namely race/ethnicity and sex,[6] and their intersectional categories. A summary of the audit results must be made publicly available online.

The Law also requires employers and employment agencies who use an AEDT to provide notice of such to candidates and employees applying for a position at least 10 days prior to their application being subject to its use, with the option to request an "alternative selection process or accommodation." The notice should also include the job qualifications and characteristics the AEDT will use in its assessment and, if not already made publicly available, "information about the type of data collected for the [AEDT], 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."

Penalties for each instance of noncompliance range from $500 to $1,500 depending on the number of prior violations. Local Law 144 counts each day an AEDT is used in violation of its requirements as a separate violation, and each failure to provide a required notice as another separate violation.

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[3] New York City Department of Consumer and Worker Protection, "Notice of Public Hearing and Opportunity to Comment on Proposed Rules," September 2022, available here.

[4] New York City Department of Consumer and Worker Protection, "Notice of Public Hearing and Opportunity to Comment on Proposed Rules," December 2022, available here.

[5] New York City Department of Consumer and Worker Protection, "Notice of Adoption of Final Rule," April 2023, available here.

[6] These are categories required to be reported by employers pursuant to § 2000e-8(c) of Title 42 of the United States Code as specified in Part 1602.7 of Title 29 of the Code of Federal Regulations. "On or before September 30 of each year, every employer that is subject to title VII of the Civil Rights Act of 1964, as amended, and that has 100 or more employees shall file with the Commission or its delegate executed copies of Standard Form 100, as revised (otherwise known as 'Employer Information Report EEO-1') in conformity with the directions set forth in the form and accompanying instructions. . . "; the full text of 29 C.F.R. § 1602.7 is available here. The text of 42 U.S.C. § 2000e–8(c) is available here. For more information on EEO-1 component 1 data collection, *see* "2021 EEO-1 Component 1 Data Collection Instruction Booklet," available here.

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II. Mapping

The following table maps sections of Local Law 144[7] to the corresponding sections in the DCWP rules, and then to the questions in the Safeguards:[8]

Local Law 144	DCWP Rules	Safeguards
As a threshold matter, §20-870 provides the definition for automated employment decision tools, which are subject to the requirements under the law. Key to this determination is whether a tool will "substantially assist or replace discretionary decision making." Another factor is whether the underlying computational process is derived from "machine learning, statistical modeling, data analytics, or artificial intelligence."	§ 5-300 clarifies that whether a tool will "substantially assist or replace discretionary decision making" turns on the overall weight given to the tool's output in relation to other factors, including human decision-making. For example, in use cases where more weight is given to human decision-making rather than the output of the tool, the tool will not be considered an AEDT and will not be subject to the requirements under the Law. § 5-300 also defines "machine learning, statistical modeling, data analytics, or artificial intelligence" and includes, as a necessary condition, that the computer, at least in part, learns how to weigh input features and other applicable parameters.	Question 1.6 asks the vendor to describe the degree of automation or human review required and available. The vendor's answer to this question will help an employer[9] determine whether the tool satisfies the AEDT definition under the Law. Questions 0.1, 2.1, and 7.6 elicit further information about the model design and the training methods used which would help confirm whether the tool uses "machine learning, statistical modeling, data analytics, or artificial intelligence" as defined under the Law.
§ 20-870 also defines "employment decision" as screening candidates for employment or employees for	§ 5-300 repeats the same definition found in Local Law 144 by reference.	Question 0.1 specifically asks vendors if the system makes or influences employment decisions. The examples

[7] Sections 20-872 (Penalties) and 20-873 (Enforcement) of Local Law 144 are omitted as they are outside the scope of the Safeguards.

[8] References to Safeguards questions are based on the numbering found in version 1.0.

[9] For the purposes of this memo, the term "employer" includes employment agencies.

promotion within the city. Only AEDTs that are used to "screen a candidate or employee for an employment decision" are subject to the requirements.		provided include assessments and decisions relating to job offers and promotion. If a vendor answers in the affirmative, then the system's use would most likely also satisfy the definition for "employment decision" under the Law.
§ 20-871(a)(1) requires employers to perform a bias audit on an AEDT no more than one year prior to using it for screening candidates or employees for employment or promotion, respectively, within the city. § 20-870 defines bias audits such that it must, at minimum, include testing for disparate impact on persons with respect to EEOC component 1 categories.	§§ 5-301(b)-(c) provide that a bias audit must, at minimum, include the calculation of selection or scoring rates, as applicable, and the impact ratios for sex categories, race/ethnicity categories, and their intersectional categories. This translates to traditional practical significance testing using adverse impact ratios (with an adapted version for models with continuous outputs). A count of the candidates or employees in the dataset that fall into an unknown category must also be indicated. § 5-301(d) provides the independent auditor discretion to exclude a category that represents less than 2% of the data being used for the bias audit, provided that they include a justification for doing so in the published summary along with the number of applicants and selection/scoring rate for the excluded category.	Question 4.2 is specifically directed toward traditional bias testing performed by the vendor and asks the vendor to specify the practical significance tests used, if any, along with the thresholds and results. Similarly, answers to other testing and audit-related questions, such as 4.3, 4.4, 7.3, 7.4, 8.1, and 10.3, may help clarify the extent to which a vendor has already carefully tested its system for bias and other performance issues, and help establish a baseline expectation for what a bias audit may entail. A vendor who is able to satisfactorily answer, at minimum, question 4.2, will likely be better positioned to enable the vendor to satisfy this requirement of the Law.

	§ 5-302 provides clarity on the data requirements for the bias audit. The default standard is that employers use their own historical data collected from usage of the AEDT. The employer is also allowed to aggregate their historical data with that of other employers using the same AEDT for testing purposes. In the event an employer has insufficient historical data of its own to conduct a bias audit, the employer would require either aggregate historical data of other employers using the same AEDT or test data.[10] If test data is used, the summary of results must include an explanation as to how and why test data was generated and used in place of historical data.	Safeguards questions related to prior domain testing in real-world client situations, audits, and disparate impact and validation studies, such as questions 7.3, 7.4, and 10.3, will help confirm that the vendor has appropriate aggregate historical data or testing data available. In many cases, especially if the employer has not used the AEDT previously, the vendor would be better positioned to prepare the data needed for the bias audit and therefore it would be helpful for employers to know whether the vendor has such data available. Even employers who have sufficient historical data of their own may prefer to aggregate their data with other employers for testing and this would likely depend on the vendor's cooperation.
§ 20-871(a)(2) requires a summary of the results of the most recent bias audit to be published on the employer's website, along with the distribution date of the tool.	§ 5-303 provides that the summary of the results must 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	Question 7.3 asks the vendor if the product has been subject to a prior audit and, to the extent possible, for a copy of the results or a summary thereof. Question 7.4 specifically asks if the model has been tested in any real-world client situations, including client data—which may be similar to the

[10] The rules do not adequately define what constitutes test data. ("'Test data' means data used to conduct a bias audit that is not historical data.")

	applicable, and the impact ratios for all categories."	aggregate historical data allowed under the Law—and to describe the data used and any audits that are available. Satisfactory responses to these questions from the vendor at the outset will likely assist the employer during the process of preparing the summary of the results, including the description of the data used.
§ 20-871(b)(1) requires employers to provide notice to employees and candidates in the city that an AEDT will be used in connection with an assessment or an evaluation at least ten business days prior to such use. The employee or candidate must also be allowed to request an alternative selection process or accommodation.	§ 5-304(a) reinforces that the notice must "include instructions for how an individual can request an alternative selection process or a reasonable accommodation under other laws, if available." §§ 5-304(b)-(c) provide several acceptable methods of providing notices, depending on if it is to an employee or candidate, such as publishing the notice on the employer's website or providing notice by mail.	Questions 13.1-13.2 focus on accommodations and alternatives. Question 13.1 asks the vendor to describe what accommodations are available to users with disabilities and how such accommodations are provided. Question 13.2 asks how alternatives are made available and specifically includes requests by users to opt out as an example. These questions are closely related to the request contemplated under the Law and will help employers identify systems which have the ability to provide accommodations or allow users to opt out, and therefore may make it easier for the employer to satisfy these notice requirements under the Law.[11]

[11] We note that question 13.3 goes further and asks the vendor to describe how they have considered inclusivity in their access and technology requirements. While Local Law 144 does not expressly consider so-called "screen out" risks, answers to question 13.3 may assist an employer with mitigating screen out risks as defined by recent

§ 20-871(b)(2) requires that the above notice also includes information on the job qualifications and characteristics that the AEDT will use.	§§ 5-304(b)-(c) provides several acceptable methods of providing notices, depending on if it is to an employee or candidate, such as publishing the notice on the employer's website or providing notice by mail.	Questions 2.2, 2.6, 2.8, 9.1, and 9.2 address data and algorithmic transparency and ask the vendor to describe, among other things, which features are used in training the model, if any protected characteristics or proxies thereto are used, and how the system uses the input features to arrive at its output. Question 6.3 seeks information on if there are known differences between training data and deployment data such that the system could, for example, use demographic information to make predictions in the real world even if it were not trained to do so. Satisfactory answers to these questions would greatly facilitate the employer's responsibility of preparing this part of the notice. Unsatisfactory answers may be an early signal of concern because if the vendor is unable or unwilling to provide transparency into how the system works, then it is unlikely that the vendor could do so on its own without undertaking a significant technical burden.

guidance from the EEOC. *See* Equal Employment Opportunity Commission, "The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees" (May 12, 2022), available here. ("Screen out occurs when a disability prevents a job applicant or employee from meeting—or lowers their performance on—a selection criterion, and the applicant or employee loses a job opportunity as a result. The ADA says that screen out is unlawful if the individual who is screened out is able to perform the essential functions of the job with a reasonable accommodation if one is legally required.")

§ 20-871(b)(3) requires the employer to either publish on their website or provide upon written request "information about the type of data collected for the automated employment decision tool, the source of such data," and the employer's data retention policy.	§ 5-304(d) provides several acceptable methods of providing this disclosure, such as publishing the information on the employer's website or posting instructions on how to make a written request. It also provides an exemption in cases where making such a disclosure may violate the law or interfere with a law enforcement investigation.[12]	In addition to the data transparency questions identified above—questions 2.2, 2.6, 2.8, which seek information about the data collected and used—governance questions 8.2-8.4 also seek relevant information about governance procedures in place (which may likely include data retention policies), model documentation, and third-party components. Adequate answers from the vendor to these questions will likely help the employer prepare the required disclosure under the Law.

III. Additional Points

In addition to the Safeguards questions which have a direct mapping to requirements under the Law, we note the following ways the Safeguards could assist with further operationalizing or complying with the Law even in the absence of an explicit mapping to the Law:

1. **Vendor cooperation.** The Law does not expressly place any obligations on the vendor and therefore some vendors may be more or less cooperative with the employer in enabling compliance. Therefore, Safeguards question 10.1—which asks the vendor how they would work with the employer to satisfy any specific legal or regulatory requirement—is especially important at the start of a potential commercial relationship in helping an employer understand the extent to which they may expect help from the vendor in fulfilling their obligations under the Law.

2. **Subpar results.** While the Law requires a summary of the results of the bias audit to be made publicly available, it does not require any specific justification or explanation of subpar test results. In practice, however, employers may want to include in the summary

[12] In such cases, the employer is required to provide a written explanation of why they may not be able to provide the disclosure to the employee or candidate.

a description of how they have attempted to remediate the subpar results or a business justification for why they have not been able to do so. Several Safeguards questions prompt vendors for context-setting information which may be helpful in the event the employer needs to include such additional context. Safeguards question 5.3, for example, asks vendors for a business justification for any potential bias that has not been fully remediated; question 5.3 asks for a comparison of the system's performance with respect to industry benchmarks; and questions 6.2 and 6.3 ask about bias monitoring efforts once the system is deployed and about how training data may differ from deployment data. Satisfactory answers to these questions from the vendor may enable the employer to provide helpful context to subpar results in an effort to mitigate legal and reputational harms.