

## **New York Passes Law Requiring Employers to Provide Notice to Employees of Electronic Monitoring**

Written by Christopher Feudo, Christian Garcia

*December 1, 2021*

On November 8, 2021, New York Governor Kathy Hochul signed into law a bill requiring employers to provide written notice to and obtain employee acknowledgments from new hires before they may engage in electronic monitoring of their employees. New York joins Connecticut and Delaware as the only states with such a requirement.

The law, which amends the New York Civil Rights Law and becomes effective May 7, 2022, applies to all employers with a place of business in New York State who “monitor or otherwise intercept” their employees’ telephone, e-mail, or internet access and usage practices. The law will require employers to provide new hires with notice of such electronic monitoring, obtain employee authorizations of their receipt of the requisite notice, and conspicuously post notices of the employer’s electronic monitoring in the workplace. The law provides that all covered employers must advise their employees of the following:

[A]ny 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.

Employers may satisfy the written notice and authorization requirements through use of electronic records or other electronic forms, as opposed to physical records.

The law specifically exempts employer processes that are (a) designed to manage the type or volume of incoming or outgoing e-mail or voicemail or internet usage, (b) not targeted to monitor or intercept e-mail or voicemail or internet usage of a particular employee, and (c) performed for the purpose of computer system maintenance and protection. The law gives enforcement authority to the New York Attorney General, and employers may be subject to fines of \$500 for the first violation, \$1,000 for the second violation, and \$3,000 for the third and all subsequent violations. The law does not provide employees with a private right of action against their employers.

Employers with a place of business in New York should review their electronic monitoring practices in advance of the law becoming effective on May 7, 2022, and if covered, prepare form notices and employee acknowledgments for all subsequent new hires. Further, while the law does not apply to existing employees, employers should also prepare a form notice to be placed in a conspicuous location inside the workplace.

### RELATED PRACTICES

■ [Labor & Employment](#)

---

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2022 Foley Hoag LLP. All rights reserved.

