

If Approved, Employers May See AI Employment Discrimination Regulations in California Go into Effect this Summer

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California workplaces may finally see new regulations addressing the use of artificial intelligence (AI) – specifically automated-decision systems (ADS) –in the employment context go into effect this summer.

After years of proposed legislation fizzling out and proposed regulations undergoing several revisions, one agency – the California Civil Rights Council (CRC) – voted on March 21, 2025, to approve the final and modified text of the "Employment Regulations Regarding Automated-Decision Systems" (ADS Regulations). If approved by the California Office of Administrative Law and published by the California Secretary of State, the ADS Regulations could become effective as early as July 1, 2025.

The CRC's approval of the ADS Regulations comes after Assembly Bill (AB) 2930, as previously discussed, died in the California Senate in 2024, following AB 331 failing to

pass the previous year. AB 2930, entitled “Automated Decision Tools,” tried to prohibit the use of any ADS tools – systems or services that use AI to make consequential decisions, such as those impacting employment – that resulted in discrimination. The CRC, which issues regulations implementing California’s civil rights laws, takes a different approach in accomplishing what California legislators set out to do: the CRC’s ADS Regulations update California’s existing anti-discrimination laws to include prohibitions against discrimination caused by ADS use in recruitment, screening, hiring, promotion, pay, leave, and other employment decisions.

Key Provisions of the New Regulations

Should the ADS Regulations be effective on July 1, employers will need to note that California’s anti-discrimination regulations will include the following key provisions:

- **The definition of “Automated-Decision Systems”:** ADS tools are defined as:

A computational process that makes a decision or facilitates human decision making regarding an employment benefit, as defined in section 11008(i) of these regulations. An Automated-Decision System may be derived from and/or use artificial intelligence, machine-learning, algorithms, statistics, and/or other data processing techniques.

The ADS Regulations provide examples of common HR tasks that ADS performs, such as (a) using computer-based assessments or tests to make predictive assessments about an applicant or employee; (b) using computer-based assessments or tests to measure an applicant’s or employee’s skills or personality traits; (c) directing job advertisements to targeted groups; (d) screening resumes; (e) analyzing facial expressions, word choice, or voice; and (f) analyzing employee or applicant data acquired from third parties.

- **An explicit ban on discrimination resulting from ADS use:** The ADS Regulations specifically state that it “unlawful for an employer or other covered entity to use an [ADS] or selection criteria a (including a qualification standard, employment test, or proxy) that discriminates against an applicant or employee or a class of applicants or employees on a basis protected by the [California Fair Employment and Housing] Act [FEHA], subject to any available defense.”
- **An emphasis on the importance of anti-bias testing:** The ADS Regulations provide that the evidence, or lack of evidence, of anti-bias testing or similar proactive efforts to avoid unlawful discrimination will be relevant to any such ADS-related discrimination claim or available defense.
- **An expansion of FEHA liability to include “Agents”:** The ADS Regulations define “agent” to include “any person acting on behalf of an employer, directly or indirectly, to exercise a function traditionally exercised by the employer or any other FEHA-regulated activity, which may include applicant recruitment, applicant screening, hiring, promotion, or decisions regarding pay, benefits, or leave, including when such activities and decisions are conducted in whole or in part through” ADS use. The ADS Regulations make clear that for the purposes of FEHA, “agents” are also an “employer.”
- **Enhanced recordkeeping requirements:** The ADS Regulations require employers and covered entities to preserve personnel and other employment records for four years, rather than two years. This mandate to preserve records extends to ADS data,

which the ADS Regulations define as any data used in or resulting from ADS use and/or any data used to develop or customize an ADS for use by a particular employer or other covered entity.

Looking Ahead

If the ADS Regulations are approved by the Office of Administrative Law and become effective on July 1, then employers should continue to take proactive efforts to ensure their use of AI, including ADS, complies with anti-discrimination laws. With the definition of “employer” expanded to include “agents,” employers using ADS will need to closely review vendor agreements. And, as previously discussed, employers should continue building processes and designating personnel to perform impact assessments, perform bias audits, and report any adverse findings from the assessments and audits to relevant internal stakeholders.

Dorsey continues to monitor new developments in the AI employment and workplace privacy space. Contact Melonie Jordan or your preferred Dorsey attorney for guidance in this fast-evolving area.