

New York Employers Must Notify Employees of Electronic Monitoring

April 27, 2022

On November 8th, 2021, New York Governor Kathy Hochul signed into law an amendment to the New York Civil Rights Law that requires employers with offices in New York to notify employees of any electronic monitoring. Effective May 7th, 2022, any employer with a place of business in New York State which monitors employees' phone calls, emails, and/or internet usage must provide notice of such monitoring -- in written or electronic form -- to all new employees, who must acknowledge their understanding of the policy in writing or electronically. Although existing employees do not need to provide written acknowledgement of the notification, employers must post notice of the electronic monitoring in a conspicuous place in the workplace.

The law does *not* apply to software or processes (1) that is designed to manage the type or volume of incoming or outgoing electronic mail or telephone voice mail or internet usage; (2) that are not targeted to monitor or intercept the electronic communication of a particular individual; and (3) are performed solely for computer system maintenance and/or protection.

The new law follows a nationwide trend towards increasing employer transparency regarding employee privacy. Although there is no private right of action, the electronic monitoring law will be enforced by the New York State Attorney General and violations will result in a maximum civil penalty of \$500 for the first offense, \$1,000 for the second offense, and \$3,000 for the third and each subsequent offense.

The law does not address whether employers are required to provide notice of the new law to individuals working remotely out of state. However, in an abundance of caution, affected employers should provide notice to all new employees, regardless of their physical place of work. To ensure compliance with the new law's requirements, employers should update their employee handbooks, prepare written notice for all onboarding employees, maintain documentation of employee acknowledgement and prepare notice of electronic monitoring to be posted conspicuously in the workplace.