

A.7244-A (Joyner)

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BILL A.7244-A (Joyner)
SUBJECT Establishes Criteria for the Sale (and Use) of Automated Employment Decision Tools
DATE May 03, 2022
OPPOSE

The goal of this bill is to limit discrimination in hiring against any protected group when employers use an automated employment decision tool. New York City recently enacted a law (effective January 1, 2023) with the same goal. The Business Council, on behalf of its 3,200 members, opposes this bill as being in conflict with the New York City bill, an undue administrative burden on employers, and that it will have the opposite effect intended by the sponsor.

The use of artificial intelligence (AI) and automated employment decision tools arose out of the need to eliminate human pre-screening bias occurring in the hiring process. Hiring managers could, occasionally, “pre-screen” applicants by excluding those applicants with names that reveal ethnicity or sex; by discriminating against older applicants by determining age based on clues in applications; or engage in religious or cultural discrimination by looking at affiliations or memberships in certain organizations or clubs.

The use of artificial intelligence has eliminated much of this bias. Employers now use automated screening tools that ignore those potential clues to an applicant’s sex, race, ethnicity or any other protected class and instead focuses on specific job qualifications and experience. If enacted, this law will require many employers to go back to human screening of applications and the corresponding risk of unconscious bias.

Importantly, it has been a long-standing requirement of both New York Labor Law and the Federal Equal Employment Opportunity Commission (EEOC) that any employment screening test be “valid.” That is, that it can be demonstrated that the screening tool does not have a disparate impact on any protected class. Litigants have been able to challenge the validity of pre-screening tools to demonstrate discrimination since 1978. Employers have long had the burden to prove the validity of the screening tools they use. That requirement exists today. If an applicant believed that any artificial intelligence resulted in discriminatory impact, that tool can and should be challenged. As such, this bill will provide no greater protection for applicants beyond what they already have.

In addition, in October of 2021, the EEOC announced it is launching an initiative to ensure that artificial intelligence and other emerging tools used in hiring and other employment decisions comply with federal civil rights laws that the agency enforces. One of the stated goals of this initiative is to issue technical assistance to provide guidance on algorithmic fairness and the use of AI in employment decisions.

The significant administrative burden placed on employers regarding notice and compliance, and the potential for costly fines and penalties for technical non-compliance will leave New York State at a disadvantage in bringing good paying jobs to the state. In fact, this law differs in significant ways from the New York City law and would cause confusion for applicants and employers who may function both inside and outside the city. This issue clearly calls for a national solution.

For these reasons, The Business Council opposes this bill.