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Civil Rights Council Releases Proposed Regulations to Protect Against Employment Discrimination in Automated Decision-Making Systems

Encourages interested parties to submit public comments by the July 18, 2024 deadline

SACRAMENTO – The California Civil Rights Council today announced the release of proposed regulations to protect against discrimination in employment resulting from the use of artificial intelligence, algorithms, and other automated decision-making systems. In compliance with the Administrative Procedure Act, the Civil Rights Council has initiated the public comment period for the proposed regulations and encourages interested parties to submit public comments by the July 18, 2024 deadline.

“Employers are increasingly using artificial intelligence and other technologies to make employment decisions — from recruitment and hiring to promotion and retention,” **said Civil Rights Councilmember Hellen Hong**. “While these tools can bring a range of benefits, they can also contribute to and further perpetuate bias and discrimination based on protected characteristics. The proposed regulations clarify how existing rules protecting against employment discrimination apply to these emerging technologies, and I encourage anyone who is interested to participate in the regulatory process by submitting public comment.”

“We’re proud of California’s innovative spirit,” **said Civil Rights Department Director Kevin Kish**. “Through advances in technology and artificial intelligence, we’re taking steps to tackle climate change, develop cutting edge treatments in healthcare, and build the economy of tomorrow. At the same time, we also have a responsibility to ensure our laws keep pace and that we retain hard-won civil rights. The proposed regulations announced today represent our ongoing commitment to fairness and equity in the workplace. I applaud the Civil Rights Council for their work.”

Under California law, the California Civil Rights Department (CRD) is charged with enforcing many of the state’s robust civil rights laws, including in the areas of employment, housing, businesses and public accommodations, and state-funded programs and activities. As part of those efforts, the [Civil Rights Council](#) — a branch of CRD — develops and issues regulations to implement state civil rights laws. With respect to automated-decision systems, the Civil Rights Council’s initial proposed regulations are the result of a series of public discussions, including [an April 2021 hearing](#), and careful consideration of input from experts and the public, as well as federal reports and guidance.

Automated decision-making systems — which may rely on algorithms or artificial intelligence — are increasingly used in employment settings to facilitate a wide range of decisions related to job applicants or employees, including with respect to recruitment, hiring, and promotion. While these tools can bring myriad benefits, they can also exacerbate existing biases and contribute to discriminatory outcomes. Whether it is a hiring tool that rejects women applicants by mimicking the existing features of a company’s male-dominated workforce or a job advertisement delivery system that reinforces gender and racial stereotypes by directing cashier ads to women and taxi jobs to Black workers, many of the challenges have been well documented.

Among other changes, the Civil Rights Council’s proposed regulations seek to:

- Clarify that it is a violation of California law to use an automated decision-making system if it harms applicants or employees based on protected characteristics.
- Ensure employers and covered entities maintain employment records, including automated decision-making data, for a minimum of four years.
- Affirm that the use of an automated decision-making system alone does not replace the requirement for an individualized assessment when considering an applicant’s criminal history.
- Clarify that third parties are prohibited from aiding and abetting employment discrimination, including through the design, sale, or use of an automated decision-making system.
- Provide clear examples of tests or challenges used in automated decision-making system assessments that may constitute unlawful medical or psychological inquiries.
- Add definitions for key terms used in the proposed regulations, such as “automated-decision system,” “adverse impact,” and “proxy.”

The Civil Rights Council and CRD encourage all interested parties and members of the public to participate in the regulatory process. Written comments must be submitted by 5:00 PM PT on July 18, 2024. Comments may be submitted by email at council@calcivilrights.ca.gov. A public hearing on the proposed regulations will be held at 10:00 AM PT on July 18, 2024. Additional information on how to submit public comment and participate in the hearing is available [here](#).

The notice of proposed rulemaking, initial statement of reasons for the proposed regulations, and proposed text of the regulations are available [here](#).

For email updates on the proposed rulemaking and other Civil Rights Council activities, you can subscribe online at <https://calcivilrights.ca.gov/subscriptions/>.

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The California Civil Rights Department (CRD) is the state agency charged with enforcing California’s civil rights laws. CRD’s mission is to protect the people of California from unlawful discrimination in employment, housing, public accommodations, and state-funded programs and activities, and from hate violence and human trafficking. For more information, visit calcivilrights.ca.gov.

