

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

December 2, 2024

An act ~~relating to technology~~: 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. ~~Artificial intelligence~~. *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, 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 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 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.

~~Existing law establishes within the Government Operations Agency the Department of Technology, which is supervised by the Director of Technology. Existing law authorizes the director and the department to exercise various powers in creating and managing the information technology policy of the state.~~

~~This bill would declare the intent of the Legislature to enact legislation relating to artificial intelligence.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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 added*
- 2 *to Division 2 of the Labor Code, to read:*

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2 *PART 5.6. AUTOMATED DECISION SYSTEMS IN THE*
3 *WORKPLACE*

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5 *CHAPTER 1. DEFINITIONS*
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7 *1520. For purposes of this part, the following shall apply:*

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

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

17 *(c) “Automated decision system” or “ADS” means any*
18 *computational process derived from machine learning, statistical*
19 *modeling, data analytics, or artificial intelligence that issues*
20 *simplified output, including a score, classification, or*
21 *recommendation, that is used to assist or replace human*
22 *discretionary decisionmaking and materially impacts natural*
23 *persons. An automated decision system does not include a spam*
24 *email filter, firewall, antivirus, software, identity and access*
25 *management tools, calculator, database, dataset, or other*
26 *compilation of data.*

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

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

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

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

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

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

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

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

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

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31 *CHAPTER 2. AUTOMATED DECISION SYSTEM PRE-USE NOTICE*

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33 1522. (a) An employer, or a vendor engaged by the employer,
34 shall provide a written notice that an ADS, for the purpose of
35 making employment-related decisions, is in use at the workplace
36 to a worker who will be directly or indirectly affected by the ADS,
37 or their authorized representative, according to the following:

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

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

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

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

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

8 (c) *The written notice required by this section shall be all of the*
9 *following:*

10 (1) *Written in plain language as a separate, stand-alone*
11 *communication.*

12 (2) *In the language in which routine communications and other*
13 *information are provided to workers.*

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

16 1524. *A notice issued pursuant to Section 1522 shall contain*
17 *the following information:*

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

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

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

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

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

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

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

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

CHAPTER 3. EMPLOYER REQUIREMENTS

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3 1526. (a) An employer, or a vendor engaged by the employer,
4 shall not use an ADS that does any of the following:
5 (1) Prevents compliance with or results in a violation of any
6 federal, state, or local labor, occupational health and safety,
7 employment, or civil rights laws or regulations.
8 (2) Obtains or infers a worker's immigration status, veteran
9 status, ancestral, history, religious or political beliefs, health or
10 reproductive status, history, or plan, emotional or psychological
11 state, neural data, sexual or gender orientation, disability, criminal
12 record, credit history, or statuses protected under Section 12940
13 of the Government Code.
14 (3) Conducts predictive behavior analysis.
15 (4) Identifies, profiles, predicts, or takes adverse action against
16 a worker for exercising their legal rights, including, but not limited
17 to, rights guaranteed by state and federal employment and labor
18 law.
19 (5) Uses or relies on individualized worker data as inputs or
20 outputs to inform compensation, unless the employer can clearly
21 demonstrate that any differences in compensation for substantially
22 similar or comparable work assignments are based on cost
23 differentials in performing the tasks involved, or that the data was
24 directly related to the tasks the worker was hired to perform.
25 (b) An employer, or a vendor engaged by the employer, shall
26 not use an ADS to collect data for a purpose that is not disclosed
27 pursuant to the notice requirements in Chapter 2 (commencing
28 with Section 1522).
29 (c) (1) An employer, or a vendor engaged by the employer,
30 shall not rely primarily on an ADS when making hiring, promotion,
31 discipline, or termination decisions.
32 (2) An employer, or a vendor engaged by the employer, shall
33 use a human reviewer to conduct its own investigation and compile
34 corroborating or supporting information for the decision. This
35 information may include, but is not limited to, any of the following:
36 (A) Supervisory or managerial evaluations.
37 (B) Personnel files.
38 (C) Employee work products.
39 (D) Peer reviews.

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

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

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

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12 *CHAPTER 4. AUTOMATED DECISION SYSTEM POST-USE NOTICE*

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14 1528. An employer, or a vendor engaged by the employer, that
15 has used an ADS to make an employment-related decision shall
16 provide the affected worker with a written notice at the time the
17 employer informs the worker of the decision. The notice shall be
18 all of the following:

19 (a) Written in plain language as a separate, stand-alone
20 communication.

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

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

25 1530. A notice issued pursuant to Section 1528 shall contain
26 the following information:

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

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

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

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

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

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

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4 CHAPTER 5. RIGHT TO APPEAL EMPLOYMENT-RELATED
5 DECISIONS
6

7 1532. (a) An employer, or a vendor engaged by the employer,
8 that uses an ADS to make an employment-related decision shall
9 provide an affected worker with a form or a link to an electronic
10 form to appeal the decision within 30 days from the date that the
11 worker is notified pursuant to Chapter 4 (commencing with Section
12 1528). The appeal form provided to an affected worker shall
13 include all of the following:

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

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

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

21 (4) Designation of an authorized representative that can also
22 access the data.

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

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

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

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

CHAPTER 6. ENFORCEMENT

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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.*

8 ~~SECTION 1. It is the intent of the Legislature to enact~~
9 ~~legislation relating to artificial intelligence.~~