



New York State Employers Required to Notify Employees of Electronic Monitoring

Effective May 7, 2022, New York's Civil Rights Law will require private employers to notify employees of electronic monitoring of their workplace electronic communications. The new law applies to any private employer in New York State that "monitors or otherwise intercepts" any employee's "telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage of or by any electronic device or system." Any private employer that engages in such monitoring must give affected employees prior written notice (notice in electronic form is permitted) that they are subject to electronic monitoring, and the notice must be acknowledged either in writing or electronically by the affected employees. Covered employers must also post a notice of electronic monitoring in a conspicuous place which is readily available for viewing by its employees who are subject to electronic monitoring.

The contents of the notice must inform employees that: "[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."

The new law does not apply to "processes that are designed to manage the type or volume of incoming or outgoing electronic mail or telephone voice mail or internet usage, that are not targeted to monitor or intercept the electronic mail or telephone voice mail or internet usage of a particular individual, and that are performed solely for the purpose of computer system maintenance and/or protection."

The new law is enforceable by the New York State Attorney General. Violations of the law carry a "maximum civil penalty of five hundred dollars for the first violation, one thousand dollars for the second violation and three thousand dollars for the third and each subsequent" violation.

Employers should prepare to comply with the law when it takes effect on May 7, 2022, including distributing and posting the required notice, obtaining employee acknowledgments and adding an electronic monitoring policy to their employee handbooks.

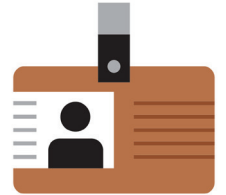
Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney with whom you have a relationship](#). ■



PHILLIPS LYTLE LLP CLIENT ALERT
LABOR & EMPLOYMENT

JANUARY 2022



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