Blog Post

California Proposes New Legislation Prohibiting Algorithmic Discrimination in the Workplace

June 3, 2024

Algorithmic discrimination continues to be a focal point of concern, as evidenced by recent legislation introduced in California which, if passed into law, will require employers who use automated decision tools to make consequential decisions to undergo a cost-benefit analysis regarding the use of such technology. Employers must continue to proceed with caution, and be "smart" about how they use Artificial Intelligence (AI) in the workplace, particularly as to hiring, firing, and other important employment-related decision-making.

Assembly Bill 2930 At-a-Glance

The California State Assembly Privacy and Consumer Protection Committee recently introduced Assembly Bill 2930 (AB 2930), which seeks to prohibit bias and "algorithmic discrimination" by automated decision tools (ADTs). Under the proposed legislation, employers who use ADTs to make consequential decisions would have to undergo impact assessments, where employers evaluate the pros and cons of using such technology. This is significant as more and more businesses are turning to emerging technology and automation to make consequential employment decisions. California's proposed legislation could inspire other states to enact similar measures, so businesses across the country should pay attention.

Related Work

Employment Litigation
Employment Training and Compliance
Labor and Employment

Related Offices

Los Angeles

HR Defense

Akerman Perspectives on the Latest Developments in Labor and Employment Law

Visit this Akerman blog

An ADT is any system that uses AI which has been developed to make, or be a controlling factor in making, a "consequential decision," defined as: "a decision or judgment that has a legal, material, or similarly significant effect on an individual's life relating to the impact of, access to, or the cost, terms, or availability of any of the following: employment, including any decisions regarding pay or promotion, hiring or termination," among other things.

AB 2930 defines "algorithmic discrimination" as a condition in which an ADT contributes to unjustified differential treatment or impacts disfavoring people based on various protected characteristics including actual or perceived race, color, ethnicity, sex, religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, reproductive health, or any other classification protected by state law.

The proposed legislation seeks to prevent algorithmic discrimination through impact assessments, notice requirements, governance programs, mandated policy disclosures, and the imposition of civil liability and civil penalties.

Notably, under the current iteration of AB 2930, there is no private right of action permitting lawsuits for discrimination. Only the California state attorney general and public attorneys are permitted to file a lawsuit. The California Civil Rights Department (CRD) would also have investigative authority.

What Does This Mean for Employers?

AB 2930 would apply to employers with 25 or more employees. *The proposed law does not apply to employers with fewer than 25 employees unless, as of the end of the prior calendar year, the employer deployed an ADT that impacted more than 999 people per year.*

If AB 2930 becomes law, employers utilizing ADTs should be prepared for the following:

Impact Assessments. Impact assessments would need to be performed on or before January 1, 2026, and annually thereafter, and the results must be maintained for two years.

- AB 2930 would require an employer, and a developer of an ADT, to perform an impact assessment for any ADT the employer uses, including, among other things, a statement of the purpose of the ADT and its intended benefits, uses, and deployment contexts.

- Additionally, the impact assessments must provide a description of the ADT's outputs and how they are used to make, or be a controlling factor in making, a consequential decision, and a summary of the type of data collected from natural persons and processed by the ADT.

- Furthermore, employers would need to conduct an analysis of potential adverse impacts on the basis of sex, race, color, ethnicity, religion, age, national origin, limited English proficiency, disability, veteran status, or genetic information from the employer's use of the ADT. Employers would also be required to provide a description of the safeguards implemented, or that will be implemented, to address any reasonably foreseeable risks of algorithmic discrimination arising from the use of the ADT known to the employer at the time of the impact assessment.

Employers Must Report Impact Assessments to the California Civil Rights Department. AB 2930 would require an employer to provide the impact assessment to the California Civil Rights Department within seven days of a request by the CRD and would punish a violation with an administrative fine of not more than $10,000 to be recovered in an administrative enforcement action brought by the CRD.

Employers Must Provide Notice to Impacted Employees. AB 2930 would require an employer to,

at or before the time an ADT is used to make a consequential decision, notify an employee that is the subject of the consequential decision that an ADT is being used to make, or be a controlling factor in making, the consequential decision and provide the employee with a statement of the purpose of the ADT. Further, if a consequential decision is made solely based on the output of an automated decision tool, the proposed legislation would require an employer to accommodate an employee's request to not be subject to the ADT and to be subject to an alternative selection process or accommodation, if technically feasible.

Governance Programs. Employers and developers would be required to establish, document, implement, and maintain governance programs that contain reasonable administrative and technical safeguards to map, measure, manage, and govern the foreseeable risks of algorithmic discrimination associated with the use or intended use of an automated decision tool. Through the governance program, the employer will be required to designate at least one employee to be responsible for overseeing and maintaining the governance program.

Policy Disclosures. Employers or developers using ADT would also be required to make publicly available, in a readily accessible manner, a policy that provides (a) the types of ADTs in use or made available to others by the employer or developer and (b) how the employer or developer manages the reasonably foreseeable risks of algorithmic discrimination that may arise from the use of the ADT.

Civil Actions. AB 2930 would authorize certain public attorneys, including the Attorney General, to bring a civil action against an employer or developer for a violation of the bill, and would authorize a court to award $25,000 per violation. Public attorneys would be required to provide an employer with 45 days' written notice to an employer or developer of

the alleged violations of the bill, and would provide an employer or developer a specified opportunity to cure those violations, if the employer or developer provides the person who gave the notice an express written statement, under penalty of perjury, that the violation has been cured and that no further violations shall occur.

Will This Bill Became Law?

AB 2930 has not yet been passed by the California legislature. We will likely not have a clear view whether this proposed bill will become law until this summer near the conclusion of the 2024 legislative session, ending August 31, 2024. In the interim, Akerman will continue to monitor any future developments related to this proposed legislation. Employers should work with their Akerman Labor & Employment attorneys to stay updated.