

# New York Employers Required to Notify Employees of Electronic Monitoring

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Beginning May 7, 2022, New York employers that monitor their employees' electronic activities will have certain notification obligations. The new law applies to all private employers, regardless of size, with a place of business in New York.

The purpose of the law is to increase transparency between employers and employees, a growing trend in jurisdictions nationwide. New York follows in the footsteps of other states, including Connecticut and Delaware, that have enacted similar employee surveillance laws.

## What Monitoring Activities Are Covered?

The law applies broadly to monitoring activities and communications on "any electronic device or system," including by means of telephone, email, or the internet. The law does not appear to be limited to monitoring on company-issued devices only, but how it will ultimately be interpreted remains to be seen.

## What Are the Notice Requirements?

Employers that electronically monitor their employees must:

- **Provide written notice to newly hired employees and obtain their written acknowledgment of that notice.**
- **Post a notice in a conspicuous area in the workplace.**

## What Monitoring Activities Are Exempted?

The law does not apply to processes that:

1. Are designed to manage the type or volume of incoming or outgoing email, voicemail, or internet usage;

2. Are not targeted to monitor or intercept the electronic activities of a particular individual; and
3. Are performed solely for computer system maintenance and/or protection.

Examples of these exempted processes include spam filters and firewalls.

## **What Are the Penalties for Noncompliance?**

New York's Attorney General is empowered to enforce the law. The maximum civil penalty is \$500 for the first offense, \$1,000 for the second offense, and \$3,000 for the third offense. As with any new law, only time will tell whether and/or how often penalties will actually be imposed.

## **Recommendations**

New York employers should review their employee handbooks, employee intranet portals, and written policies on electronic monitoring to ensure they comply with the law. Employers should also prepare an acknowledgment form for newly hired employees to sign once they receive notice of electronic monitoring and prepare a notice to post in a conspicuous area in the workplace.

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