

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

NOVEMBER 19, 2021

New York Enacts Law Requiring Employers to Provide Notice of Electronic Monitoring

On Nov. 8, 2021, New York Gov. Kathy Hochul signed a bill amending New York's Civil Rights Law by adding a new section that requires employers to give prior written notice of any electronic monitoring to employees upon hire. The law takes effect on May 7, 2022. The law applies to all employers in New York, regardless of the size of the employer.

The law requires notice for any employer who monitors or intercepts telephone conversations/transmissions, emails, or internet access or usage. The law requires the notice to be given in writing, in an electronic record or in another electronic form. Further, employers must receive a written or electronic acknowledgement from employees of receipt of the notice. Employers must also post the notice in a conspicuous place so that employees who are subject to electronic monitoring can readily review the notice.

The law does not apply to processes that are designed to manage the type or volume of email, voicemail or internet usage; that are not targeted to monitor or intercept employee communications; and that are performed solely for the purpose of system maintenance and/or protection.

With respect to the content of the notice, the law provides as follows:

For purposes of written notice . . . an employee shall be advised 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 does not provide for a private right of action. The New York State Attorney General is responsible for enforcement of the law. Employers found to be in violation of the law may be subject to 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.

Employers should determine if any new hires will be subject to the notice provisions of this law and determine the manner in which they will provide such notice.

If you have any questions about the information presented in this memo, please contact [Richard White](#), any attorney in our [Labor and Employment practice](#) or the attorney at the firm with whom you are regularly in contact.



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