NEW YORK CITY

DEPARTMENT OF CONSUMER AND WORKER PROTECTION

DCWP AEDT RULES VIRTUAL PUBLIC HEARING

November 4, 2022

INDEX

1   MR. CHARLIE DRIVER: Alright, folks, since

2   we've had some new people join the call, if you are

3   interested in testifying at this hearing, and have not

4   already, let me know that you're hoping to testify.

5   Please notify me now. I will put my, I can put my

6   email in the chat, you can also just drop it in the

7   chat or unmute yourself to let me know.

8   Alright, we've been having, you know, a lot

9   of people trickle in. {lease let me know if you have

10   not indicated that you're interested in testifying to

11   me already and you want to speak at this hearing.

12   There will be a chance to do it at the end, but if you

13   want to just get on the list, please notify me. I'm

14   going to drop my email in the chat. You can also just

15   unmute or reply directly in the chat. Alright and

16   please make sure you just mute yourself if you're not

17   talking. Thank you.

18   Okay, folks again, please let me know if you

19   want to testify and you haven't already let me know,

20   feel free to unmute yourself and let me know, or drop

21   it in the chat, whichever works. Julia, you're on the

22   list. Thank you. Dave, a copy of the hearing is not

23   going to be made public, but we do make public a

24   transcript of the hearing. So, you know, functionally

25   the same, we just don't share the video. And just for

1   the record, the transcript and our additionally, the

2   comments that we receive for the rules, those all get

3   posted publicly on our website and I will drop the

4   link for that in the chat right now.

5   For everyone who has just joined, please let

6   me know if you haven't done so already if you want to

7   testify at this hearing. You can unmute and let me

8   know. You can also drop a message in the chat. I'll

9   also drop my email as well. We're going to get started

10   probably a few minutes after 11:00. Ryan, I have you

11   on my list already, thank you. Yeah, we're going to

12   start a few minutes after 11:00 just to allow time for

13   more people to trickle in and hopefully the pace of

14   these chimes associated with it to slow down and then

15   we will, we will begin.

16   And just for everyone's awareness, I'm

17   probably, I'm projecting that this will take somewhere

18   between 60 and 90 minutes, although I don't have a

19   firm way, you know, of telling you exactly how long

20   it's going to be. For the folks who have just joined,

21   we're going to get started, you know, in a few

22   minutes. I'm just letting, you know, any, any people

23   who are coming off maybe 10:00 a.m. meetings to join

24   the call. If you have not already let me know that

25   you're interested in testifying, and that includes if

1   you had signed up to testify at a previous hearing

2   with me, I have the list the same as it was. I can

3   sign up you that way.

4   Okay, folks, again, we're going to probably

5   wait until 11:05 or so, or when the pace of people

6   joining the meeting drops off before we get started.

7   If you haven't let me know already that you're

8   interested in testifying, and would like to testify at

9   today's hearing, please do so now. You can either

10   unmute and let me know, or drop a message in the chat

11   or you can also email me. I'm putting my email in the

12   chat right now. Janet, yes, you are on the list.

13   Thanks for double checking.

14   Okay, I'm going to give it one more minute

15   and then, and then we'll get this started. Thanks

16   everyone, for your patience. Okay. I'm going to get

17   this underway. A reminder to everyone to please let me

18   know if you haven't already, that you're interested in

19   testifying. You can either drop that in the chat or

20   you can email me. I'm going to drop my email in the

21   chat. I have a little bit of a, just an intro to read

22   and then we'll dive right into the testimony.

23   So good morning, everyone. My name is

24   Charlie Driver. I've been designated as the hearing

25   officer for this public hearing of the Department of

1 Consumer and Worker Protection on proposed rules to

2 implement local law 144 of 2021, relating to automated

3 employment decision tools. This hearing is being held

4 on Microsoft Teams, and it is now 11:07 on Friday,

5 November 4, 2022 and I am hereby convening the public

6 hearing on this proposed rule.

7 The proposed rule was published in the City

8 Record on September 23, 2022. Published notice and

9 rules are available online on the New York City Rules

10 websites as well as on the department's website. The

11 department has proposed these rules pursuant to the

12 authority vested in the commissioner of the Department

13 of Consumer and Worker Protection by sections 1043 and

14 2203F of the New York City Charter and section 20-1 of

15 4B of the New York City Administrative Code.

16 This hearing affords the public the

17 opportunity to comment on all aspects of the rules the

18 department has proposed. The department will carefully

19 review all testimony and written comments received at

20 this hearing and throughout the comment period and

21 will give due weight and consideration to proposals

22 and recommendations that are submitted for the record.

23 A few ground rules before we get started.

24 Please make sure you are muted as long as you are not

25 speaking. I will be quick on the mute button if you

1   aren't, but it's easier if I don't have to do that at

2   all. Especially, we do have an awful lot of people

3   here. I think it's a DCWP record, so congratulations

4   to everyone, so just be cognizant of that. There's a

5   time limit for any oral testimony. The time limit is

6   three minutes. I am not going to cut you off directly

7   at three minutes, but I will ask you to stop shortly

8   after that. Ryan, keep track of time. I can also, if

9   it will be helpful to people, let you know how much

10   time you have. I'll just maybe put like a one up on my

11   camera when we get to that point.

12   And then, again, if you're interested in

13   testifying and you haven't already let me know, please

14   just drop that in the chat, send me an email. I will

15   drop my email in the chat again now. While there is a

16   limit on the time you can take for oral testimony,

17   again, that limit three minutes, there is no limit for

18   what you can submit as written testimony to the

19   department. You can email me or go to NY-

20   rules.nyc.gov. and comment there, or also email

21   DCWP@rulecomments.dcwp@dcwp.nyc.gov to submit those

22   and we'll need those comments by midnight tonight to

23   be considered as part of this rulemaking process.

24   And last thing before we get started, I just

25   want to thank all of you for your patience with this

1 rulemaking process and your flexibility after we had

2 to postpone the initial hearing due to some technical

3 difficulties, you know, figuring out that we had a

4 participant limit on our Zoom. As everyone I'm sure

5 has noticed, we don't have a participant limit of the

6 same low nature for this Teams call and I'm glad that

7 you call could make it and, you know, we're committed

8 to making sure that you can participate in the process

9 and have a voice in the way that New York City

10 government is, is run.

11   So without any further ado, we'll dive into

12 this comments list. Again, please drop in the chat if

13 you are interested in testifying and haven't already

14 let me know to get on my list, but I'm just going to

15 proceed down the list as I have it right now. And

16 first up, we have New York City Council majority whip

17 Selvena Brooks-Powers. Council Member, whenever you're

18 ready, your three minutes, and thank you for

19 participating today.

20   MS. SELVENA BROOKS-POWERS: Thank you. Are

21 you able to hear me?

22   MR. DRIVER: Yeah, I hear you loud and

23 clear.

24   MS. BROOKS-POWERS: Perfect. So as you

25 mentioned, I'm Councilwoman Selvena Brooks-Powers and

1   I represent New York City's 31st Council District. I'm

2   proud to be one of the 38 lawmakers who voted yes on

3   Local Law 144 at the end of last year. This

4   legislation is an unprecedented effort to shine a

5   light on the tools employers use to evaluate job

6   applicants with an eye to racial equity consequences.

7   As the agency works to implement this

8   legislation, we must all keep at the forefront the

9   problem Local Law 144 is intended to solve. For

10   decades, employers have used automated decision making

11   tools to essentially sort individuals into a yes and

12   no pile when they apply for a job. During the Civil

13   Rights Era, advocates realized that certain tools have

14   the tendency to assign a disproportionate number of

15   black and brown people to the no pile. This type of

16   discrimination was coined disparate impact.

17   Disparate impact is not a complex technical

18   concept. In the educational context, many people are

19   familiar with the SAT as an example as a tool that

20   tends to result in disparate impact for college

21   admission. In the employment context, many different

22   tools have similar effects for determining who gets

23   considered for jobs.

24   From a practical perspective, when an

25   employer genuinely wants to promote workforce

1   diversity, one of the most important things they can

2   do is avoid procedures with significant disparate

3   impact. Otherwise, the technology will quote unquote

4   screen out most black and brown applicants. Too many

5   of these candidates have been turned away from a job

6   that could change their lives.

7   Many times applicants are not even aware of

8   the nature of the tools being used and more

9   importantly, the tools bias. In one case, a resume

10 screening tool used to identify and promote Ivy League

11 schools on employees' resumes and downgrade resumes

12 with HBCUs or women colleges. Given how much progress

13 we still need to make employment equity a reality, it

14 is safe to assume that disparate impact is a common

15 issue with many decision making tools in use today.

16   The challenge however is that we do not have

17 the necessary information to identify which

18 technologies are problematic. Many employers and HR

19 tech vendors collect important data about such racial

20 consequences, but they tend to keep a very close hold

21 on evidence their procedures are blocking workforce

22 diversity.

23   This lack of transparency and resulting lack

24 of accountability is a fundamental problem Local Law

25 144 is intended to solve. For the first time in any

1   jurisdiction, when an employer wants to use an

2   automated hiring tool to evaluate New Yorkers for

3   jobs, they must publicly disclose a report on how

4   biased the outcomes from the tools tend to be. The

5   disclosures will be known as bias audit reports. They

6   will be produced by a third party investigator who

7   conducts an analysis of disparate impact for the tool.

8   One way we can think about a bias audit

9   report is as a label that serves to better inform

10   consumers about the negative aspects of hiring tools.

11   Mandated disclosures like this are not new, we have

12   seen them applied to nutrition information for food

13   and emission ratings for cars. The idea is simply that

14   New Yorkers deserve more than empty promises that a

15   food item is healthy and a car is eco-friendly.

16   The City Council passed Local Law 144

17   because we felt the next frontier for mandatory

18   disclosure regime was one focused on racial equity.

19   Bias audits will be able to present crucial facts

20   about whether the automated hiring systems an employer

21   relies on are biased against people of color. Public

22   disclosure of such information would be unprecedented.

23   Now, the task is to ensure this law is

24   implemented in a manner that guarantees meaningful,

25   transparency as the administration continues the rules

1   for Local Law 144 over the next few weeks, I encourage

2   officials to keep in mind just how powerful

3   transparency can be, because transparency can bring

4   about real systems of accountability, actors who do

5   not want to be held accountable will do everything

6   they can to avoid exposure.

7   Practically speaking, my recommendation is

8   for the agency to recognize the need for expertise.

9   Previous commenting periods have included tenured

10 professors providing technical guidance, third party

11 validators seeking accountability and transparency and

12 major trade associations concerned with compliance. In

13 enforcing these regulations, I call on the department

14 to ensure the New York City Law Department and DCWP

15 are well capacitated with experts in this field to

16 ensure any regulations hold bad actors accountable

17 without hampering legitimate, inclusive AEDTs that

18 seek to expand the hiring pool in the city.

19   The path we face is not an easy one, rooting

20 out discrimination in hiring is not something that can

21 be accomplished by a single piece of legislation.

22 Moreover, scores of businesses rely on these tools to

23 capacitate essential workers. As a comment from the

24 NYU at Langone shows and what we witnessed firsthand

25 during the height of the pandemic. We are however at a

1   turning point in the industry. Systems of evaluating

2   job applicants can either be built to sustain the

3   inequitable status quo or promote progress towards

4   diversity. I firmly believe that this law, if

5   implemented correctly, will be an important first step

6   to a more transparent, fair and balanced hiring

7   process for all New Yorkers. Thank you so much for the

8   opportunity to testify today.

9   MR. DRIVER: Great. Thank you so much,

10   Council Member. I really appreciate your participation

11   in this process. Next up, I have Shea Brown. Shea, are

12   you on the call?

13   MR. SHEA BROWN: Can you hear me?

14   MR. DRIVER: Yeah, I can hear you fine,

15   three minutes whenever you're ready.

16   MR. BROWN: Thank you very much. Good

17   morning, and thank you for allowing me the opportunity

18   to speak. My name is Shea Brown and I'm the CEO of

19   BABL AI, a company that audits algorithms for ethical

20   risks, effective governance, bias and disparate

21   impact. BABL believes that the spirit of this law

22   furthers our mission to promote and protect human

23   flourishing in the age of AI. I just want to highlight

24   two things that I think are concerning about the

25   proposed rules. The first is the AEDT definition. We

1   find that the clarified definition of an AEDT is

2   overly stringent. In its proposed form, it allows for

3   serious loopholes for employers to seek exemption from

4   bias audits. To illustrate this, a user of an ML based

5   assessment whose results have shown to recruiters as

6   part of a candidate profile could claim exemption from

7   the bias audit, arguing that this assessment does not

8   overrule or modify recruiter decision making.

9   While this may be true in some cases, our

10   experience has shown that this is only determined

11   through a careful risk or impact assessment. Given

12   that many such ML systems tend to contain high risk of

13   algorithmic bias, we view their potential exclusion as

14   risky. Therefore, we strongly encourage the department

15   to provide a recalibrated definition of an AEDT, which

16   may include these systems.

17   The second is that of independence. We're

18   concerned that this new definition of independence is

19   not sufficiently strong to provide the level of

20   impartiality, which is also required by the law. This

21   definition allows for internal parties with conflicts

22   of interest for a vendor or an employer, for example,

23   operating under the same level of management to

24   conduct the audit, which might hide impartiality.

25   Also, this definition shifts the discourse

1   to a semantic debate on the terms using and deploying.

2   For example, the term developing, sorry, developing,

3   the term developing carries a dual meaning in AI

4   fields. There's a narrow scope as in the development

5   phase of an AEDT, where the AI or model is first

6   built, trained and tested prior to development. And

7   there's also a broad scope, where the continuous

8   design, procurement, training, testing, deployment and

9   monitoring are all parts of the AEDT's development. As

10   a result, the number of parties involved in developing

11   depends on its meaning and its scope.

12   We encourage the department to either

13   consider a different approach to defining

14   independence, for instance, using precedent like

15   Sarbanes-Oxley, or to provide special clarification

16   for the terms using and developing.

17   Overall, we support this law. This law is a

18   welcome attempt to mitigate potential harm that such

19   systems could cause while strengthening the market

20   position of vendors and employers that invest in

21   thorough due diligence to tackle these issues head on.

22   I'd like to thank the department again for allowing me

23   the opportunity to speak.

24   MR. DRIVER: Great, thank you so much, Shea,

25   I really appreciate it. Next up, I have Scott Cambo,

1   Scott, are you on the call? If you want to share your

2   screen, you're welcome to. I think it's preferable. It

3   doesn't really make a difference, because we're going

4   to release a transcript here. But if you like, we can

5   try and do it.

6   MR. SCOTT CAMBO: I would love to.

7   Apparently, Teams is incompatible with Firefox and I

8   didn't have time to kind of switch browsers around. So

9   unfortunately [unintelligible] [00:42:53] today.

10   MR. DRIVER: I can also, if you have access

11   to another browser, Scott, I can drop you later in the

12   lineup and you could rejoin the call on a different

13   browser?

14   MR. CAMBO: Okay. If you feel that it's that

15   necessary.

16   MR. DRIVER: I would say it's absolutely not

17   necessary to share your screen, especially since we're

18   again, we're releasing just a transcript of this

19   hearing, so any visual slides that you show will not

20   show up in the permanent record of this.

21   MR. CAMBO: Yeah. It's not about privacy,

22   it's just about compatibility.

23   MR. DRIVER: Sure.

24   MR. CAMBO: And I don't have slides.

25   MR. DRIVER: Okay. Also, just generally,

1   you're welcome to submit any visuals you would have

2   shown as written comments.

3   MR. CAMBO: Excellent.

4   MR. DRIVER: Yeah, Scott, if you want to go,

5   whenever you're ready,

6   MR. CAMBO: Am I free to get started?

7   MR. DRIVER: Yeah.

8   MR. CAMBO: Alright. Thank you.

9   MR. DRIVER: Three minutes.

10   MR. CAMBO: Alright. Good morning. My name

11   is Dr. Scott Allen Cambo and I'm here today on behalf

12   of Parity AI, a technology company that provides model

13   audits and responsible AI tools. We applaud New York

14   City's passage of this landmark and revolutionary law.

15   However, we must state that the recent guidance as

16   currently written would unravel the positive impact

17   that this law was intended to have. We have submitted

18   written comments, which we'll summarize today. We've

19   seen the good, the bad and the complicated in AEDT

20   systems through our work. The good companies actively

21   seek our guidance, not just to comply with this law,

22   but to create AEDT systems that can help their

23   customers make good and fair hiring decisions.

24   However, there are also companies that are

25   at best pseudoscientific snake oil and at worst

1   algorithmic frenology. We've heard these companies say

2   the audit doesn't need to be good, it just needs to

3   happen and have been lucky enough to be in a position

4   to turn down these deals. There are of course

5   competitors more than willing to cut corners. Where it

6   gets complicated is that many AEDT are decisions

7   support tools. They seek to any many questions beyond

8   job fit. Do they have the right foundation to be

9   trained into this role, would they respond to a cold

10   call, would they be likely to move for this role. How

11   these metrics are contextualized through UX an UI

12   design make a big impact on how the customer

13   understands the information and how that information

14   may bias the hiring process.

15   There are even more complications when it

16   comes to demographic information. This guidance seeks

17   to mirror EEOC reports that presume that demographic

18   information has been collected. However, employers

19   themselves rarely build AEDT systems. They rely on

20   vendors. These AEDT vendors avoid collecting this

21   information because of the data minimization and

22   anonymization practices that are mandated by data

23   privacy laws, such as HIPAA and GDPR.

24   Collecting this information is no easy task

25   and takes a very long time to do right. In the absence

1   of self-reported data, many are turning to gender and

2   race inference methods from other industries such as

3   Bayesian improved surname geocoding or BISG. BISG

4   references historical data about the races that are

5   associated with names within a zip code to infer race.

6   This practice is only possible because the United

7   States has a horrible history of segregation by race

8   via redlining and white flight, which create

9   monocultural communities. As you can imagine, the more

10   diverse and multicultural a community is, the less

11   accurate BISG can be. And I can't imagine a more

12   diverse and multicultural place than New York City.

13   We've submitted detailed comments with

14   examples as well as more concrete recommendations and

15   we look forward to your feedback and encourage further

16   scrutiny of the law so that it can be effective in

17   combating algorithmic hiring discrimination.

18   MR. DRIVER: Great, thank you so much. Next

19   up, Julia Stoyanovich, three minutes whenever you're

20   ready.

21   MS. JULIA STOYANOVICH: Yes, I'm ready,

22   thank you. My name is Julia Stoyanovich. Thank you for

23   an opportunity to testimony. I'm a tenured professor

24   of computer science and engineering and of data

25   science at New York University, and the founding

1   director of the Center for Responsible AI. Most

2   importantly, I am a devoted and proud New Yorker. I

3   see Local Law 144 as an incredible opportunity for the

4   city to lead by example, but only if this law is

5   enacted in a way that is responsible to the needs of

6   all key stakeholders.

7   The conversation so far has been dominated

8   by the voices of commercial entities, by two vendors

9   and organizations that represent them, by employers

10   who use tools to screen candidates and employees and

11   by commercial entities wishing to conduct audits of

12   these tools. However, as is evident from the fact that

13   we're testifying in front of the Department of

14   Consumer and Worker Protection, the main stakeholder

15   group that Local Law 144 aims to protect from unlawful

16   discrimination and arbitrary and capricious decision

17   making are job candidates and employees.

18   And yet, their voices haven't been heard

19   prominently in the conversation. Therefore, my first

20   recommendation is to involve job seekers, employees

21   and their representatives in defining standards for

22   bias audits and notices. The New York City Center for

23   Responsible AI conducted numerous public engagement

24   and public education activities under my leadership,

25   most broadly on AI and automated decision making and

1   specifically on hiring tools. And we see substantial

2   interest from members of the public. We will be happy

3   to assist the city in convening diverse groups of

4   stakeholders.

5   Bias audits are a crucially important

6   component of Local Law 144. My second recommendation

7   is to expand the scope of auditing for bias, based on

8   input from job seekers, employees and their

9   representatives. The most prominent thread in readers'

10   comments on a *New York Times* opinion piece I co-

11   authored in March '21 entitled, "We need laws to take

12   on racism and sexism in hiring technology" concerned

13   age-based discrimination in hiring. Local Law 144 does

14   not currently include any provisions for audit, to

15   audit for this type of discrimination. This is

16   problematic.

17   My third recommendation is to expand the

18   scope of auditing beyond bias, to also interrogate

19   whether the tools work. There's evidence that

20   recommendations of many of these tools are

21   inconsistent and arbitrary. Tools that don't work hurt

22   job seekers and employees subjecting them to arbitrary

23   decisions with no recourse. Tools that don't work also

24   hurt employers. They waste money paying for software

25   that doesn't work and they miss out on many well

1   ║   qualified candidates based on a self-fulfilling

2   ║   prophecy delivered by a tool.

3   ║   In my own work, that in collaboration with a

4   ║   larger interdisciplinary team, I evaluated the

5   ║   validity of two algorithmic personality tests, tools

6   ║   that are used for pre-hire employment assessment,

7   ║   produced by Humantic AI and Crystal. We found that

8   ║   both tools show substantial instability on key facets

9   ║   of measurements and so cannot be considered balanced

10 ║   testing instruments. For example, Crystal frequently

11 ║   computes different personality profiles if the same

12 ║   resume is given in .PDF versus in raw text. And

13 ║   Humantic gives different personality profiles on a

14 ║   LinkedIn profile and a resume of the same job seeker,

15 ║   violating the assumption that the output should be

16 ║   stable across job irrelevant factors. Such tools

17 ║   cannot be allowed to proliferate and Local Law 144

18 ║   should help protect candidates and employees from

19 ║   their use.

20 ║   And wrapping up with my fourth and final

21 ║   recommendation that concerns the crucially important

22 ║   notices portion of Local Law 144. I recommend --

23 ║   MR. DRIVER: Alright, Julia, I'm going to

24 ║   have to stop you there. I'm sorry.

25 ║   MS. STOYANOVICH: Okay.

1   MR. DRIVER: But just need to keep it to the

2   time limit and we have a lot of people signed up. I

3   think you've already submitted your written testimony,

4   but if not, feel free to submit that, you know, at

5   some point before the end of the day today. Next up, I

6   have a representative from ORCAA, is someone from

7   ORCAA here?

8   MS. CATHY O'NEIL: Yeah, thank you, Charlie.

9   MR. DRIVER: Hi, Cathy, whenever you're

10   ready.

11   MS. O'NEIL: Great. I think I'll just skip

12   sharing my slides and just read from my slides. So I

13   have three points to make. Before I make those points,

14   I'll just say this is really exciting. The law is

15   very, very exciting and I'm really glad to see it. And

16   I know it's, it's in its first phase, and I think we

17   can make it better over time, and I'm an independent

18   auditor so I have a lot of pretty big stakes for me.

19   The first major point I want to make of

20   three is that the audits should be per employer, not

21   per tool. And this is after speaking to about 40

22   different tool makers in the last year and a half. One

23   of the big problems with the idea of the toolmaker

24   making the audit is that they often don't actually

25   have access to the usage data by their clients, i.e.

1   the employers. They just don't, they don't collect it,

2   they don't save it. And sometimes they, they

3   technically have it, but they have licensing

4   agreements where they're not allowed to use it.

5   But even when they do actually have some of

6   the data, which again, isn't always, they don't have

7   the downstream outcomes. They basically only have sort

8   of maybe some kind of scores, one to 100 let's say.

9   But they don't know how those scores are used. And

10   that's really, really important. And, you know,

11   sometimes they do even have thresholds, like 77 and

12   above is green lighted, but they don't know what

13   actually happened to the people that are green

14   lighted. So they don't know if those people get

15   interviews or they actually end up getting job offers,

16   whereas the employers do have that information.

17   And then finally, if you aggregate across

18   employers, it could mislead, like the tool level

19   result might look good when things are actually bad

20   for some of the clients, they're actually using it in

21   a problematic way. Or it could end up looking bad at

22   the tool level, but many of the clients are using it

23   well. So the real, the final point is that like when

24   firms, when the employers, the clients, have to sort

25   of mix up their data, assuming that data exists, it

1   sometimes makes them look better than they should or

2   worse than they should. That's not fair for the good

3   actors.

4   The second point I want to make is that I

5   think the audits, we at ORCAA think that the audits

6   should address the sourcing. There's a lot of, as we

7   know, a lot of advertising for employment at this

8   point. And there's ways of creating a biased applicant

9   pool by simply focusing on some types of advertising

10 and not others. And I'm sure we all are aware of that.

11 So we think an analysis should be done on the actual

12 sourcing. So who, you know, what is the sort of

13 demographic layout of the people who applied versus

14 the people we should expect to apply. So that

15 expectation of course, which is like the baseline, has

16 to be also required. For example, you wouldn't expect

17 exactly the same demographic applicant pool for tech

18 engineers as you would for cashiers in a grocery

19 store. So you have to sort of set up the baseline. But

20 those, such baselines do exist and are available. So

21 we should, the second point is audits should address

22 the sourcing itself.

23   And then the final point I'll make is that

24 the rules as stated have problems with sample size

25 issues. Because it's intersectional, which I think is

1   a great idea, it has sort of like Native American

2   males, I'm taking this from your report, there's only

3   11 people, or 24 people, just not enough data. So

4   there should be rules about what to do with small

5   samples. I think that will be especially true if the

6   first point is taken seriously, which is that we have

7   to think about per employer, because then we'll have

8   more small data problems.

9   But other than that, I'll just stop there

10   and say we're really, really glad about the progress

11   on this law, thank you.

12   MR. DRIVER: Great. Thank you so much for

13   sharing those comments. If you haven't submitted any

14   written comments and you're looking to submit written

15   comments, again, please submit those by the end of the

16   day. Next up, we have Ryan Carrier, ForHumanity, Ryan,

17   whenever you're ready.

18   MR. RYAN CARRIER: Thanks, Charlie, and

19   thanks to Majority Whip Brooks-Powers for her

20   leadership on this really globally cutting edge law.

21   I'm the executive director of ForHumanity. ForHumanity

22   is an open community, available for all humans to

23   participate. We essentially establish and try to build

24   an infrastructure of trust, supporting all auditors,

25   supporting all pre-audit service providers when

1   governments and regulators choose to provide laws in

2   the areas of AI algorithmic and autonomous systems.

3   And so when this law was passed, we spent 45

4   weeks meeting together, crowd sourcing a bias audit,

5   which we have submitted to DCWP. They are welcome to

6   use it as they might like. The idea is in support of

7   both what Cathy and Shea have testified which is can

8   we establish uniformity? Uniformity of these audits is

9   the great result so that all AEDTs, all employers are,

10   are essentially achieving bias audit as we define

11   that, in the same sort of way and so that we have

12   trained and certified practitioners and professionals

13   conducting these audits in a consistent and uniform

14   manner across all AEDTs. That should be our end goal.

15   And so to that end, we have a few comments.

16   We have submitted all of this of course, in writing.

17   One of those would be to echo Shea's point. The

18   definition of independence offered under rulemaking

19   is, well, quite frankly, it's a mistake. The law is

20   predefined in four different places already. The

21   Securities and Exchange Commission, PCAOB, Sarbanes-

22   Oxley and the EU Digital Services Act, not that that

23   necessarily applies. But these are very large laws

24   that go and define independence in exactly the same

25   way. And so New York City should aim to follow that

1 | rather than create some new solution. And so the

2 | existing definition aims to do that and we think

3 | that's a mistake and should be rescinded.

4 | True independence, when it means no

5 | remuneration from the, the auditee except their audit

6 | fees, creates objectivity and avoids conflict of

7 | interest that's necessary to avoid fraud and

8 | malfeasance on grand scales, such as Enron and

9 | WorldCom. Sarbones-Oxley was built and passed and

10 | identified independence to help avoid and amend the

11 | problems that occurred in those substantial financial

12 | malfeasance.

13 | I would also add that the further

14 | clarification on terminologies and machine learning of

15 | what an AEDT is were probably a mistake. They have

16 | gotten too narrow and they have allowed for too many

17 | loopholes of tools that will avoid this law through

18 | those loopholes. Eventually, they'll be caught out

19 | through jurisprudence, eventually, they're going to be

20 | caught out. But to, to take these steps in rulemaking

21 | would neuter the point of the law that the Council,

22 | the beautiful point of the law that the Council tried

23 | to, that the Council has passed.

24 | Finally, we would continue to ask for

25 | further clarification on what a bias audit is. We do

1 not think a bias audit is disparate impact study, nor

2 does the law since the law says a bias, a disparate

3 impact study, but not limited to. Bias exists in many

4 phases, to pick up on Cathy's point, right. AEDTs may

5 have bias and then employers may introduce bias in the

6 integration of those AEDTs. So we would advocate

7 actually that, that audits would occur on both points,

8 at the AEDT level and at the employer level across

9 three areas of development in these systems in the

10 data, in the architectural inputs and in the outcomes.

11 In addition, bias would be --

12   MR. DRIVER: Ryan, can you just finish up,

13 we're at time?

14   MR. CARRIER: -- yeah, right here, examined

15 across both statistical bias, cognitive bias, and non-

16 response bias, or technology barrier bias. Those would

17 be our recommendations. Thank you, Charlie.

18   MR. DRIVER: Alright. Thanks so much and

19 thanks for submitting all your written comments as

20 well. I appreciate it. Next up, Jason Albert. Jason,

21 whenever you're ready.

22   MR. JASON ALBERT: Thank you so much. I

23 really appreciate the opportunity to comment at the,

24 at the hearing today. So I am the global chief at ADP,

25 and ADP provides a range of administrative solutions

1   to over a million employers worldwide, enabling

2   employers of all types and sizes to manage their

3   employment responsibilities from recruitment to

4   retirement, including payroll services, employment tax

5   administration, HR management, benefits

6   administration, time and attendance, retirement plans,

7   and talent management.

8   We've been a leader in AI ethics, including

9   through publication of a set of AI ethics principles

10   and establishing an AI and data ethics committee

11   comprised of both internal and external experts.

12   We congratulate the DCWP on the proposed

13   rules, as they provide greater clarity as to how the

14   law operates and by doing so will help companies more

15   effectively meet the requirements and objectives of

16   the law. Specifically, we appreciate the added

17   precision the proposed rules on what constitutes an

18   AEDT subject to the law's requirements. By specifying

19   that the system must be a sole factor or outweigh any

20   other factor, or overrule or modify human decision

21   making to be a covered AEDT, the proposed rules ensure

22   that the law applies in instances where the AEDT is

23   the primary factor in the decision whether to hire,

24   promote an individual. Reportedly, this helps ensure

25   that the law doesn't inadvertently impinge its

1   supplemental uses of machine learning technology in

2   the hiring and promotion process.

3   We also further appreciate that the DCWP

4   defined an independent auditor to include persons or

5   groups who might be part of the same company but who

6   were not involved in the development or use of the

7   ADT. Oftentimes, others in the company will be in the

8   best position to conduct an audit, given their

9   expertise in the systems the company uses and develops

10   and the particulars of machine learning the company

11   employees. While third parties are increasingly

12   entering the AI audit space, this industry is still

13   nascent, so enabling companies to rely on internal

14   experts is very helpful.

15   We would suggest a couple of areas of

16   additional work. The first is more clarity on what the

17   law applies. It's very clear that the notice

18   requirements apply to New York City residents, but

19   otherwise the law applies in the city, leaving unclear

20   what jobs fall within the law's scope. To avoid

21   concerns about long arm jurisdiction and ensure

22   clarity as to the law's scope, we'd ask that DCWP

23   clarify the replies to posted jobs where the role will

24   be physically located in New York City.

25   Our other ask would be that DCWP delay the

1   enforcement of the law until at least 180 days after

2   adoption of the proposed rules, given the short time

3   in between when the proposed rules are proposed and

4   will be adopted and the effective date of the law, a

5   short enforcement delay would give companies time to

6   totally implement the regulations.

7   Again, we really appreciate DCWP's efforts

8   in this regard and the proposed rules and appreciate

9   things like the notice to New York City residents

10   being able to be posted on the website so that they're

11   not dissuaded by delayed consideration of their

12   applications. And again, really appreciate the

13   opportunity to comment in today's hearing.

14   MR. DRIVER: Great, thank you, Jason. Two

15   minutes, 58, really good timing. Next up, Frida, I'm

16   sorry if I'm going to pronounce your last name wrong,

17   Frida Polli.

18   MS. FRIDA POLLI: Absolutely. Thanks so

19   much. So Hi, I'm Dr. Frida Polli, I'm a former Harvard

20   and MIT trained cognitive neuroscientist turned

21   founder of a company called Pymetrics. As an industry

22   outsider, my observations of the HR tech space have

23   led me to be an avid supporter of the transparency

24   objectives of this law and my comments in this hearing

25   are in the capacity as the founder of Pymetrics.

1   I agree with a lot of what has already been

2   said, so I'm going to cut my comments short, but I

3   really believe the recently enacted, that this law is

4   very similar the recently enacted pay transparency in

5   that it brings much needed transparency to the concept

6   of AEDT bias. It addresses the information asymmetry

7   that exists between companies and the public.

8   Companies and vendors, like Pymetrics usually know if

9   their tools have bias, but candidates, employees and

10   the public do not. In this day and age of increased

11   demand for transparency, candidates, employees and the

12   public deserve to have this information as they make

13   educated decisions about the companies they want to

14   apply to, work for and be customers of. And as a

15   scientist and a tech vendor, I strongly believe that

16   the HR industry and employers should really work to

17   increase trust in this technology, which is becoming

18   more and more deployed, by embracing transparency.

19   The transparency component is really the

20   critical new element of this law. Many other aspects

21   of this law are quite well established, so automatic

22   decision making has been present for decades now,

23   employers have been using automated tools. The notion

24   of using statistical tests to evaluate bias is also

25   not new. For, you know, since the mid-1900s, EEOC has

1   encouraged employers and HR vendors to voluntarily

2   conduct self audits of their hiring tools. And OFCCP

3   routinely audits companies yearly. Therefore, audits

4   for disparate impacts have been common for half a

5   century.

6   However, what's new is that the results --

7   what's new about this law is that historically the

8   results have never been readily made available to the

9   public and this has really restricted progress towards

10   reducing bias in these tools.

11   First, many employers who rely on hiring

12   tools with different impacts face virtually no

13   pressure to revisit their methods despite increased

14   calls to hold companies accountable on equity

15   commitments. No one is sufficiently informed about the

16   extent of bias. And this includes everybody. Nobody

17   knows what brown truth is to draw attention to the

18   problem.

19   Secondly, vendors of HR technology are not

20   incentivized to apply recent scientific advances to

21   reduce bias in the development of automated tools

22   because information about disparate impact is rarely

23   available on a product level in market. And therefore

24   the amount of bias in the tool is not often a key

25   consideration.

1   And third, the public, candidates,

2   employees, and the general public have no information

3   about this when they apply and interact with

4   companies.

5   So really, I think that Local Law 144

6   represents a remarkable opportunity to bring

7   transparency to automated hiring tools, but in

8   agreement with what a bunch of other people have said,

9   I think a couple of things should happen.

10   I think the new definition is overly

11   restrictive. Some of the most problematic forms of

12   bias exist in old tools like cognitive testing, which,

13   you know, only passes three African Americans and four

14   Hispanics for every ten Caucasians, and that's not

15   necessarily -- that doesn't rely on ML. Secondly, I

16   think bias audits reports should have clear

17   information in the form of disparate impact reporting,

18   which has been around for a long time and we all know

19   how to do it, so I think we should rely on that.

20   And then I also think that independent

21   audits must be conducted by individuals who are not

22   employed by the organizations that build or use these

23   tools. So, with that, I'm actually done with my

24   testimony. So I think that was under three minutes.

25   MR. DRIVER: Great. Thank you so much,

1   Frida, I really appreciate it. Next up, we have Andrew

2   Hamilton. Andrew, are you on?

3   MR. ANDREW HAMILTON: I am. And thanks for

4   letting me testify. So my name is Andrew Hamilton,

5   immediate past president of the Metro New York Chapter

6   of the Black MBAs. For decades, automated hiring tools

7   have played a significant role in determining who

8   receives serious consideration to employers.

9   Unfortunately, the racial implications of these

10 systems are seldom made clear to employers or public.

11   Two years ago, I testified before the City

12 Council technology committee in support of Local Law

13 144. I firmly believe the legislation could disrupt

14 one of the major challenges people of color face in

15 accessing economic opportunity. Once this law goes

16 into effect, critical information that could drive

17 real progress toward diversity and inclusion will be

18 available. Finally, the public audit reports will be

19 able to have frank conversations about the

20 consequences of the methods hiring have for racial

21 equity.

22   As someone who firmly believes in the spirit

23 of the law, I have a few comments for DCWP's rules.

24 First, I believe that central to regulators' implement

25 legislation so that the definition of automated

1   employment decision tools or AEDTs does not discourage

2   nefarious behavior. The behavior I'm specifically

3   concerned about is employers who will change the

4   hiring processes for the purpose of avoiding important

5   push for transparency. If the rules include overly

6   specific details about which technologies are subject

7   to biases audits like those built with machinery,

8   employers will have incentivized to avoid the old

9   systems all together regardless of racial impacts.

10   To be clear, while some people associate the

11   term automated with cutting edge artificial

12   intelligence systems, automated decision making tools

13   have been around for many years. Just think about any

14   standardized score by computer scores, used talking

15   with into yes or no piles, a lot of people in the U.S.

16   have a long history of being evaluated by bias

17   technology in context of lending, housing and hiring.

18   The history is not over. In 2022, whether

19   you apply for a white collar or a blue collar job in

20   the country's most prominent businesses, there's a

21   decent chance that you'll be evaluated by an automated

22   system of the 1970s. One way, and I know many people

23   gave some great eloquent statements, one way

24   regulators make important, more credible to specify

25   which counts as independent auditor. Currently the

1   rules mention that the auditor cannot have involved or

2   using developing of the tool. From my perspective, at

3   the very least, auditors should not be employed by

4   either the employer or technology vendor. Auditors

5   should be provided key information about how the

6   relevant samples are scored.

7   My decision to support early on came from

8   the belief innovation can be a popular tool for

9   change, but only if the necessary evidence evaluated.

10 In recent years, many new technologies have developed

11 for use in employment context and vendors often claim

12 that products can promote outcomes. While the

13 statements cannot be led blindly, what Local Law 144

14 will enable better differentiate tools that were

15 actually built with equity in mind that were not.

16   I would like to thank the agency for this

17 time this morning for allowing me to testify. Thank

18 you.

19   MR. DRIVER: Great, thank you so much,

20 Andrew. Next up, we have Rahsaan Harris. Are you on?

21   MR. RAHSAAN HARRIS: I am.

22   MR. DRIVER: Okay, great, whenever you have

23 a chance, three minutes.

24   MR. HARRIS: Well, thank you for this

25 opportunity. I am Dr. Rahsaan Harris, the CEO of

1 Citizens Committee for New York City. Our organization

2 is committed to providing New Yorkers particularly

3 those in low-income neighborhoods with resources to

4 improve their quality of life. I've spent over 20

5 years working at the intersection of corporate

6 philanthropy, community empowerment and racial and

7 socioeconomic equity.

8   Also relevant to this conversation, I was

9 the CEO of the Emma Bowen Foundation from 2015 to

10 2020. It was founded as a foundation for minority

11 interest in media. The Emma Bowen Foundation partnered

12 with major media and technology companies to provide

13 black, Latino, Asian American and Native American

14 college students pathways to careers in the industry.

15 The Emma Bowen Foundation was founded in 1989 and is

16 still fighting for inclusive hiring practices so

17 people of color can be hired, retained and advanced in

18 media and technology organizations.

19   Local Law 144 represents an overdue effort

20 to unpack the problem of bias in hiring. I am very

21 existing that city officials are actively working to

22 see this law implemented after the new year because it

23 has the potential to bring real change to how workers

24 are evaluated for economic opportunities.

25   Throughout my career, I've witness the power

1   of transparency in furthering social equity. Today, it

2   is common for executives to have bold claims of

3   wanting to promote diversity and inclusion, but many

4   fail to even take basic steps to involve people of

5   color in the process.

6   Workers and job applicants are barred from

7   meaningful participation if there are information

8   asymmetries. Business leaders often recognize that

9   certain internal activities are perpetuating racial

10   inequities, but if workers and job candidates aren't

11   informed, it becomes extremely difficult to push for

12   change. The bias audit called for by the Local Law 144

13   provide much needed transparency. When employers

14   decide what types of automated hiring tools to use,

15   the decision is ultimately one about equity and

16   diversity.

17   One of the defining features of any

18   assessment tool technology is the extent to which the

19   particular tool disadvantages people of color. The

20   vendors who build these products and the employers who

21   use them can often keep track of information behind

22   closed doors to comply with regulations under federal

23   employment law. With bias audits, the doors will be

24   open and we'll certainly have evidence of which hiring

25   tools are responsible for perpetuating racial equity.

1   Thank you.

2   MR. DRIVER: Great, thank you, thank you so

3   much. Next up, we have a representative from HireVue,

4   I think Lindsey, whenever you're ready.

5   MS. LINDSEY ZULOAGA: Thank you. Hi,

6   everyone, my name is Lindsey Zuloaga. I'm the chief

7   data scientist with HireVue. HireVue is a video

8   interviewing and assessment platform. We support both

9   the candidate and employer interview experience in a

10   broad range of industries for customers around the

11   globe.

12   Our comments on this bill today are based on

13   our extensive experience with the use of AI in hiring.

14   At HireVue, our mission is to change lives by

15   connecting talent and opportunity. Our approach is to

16   use science, technology, and best practice to enable a

17   hiring process that's more fair, inclusive and

18   equitable and that allows candidates to showcase their

19   potential.

20   HireVue shares the New York City's concern

21   around the potential for bias and supports the idea of

22   auditing AI technologies. However, the bill's one size

23   fits all approach is problematic in practice,

24   especially with regard to employment. For example, the

25   bill suggests analyzing data such as race and gender

1 that by law is not required to be provided by

2 candidates. We think there's more work to be done to

3 ensure any requirements conform to already existing

4 EEOC guidelines as well as federal and state

5 employment and privacy laws.

6   HireVue also believes it is important to

7 distinguish between static and self-learning

8 algorithms. Our technology uses only static algorithms

9 after auditing the algorithms against established

10 frameworks in hiring. This means our deployed

11 algorithms are locked and don't learn continually or

12 change from the addition of unaudited or untested

13 data. This approach dramatically reduces the risk of

14 bias and ensures that we're complying with EEOC

15 guidelines requiring consistency in candidate

16 treatment.

17   Based on our experience in auditing our own

18 technology, we would like to offer the following

19 points for the Council's consideration with respect to

20 algorithmic audits. First, the audit criteria should

21 be clearly defined. Much like audit standards in other

22 industries, like finance or banking, an audit of an AI

23 tool should include reference to relevant industry and

24 legal standards. It should explain how a model works,

25 its purpose and limitations and the data it relies

1   upon to make decisions. And it should do so in clear

2   language that can be easily understood.

3   Second, the focus of an independent audit

4   should start with product development to ensure tools

5   are designed, developed, trained and tested, including

6   steps to identify and mitigate bias before deployment.

7   Once deployed, the algorithm should also be

8   periodically monitored to identify any unexpected

9   results.

10   Last, vendors should be responsible for

11   delivering an audit on the products they provide to

12   their customers. Vendors will differ in how their

13   tools are developed and what sort of data they use.

14   The way audits are conducted would not be universal so

15   audits must always consider the industry and the

16   context of where and how the AI is being used.

17   In addition, HireVue has published an AI

18   explainability statement to help our stakeholders

19   understand how our algorithms are developed, and our

20   approach to reducing bias. We recommend this as a best

21   practice to provide transparency and understanding of

22   the ethical uses of AI. Ongoing dialogue between

23   appropriate stakeholders is key to creating

24   legislation that protects candidates, companies and

25   innovation. HireVue welcomes legislation that

1   encourages transparency and approves the process and

2   fairness for all candidates. Thanks for your time

3   today.

4   MR. DRIVER: Great, thank you so much,

5   Lindsey. Next up, Janet Helms. Janet, you have three

6   minutes, whenever you're ready.

7   MS. JANET HELMS: Can you hear me?

8   MR. DRIVER: Yeah, I can hear you great.

9   MS. HELMS: If only you could see me, we'd

10   be on, let's see --

11   MR. DRIVER: It's becoming a transcript

12   anyway, so ultimately not necessary.

13   MS. HELMS: Okay. Well, then, I will

14   proceed. My name is Dr. Janet Helms and I have spent

15   much of my 40 year career as a professor of testing

16   and assessment and as a research psychologist focused

17   on racial issues. I've received many awards for my

18   theory and research on racial bias in education or

19   employment testing. It is no secret that high scores

20   on standardized tests can open doors for people to

21   better schools, financial aid and good jobs. Yet, my

22   research in standardized tests has led me to believe

23   that assessment developers have continued to

24   purposefully tailor these tools to assure that white

25   people [unintelligible] [01:17:29] black people.

1   The first employment test was developed

2   during WWI by a white eugenicist. Subsequent tests

3   that used the same design structure as the original

4   test, although the test may have different names. Not

5   surprisingly, ever since [unintelligible] [01:17:43]

6   tests were developed, black test takers mean scores

7   were predictably then lower than white test takers

8   mean scores on tests of cognitive abilities, knowledge

9   and skills.

10   Employers have used tests for almost a

11   hundred years to segregate people of color and

12   personnel and military selection and college

13   admissions by assigning them to conditions where their

14   racial groups predominate. The public respects test

15   scores as objective criteria because they are numbers,

16   where researchers are well aware that they

17   discriminate against people of color.

18   Last year, the American Psychological

19   Association, the largest and oldest association of

20   psychologists apologized to communities of color for

21   condoning use of tests that support systemic racism

22   and racial hierarchy. Given APA's confession the

23   testing methodologies advantage white people it is

24   remarkable that business have not rushed to abandon

25   them, although some universities recently have.

1   ║   Disparate impact and adverse impact are the

2   ║   legal terms for supposedly objective tests whose use

3   ║   results in different outcomes between racial groups.

4   ║   Disparate impact laws exist because black janitors

5   ║   sued their employer for using intelligence tests to

6   ║   segregate them into low paying jobs in the 1970s.

7   ║   Similar suits cannot happen today because

8   ║   interpretation of antidiscrimination law has changed

9   ║   so that the harmed group must provided the evidence of

10   ║   adverse impact, but job applicants do not have access

11   ║   to the type of information necessary to prove

12   ║   disparate impact and employers and test publishers do

13   ║   not have to reveal it.

14   ║   New York City Law 144 has the capacity to

15   ║   bring adverse impact out into the open by requiring

16   ║   use of employment tools to specify for public view the

17   ║   information necessary to evaluate the adverse impact

18   ║   of each employment tool or assessment tool. However,

19   ║   the laws should pertain to all tests and testing

20   ║   tools, not just automated decision tools.

21   ║   Nowadays, all employment tests and

22   ║   assessment tools are automated on some ways and are

23   ║   used to assist employers in deciding who to hire or

24   ║   promote. It would be unfortunate if the law did not

25   ║   include standardized tests or judicial measures in its

1   requirement, because these are the tools that have the

2   longest history of secretly harming people of color.

3   These are the tools that have supported Jim Crow

4   testing. New York City Law 144 has the capacity to

5   take a major innovative step toward ending racial

6   adverse impact in employment testing and citizens

7   should support the law even if businesses and test

8   publishers do not. And I thank you for allowing me to

9   testify.

10   MR. DRIVER: Great, thank you so much. I

11   really appreciate it. Next up, a representative from

12   Retrain.ai. Is anyone on from Retrain.ai? Last call

13   for now. Okay, if someone does join or makes

14   themselves available later, let me know. We'll just

15   keep moving. Matthew Scher. Matthew, are you here with

16   us? Okay. We'll keep moving as well. Steve Malone, I

17   can see you on camera, so three minutes whenever

18   you're ready.

19   MR. STEPHEN MALONE: Good morning. Thank

20   you, Charlie, can you hear me alright?

21   MR. DRIVER: Yep.

22   MR. MALONE: Okay, terrific, good morning,

23   everyone. My name is Stephen Malone, I'm a practicing

24   attorney based in New York City, focusing on

25   employment law. I'm speaking today as an individual

1   who has many years of experience working with human

2   resources professionals and the employer community in

3   the New York area. I'm not speaking on behalf of any

4   particular organization or my employer.

5   I have three brief points to raise today

6   related to the ten-day notice period, the scope of the

7   AEDT definition and the effective date of the new law.

8   First, I would like the department to clarify that the

9   ten-day notice period, the ten-day notice to

10   candidates for employment in section 5303 is only

11   needed on an employer's jobs website one time. It is

12   not meant to impose a ten-day waiting period on every

13   employer for each and every posting or each and every

14   candidate for employment. NYU Langone has highlighted

15   the problem in this draft regulation in their written

16   comments.

17   Second, I'd like the department to provide

18   more concrete examples to the employer community as to

19   what computational processes require a bias audit. The

20   written comments from the Seyfarth Law Firm and the

21   Society for Human Resources management make these

22   points very well. AI tools for recruiting are amazing

23   and can help to expand opportunities for candidates

24   [unintelligible] [01:22:24] more opportunity for New

25   York employees, yet Local Law 144 --

1   MR. DRIVER: Stephen, you dropped for a

2   second. Could you go back for maybe a paragraph or

3   two?

4   MR. MALONE: Sure.

5   MR. DRIVER: Don't worry about the time you

6   have left. I was about to speak about concrete

7   examples to the employer community and specifically

8   what computational processes require a bias audit. The

9   written comments from the Seyfarth Law Firm and

10   Society for Human Resources Management make these

11   points very well. AI tools for recruiting can help to

12   expand opportunities for New Yorkers, yet Local Law

13   144 and the proposed regulations are so broad that

14   they may deter the employer community from using good

15   AI tools for recruiting whatsoever. Charlie, is the

16   audio still good?

17   MR. DRIVER: Yep, it's still good.

18   MR. MALONE: Terrific. Finally, I recommend

19   that the City Council delay the January 1 effective

20   date of this law, just like they did earlier this year

21   for the pay transparency law. By the time these

22   proposed regulations are finalized, employers will

23   have little or no time to comply with the new law by

24   January 1. This is particularly challenging as

25   employers are trying to get workforces back into empty

1   New York City offices after COVID and they're still

2   trying to deal with the New York City pay range

3   disclosure law as well as upcoming laws in other

4   states. An additional six-month delay in the effective

5   date is warranted, or alternatively, a delay in the

6   enforcement. Thank you for the opportunity to speak

7   today.

8   MR. DRIVER: Great. Thank you so much,

9   Stephen. Next up, Rob Szyba, Rob, whenever you're

10   ready.

11   MR. ROB SZYBA: Great, thank you, Charlie,

12   and thank you for the opportunity to provide comments.

13   I have, of the comments that we submitted on behalf of

14   Seyfarth Shaw, I'll make one point and my partner

15   [unintelligible] [01:24:20] will make a few additional

16   points. First and foremost, on the heels of the prior

17   comment, we point out that the law is scheduled to

18   take effect on January 1, 2023. Presently, there

19   remain many questions regarding the definitions of

20   automated employment decision tools, bias audits,

21   independent auditors and other criteria of the law.

22   In light of the ambiguity and the timing,

23   even if the law was to go into effect and the

24   regulations were finalized today, that would be

25   insufficient time for employers to collect the data

1   necessary and to perform meaningful bias audits by the

2   compliance date. We recommend that at very minimum,

3   the department should either stay enforcement or the

4   City Council should consider pushing back the

5   effective date until at minimum 90 days after final

6   regulations have been posted. Optimally, a longer time

7   period would alleviate any of the concerns that I just

8   raised. Thank you for the opportunity and I'll leave

9   any remaining time I might have to my partner Annette

10   Tyman.

11   MR. DRIVER: Great, Annette, whenever you're

12   ready, three minutes.

13   MS. ANNETTE TYMAN: Sure. Thank you so much.

14   Good morning, and thanks for the opportunity to share

15   these comments. As noted, my name is Annette Tyman and

16   I'm a partner with Seyfarth Shaw and I am the co-chair

17   of the people analytics practice group here. And in

18   that role, I advise employers on the legal

19   implications of using these sophisticated algorithmic

20   technologies in the workplace. In my experience,

21   employers that do use these tools are focused on

22   improving efficiencies and effectiveness of their

23   employment decisions, while at the same time

24   addressing issues with regard to potential implicit

25   biases that are believed to be at play when it comes

1   to traditional human decision making. That is part of

2   the promise of AI tools.

3   Recognizing that these issues are complex

4   and do require thoughtful implementation, I'd offer

5   the following three key observations. The first is

6   that the, the definitional language as it has been

7   included with the proposed regulations make the

8   coverage issues broad and some of it still remains

9   unclear. For instance, even background checks that

10   have been traditionally conducted as part of an

11   employee hiring process could be subject to bias

12   audits. Presumably Local Law 144 was not intended to

13   regulate the consumer reporting agencies or to

14   regulate background checks that are performed by

15   employers. However the text does not make that clear.

16   There's sections, A and B, of section 5301

17   which do address the bias audits use undefined terms

18   such as individuals and applicants rather than the

19   defined terms that are also in the proposed regs of

20   candidates for employment. So there's some

21   inconsistencies there that could be cleaned up to

22   ensure that employers are able to run these audits in

23   a compliant way.

24   The second covers the scope of the audit.

25   Employers need further clarity regarding the scope of

1   the pool that is considered to be included in the

2   audit. For instance, I get a lot of questions about

3   whether the audits, you know, have to be limited to

4   New York City candidates only, or conversely can they

5   use a sample set of data.

6   We would encourage the department to allow

7   employers the flexibility needed to perform the audits

8   to ensure compliance with Local Law 144 in particular

9   being able to have that flexibility when they're

10   developing a new tool, otherwise, you really can't use

11   it in New York City.

12   The third and final issue is the impact

13   ratio metric that relies on average scores. It's our

14   understanding that that proposed methodology is flawed

15   and that it doesn't adequately consider variability in

16   scores. Based on our discussions with labor economists

17   and IO psychologists that do this work, the proposed

18   methodology does not provide the requisite insight

19   needed to make inferences about whether there is bias

20   based on that second methodology that's proposed. So

21   we do encourage the department to work with other

22   professionals who have specific experience with

23   analytics in the employment context to evaluate and

24   assess the viability and reliability of that specific

25   methodology. Thank you for the opportunity to provide

1   these comments today.

2   MR. DRIVER: Great. Thank you so much. Next

3   up, we have Kirsten John Foy, whenever you're ready.

4   MR. KIRSTEN JOHN FOY: Good morning. I

5   appreciate the opportunity to speak before you all

6   today. I am writing to you, I am testifying, pardon

7   me, I am testifying to you with respect to New York

8   City's groundbreaking legislation, Local Law 144 of

9   2021 which will amend the administrative code in

10   relation to automated employment decision tools.

11   The last four years I have served as the

12   president and the CEO of the Arc of Justice, an

13   organization committed to advancing civil and human

14   rights and liberty to the least advantaged among us.

15   New Yorkers are well aware that racial inequities is

16   not a bygone issue. We repeatedly see political

17   leaders and powerful businesses making promises to

18   disrupt historical patterns of discrimination, but

19   change never occurs without accountability.

20   Police reform is one context in which

21   clandestine behavior has barred progress. As Local Law

22   144 correctly identifies, fair employment is another.

23   For years, we have heard employers make bold

24   statements about their desire to do better in terms of

25   granting opportunities to historically disadvantages

1 communities. The most recent outpouring of such

2 commitment came in the wake of George Floyd's death in

3 the summer of 2020. And yet while the sentiments

4 expressed by New York's business community are more

5 impassioned than ever it is still a challenge to hold

6 actors accountable for their promises.

7 When the City Council passed Local Law 144

8 last year, a message was sent that New York workers

9 deserve more than vague language about diversity

10 goals. The simple reality is that too little progress

11 towards racial inequity and employment has been made

12 in recent years. Proponents of justice cannot continue

13 to blindly trust that businesses are trying to do

14 better behind closed doors. We deserve to know whether

15 the hiring practices a company uses internally aligned

16 to the progressive rhetoric they communicate

17 externally.

18 The specific hiring practices that this

19 legislation focuses on are defined as automated

20 decision making tools. These tools are the

21 technologies employers rely upon to evaluate large

22 numbers of candidates in a systemic, systematic

23 manner. And they can include traditional standardized

24 tests or high tech screening platforms. But the

25 details of the technology aren't what matter. What

1   matters is the fact that automated decision making

2   tools can be tested for a tendency to

3   disproportionately disadvantage people of color and

4   women.

5   If it is possible to conduct data driven

6   tests on hiring tools to look for bias, one might ask

7   why haven't employers been doing so all along? The

8   reality is that many businesses have been for decades,

9   though they have hidden the results behind closed

10   doors. Some may have forgotten just how discriminatory

11   the systems enshrined in their HR departments truly

12   are, or perhaps the information is kept close to the

13   chest by a small number of internal attorneys or

14   processes.

15   Regardless, once this law is enacted in 2023

16   for the first time in history, the results of bias

17   testing on employment tools will be revealed to the

18   public. As the Department of Consumer and Worker

19   Protection works to implement this groundbreaking

20   legislation in the near term, agency staff will

21   undoubtedly hear complaints from businesses who are

22   resistant to change.

23   I strongly encourage our government

24   officials to consider the motives of an employer who

25   is so eager to avoid transparency. This law does not

1   tell employers they must use certain automated

2   decision making tools and abandon others. It is only

3   about making clear information available to the

4   public. If an employer is so concerned about what the

5   clear reporting will reveal about the integrity of

6   their diversity commitment, we should all raise our

7   eyebrows at what exactly is being hidden.

8   I look forward to seeing this legislation

9   implemented in a manner that lives up to the spirit of

10   transparency and accountability for the sake of

11   equity. Thank you for the opportunity to share my

12   comments.

13   MR. DRIVER: Great, thank you so much. Next

14   up, Camille Carlton. Camille, are you on the call?

15   MS. CAMILLE CARLTON: Yes. I'm here. I,

16   thank you so much.

17   MR. DRIVER: Whenever you're ready.

18   MS. CARLTON: Great, thank you. Yeah, thank

19   you so much for giving me the chance to testify. My

20   name is Camille Carlton. I'm here commenting on behalf

21   of myself and fellow team members Michael Yang as well

22   and Sid Srinivasan. We're a group of Aspen Institution

23   of Technology fellows and we spent the laws few months

24   developing recommendations on how the New York City

25   DCWP can improve specifically the notification

1   requirement portion of this new law.

2   So, as everyone here knows, implementing the

3   notifications correctly is critical to upholding the

4   intent of the law, which is to ensure that New York's

5   new job applicants can know when they might have been

6   discriminated against by automated tools. We request

7   that DCWP issue clearer guidance, including templates,

8   on how employers can comply with the notification

9   requirements.

10   So specifically, we ask that DCWP

11   considering three things. First, establishing specific

12   rules for employers regarding what when and how to

13   disclose information about the use of an automated

14   employment decision tool, second establish data

15   disclosure standards, and third, we request that DCWP

16   also supply employers with a list of frequently asked

17   questions and other educational resources to help them

18   comply with the new law.

19   So we've actually pulled together more

20   details and sample templates, a sample FAQ that DCWP

21   can use to help with implementing the notice

22   requirements of this law. It's, I'm going to drop the

23   link in the chat as well, but it's available just for

24   the transcript, at

25   https://www.aspentechpolicyhub.org/project/enforcing-

1   new-york-citys-ai-hiring-law/ and I'm going to drop

2   that again in the chat for everyone. But again, thank

3   you DCWP and everyone here for considering this.

4   MR. DRIVER: Great, thank you so much,

5   Camille. Next up Sebastian Filipe Duenas Muller,

6   Sebastian, whenever you're ready.

7   MR. SEBASTIAN FILIPE DUENAS MULLER: Can you

8   hear me?

9   MR. DRIVER: Yeah, three minutes, whenever

10   you're ready.

11   MR. MULLER: Okay. Thank you. Well I am

12   Sebastian Duenas, a researcher of the [unintelligible]

13   [01:35:30] technology program of the Catholic

14   University of Chile. Thank you for the opportunity to

15   comment on the proposed rules. This proposal also

16   represents a great example on what we're going to see

17   in the future in jurisdictions here in South America.

18   Well, first and foremost, in regards [unintelligible]

19   [01:35:45] independence, I think the definition of

20   independent auditor means a person or group that is

21   not involved in use or develop, developing the AEDT,

22   that is responsible for conducting a bias audit of

23   such AEDT. So it's, it's likely a weak definition. It

24   may even be an employer or employment agency worker.

25   So a stronger definition should also consider legally

1   independent entity. I think there are also some

2   comments about this before.

3   Also, second point is that it will be very

4   useful to answer how can a vendor satisfy the

5   requirements without having access to sensitive data

6   from employer and if is, if there's also a privacy

7   standard that should be met when sharing data. Also,

8   we should always keep in mind that very often,

9   [unintelligible] [01:36:36] levels for

10   [unintelligible] [01:36:36] imply lower levels of

11   transparency. So there may be a tradeoff between these

12   two.

13   Also our third point is that bias audit can

14   consist only on [unintelligible] [01:36:48]

15   calculation. It was said before, should also consider

16   the case when employers or vendors only have access to

17   a small [unintelligible] [01:36:56] so rate, so

18   because in that cases, the ratios could be misleading.

19   Also, when this is the case, can employers or vendors

20   use data from outside New York City? That would be a

21   question to answer.

22   Our fourth point is that the definition of

23   machine learning, statistical modeling or data

24   analytics or the artificial intelligence is kind of

25   very narrow, which may result in a detriment to the

1   intended scope of the proposed rule. The use of a

2   broader definition, such as the proposal in the

3   blueprint for an AI bill of rights or given by the

4   OECD could make the proposed rule to be more fidget

5   proof.

6   Well, again, thanks for the opportunity to

7   comment on the proposed rule and congratulations on

8   the great work that has been done so far which

9   certainly will lead and guide other jurisdictions. So

10   thank you very much.

11   MR. DRIVER: Great. Thank you so much. At

12   this time, I just want to check if any of the people

13   who I passed over earlier are here. Is there anyone

14   here from Retrain.ai looking to testify? Okay. Is

15   Matthew Scher available? It doesn't look like it.

16   Okay. at this time, that, that's my full list of

17   people we have commenting. Is there anyone here who

18   has not been called to comment but is looking to

19   provide comments at this hearing orally? Feel free to

20   either message in the chat or unmute yourself? Okay.

21   Ridhi, you can go whenever. Apologies for missing you.

22   MS. RIDHI SHETTY: Can you hear me?

23   MR. DRIVER: Yes.

24   MS. SHETTY: Thank you for the opportunity

25   to speak before the department today. My name is Ridhi

1   Shetty, and I'm a policy counsel on the Privacy and

2   Data Project at the Center for Democracy and

3   Technology, a nonprofit that advocates for stronger

4   civil rights protections against discriminatory uses

5   of technology. CDT appreciates the department's effort

6   to clarify the notice and audit requirements for the

7   use of automated employment decisions tools, or AEDTs.

8   Upon Local Law 144's passage, CDT published

9   an analysis explaining that the law's requirements do

10   not go far enough to ensure that AEDTs are examined

11   for potential discrimination or that employers give

12   candidates proper notice regarding how the tools will

13   evaluate them. As they currently read, the proposed

14   rules will reduce the law's already limited

15   effectiveness against discriminatory hiring

16   technologies. We recommend five changes to the

17   proposed rules to avoid further narrowing the law's

18   protection.

19   First, the interpretation of the phrase,

20   substantially assist, as used in the ordinance's

21   definition of automated employment decision tool

22   should not be so narrow. Employers could easily argue

23   that they do not assign enough weight to a tool's

24   output for it to fall within this term's

25   [unintelligible] [01:39:47] definition. The term

1   should either be left undefined in the rules, or

2   should be defined to include tools whose output is an

3   important or significant factor in an employment

4   decision.

5   Second, the term candidate for employment

6   should include people who are screened out of targeted

7   job advertising or recruiting tools that prevent

8   people from learning of job opportunities for which

9   they could apply. The tools should protect people

10   subjected to tools -- excuse me, the tools should

11   protect people subjected to tools that make a

12   discrimination determination about whether someone

13   should be selected or advanced in the hiring or

14   promotion process, or a determination about whether to

15   represent that any employment or job position is

16   available.

17   Third, the proposed rules use the definition

18   of employment agency under the department's

19   regulations which say that employment agencies only

20   include persons who provide vocational guidance or

21   counseling services for a few and who represent that

22   they perform certain functions to help applicants

23   obtain jobs. The state's full definition and the

24   city's antidiscrimination laws actually include anyone

25   who tries to compare employees or employers or tries

1   to procure job opportunities for workers. The rules

2   should draw upon these broader definitions to more

3   fairly protect more workers.

4   Fourth, the rules should impose more

5   specific requirement for independent auditors,

6   requiring them to also certify the accuracy and

7   thoroughness of the audit results they report and

8   requiring that conflicts of interest do no compromise

9   their ability to perform and report accurately these

10   results of audit.

11   And finally, the rules clarify that

12   employers have an affirmative responsibility to

13   provide a foundation even when using AEDT. The rules

14   should also clarify that employers must proactively

15   inform candidates about how an AEDT will evaluate them

16   and how it will use and retain their data.

17   CDT has submitted written testimony to

18   elaborate on why these improvements to these proposed

19   rules are necessary. We look forward to community

20   engagement as the department's rulemaking progresses.

21   Thank you.

22   MR. DRIVER: Thank you so much, and again,

23   apologies for not calling on you earlier. Anyone else

24   looking to testify? Alright. So it looks like at this

25   time, we've come to the end of the hearing. Thank you

1   everyone for tuning in and listening to what everyone

2   has to say. So the deadline for submitting written

3   comments to these rules is 11:59 p.m. tonight. A

4   transcript of this hearing will be made available as

5   fast as we can turn it around, you know, you have to

6   give us a little bit of time for that. We retain an

7   independent partner for that, but we'll try and get it

8   out as soon as possible.

9   So, if you want to submit written comments,

10   the website down there that I just put in the chat is

11   one place you can do it. You can also email us at

12   rulecomments@dcwp.nyc.gov. Your written comments can

13   be of any length. There's no limit of that. We'll post

14   the written comments that we've receive -- we'll post

15   the written comments that we receive probably on

16   Monday on our website, on that link that I shared

17   earlier and we'll post a transcript there as well, as

18   soon as we're able to turn that around.

19   Yeah, thank you again to everyone for

20   bearing with us, you know, as we were able to make

21   this happen, I'm glad we were able to have everyone

22   here today to give comments who wanted to speak.

23   There's no anticipated final date for releasing the

24   rules that I can share, but I'll make sure that

25   everyone who has registered for this meeting gets an

1   email about it. When you registered for the Teams

2   call, I think I can then access your email that way

3   and we'll make sure that you're on the distribution

4   list. Otherwise, you can also check, all of that is

5   posted on the NYC Rules website as well.

6   And again, just dropping the link for where

7   we will post the comments as we receive them and thank

8   you everyone. Have a great weekend and I appreciate

9   you participating in this process. Thank you.

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CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript
of DCWP AEDT Rules Hearing on November 4, 2022 was
prepared using the required transcription equipment and
is a true and accurate record of the proceedings.

Certified By

_____

Date: December 7, 2022

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018