



Frequently Asked Questions: What Employers Need to Know About the Notification Requirements for NYC's AI Hiring Law

This document should be used by the New York City Department of Consumer and Worker Protection (DCWP) to provide employers and employment agencies with information about the proposed notification requirements of the New York City (NYC) Hiring Law. Note that this document assumes that the recommendations in the accompanying playbook, *Implementing New York City's New Artificial Intelligence Hiring Law*, have been implemented.

LIST OF FREQUENTLY ASKED QUESTIONS (FAQS)

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19. Is there a sample “AEDT Data Practices” disclosure?

1. WHAT IS NYC LAW 2021/144 (ALSO KNOWN AS THE NYC AI HIRING LAW)?

The NYC AI Hiring Law aims to curb discrimination in algorithmic hiring decisions by governing how employers and employment agencies can use automated employment decision tools (AEDTs) to assist in hiring and promoting job candidates. The notification provision of the law aims to increase transparency about the use of AEDTs.

The law was passed in November 2021 and goes into effect on January 1, 2023.

2. WHAT IS AN AUTOMATED EMPLOYMENT DECISION TOOL (AEDT)?

According to the NYC AI Hiring Law, an AEDT is “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 decisionmaking that impacts natural persons.”

AEDTs do not include tools that “d[o] not automate, support, substantially assist, or replace discretionary decision-making processes and that d[o] not materially impact natural persons, including, but not limited to, [j]unk email filter[s], firewall[s], antivirus software, calculator[s], spreadsheet[s], database[s], data set[s], or other compilation [of data].”¹ The use of online platforms like LinkedIn or Indeed for the purposes of posting or advertising jobs is not considered AEDT use.

3. WHAT ARE THE LIMITS AND POSSIBILITIES OF USING AN AEDT?

Limits

AEDTs often learn through historical hiring data, which can be biased. For example, Amazon sought to develop an in-house tool to sort resumes and had to discard the tool [because it was biased against women](#). More generally, an AEDT might define a “good job candidate” as somebody who has similar characteristics, skills, experiences, and background as previous hires. Aside from inclusivity concerns, an AEDT might filter promising candidates that an employer had not thought to consider before.

Possibilities

Hiring practices have been shown to be susceptible to human bias. One study found that, since 1989, the levels of racial discrimination in hiring [have not changed](#). However, engineers [can intentionally design](#) algorithms to [mitigate bias](#).

AEDTs have become popular because manual review in hiring is difficult and tedious. An AEDT offers great improvements in speed and scale over human review. The benefits could compound if an AEDT is also able to successfully account for bias and diversity, since the change made by an AEDT will be easier and faster to implement than changing human review practices.

4. WHAT DOES THE NYC AI HIRING LAW REQUIRE?

NYC employers and employment agencies are required to meet the following criteria if they choose to use AEDTs for hiring:

1. *Bias Audits*: Any AEDT used by an employer or employment agency must have been subject to a bias audit within the last year, and the results of the audit must be publicly viewable on the employer’s or employment agency’s website.
2. *Notice Requirements*:
 - a. Use: NYC employers and employment agencies must notify a job candidate or employee residing in NYC of the use of an AEDT at least 10 business days before using the AEDT.
 - b. Alternative process: The job candidate or employee may request an alternative or accommoda-

tion.

- c. **Qualifications and Characteristics:** Employers and employment agencies must notify a job candidate or employee residing in NYC of the job qualifications and characteristics used by the AEDT at least 10 business days before such use.
- d. **Data Practices:** Information on the type and source of data used by the AEDT, as well as the employer's or employment agency's data retention policy, must be made available on a website or within 30 days of a written request from a candidate residing in NYC.

*Please note the remainder of this FAQ series will focus on the **notice requirement** obligations for employers and employment agencies.*

5. WHAT DOES THE NYC DEPARTMENT OF CONSUMER AND WORKER PROTECTION (DCWP) REQUIRE TO COMPLY WITH THE NOTICE REQUIREMENT OF THE LAW?

NYC DCWP requires that employers and employment agencies that use AEDTs in hiring or employment:

1. **Send an AEDT Notice to job candidates and respond to any completed AEDT Opt-Out Requests.** An *AEDT Notice* is a short statement sent out by employers or employment agencies to notify NYC job candidates that an AEDT will be used in connection with a hiring or employment decision. An *AEDT Opt-Out Request* is a short form sent out by employers or employment agencies that gives job candidates the right to request an employer-specified alternative to the use of an AEDT, or to request an accommodation. The term *AEDT Notification Package* is used to describe the combined *AEDT Notice* and the *AEDT Opt-Out Request* (i.e., when they are used together).

The requirements for “completed” *AEDT Notices* and *AEDT Opt-Out Requests* are outlined in [NYC AI Hiring Law Playbook](#). A sample *AEDT Notice* is provided in [Question #17](#) and a sample *AEDT Opt-Out Request* is provided in [Question #18](#).

2. **Abide by NYC DCWP's rules for delivering the AEDT Notification Package** (i.e., the *AEDT Notice* and the *AEDT Opt-Out Request*) to job candidates. These rules include:
 - a. **How the AEDT Notice can be disseminated.** For example, the *AEDT Notice* may be listed on a job

posting or job application, or sent via personal communication, such as email or mail.

- b. How the *AEDT Notices* and the *AEDT Opt-Out Requests* can be used in tandem.** For example, employers may choose to deliver the *AEDT Notice* and the *AEDT Opt-Out Request* at once, or deliver the *AEDT Notice* before the *AEDT Opt-Out Request* to get a head start on the 10 business day waiting period with an earlier Notice Date. However, employers may only split up the notification package in a manner that ensures that candidates have the opportunity to receive and submit an *AEDT Opt-Out Request* before AEDT use commences. Additionally, if the *AEDT Notice* is disseminated before the *AEDT Opt-Out Request* (e.g., with a job posting or via personal communication), an identical copy of the *AEDT Notice* (and a link or reference to the original notice) must be reproduced above the *AEDT Opt-Out Request*.
- c. What the *AEDT Notices* and the *AEDT Opt-Out Requests* can and cannot be used for.** Employers may only use AEDTs to evaluate a job candidate for the purposes declared in an *AEDT Notice* (see Question 7 for more details). Furthermore, personal information collected for the purpose of disseminating the *AEDT Notice* or the *AEDT Opt-Out Request* may not be used for any other purposes.

The complete requirements for the delivery of the *AEDT Notification Package* are outlined in the [NYC AI Hiring Law Playbook](#).

- 3. Provide a complete disclosure of *AEDT Data Practices*,** either publicly or privately within 30 days of request. This request may be received via the *AEDT Opt-Out Request*. The requirements for a complete disclosure of *AEDT Data Practices* is outlined in [NYC AI Hiring Law Playbook](#) and a sample is included in Question #20.

6. WHAT INFORMATION SHOULD AN AEDT NOTICE CONTAIN?

Employers are required to submit an *AEDT Notice*. **These notices should disclose that an AEDT will be used in connection with a hiring or employment decision** and should include the following information:

- a. Notice date;
- b. Notice expiration date;

- c. 10-day waiting period notice;
- d. Employer or employment agency name;
- e. Job position title;
- f. Brief explanation of AEDTs;
- g. Purpose(s) for which the AEDT system will be used;
- h. Types of AEDTs used;
- i. Job qualifications and characteristics the AEDT will evaluate;
- j. Right to request alternative or accommodation; and
- k. AEDT data practices.

A sample AEDT Notice is provided in Question #18. For detailed information, please see [NYC AI Hiring Law Playbook](#).

7. WHAT INFORMATION SHOULD AN AEDT OPT-OUT REQUEST CONTAIN?

In addition to submitting an *AEDT Notice*, employers are also required to provide and obtain an *AEDT Opt-Out Request*, which gives job candidates the right to request an alternative or accommodation.

This statement should contain:

- a. Impact of request for alternative and accommodation;
- b. Option to request alternatives or accommodations;
- c. AEDT data practices;
- d. Date and signature request; and
- e. Declaration of notice date and 10 business day waiting period.

A sample *AEDT Opt-Out Request* is provided in Question #19. For detailed information, please see the [NYC AI Hiring Law Playbook](#).

8. CAN I USE AN AEDT NOTIFICATION PACKAGE FOR SIMILAR PURPOSES AS THOSE DISCLOSED IN THE AEDT NOTICE?

An *AEDT Notification Package* should **not** authorize the use of:

- a. AEDTs for job positions substantially different from the positions specified in the notice;
- b. Any AEDT type other than the AEDT type declared in the notice;
- c. Any AEDT purpose other than the AEDT purpose declared in the notice;
- d. Job qualifications and characteristics in an AEDT other than as disclosed in the notice; and
- e. Any AEDT to evaluate a candidate who has **not** received the *AEDT Opt-Out Request* and been given the opportunity to opt-out.

If an employer or employment agency wishes to use an *AEDT Notification Package* for any of the above reasons, they should send the job candidate or employee a new *AEDT Notice* and obtain a new *AEDT Opt-Out Request*.

As a reminder, the *AEDT Notification Package* is the term used throughout this document to describe the combined *AEDT Notice* and *AEDT Opt-Out Request*. Please see Question 5 for more details.

9. HOW SHOULD THE AEDT NOTICE AND AEDT OPT-OUT REQUEST BE DISSEMINATED?

Employers and employment agencies may disseminate the *AEDT Notice* on a job posting or job application, or via personal communication, such as email or mail. If employers or employment agencies choose to post a job on a third-party platform, that platform must allow the *AEDT Notice* to be posted alongside the job listing.

Employers and employment agencies may request the *AEDT Opt-Out Request* from job candidates along with the job posting or via personal communication, such as email, electronic forms, or mail.

There is a 10 business day waiting period from when the *AEDT Notice* is disseminated before AEDT use may commence. Employers may get a head start on this waiting period by delivering the *AEDT Notice* before the *AEDT Opt-Out Request*, but they may only break up the notification package in this way if candidates can receive and submit the Opt-Out Request before AEDT use commences. For instance,

disseminating the *AEDT Notice* on a public job posting and later presenting the *AEDT Opt-Out Request* form alongside an online job application would be acceptable. However, first disseminating the *AEDT Notice*, and later delivering the *AEDT Opt-Out Request* via personal communication more than 10 business days from the Notice Date, is **not** acceptable, as AEDT use may already have commenced, depriving the candidate of the opportunity to request an alternative or accommodation.

If employers or employment agencies plan to use multiple AEDTs throughout the hiring process, they should consider obtaining consent for all AEDT uses at the beginning of the hiring process in order to expedite the hiring timeline.

10. WHEN DOES THE 10 BUSINESS DAY WAITING PERIOD FOR AEDT USE BEGIN?

The NYC AI Hiring Law prohibits employers and employment agencies from using AEDTs earlier than 10 business days from when job applicants are notified of AEDT use. This 10 business day waiting period begins on the Notice Date on a disseminated *AEDT Notice*. Employers and employment agencies may declare all AEDT use in an *AEDT Notice* posted alongside a job posting to start the 10-day waiting period, at which point employers and employment agencies may begin accepting applications at their convenience. However, employees and employment agencies may not begin using AEDTs to evaluate such applications until the 10 business day waiting period has passed. Additionally, employers may only break up the notification package in this way if candidates can still receive and submit the Opt-Out Request before AEDT use commences.

Please note that an *AEDT Opt-Out Request* expires 6 months after the *Notice Date*.

11. WHAT INFORMATION SHOULD AN AEDT DATA PRACTICES DISCLOSURE CONTAIN?

Employers and employment agencies are required to make their *AEDT Data Practices* publicly available or communicated within 30 days of a written request.

***AEDT Data Practices* include:**

1. Disclosures of the type of data collected, who collected the data, the original date of collection, date of most recent modification, and the states or localities where the data was collected.

2. Disclosures of how long each of the different types of data gathered by the AEDT will be retained, and whether it will be used to improve the AEDT.

This information may be disclosed on the employer’s website or the website of a third-party vendor, or made available via personal communication such as email. The *AEDT Opt-Out Request* must either contain a link to the employer’s or vendor’s disclosure website or allow candidates to request the disclosure via personal communication.

12. WHAT TYPES OF JOB QUALIFICATIONS AND CHARACTERISTICS DO AEDTS CONSIDER?

AEDTs are used by employers and employment agencies in multiple phases of hiring, resulting in various types of AEDTs with differing implications for candidates. When providing candidates with the *AEDT Notice* and *AEDT Opt-Out Request*, employers and employment agencies must notify a job candidate of (1) the purpose of the AEDT and (2) the job qualifications and characteristics an AEDT will assess. Below is a *non-comprehensive* table that employers and employees can use to help guide this notification, organized by different AEDT types.

Type of AEDT	Phase of Use	Examples of Existing Vendors	Job Qualifications/ Characteristics
Automated background checks	Any phase	GoodHire, Fama, Predictim, Hiretual	Demographic data; employment history; educational background; credit ratings; social media data
Resume Screening	Early hiring	Applicant tracking systems, such as Lever, Greenhouse, SmartRecruiter, SquarePeg, or Workday	Demographic data; employment history; educational background
Automated interviews	Mid-hiring	HireVue	Facial recognition; speech or audio data; cognitive assessments

Psychometric puzzles or games	Mid- & Late hiring	Pymetrics	Facial recognition; speech or audio data; cognitive assessments
Retention prediction	Late hiring	Visier, Oracle Recruiting Cloud	Demographic data; employment history; details about offer or current compensation, like salary

13. WHY SHOULD I DECLARE MY AEDT USE ON A PUBLIC JOB POSTING?

If you provide your *AEDT Notice* on your public job posting, you may use the Notice Date (the date the *AEDT Notice* is disseminated) as the start of the 10 business day waiting period. This may help expedite your hiring timeline.

Please note that you may only break up the notification package in this way if candidates can receive and submit the *Opt-Out Request* before AEDT use commences.

14. WHAT INFORMATION DO I NEED TO RECEIVE FROM MY AEDT VENDOR TO COMPLY WITH THE LAW?

Vendor Responsibilities: Vendors must notify employers of the job qualifications and characteristics used by an AEDT, as listed in Recommendation 1, section “*AEDT Notice*” of the [NYC AI Hiring Law Playbook](#). Vendors must also notify employers of the data sources and data retention policies as listed in Recommendation 3 of the [NYC AI Hiring Law Playbook](#).

Employer Responsibilities: Employers should ensure that all information received from vendors is incorporated into notices that are communicated to job candidates or employees. Employers should also clearly specify alternative procedures in the event of an applicant choosing to request an alternative to the use of AEDT.

Ultimately, the final responsibility for complying with the law rests with the employer or employment agency that chooses to use an AEDT.

15. WHAT ARE MY OBLIGATIONS IN THE EVENT AN APPLICANT OR JOB CANDIDATE REQUESTS AN ACCOMMODATION OR ALTERNATIVE TO THE USE OF AN AEDT?

Employers should specify how they intend to handle requests for accommodations and alternatives for each AEDT used, per the NYC AI Hiring Law. Employers should also disclose if the alternative they provide may disadvantage a job candidate's application (for example, if a job candidate's application will take longer to review without the use of an AEDT).

16. HOW DO MY OBLIGATIONS TO PROVIDE CANDIDATES WITH ACCOMMODATIONS OR ALTERNATIVES TO AEDT USE INTERSECT WITH MY OBLIGATIONS TO COMPLY WITH FEDERAL ADA REGULATIONS?

Under the Americans With Disabilities Act (ADA), employers are required to provide reasonable accommodations for people with disabilities if such accommodations do not pose "undue hardship" on the employer.

The obligation of employers to provide job candidates with accommodations or alternatives to the use of AEDTs does not exempt employers from their obligations to federal ADA standards. Employers must provide job candidates with disabilities the right to request "reasonable accommodations" both in regards to the use of AEDTs and otherwise.

17. IS THERE A SAMPLE “AEDT NOTICE”?

Gray highlights must be filled in by the employer or employment agency.

**TEMPLATE FOR EMPLOYERS AND EMPLOYMENT AGENCIES:
Automated Employment Decision Tool (AEDT) Notice**

Notice Date: [date], [link/reference to original notice if this is a copy of previously disseminated notice]

Notice Expiration Date: [date, no more than 6 months from Notice Date]

An AEDT is a computerized tool that assists employers in making hiring decisions, using information such as (but not limited to) your job application and interview performance.

[Employer or Employment Agency Name] will use an AEDT for [AEDT Use Purpose(s)] for the role of [Position Title(s)]. AEDTs may be used for the declared purpose no earlier than 10 business days from the Notice Date listed above.

See below for a list of the employer’s declared AEDTs and their associated considerations below:

[1. [AEDT Used 1]: [Job qualifications and characteristics taken into consideration].

[2. [AEDT Used 2]: [Job qualifications and characteristics taken into consideration].

[3. [AEDT Used 3]: [Job qualifications and characteristics taken into consideration].

New York City residents have the right to request accommodations or alternatives to the use of any AEDT listed above through an AEDT Opt-Out Request that employers are required to distribute. [Description of how candidates will receive the AEDT Opt-Out Request.]

[You can read more about the data practices of the AEDTs [here](#) (link to AEDT Data Practices disclosure)]

OR

[You will also be able to request further details about the employer’s AEDT data practices through the AEDT Opt-Out Request.]

READ MORE about AEDTs [here](#) [live link to a non-technical AEDT explainer].

18. IS THERE A SAMPLE “AEDT OPT-OUT REQUEST”?

Gray highlights must be filled in by the employer or employment agency

**TEMPLATE FOR EMPLOYERS AND EMPLOYMENT AGENCIES:
AEDT Opt-Out Request**

As a NYC resident, you have the right to request accommodations or alternatives to the use of any automated employment decision tool (AEDT) declared in the AEDT Notice.

For each AEDT below, select whether you consent to its use, request the employer-specified alternative, or request a different alternative or accommodation.

	I request the employer’s specified alternative	I request the following alternative or accommodation*:
[AEDT Use 1] [Alternative: Employer’s Alternative and Impact]:	<input type="radio"/>	[Text box]
[AEDT Use 2] [Alternative: Employer’s Alternative and Impact]:	<input type="radio"/>	[Text box]
[AEDT Use 3] [Alternative: Employer’s Alternative and Impact]:	<input type="radio"/>	[Text box]

*** The employer may contact you to further discuss such requests.**

[You can read more about our data practices for AEDTs [here](#) (link to AEDT Data Practices disclosure)] OR

[I wish to request a copy of the employer’s AEDT Data Practices. (Textbox for email or mailing address)]

Notice Date on associated “AEDT Notice”: [date]

AEDTs may be used for the declared purpose no earlier than 10 business days from the Notice Date.

Signature:

Date:

19. IS THERE A SAMPLE “AEDT DATA PRACTICES” DISCLOSURE?

Gray highlights must be filled in by the employer or employment agency

**TEMPLATE FOR EMPLOYERS AND EMPLOYMENT AGENCIES:
AEDT Data Policies**

Date: [today]

Information on data sources used by [AEDT]:

Type of Data	Collected By	Original Date of Collection	Most Recent Modification	States/ Localities Where Data was Collected
[Data Type 1]	[Collector 1]	[Date 1]	[Date 1]	[Location 1]
[Data Type 2]	[Collector 2]	[Date 2]	[Date 2]	[Location 2]
[Data Type 3]	[Collector 3]	[Date 3]	[Date 3]	[Location 3]

Information on data retained by [AEDT]:

Data Collected by AEDT Use	Retained Until	Used for Further Improvement of AEDT
[Data Type 1]	[Date 1]	[Yes/No]
[Data Type 2]	[Date 2]	[Yes/No]
[Data Type 3]	[Date 3]	[Yes/No]



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