SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
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SB 7 (McNerney)
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SUBJECT

Employment: automated decision systems

DIGEST

This bill regulates the use of automated decision systems (ADS) in the employment context.

EXECUTIVE SUMMARY

ADS powered by AI are being increasingly deployed in a multitude of contexts, including employment. Major transparency and fairness concerns have been raised about the use of ADS to make consequential decisions, essentially determinations with significant legal or other material effect on people's lives. This includes choosing or interviewing applicants through ADS to using ADS to determine compensation or termination decisions. This bill seeks to regulate the use of ADS in this context by requiring employers and their vendors to provide pre- and post-use notices that inform workers, including applicants, that they are subject to ADS and of the ADS details. The bill provides a series of prohibited uses, such as where it may interfere with existing labor protections or where it conducts predictive behavior analysis, as defined. Workers have the right to access information used by the ADS, to correct that information, and to appeal any decision made by ADS. The bill can be enforced through civil actions brought by the Labor Commissioner, public prosecutors, and workers or their representatives who are harmed by violations.

This bill is sponsored by the California Federation of Labor Unions AFL-CIO. It is supported by a wide coalition of labor organizations and advocacy groups, including the California Nurses Association and the Coalition for Humane Immigrant Rights. It is opposed by a broad coalition of industry groups, including TechNet and the California Apartment Association. The bill passed out of the Senate Labor, Public Employment and Retirement Committee on a 4 to 1 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the California Consumer Privacy Act (CCPA), which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civ. Code § 1798.100 et seq.)

2) Establishes the Consumer Privacy Rights Act (CPRA), which amends the CCPA and creates the California Privacy Protection Agency (PPA), which is charged with implementing these privacy laws, promulgating regulations, and carrying out enforcement actions. (Civ. Code § 1798.100 et seq.; Proposition 24 (2020).)

3) Requires the PPA to adopt regulations governing access and opt-out rights with respect to businesses' use of automated decisionmaking technology, including profiling and requiring businesses' response to access requests to include meaningful information about the logic involved in those decisionmaking processes, as well as a description of the likely outcome of the process with respect to the consumer. (Civ. Code § 1798.185(a)(15), (d).)

4) Establishes the Fair Employment and Housing Act ("FEHA"). (Gov. Code § 12900 et seq.)

5) Makes it an unlawful employment practice, unless based upon a bona fide occupational qualification, for an employer to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment based upon specified characteristics, including race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status. (Gov. Code § 12940.)

6) Requires the California Department of Technology (CDT) to conduct a comprehensive inventory of all high-risk ADS that have been proposed for use, development, or procurement by, or are being used, developed, or procured by, any state agency. It defines the relevant terms:
    a) "Automated decision system" means a 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. "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.

b) "High-risk automated decision system" means an ADS that is used to assist or replace human discretionary decisions that have a legal or similarly significant effect, including decisions that materially impact access to, or approval for, housing or accommodations, education, employment, credit, health care, and criminal justice. (Gov. Code § 11546.45.5.)

This bill:

1) Requires 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 a worker who will be directly or indirectly affected by the ADS, or their authorized representative, according to the following:
    a) At least 30 days before the introduction of the ADS.
    b) If the employer or vendor is using an existing ADS at the time this title takes effect, no later than February 1, 2026.
    c) To a new worker within 30 days of hiring the worker if an existing ADS is in place.
    d) Within 30 days of any significant updates or changes to the ADS, or a significant change in how the employer is using ADS.

2) Requires the notice to contain the following information:
    a) An updated list of all ADS currently in use, that the employer shall maintain.
    b) A plain language explanation of the nature, purpose, and scope of the decisions for which the ADS will be used, including the specific employment-related decisions potentially affected.
    c) The specific category and sources of worker input data that the ADS will use and how that data will be collected.
    d) The logic used in the ADS, including the key parameters that affect the output of the ADS, and the type of outputs the ADS will produce.
    e) The individuals, vendors, and entities that created the ADS and the individuals, vendors, and entities that will run, manage, or interpret the results of the ADS output.
    f) For each performance metric, quota, or other related measure, a description of how the performance standard is measured, how data is

collected, and any adverse consequences or incentives associated with the performance standard.
   g) A description of the worker's right to access information about the employer's use of ADS to make an employment-related decision.
   h) A description of the worker's rights to appeal a decision for which the ADS was used and to correct data used by the ADS.
   i) That the employer is prohibited from retaliating against workers for exercising their rights.

3) Provides that an employer or vendor cannot use an ADS to collect data for a purpose not disclosed within the above notice.

4) Requires an employer or vendor to also provide a written post-use notice to the affected worker at the time the employer informs the worker of the decision that contains the following information:
   a) The human to contact for more information, including corroborating evidence found by a human reviewer, for access to data used to make the decision, or to appeal the decision.
   b) That the employer or vendor used an ADS to make one or more employment-related decisions with respect to the worker.
   c) That the worker has the right to appeal the decision.
   d) That the worker has the right to correct errors.
   e) A form or a link to an electronic form for the worker to file an appeal or request more information on the data used in the decision.
   f) That the employer is prohibited from retaliating against the worker for exercising their rights

5) Provides that the written notices shall be:
   a) Written in plain language as a separate, stand-alone communication.
   b) In the language in which routine communications and other information are provided to workers.
   c) Provided via a simple and easy-to-use method, including an email, hyperlink, or other written format.

6) Prohibits an employer, or a vendor engaged by the employer, from using an ADS that does any of the following:
   a) Prevents compliance with or results in a violation of any federal, state, or local labor, occupational health and safety, employment, or civil rights laws or regulations.
   b) Obtains or infers a worker's immigration status; veteran status; ancestral, history; religious or political beliefs; health or reproductive status, history, or plan; emotional or psychological state; neural data; sexual or gender orientation; disability; criminal record; credit history; or statuses protected under Section 12940 of the Government Code.

c) Conducts predictive behavior analysis.
d) Identifies, profiles, predicts, or takes adverse action against a worker for exercising their legal rights, including, but not limited to, rights guaranteed by state and federal employment and labor law.
e) Uses or relies on individualized worker data as inputs or outputs to inform compensation, unless the employer can clearly demonstrate that any differences in compensation for substantially similar or comparable work assignments are based on cost differentials in performing the tasks involved, or that the data was directly related to the tasks the worker was hired to perform.

7) Prohibits an employer or vendor from relying primarily on an ADS when making hiring, promotion, discipline, or termination decisions. Rather, they are required to use a human reviewer to conduct its own investigation and compile corroborating or supporting information for the decision. This information may include, but is not limited to, any of the following:
   a) Supervisory or managerial evaluations.
   b) Personnel files.
   c) Employee work products.
   d) Peer reviews.

8) Prohibits the use of ADS to make employment-related decisions when customer ratings are the only or primary input data.

9) Requires an employer to allow a worker to access worker data collected or used by an ADS and to correct errors in any input or output data used by or produced by the ADS or used as corroborating evidence by a human reviewer. Employees have the right to appeal an employment-related decision for which the ADS was used.

10) Requires an employer or vendor to provide an affected worker with a form or a link to an electronic form to appeal the decision within 30 days from the date that the worker is notified that shall include all of the following:
   a) The option to request access to the data used as input to or as output from the ADS.
   b) The option to request access to any corroborating or supporting evidence provided by a human reviewer to verify output from the ADS.
   c) The worker's reason or justification for an appeal and any evidence to support the appeal.
   d) Designation of an authorized representative that can also access the data.

11) Provides that an employer shall respond to an appeal within 14 business days. In responding, the employer shall designate a human reviewer not involved in the relevant decisionmaking who is required to objectively evaluate all evidence, has

sufficient authority, discretion, and resources to evaluate the decision, and has the authority to overturn the decision. The response provided to the worker shall be a clear, written document describing the result of the appeal and the reasons for that result. If the human reviewer determines that the employment-related decision should be overturned, the employer or vendor shall rectify the decision within 21 business days.

12) Provides that 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 hereunder, filing a complaint with the Labor Commissioner, alleging a violation hereof, cooperating in an investigation or prosecution of an alleged violation, or any action taken by the worker to invoke or assist in any manner the enforcement hereof, or for exercising or attempting to exercise any right protected hereunder.

13) Authorizes the Labor Commissioner to 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, as specified, including issuing a citation against an employer in violation 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 are the same as specified under current law.

14) Authorizes, alternatively, any worker, or their exclusive representative, who has suffered a violation, or a public prosecutor, to bring a civil action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages.

15) Provides that in any such civil action, 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.

16) Subjects an employer in violation to a civil penalty of $500 per violation.

17) Specifies that it does not preempt any city, county, or city and county ordinance that provides equal or greater protection to workers who are covered by this part.

18) Includes a severability clause.

19) Defines the relevant terms, including:

a) "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.
b) "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.
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) "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.
f) "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.

COMMENTS

1. Considerations for deployment of ADS

With recent dramatic advances in the capabilities of AI systems, the need for regulatory frameworks for accountability and responsible development and deployment have become ever more urgent. This is especially true with respect to AI-powered ADS that are used to make, or assist in making, decisions that have a legal or other significant effect.

ADS introduce several concerning issues when deployed across various sectors. Bias and discrimination represent perhaps the most significant problem, as AI systems frequently reflect and amplify historical biases present in their training data. This can lead to unfair outcomes based on protected characteristics like race, gender, and

socioeconomic status, particularly in sensitive domains such as lending, housing allocation, and criminal justice.

The lack of transparency in many AI systems compounds these concerns. These technologies often function as "black boxes" where the rationale behind specific decisions remains obscure even to their developers. This opacity makes it exceptionally difficult for affected individuals to understand why they were denied a loan, were passed over for a job opportunity, or received an unfavorable outcome. Such obscurity directly challenges meaningful accountability when harmful outcomes inevitably occur.

Accuracy and reliability issues also persist even in sophisticated AI systems. These technologies can make confident but incorrect predictions, with errors often disproportionately affecting already marginalized groups. Performance demonstrated in controlled testing environments frequently fails to translate to complex real-world scenarios, leading to unexpected and harmful outcomes.

Accountability gaps emerge when determining responsibility for AI-caused harms. The complex relationship between developers, deployers, and users makes liability difficult to establish. Legal frameworks consistently lag behind rapidly advancing technological capabilities, creating environments where harms can occur without clear recourse.

By reducing complex human situations to algorithmic outputs, ADS risk eliminating human judgment, empathy, and contextual understanding from important processes. Many people report feeling powerless when facing decisions made by automated systems, especially when those systems lack transparency or meaningful appeal mechanisms. The incidence of ADS deployment in the employment context is on the rise. According to a U.C. Berkeley Labor Center report:

> Across the country, employers are increasingly using data and algorithms in ways that stand to have profound consequences for wages, working conditions, race and gender equity, and worker power. How employers use these digital technologies is not always obvious or even visible to workers or policymakers. For example, hiring software by the company HireVue generates scores of job applicants based on their tone of voice and word choices captured during video interviews. Algorithms are being used to predict whether workers will quit or become pregnant or try to organize a union, affecting employers' decisions about job assignment and promotion. Call center technologies are analyzing customer calls and nudging workers in real time to adjust their behavior. And grocery platforms like Instacart are monitoring workers and calculating metrics on their speed as they fill shopping lists.[1]

[1] Annette Bernhardt, Lisa Kresge & Reem Suleiman, *Data and Algorithms at Work: The Case for Worker Technology Rights* (November 2021) U.C. Berkeley Labor Center, https://laborcenter.berkeley.edu/wp-

Amazon's deployment of ADS for hiring purposes provides an example of how bias can be built into these systems:

> Amazon.com Inc's machine-learning specialists uncovered a big problem: their new recruiting engine did not like women.
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> The team had been building computer programs since 2014 to review job applicants' resumes with the aim of mechanizing the search for top talent, five people familiar with the effort told Reuters.
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> Automation has been key to Amazon's e-commerce dominance, be it inside warehouses or driving pricing decisions. The company's experimental hiring tool used artificial intelligence to give job candidates scores ranging from one to five stars - much like shoppers rate products on Amazon, some of the people said.
>
> "Everyone wanted this holy grail," one of the people said. "They literally wanted it to be an engine where I'm going to give you 100 resumes, it will spit out the top five, and we'll hire those."
>
> But by 2015, the company realized its new system was not rating candidates for software developer jobs and other technical posts in a gender-neutral way.
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> That is because Amazon's computer models were trained to vet applicants by observing patterns in resumes submitted to the company over a 10-year period. Most came from men, a reflection of male dominance across the tech industry.[2]

Another troubling example comes out of Los Angeles where once ADS triggered a termination process, there was no way to correct it:

> The story of Mr. Diallo's sacking by machine began when his entry pass to the Los Angeles skyscraper where his office was based failed to work, forcing him to rely on the security guard to allow him entry. Then he noticed that he was logged out of his work system and a colleague told Mr. Diallo that the word "Inactive" was listed alongside his name.

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content/uploads/2021/11/Data-and-Algorithms-at-Work.pdf. All internet citations are current as of April 19, 2025.

[2] Jeffrey Dastin, *Insight - Amazon scraps secret AI recruiting tool that showed bias against women* (October 10, 2018) Reuters, https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G/.

His day got worse. After lunch - and a 10-minute wait for a co-worker to let him back into his office - he was told by his recruiter that she had received an email saying his contract was terminated. She promised to sort out the problem.

The next day he had been locked out of every single system "except my Linux machine" and then, after lunch, two people appeared at his desk. Mr. Diallo was told that an email had been received telling them to escort him from the building.

His boss was confused but helpless as Mr. Diallo recalls: "I was fired. There was nothing my manager could do about it. There was nothing the director could do about it. They stood powerless as I packed my stuff and left the building."

At the time, he was eight months into a three-year contract and over the next three weeks he was copied into emails about his case. "I watched it be escalated to bigger and more powerful titles over and over, yet no-one could do anything about it. From time-to-time, they would attach a system email. "It was soulless and written in red as it gave orders that dictated my fate. Disable this, disable that, revoke access here, revoke access there, escort out of premises, etc. "The system was out for blood and I was its very first victim."

It took Mr. Diallo's bosses three weeks to find out why he had been sacked. His firm was going through changes, both in terms of the systems it used and the people it employed. His original manager had been recently laid off and sent to work from home for the rest of his time at the firm and in that period he had not renewed Mr. Diallo's contract in the new system.

After that, machines took over - flagging him as an ex-employee. "All the necessary orders are sent automatically and each order completion triggers another order. Although Mr. Diallo was allowed back to work, he had missed out on three weeks' worth of pay and been escorted from the building "like a thief".

His story should serve as a cautionary tale about the human-machine relationship, thinks AI expert Dave Coplin. "It's another example of a failure of human thinking where they allow it to be humans versus machines rather than humans plus machines," he said. "One of the

> fundamental skills for all humans in an AI world is accountability - just because the algorithm says it's the answer, it doesn't mean it actually is."[3]

In response to growing concerns about the increased deployment of ever-advanced ADS, the Biden Administration published a *Blueprint for an AI Bill of Rights*, which is a set of principles and associated practices to help guide the design, use, and deployment of AI to protect the rights of the American public. Of note, the Blueprint specifically called for notice and explanation rights:

> *Notice and Explanation*: You should know that an automated system is being used and understand how and why it contributes to outcomes that impact you. Designers, developers, and deployers of automated systems should provide generally accessible plain language documentation including clear descriptions of the overall system functioning and the role automation plays, notice that such systems are in use, the individual or organization responsible for the system, and explanations of outcomes that are clear, timely, and accessible. Such notice should be kept up-to-date and people impacted by the system should be notified of significant use case or key functionality changes. You should know how and why an outcome impacting you was determined by an automated system, including when the automated system is not the sole input determining the outcome.[4]

This bill looks to address the incidence of ADS deployment in the hiring and general employment context by providing more transparency, subject control, and accountability.

2. Creating a regulatory framework for ADS in the workplace

This bill provides a comprehensive set of rules and prohibitions for the use of ADS in the workplace. This includes disclosures to workers along with other rights with respect to ADS deployment. There are also a set of prohibitions on using ADS that rely on certain criteria or carrying out specified decisionmaking activities.

According to the author:

> Businesses are increasingly using AI to boost efficiency and productivity in the workplace. But there are currently no safeguards to prevent machines from unjustly or illegally impacting workers' livelihoods and working conditions. SB 7 does not prohibit ADS in the workplace, rather it will establish guardrails to ensure that California businesses are not

[3] Jane Wakefield, *The man who was fired by a machine* (June 21, 2018) BBC, https://www.bbc.com/news/technology-44561838 (omissions not noted).
[4] *Blueprint For An AI Bill Of Rights* (October 2022) Office of Science and Technology Policy, https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf.

> operated by robo bosses, because there will be a human in the loop. AI must remain a tool controlled by humans, not the other way around.

a. Written notice and explanation of ADS use

First, this bill requires a written notice from employers and their vendors that ADS is in use in the workplace for the purpose of making employment-related decisions, as specified. "Employment-related decisions" 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.

The notice needs to be provided to every worker who is affected by the ADS and made at least 30 days before introduction, within 30 days of hire for new employees, and within 30 days of any significant updates, informing the worker of their rights.

The notice needs to explain the critical elements of the ADS, including the nature, purpose, and scope of the decisions the ADS will assist in making. There must also be details on the inputs and outputs and the logic used in the ADS. An employer or vendor cannot use an ADS to collect data for a purpose not disclosed in the notice.

The bill also requires an employer or vendor to provide a written *post-use* notice to the affected worker at the time the employer informs the worker of the decision. This includes not only notice that ADS was used but notice of the employee's rights with respect to the ADS deployment and necessary information to exercise those rights, such as a contact person and a form or link to use.

Concerns have been raised about the feasibility of these notice requirements. In their opposition letter, the American Staffing Association explains the systematic utilization of ADS to create efficiencies in finding qualified candidates and then argues these notices are impossible:

> Impossibility of Pre-Use Notice: Providing temporary job candidates with "pre-use notice" of ADS use is practically impossible. In each of the three search methods described above, staffing agencies *already have used ADS* to conduct the initial search, whether the resumes come from a job board, their own website or candidate pool, or from an internet search. In each case, it is not possible to provide advance notice because the ADS has *already been used*. Before using ADS in the initial stages of any search, agencies would have to provide notice *to the entire universe of potential applicants or candidate pool*—a literal impossibility.

> The practical solution is to amend SB 7 to allow staffing agencies to comply with any notice requirement via a "pop-up" notice in the employment section of their websites which all job candidates would see when they access the site. New York City adopted such an approach in regulations issued last year allowing employers to post website notices to candidates for employment. Alternatively, staffing agencies could include language in their online job applications advising applicants that ADS will be used in making employment decisions.
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> If an agency uses a job board, the notice requirement should be satisfied by a job board notice informing candidates who post their job qualifications on the board that their applications or resumes will be selected using job board ADS based on criteria provided by prospective employers.
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> Inability to Comply with Post-Use Notice: There also is no feasible way for any but the smallest employers to comply with the post-decision requirements. As currently written, the bill would require every individual in a staffing agency's candidate pool, or who posted their information on a job board, or somewhere on the internet, to receive a detailed, personalized, notice every time an ADS was used to make a selection that did not include them, including the right to appeal the decision based on the candidate's perception that the decision was based on incorrect data. This would require sending thousands of notices to applicants, and potential appeals every day. Because ADS uses key word searches to filter candidates by job industry sectors – for instance, "light industrial" candidates from "information technology" candidates – such notices would be required even for applicants that are patently ineligible for a particular assignment. No law has ever required employers to provide personalized notices and explanations to the vast majority of applicants who are not selected for a position.

A coalition led by the Chamber of Commerce also raises "significant concerns" with this section and asserts that "hiring therefore deserves distinct consideration."

In response to these and other concerns, the author has agreed to amendments that remove hiring from much of the bill. This includes removing job applicants from the definition of "worker." This change addresses the issues with providing post-use notices and appeal rights to candidates. The amendments still require pre-use notifications, but provide an alternative compliance measure that requires an employer or vendor to notify a job applicant upon receiving an application that the employer utilizes ADS in hiring decisions, but allows for this to be accomplished by using an automatic reply mechanism. This avoids curtailing any beneficial efficiencies without sacrificing the baseline protection of ensuring applicants are made aware ADS is in use.

b. Prohibitions

The bill also prohibits use of ADS in the workplace that undertakes certain actions. This includes preventing compliance with existing labor and civil rights laws or regulations. The ADS cannot profile, predict, or take adverse action against a worker for exercising their legal rights. The bill also prohibits ADS from obtaining or inferring information about a worker's protected classifications, such as immigration status, health, sexual orientation, criminal record, or credit history.

ADS cannot be used if it conducts "predictive behavior analysis," which is defined as any system or tool that predicts or infers a worker's behavior, beliefs, intentions, personality, emotional state, or other characteristics or behavior. This is a broad definition that likely encompasses many ADS currently in use as it captures any predictions or inferences of any of a worker's characteristics. However, serious concerns have been raised in connection with utilizing such tools, especially in the employment context. A report examined these tools and their potential to perpetuate discriminatory practices and concluded:

> Legal scholars have aptly noted that "although algorithms offer the potential for avoiding or minimizing bias, the real question is how the biases they may introduce compare with the human biases they avoid." Our research did not convince us that sufficient safeguards yet exist to ensure this balance will tip in favor of equity.
>
> Because of the inherent weaknesses in nearly all workforce data, predictive hiring tools are prone to be biased by default. Legal and regulatory protections from technology-enabled discriminatory recruitment practices remain largely untested, and in the worst case, they are unsuited to contend with the sort of predictive tools described in this report. Stakeholders are flying blind when it comes to assessing fairness and equity. Jobseekers have little visibility into the tools that are being used to assess them. Employers can have little insight into how their vendors' proprietary tools actually work. Regulators lack the legal authority, resources, and expertise needed to oversee the growing landscape of predictive hiring technologies. Moreover, modern predictive tools do not fit neatly into established understandings of employment law concepts.
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> But the picture is not entirely grim: Vendors have rolled out some promising features that reflect at least some awareness of the deep and systemic inequalities that continue to distort hiring dynamics. Measures

> like these could ultimately help pull hiring technologies in a more constructive direction, but much more work is needed.[5]

ADS are also prohibited if they use or rely on individualized worker data as inputs or outputs to inform compensation, unless the employer can clearly demonstrate that any differences in compensation for substantially similar or comparable work assignments are based on cost differentials in performing the tasks involved, or that the data was directly related to the tasks the worker was hired to perform. They also cannot rely solely or primarily on customer ratings to make employment-related decisions.

Employers cannot rely primarily on an ADS when making hiring, promotion, discipline, or termination decisions, rather, they must use human reviewers to conduct their own investigation and compile corroborating or supporting information for the decision, including from evaluations and the employee's work product.
A coalition in opposition, led by the California Chamber of Commerce, argue these provisions will stifle the efficiencies provided by ADS and could undermine many beneficial use cases:

> Section 1526(a) provides that ADS cannot be used to obtain or infer a variety of information about employees, such as religious or political beliefs, veteran status, health status, and more. Practically speaking, this is not possible. For example, job applicants will have volunteer work, military service, or prior jobs on their resume that will include information about these topics. The political beliefs of a job applicant for the California Democratic Party with a work history for a Democratic Senator or College Democrats club will be apparent from their resume alone and the fact that they are applying for a job with a specific political party. And that makes sense because the applicant's political beliefs would be highly relevant to determining whether that applicant is well-suited for that position. The Fair Employment and Housing Act (FEHA) very clearly outlines which classes of people are protected from discrimination. If the use of ADS results in unlawful discrimination, employees already have the right to bring a claim under FEHA.

In response to concerns about this provision, the author has agreed to an amendment that removes the prohibition on ADS *obtaining* such information.

c. Employee rights: access, correction, and appeal

The bill also grants specific rights to employees in connection with ADS deployment in the workplace, including access rights and the right to correct and appeal decisions.

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[5] Miranda Bogen & Aaron Rieke, *Help Wanted: An Examination of Hiring Algorithms, Equity, and Bias* (December 2018) Upturn, https://www.upturn.org/work/help-wanted/.

Employers must provide workers access to the data collected and used by an ADS. In addition, workers must be given an opportunity to correct any incorrect information in the inputs, outputs, or corroborating materials used by the human reviewer. The worker is to be given information on a human to contact to exercise these rights. When an employment-related decision is made, the worker is granted the right to appeal and must be given a form or link to accomplish this, which must be provided in the above notices. The appeal form provided to an affected worker shall include all of the following:

- The option to request access to the data used as input to or as output from the ADS.
- The option to request access to any corroborating or supporting evidence provided by a human reviewer to verify output from the ADS.
- The worker's reason or justification for an appeal and any evidence to support the appeal.
- Designation of an authorized representative that can also access the data.

The worker shall be given 30 days to appeal and a decision must be made within 14 business days. In responding to an appeal, the employer or vendor shall designate a human reviewer not involved in the relevant decisionmaking who is required to objectively evaluate all evidence, has sufficient authority, discretion, and resources to evaluate the decision, and has the authority to overturn the decision.

The response provided to the worker shall be a clear, written document describing the result of the appeal and the reasons for that result. If the human reviewer determines that the employment-related decision should be overturned, the employer or vendor shall rectify the decision within 21 business days.

The coalition in opposition asserts that the appeals process is overly broad and unworkable:

> Allowing a right to appeal in the hiring context obviates the usefulness of ADS. For example, say a medium-sized company receives 100 resumes for one position. It is likely that company has only one, maybe two human resources professionals. That person would be required to issue individualized notices to all 100 applicants. After the position is filled, they would be required to issue 99 more individualized notices. Those notices would include a 30-day right to appeal a decision about a job that is now being performed by another person. If anyone does appeal, the one HR professional must then respond in fourteen days and find someone who was not involved in the hiring process to evaluate the resume independently. That reviewer may not have looked at anyone else in the candidate pool. Not only does this add an extremely onerous process to hiring, but it is unclear exactly how the appeals process would play out because someone has been hired for the position. To overturn that

> decision would necessarily require revoking an offer or terminating a recently hired employee.

As discussed above, the author has agreed to an amendment that removes hiring from the requirement to provide an appeal.

d. Enforcement

The bill explicitly provides that an employer shall not take specified adverse action against a worker for exercising the rights provided hereunder.

The Labor Commissioner is tasked with enforcing the provisions of the bill and is granted investigatory authority, as provided. The Commissioner is authorized to order appropriate temporary relief to mitigate a violation or maintain the status quo pending the completion of a full investigation or hearing, including issuing a citation against an employer and filing a civil action.

Alternatively, public prosecutors and any worker, or their exclusive representative, who has suffered a violation of this part may bring a civil action for damages caused by that adverse action, including punitive damages. The person or entity bringing the action may seek appropriate temporary or preliminary injunctive relief, including punitive damages, and reasonable attorney's fees and costs. Employers are subject to a civil penalty of $500 for each violation.

3. Stakeholder support

The California Federation of Labor Unions, the sponsor of the bill, makes the case:

> Employer use of ADS in the workplace is widespread. One report from a national survey in 2024 found that 40 percent of workers experience some form of automated task management. However, Black and Latino workers report higher rates of automated management technologies in their workplace, with 63 percent of Black and 52 percent of Latino workers versus only 35 percent of White workers subject to automated management.
>
> The pursuit of efficiency by a machine can do serious harm to workers. Eliminating routine tasks and increasing work speeds can lead to fatigue, burn-out, excessive injuries, and other harm, as seen in Amazon warehouses. Amazon uses surveillance and algorithmic management to push workers to work harder, faster, and longer–often automatically firing them if they violate set rules.

> In addition to swiftly firing a worker, ADS can also include bias and potentially discriminate based on the pre-set rules that are deemed proprietary to conduct predictive behavior analysis to prevent "undesirable worker outcomes." For example, Teramind offers employers with advisory service algorithms to detect potential employee fraud by analyzing information such as a worker's debt history or their spending habits in order to flag a worker as being susceptible to committing fraud and stealing from the company.
>
> In order to protect workers from automated discrimination, SB 7 (McNerney), the No Robot Bosses Act, will ensure human oversight of automated decision-making systems when making decisions affecting a worker's livelihood. SB 7 puts in place pre- and post-use notification to workers of the use of ADS to increase transparency. When an ADS is used to make an employment related decision, the bill establishes a process for workers to appeal the decision and to correct any erroneous data used as input. The bill also prohibits employers from uses of ADS that are potentially discriminatory, invasive, or unproven.

TechEquity Action writes in support:

> SB 7 requires human oversight of decisions made by an ADS to prevent the emergence of Robo-bosses. It requires employers to provide independent, corroborating evidence when employers use an ADS for hiring, firing, promotions or discipline decisions–those decisions that most impact a worker's life and livelihood. Technology can be a powerful tool to support and assist workers and managers when proper guardrails are in place. This bill balances innovation with human oversight to identify potential bias, errors and to prevent management that requires workers to perform like machines.

SUPPORT

California Federation of Labor Unions AFL-CIO (sponsor)
AFSCME California
California Alliance for Retired Americans (CARA)
California Coalition for Worker Power
California Employment Lawyers Association
California Federation of Labor Unions, AFL-CIO
California Federation of Teachers, AFL-CIO
California Immigrant Policy Center
California Nurses Association
California School Employees Association
California State Legislative Board of the Smart - Transportation Division

California Teamsters Public Affairs Council
CFT — A Union of Educators & Classified Professionals, AFT, AFL-CIO
Center for Inclusive Change
Coalition for Humane Immigrant Rights (CHIRLA)
Communications Workers of America, District 9
Community Agency for Resources, Advocacy and Services
Consumer Attorneys of California
Consumer Federation of California
International Lawyers Assisting Workers (ILAW) Network
LAANE
Los Angeles County Democratic Party
National Employment Law Project
National Union of Healthcare Workers (NUHW)
Northern California District Council of the International Longshore and Warehouse Union (ILWU)
Pillars of the Community
Powerswitch Action
Rise Economy
San Diego Black Workers Center
SEIU California State Council
Surveillance Resistance Lab
TechEquity Action
The Workers Lab
UNITE Here, Local 11
United Food and Commercial Workers, Western States Council
Workers' Algorithm Observatory
Working Partnerships USA
Worksafe

OPPOSITION

American Staffing Association
Acclamation Insurance Management Services
Allied Managed Care
American Staffing Association
Associated General Contractors
Associated General Contractors San Diego
Brea Chamber of Commerce
California Apartment Association
California Association of Winegrape Growers
California Chamber of Commerce
California Credit Union League
California Grocers Association
California Hospital Association

California League of Food Producers
California Manufacturers and Technology Association
California Retailers Association
Carlsbad Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Corona Chamber of Commerce
Flasher Barricade Association
Gilroy Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Insights Association
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Mission Viejo Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Public Risk Innovation, Solutions, and Management (PRISM)
Rancho Cucamonga Chamber of Commerce
Rancho Mirage Chamber of Commerce
Roseville Area Chamber of Commerce
San Diego Regional Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Security Industry Association
Southwest California Legislative Council
Technet
Torrance Area Chamber of Commerce
Valley Industry and Commerce Association

RELATED LEGISLATION

Pending Legislation:

SB 420 (Padilla, 2025) regulates the use of "high-risk automated decision systems (ADS)." This includes requirements on developers and deployers to perform impact assessments on their systems. The bill establishes the right of individuals to know when an ADS has been used, details about the systems, and an opportunity to appeal ADS decisions, where technically feasible. SB 420 is currently in the Senate Appropriations Committee.

SB 468 (Becker, 2025) imposes a duty on a business that deploys a high-risk artificial intelligence system, or high-risk ADS, that processes personal information to protect that information and requires such a deployer to maintain a comprehensive information security program that meets specified requirements. SB 468 is currently in the Senate Appropriations Committee.

AB 1018 (Bauer-Kahan, 2025) requires a developer of a covered ADS to take certain actions, including conduct performance evaluations of the ADS, submit to third-party audits, and provide deployers to whom the developer transfers the covered ADS with certain information, including the results of those performance evaluations. It requires a deployer of a covered ADS to take certain actions, including provide certain disclosures to a subject of a consequential decision made or facilitated by the covered ADS, provide the subject an opportunity to opt out of the use of the covered ADS, provide the subject with an opportunity to correct erroneous personal information used by the ADS, and to appeal the outcome of the consequential decision, and submit the covered ADS to third-party audits, as prescribed. AB 1018 is currently in the Assembly Privacy and Consumer Protection Committee.

Prior Legislation:

SB 892 (Padilla, 2024) would have required CDT to develop and adopt regulations to create an ADS procurement standard, as specified, and prohibited a state agency from procuring ADS, entering into a contract for ADS, or any service that utilizes ADS, until CDT has adopted regulations creating an ADS procurement standard, as specified. SB 892 was vetoed by Governor Newsom, who stated in his veto message that aspects of the bill would disrupt ongoing work, "including existing information technology modernization efforts, which would lead to implementation delays and higher expenses for critical projects."

AB 2885 (Bauer-Kahan & Umberg, Ch. 843, Stats. 2024) established a uniform definition for "artificial intelligence" in California's code, which is used in this bill.

AB 2930 (Bauer-Kahan, 2024) would have regulated the use of ADS in order to prevent "algorithmic discrimination." This includes requirements on developers and deployers that make and use these tools to make "consequential decisions" to perform impact assessments on ADSs. It would have established the right of individuals to know when an ADS is being used, the right to opt out of its use, and an explanation of how it is used. AB 2930 died without a vote on the Senate Floor.

AB 302 (Ward, Ch. 800, Stats. 2023) required CDT, on or before September 1, 2024, to conduct a comprehensive inventory of all high-risk ADS that have been proposed for use, development, or procurement by, or are being used, developed, or procured by, any state agency.

AB 331 (Bauer-Kahan, 2023) was substantially similar to AB 2930. AB 331 died in the Assembly Appropriations Committee.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)

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