



## **Preparing for New York City AI Regulation: The Value of the Data & Trust Alliance Algorithmic Bias Safeguards**

Effective July 5, 2023, a landmark New York City law<sup>1</sup> will require companies to conduct audits to assess bias in any automated employment decision tools they use in hiring—in-house or through their vendors. While it is one of the first such “AI audit” laws to pass, it is consistent with other proposed or anticipated requirements around automated decision-making. Language from the New York City Local Law 144 has been mirrored in proposed state legislation, both in New York and elsewhere, and reflects common requirements of many existing proposals around regulating automated decision-making systems across the US, at a federal level and within the European Union.<sup>2</sup>

The recently issued final implementation guidance on the NYC bias audit requirements confirms that the law does not apply directly to vendors, but to the employers, who will be held responsible for compliance. Therefore, it behooves all employers and employment agencies to take steps now to identify and review any employment related services using AI and consider how to demonstrate that they are applied with proper safeguards.

The Algorithmic Bias Safeguards developed and launched by the Data & Trust Alliance in December 2021 are designed with the same high-level goal as the NYC law—to ensure that any employment-related functions are without unfair or discriminatory bias toward applicants and employees. The Safeguards are a detailed screening tool to consider vendor AI services in the HR sphere that directly address many of the practice controls which any audit will need to consider. The Safeguards’ questions are thorough, and the answers of vendors who have completed them satisfactorily should significantly help position the primary employer to comply with the imminent audits.

We highlight three key reasons:

- **Compliance with Existing Legal Standards in Employment.** NYC’s required audits appear to be modeled on bias testing typically performed by the EEOC.<sup>3</sup> As the questions in the Safeguards have been designed to align with these legal standards—for example, considering both practical and statistical disparate-impact testing—any vendor who successfully answers the Safeguards’ questions related to bias testing should be well positioned to assist employer compliance.
- **Notice Requirements and Algorithmic Transparency.** The law mandates that notice of an AI’s system use and scope be made available to impacted applicants or employees. Sufficient notice must include information about key data and features used by the AI system.<sup>4</sup> The Safeguards’ transparency questions explicitly address identification of such

data and features. If those questions received qualifying answers, companies should be able to clearly meet the law's transparency requirements.

- **Summary Test Results Are Easily Derived from the Safeguards' Detail-Oriented Questions.** The law requires a summary of the results of the bias audit be made public on the website of the employer or employment agency prior to the use of the tool; in addition to the test results this includes high-level information such as the source and explanation of the data used. Any vendor who scored well on the detail-oriented questions in the Safeguards will likely be able to provide a summary of such results to their business customers with sufficient detail and structure to meet audit's intent.

In conclusion, use of the Safeguards by Data & Trust Alliance members (or other businesses) as a procurement tool for HR systems that incorporate AI will prepare the hiring company with an effective and defensible way to demonstrate responsible leadership and will position those companies for the coming compliance demands.

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[BNH.AI](#) is a boutique law firm focused on the liabilities of artificial intelligence, with primary offices in the District of Columbia. We help our clients audit and manage their AI risks.

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<sup>1</sup>Local Law 144 became Subchapter 25 of Chapter 5 of Title 20 of the New York City Administrative Code, the full text of which is available [here](#). The enforcement date was first set for January 2023, but then postponed to April 15, 2023, and finally to July 5, 2023 by the Department of Consumer and Worker Protection (DCWP) in the process of finalizing the rules. Notice of Adoption of Final Rule, available [here](#).

<sup>2</sup>At the state level alone in the US, for example, there are a number of requirements *already* in effect mandating thorough risk assessments for AI systems related to bias. *See, e.g.*, Connecticut Data Privacy Act § 6(5); Colo. Rev. Stat. § 6-1-1308(6); and Va. Code Ann. §§ 59.1-571 *et seq.* (2020), among others.

<sup>3</sup>This assessment is based on the law's explicit requirement for disparate impact testing on EEOC Component-1 categories under Section 2000e-8 of Title 42 of the United States Code, as specified in Part 1602.7 of Title 29 of the Code of Federal Regulations.

<sup>4</sup>Notices under the law may be posted directly on the employer's or employment agency's website or provided in response to a written request for such information. In either case, the Safeguards' focus on transparency in the AI system will help vendors to explicitly address such requirements.