

Six Things to Know About New York's New Employer Notification Requirements for Electronic Monitoring of Employees

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Under an [amendment](#) to the New York Civil Rights Law that will [take effect](#) on May 7, 2022, private-sector employers that monitor their employees' use of telephones, emails, and the internet must provide notice of such monitoring. The following provides highlights of the new law.

Question 1. *Which employers and electronic monitoring activities are covered?*

Answer 1. The law applies to any private individual or entity with a place of business in New York, and it broadly covers "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 [that] may be subject to monitoring."

Q2. *Are any electronic monitoring activities exempted from coverage?*

A2. The law does not cover processes "designed to manage the type or volume of incoming or outgoing electronic mail or telephone, voice mail or internet usage," and it also does not apply to processes "that are not targeted to monitor or intercept the electronic mail or telephone voice mail or internet usage of a particular individual." The law also exempts processes that are "performed solely for the purpose of computer system maintenance and/or protection."

Q3. *What are some of the law's compliance obligations?*

A3. Private-sector employers that "monitor[] or otherwise intercept[] [employee] telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage" must post a notice of electronic monitoring in a "conspicuous place which is readily available for viewing" by affected employees. Employers also must furnish new employees with written notice when they are hired. The law requires that newly hired employees acknowledge receipt of the notice, "either in writing or electronically."

Q4. *What information must be included in the notices?*

A4. Under the law, employers are required to notify 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” may be subject to monitoring “at any and all times and by any lawful means.” The law requires that the written notice advise employees that the electronic devices or systems that may be subject to monitoring include, but are not limited to, “computer, telephone, wire, radio or electromagnetic, photoelectronic or photo-optical systems.”

Q5. What are the penalties for violations of the law?

A5. The law provides for the imposition of civil penalties for violations of its requirements. Employers found to be in violation of the law are subject to civil penalties of \$500 for a first offense, \$1,000 for a second offense, and \$3,000 for a third offense and for each subsequent offense. The Office of the New York State Attorney General will enforce the law.

Q6. Are there similar requirements in other jurisdictions?

A6. [Connecticut](#) and [Delaware](#) also require employers to provide notification of electronic monitoring. As the requirements of these laws vary slightly from New York’s law, employers doing business in either or both of these states and in New York may wish to consider whether to adopt a single approach, or adopt approaches tailored to each jurisdiction’s requirements.

Key Takeaways

New York employers that have not already taken action to comply with this new law may wish to consider whether to post physical notices in the workplace or utilize electronic postings that are visible upon logging in to the employer’s computer, or both.

Employers may also wish to determine how to incorporate the required notice to new employees in their new-hire and onboarding systems. Employers that address electronic monitoring in existing policies may also wish to review the existing policies to ensure that the information in those policies is consistent with the nature of the notification required by the new law, and update existing policies if warranted.

Employers may also wish to consider whether to obtain written or electronic acknowledgments of electronic monitoring from current employees. In addition, employers may wish to evaluate the potential for challenges to the use of information obtained through electronic monitoring absent compliance with the notice requirements.

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