

CYBERSECURITY AND DATA PRIVACY INFORMATION MEMO

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Mark Your Calendars: One Month Until New York's Law Requiring Notice of Electronic Monitoring of Employees Goes into Effect

New York entities have one month to prepare required notices to employees for certain types of electronic monitoring. On Nov. 8, 2021, Gov. Hochul signed into law an amendment to the New York Civil Rights Law, that requires any private individual or entity with a place of business in the state to provide notice to employees for certain types of electronic monitoring. The law goes into effect on May 7, 2022, pushing employers to determine the scope of their electronic monitoring activities and begin updating their policies and issuing notices to ensure compliance with the new law's requirements prior to its effective date.

The law applies broadly to telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage "of or by an employee by any electronic device or system, including but not limited to the use of a computer, telephone, wire, radio, or electromagnetic, photoelectronic or photo-optical systems." Employers that "monitor or otherwise intercept" their employees' telephone calls, email or internet access or usage as defined under the law must provide written notice to all employees upon hiring and post a notice of electronic monitoring in a "conspicuous place which is readily available for viewing" by affected employees. The law requires that the written notice advise employees "that any and all telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage by an employee by any electronic device or system, including but not limited to the use of a computer, telephone, wire, radio or electromagnetic, photoelectronic or photo-optical systems may be subject to monitoring at any and all times and by any lawful means." The law further requires that new employees acknowledge receipt of this notice either in writing or electronically.

The law does not, however, apply to processes where the monitoring activity (1) is designed to manage the type or volume of email, telephone or internet usage; (2) is not targeted to monitor a particular employee; and (3) is performed solely for the purpose of computer system maintenance and/or protection. The law does not provide for a private right of action but will be enforced by the New York State attorney general. Failure to comply with the new law could result in financial penalties of \$500 for the first offense, \$1,000 for the second offense and \$3,000 for the third and each subsequent offense. You can read our [previous blog post outlining the new law here](#).

Due to the law's broad definition, most employers in New York are likely impacted by the new restrictions and requirements. It is important to note that notice requirements under the law applies to Acceptable Use policies and Bring-Your-Own-Device (BYOD) programs and is not strictly limited to employees who are provided with employer-issued devices. Employers must provide notice to employees regardless of whether they participate in their employer's BYOD program or use a personal device to transmit email through a corporate email server or access the internet through the employer's internet connection.

As the law's effective date quickly approaches, employers must first determine whether their employee monitoring activities trigger the obligations under the law and identify newly hired employees that will be subject to electronic monitoring. Employers should draft notice language that conforms with the requirements contained in the law, promotes transparency and addresses employee relations concerns. They should also consider issuing and posting notices before the effective date of the law. Employers should develop a process for ensuring all designated employees receive and acknowledge the notice of electronic monitoring during the onboarding process. Employers may even want to consider going beyond the minimum requirements of the law by including a reference to electronic monitoring in its employee handbooks and other relevant policies to notify employees that electronic monitoring is occurring and help establish a defense that employees had adequate notice of monitoring.

In the context of data privacy, New York's new electronic monitoring law is yet another example of state legislation enacted to increase transparency and promote data privacy. The law seeks to strike a delicate balance between an employee's right to privacy and an employer's right to monitor employee activities. As a result, employees in New York will now be explicitly notified if their employers are electronically monitoring telephone conversations, emails and internet usage.

New York entities should act now to implement the required notices and acknowledgements prior to the May 7, 2022 effective date. For more information or if you would like assistance in preparing your organization for compliance with this new law, please contact [Amber Lawyer](#), CIPP/E, [Shannon Knapp](#), CIPP/US, [Gianelle Duby](#) or any attorney in the [Cybersecurity and Data Privacy practice](#).

