

AMENDED IN SENATE MAY 1, 2025

AMENDED IN SENATE MARCH 6, 2025

SENATE BILL

No. 7

Introduced by Senator McNerney
(Coauthors: Assembly Members Bryan and Elhawary)

December 2, 2024

An act to add Part 5.6 (commencing with Section 1520) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 7, as amended, McNerney. Employment: automated decision systems.

Existing law requires the Department of Technology to conduct, in coordination with other interagency bodies as it deems appropriate, a comprehensive inventory of all high-risk automated decision systems (ADS) that have been proposed for use, development, or procurement by, or are being used, developed, or procured by, any state agency.

Existing law establishes the Labor and Workforce Development Agency, which is composed of various departments responsible for protecting and promoting the rights and interests of workers in California, including the Division of Labor Standards Enforcement, led by the Labor Commissioner, within the Department of Industrial Relations.

This bill would require an employer, or a vendor engaged by the employer, to provide a written notice that an ADS, for the purpose of making employment-related decisions, *not including hiring*, is in use at the workplace to all workers that will be directly or indirectly affected by the ADS, as specified. The bill would require the employer or vendor to maintain a list of all ADS currently in use and would require the

notice to include the updated list. *The bill would require an employer or vendor to notify, as provided, a job applicant that the employer utilizes an ADS in hiring decisions.* The bill would prohibit an employer or vendor from using an ADS that does certain functions and would limit the purposes and manner in which an ADS may be used to make decisions. The bill would require an employer to allow a worker to access data collected or used by an ADS and to correct errors in data, as specified.

This bill would require an employer or vendor to provide a written notice to a worker that has been affected by ~~an~~ *a nonhiring* employment-related decision made by an ADS, and provide that worker with a form or a link to an electronic form to appeal the decision within 30 days of the notification. The bill would require an employer or vendor to respond to an appeal within 14 business days, designate a human reviewer who meets specified criteria to objectively evaluate all evidence, and rectify the decision within 21 business days if the human reviewer determines that the employment-related decision should be overturned.

This bill would prohibit an employer from discharging, threatening to discharge, demoting, suspending, or in any manner discriminating or retaliating against any worker for taking certain actions asserting their rights under the bill. The bill would require the Labor Commissioner to enforce the bill's provisions, as specified, and would authorize a public prosecutor or any worker who has suffered a violation or their representative to bring a civil action. The bill would set forth specified types of relief that a plaintiff may seek and that an employer that violates these provisions is subject to, including a \$500 civil penalty per violation.

This bill would declare that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Part 5.6 (commencing with Section 1520) is
- 2 added to Division 2 of the Labor Code, to read:

PART 5.6. AUTOMATED DECISION SYSTEMS IN THE
WORKPLACE

CHAPTER 1. DEFINITIONS

1520. For purposes of this part, the following shall apply:

(a) “Artificial intelligence” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

(b) “Authorized representative” means any person or organization appointed by the worker to serve as an agent of the worker. Authorized representative shall not include a worker’s employer.

(c) “Automated decision system” or “ADS” means 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 assist or replace human discretionary decisionmaking and materially impacts natural persons. An automated decision system does not include a spam email filter, firewall, antivirus, software, identity and access management tools, calculator, database, dataset, or other compilation of data.

(d) “ADS output” means any information, data, assumptions, predictions, scoring, recommendations, decisions, or conclusions generated by an ADS.

(e) (1) “Employer” means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, benefits, other compensation, hours, working conditions, access to work or job opportunities, or other terms or conditions of employment, of any worker. This shall include all branches of state government, or the several counties, cities and counties, and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof.

(2) “Employer” includes a labor contractor of a person defined as an employer under paragraph (1).

(f) “Employment-related decision” means any decision by an employer that impacts wages, wage setting, benefits, compensation, work hours, work schedule, performance evaluation, hiring, discipline, promotion, termination, job tasks, skill requirements, work responsibilities, assignment of work, access to work and training opportunities, productivity requirements, workplace health and safety, and any other terms or conditions of employment.

(g) “Individualized” means specific to an individual or group, band, class, or tier of individuals with particular personal characteristics, ~~behaviors~~ *behaviors*, or biometrics.

(h) “Predictive behavior analysis” means any system or tool that predicts or infers a worker’s behavior, beliefs, intentions, personality, emotional state, or other characteristics or behavior.

(i) “Vendor” means a third party, subcontractor, or entity engaged by an employer or an employer’s labor contractors to provide software, technology, or a related service that is used to collect, store, analyze, or interpret worker data or worker information.

(j) “Worker” means any natural person who is ~~a job applicant to~~ an employee of, or an independent contractor providing service to, or through, a business or a state or local governmental entity in any workplace.

(k) “Worker data” means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with, a worker, regardless of how the information is collected, inferred, or obtained.

CHAPTER 2. AUTOMATED DECISION SYSTEM PRE-USE NOTICE

1522. (a) An employer, or a vendor engaged by the employer, shall provide a written notice that an ADS, for the purpose of making employment-related decisions, *not including hiring*, is in use at the workplace to a worker who will be directly or indirectly affected by the ADS, or their authorized representative, according to the following:

(1) At least 30 days before the introduction of the ADS.

(2) If the employer or vendor is using an existing ADS at the time this title takes effect, no later than February 1, 2026.

(3) To a new worker within 30 days of hiring the worker if an existing ADS is in place.

1 (4) Within 30 days of any significant updates or changes to the
2 ADS, or a significant change in how the employer is using ADS.

3 (b) An employer, or a vendor engaged by the employer, shall
4 maintain an updated list of all ADS currently in use and include
5 that list in the notice required under subdivision (a).

6 (c) The written notice required by this section shall be all of the
7 following:

8 (1) Written in plain language as a separate, stand-alone
9 communication.

10 (2) In the language in which routine communications and other
11 information are provided to workers.

12 (3) Provided via a simple and easy-to-use method, including an
13 email, hyperlink, or other written format.

14 *(d) An employer, or a vendor engaged by the employer, shall*
15 *notify a job applicant upon receiving the application that the*
16 *employer utilizes an ADS in hiring decisions. Notifications may*
17 *be made using an automatic reply mechanism.*

18 1524. A notice issued pursuant to *subdivision (a) of Section*
19 *1522* shall contain the following information:

20 (a) A plain language explanation of the nature, purpose, and
21 scope of the decisions for which the ADS will be used, including
22 the specific employment-related decisions potentially affected.

23 (b) The specific category and sources of worker input data that
24 the ADS will use and how that data will be collected.

25 (c) The logic used in the ADS, including the key parameters
26 that affect the output of the ADS, and the type of outputs the ADS
27 will produce.

28 (d) The individuals, vendors,~~and~~ *or* entities that created the
29 ADS and the individuals, vendors, and entities that will run,
30 manage, or interpret the results of the ADS output.

31 (e) For each performance metric, quota, or other related measure,
32 a description of how the performance standard is measured, how
33 data is collected, and any adverse consequences or incentives
34 associated with the performance standard.

35 (f) A description of the worker's right to access information
36 about the employer's use of ADS to make an employment-related
37 decision.

38 (g) A description of the worker's rights to appeal a decision for
39 which the ADS was used and to correct data used by the ADS.

1 (h) That the employer is prohibited from retaliating against
2 workers for exercising their rights described in subdivision (g).

3
4 CHAPTER 3. EMPLOYER REQUIREMENTS
5

6 1526. (a) An employer, or a vendor engaged by the employer,
7 shall not use an ADS that does any of the following:

8 (1) Prevents compliance with or results in a violation of any
9 federal, state, or local labor, occupational health and safety,
10 employment, or civil rights laws or regulations.

11 (2) ~~Obtains or infers~~ *Infers* a worker's immigration status,
12 veteran status, ancestral, history, religious or political beliefs,
13 health or reproductive status, history, or plan, emotional or
14 psychological state, neural data, sexual or gender orientation,
15 disability, criminal record, credit history, or statuses protected
16 under Section 12940 of the Government Code.

17 (3) Conducts predictive behavior analysis.

18 (4) Identifies, profiles, predicts, or takes adverse action against
19 a worker for exercising their legal rights, including, but not limited
20 to, rights guaranteed by state and federal employment and labor
21 law.

22 (5) Uses or relies on individualized worker data as inputs or
23 outputs to inform compensation, unless the employer can clearly
24 demonstrate that any differences in compensation for substantially
25 similar or comparable work assignments are based on cost
26 differentials in performing the tasks involved, or that the data was
27 directly related to the tasks the worker was hired to perform.

28 (b) An employer, or a vendor engaged by the employer, shall
29 not use an ADS to collect data for a purpose that is not disclosed
30 pursuant to the notice requirements in Chapter 2 (commencing
31 with Section 1522).

32 (c) (1) An employer, or a vendor engaged by the employer,
33 shall not rely primarily on an ADS when making ~~hiring~~, promotion,
34 discipline, or termination decisions.

35 (2) An employer, or a vendor engaged by the employer, shall
36 use a human reviewer to conduct its own investigation and compile
37 corroborating or supporting information for the decision. This
38 information may include, but is not limited to, any of the following:

39 (A) Supervisory or managerial evaluations.

40 (B) Personnel files.

1 (C) Employee work products.

2 (D) Peer reviews.

3 (d) An employer, or a vendor engaged by the employer, shall
4 not use customer ratings as the only or primary input data for an
5 ADS to make employment-related decisions.

6 (e) An employer shall allow a worker to access worker data
7 collected or used by an ADS and correct errors in any input or
8 output data used by or produced by the ADS or used as
9 corroborating evidence by a human reviewer.

10 (f) An employer shall allow a worker to appeal an
11 employment-related decision for which the ADS was used pursuant
12 to Chapter 5 (commencing with Section 1532).

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14 CHAPTER 4. AUTOMATED DECISION SYSTEM POST-USE NOTICE

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16 1528. An employer, or a vendor engaged by the employer, that
17 has used an ADS to make an employment-related ~~decision~~ *decision*,
18 *not including hiring*, shall provide the affected worker with a
19 written notice at the time the employer informs the worker of the
20 decision. The notice shall be all of the following:

21 (a) Written in plain language as a separate, stand-alone
22 communication.

23 (b) In the language in which routine communications and other
24 information are provided to workers.

25 (c) Provided via a simple and easy-to-use method, including an
26 email, hyperlink, or other written format.

27 1530. A notice issued pursuant to Section 1528 shall contain
28 the following information:

29 (a) The human to contact for more information, including
30 corroborating evidence found by a human reviewer, for access to
31 data used to make the decision, or to appeal the decision.

32 (b) That the employer or vendor used an ADS to make one or
33 more employment-related decisions with respect to the worker.

34 (c) That the worker has the right to appeal the decision pursuant
35 to Chapter 5 (commencing with Section 1532).

36 (d) That the worker has the right to correct errors in any input
37 or output data used by or produced by the ADS or used as
38 corroborating evidence by the human reviewer.

1 (e) A form or a link to an electronic form for the worker to file
2 an appeal or request more information on the data used in the
3 decision.

4 (f) That the employer is prohibited from retaliating against the
5 worker for exercising their rights under this part.

6
7 CHAPTER 5. RIGHT TO APPEAL EMPLOYMENT-RELATED
8 DECISIONS
9

10 1532. (a) An employer, or a vendor engaged by the employer,
11 that uses an ADS to make an employment-related ~~decision~~ *decision*,
12 *not including hiring*, shall provide an affected worker with a form
13 or a link to an electronic form to appeal the decision within 30
14 days from the date that the worker is notified pursuant to Chapter
15 4 (commencing with Section 1528). The appeal form provided to
16 an affected worker shall include all of the following:

17 (1) The option to request access to the data used as input to or
18 as output from the ADS.

19 (2) The option to request access to any corroborating or
20 supporting evidence provided by a human reviewer to verify output
21 from the ADS.

22 (3) The worker's reason or justification for an appeal and any
23 evidence to support the appeal.

24 (4) Designation of an authorized representative that can also
25 access the data.

26 (b) An employer, or a vendor engaged by the employer, shall
27 respond to an appeal within 14 business days.

28 (1) In responding to an appeal, the employer or vendor shall
29 designate a human reviewer who is required to objectively evaluate
30 all evidence, has sufficient authority, discretion, and resources to
31 evaluate the decision, and has the authority to overturn the decision.
32 The employer or vendor shall not designate a person who was
33 involved in the decision that the worker is appealing.

34 (2) The response provided to the worker shall be a clear, written
35 document describing the result of the appeal and the reasons for
36 that result.

37 (3) If the human reviewer determines that the
38 employment-related decision should be overturned, the employer
39 or vendor shall rectify the decision within 21 business days.

CHAPTER 6. ENFORCEMENT

1534. An employer shall not discharge, threaten to discharge, demote, suspend, or in any manner discriminate or retaliate against any worker for using or attempting to use their rights under this part, filing a complaint with the Labor Commissioner, alleging a violation of this part, cooperating in an investigation or prosecution of an alleged violation of this part, or any action taken by the worker to invoke or assist in any manner the enforcement of this part, or for exercising or attempting to exercise any right protected under this part.

1536. (a) The Labor Commissioner shall enforce this part, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate a violation or maintain the status quo pending the completion of a full investigation or hearing through the procedures set forth in Section 98.3, 98.7, 98.74, or 1197.1, including issuing a citation against an employer who violates this part and filing a civil action. If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 98.74 or 1197.1, as applicable.

(b) Alternatively to subdivision (a), any worker, or their exclusive representative, who has suffered a violation of this part may bring a civil action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages.

(c) This part may also alternatively be enforced by a public prosecutor pursuant to Chapter 8 (commencing with Section 180) of Division 1.

(d) In any civil action brought pursuant to paragraph (a), (b), or (c) in superior court in any county wherein the violation in question is alleged to have occurred, or wherein the person resides or transacts business, the petitioner may seek appropriate temporary or preliminary injunctive relief, including punitive damages, and reasonable attorney's fees and costs as part of the costs of any such action for damages.

(e) An employer who violates this part shall be subject to a civil penalty of five hundred dollars (\$500) per violation.

1 1538. This part does not preempt any city, county, or city and
2 county ordinance that provides equal or greater protection to
3 workers who are covered by this part.

4 SEC. 2. The provisions of this act are severable. If any
5 provision of this act or its application is held invalid, that invalidity
6 shall not affect other provisions or applications that can be given
7 effect without the invalid provision or application.

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