

## Private-Sector Employers in New York State Required to Provide Notice on Monitoring of Employees

**May 10, 2022**

Effective May 7, 2022, private-sector employers in New York State that monitor or otherwise intercept their employees' electronic and internet usage and communications must provide notice about that monitoring to their employees. This new statute applies to all private employers in New York State regardless of employer size and type.

The law requires employers to provide prior written notice of their electronic monitoring practices to all employees upon hiring. New employees must provide written or electronic acknowledgement of receipt of that notice. The law does not mandate individual notice to existing employees, but it does require employers to post a notice of electronic monitoring in a "conspicuous place" where it can be viewed by all employees who are subject to such monitoring.

The law requires an employer's electronic monitoring notice to include language as to the medium to be monitored (such as telephone or text conversations, e-mail, or internet access) and the nature of the monitoring ("may be subject to monitoring at any and all times and by any lawful means").

There are three categories of electronic monitoring processes to which the law does not apply: (1) processes designed to manage or review the type or volume of e-mail, telephone, or internet usage; (2) processes not targeted to monitor or intercept the email, voicemail or internet usage of a particular person; and (3) processes performed only for computer system maintenance or protection. There is some gray area here in light of the fact that some monitoring tools might be used for multiple purposes.

The NY Attorney General may impose civil penalties upon employers that are not in compliance with the law. Civil penalties for violators include a \$500 maximum fine for the first offense, \$1,000 for the second violation, and \$3,000 per violation for any subsequent offenses. The law does not provide a private right of action.

By enacting this legislation, New York joins states like [Delaware](#) and [Connecticut](#), which have similar electronic monitoring laws. Employee monitoring is common practice, as is employer disclosure of such practices through internal privacy memos or employee handbooks. However, the new law requires private employers in New York to take additional steps to notify employees about electronic monitoring. Employers in New York should review their current monitoring and notice practices and work with their HR department and counsel to make necessary updates to comply with this statute.

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