

March 15, 2022

Effective May 7, 2022 New York State Law Will Require Employers to Notify Employees of Monitoring

New York State recently amended its Civil Rights Law to require employers operating in New York to provide prior notice to employees regarding monitoring of employee telephone, email, or internet usage.¹ While many employers already do provide notice in an employee handbook, this is now a legal requirement. In addition, employees must sign a receipt of the notice. Details are provided below.

The law, which takes effect May 7, 2022, requires private employers to provide written notice to all employees subject to electronic monitoring. Employers may consider sending pre-emptive notice to all employees that they may be subject to electronic monitoring and should review existing practices for providing notice of monitoring, including through employee handbooks or acceptable use policies. The law also requires employees to acknowledge receipt of the notice in writing or electronically, and employers should be careful to accurately track and maintain these acknowledgements. Although not strictly required, employers may consider sending a supplemental notice to employees should aspects of the employers' electronic monitoring change.

Employers must also post a notice that employees are subject to electronic monitoring in a place that will be conspicuous and readily available to any affected employees. For those operating in a remote environment, consider posting an electronic notice on your organization's intranet or internal virtual workspace. For those operating in a hybrid environment, the employer should post both physical notice and notice in the virtual workspace.

The definition of electronic monitoring is broad, and the new law covers monitoring of telephone conversations or transmissions, email or other electronic transmissions and internet access or usage by any electronic device or system. However, the law does not apply to processes that are designed to manage the type or volume of incoming or outgoing email, telephone voicemail, or internet usage solely to the extent that they are performed for the purpose of computer system maintenance or protection and are not targeted to monitor or intercept communications involving a particular individual.

Employers who fail to comply with the law may be subject to civil penalties ranging from \$500 for the first offense, \$1,000 for the second offense, and \$3,000 for any subsequent offenses. Employees do not have a private right of action against the employer for failure to comply.

¹ New York Civil Rights Law § 52-c (effective May 7, 2022).

Sample Notice of Electronic Monitoring

Please 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.

I, [**employee name**], hereby acknowledge and confirm that I have read and understood the Notice of Electronic Monitoring and that such notice has also been posted in a conspicuous and readily available place.

[**Employee Name**]

Dated: _____, 2022

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