

# New York Employers Required To Notify Employees of Electronic Monitoring

## The Bottom Line

- New York employers should review the scope of their electronic monitoring and determine which monitoring processes and activities could be covered by the new legislation.
- Starting May 7, 2022, employers that monitor or otherwise intercept employee phone, email and/or internet usage must provide new hires with written notice of monitoring and obtain written or electronic acknowledgment of receipt.
- Employers must also post the notice in a conspicuous location in the workplace.

Beginning on May 7, 2022, all private employers in New York State will be required to notify employees of electronic monitoring in the workplace. Following new [legislation](#) signed by Governor Kathy Hochul on Nov. 8, 2021, New York State's Civil Rights Law has been amended to mandate that employers engaged in electronic monitoring inform employees of the monitoring and obtain an acknowledgment that employees received notice.

## Employer Notice, Employee Acknowledgment and Workplace Posting Requirement

The law applies to any employer that “monitors or otherwise intercepts” employee electronic activities such as email, internet usage and telephone calls. Employers must provide a notice to employees who may be subject to monitoring “upon hiring” and obtain an acknowledgment from new hires who receive the notice. Both the notice and acknowledgment provided to employees can be in writing or electronic form.

Employers must also post notice of electronic monitoring “in a conspicuous place which is readily available for viewing” by employees subject to monitoring.

The law does not address whether the notice can be included in an employee handbook or must be provided as a separate document. If an employer decides to only

include the information in a handbook given to new hires, the employer should also ensure that employees sign an acknowledgment that they received notice of electronic monitoring.

### Contents of Notice and Posting

The statute contains specific language to be included in the notice given to employees, stating that employees “shall 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.

### Exceptions

The law does not apply to employer monitoring processes that are:

1. designed to manage the type or volume of incoming or outgoing email, voicemail or internet usage;
2. not targeted to monitor or intercept the internet usage, voicemail or email of a particular individual; and
3. performed solely for the purpose of computer system maintenance and/or protection.

Based on these exceptions, electronic monitoring processes such as spam filters, data loss prevention software and firewalls do not come within the purview of the legislation.

### Penalties and Enforcement

While there is no private cause of action for violations, the law is enforced by New York’s Attorney General. Violations can subject employers to the following penalties: (1) \$500 for the first offense; (2) \$1,000 for the second offense; (3) \$3,000 for the third and any subsequent offense.

### Privacy Law Trends

This new law continues an increasing trend of privacy laws being enacted at the state level in the absence of comprehensive privacy legislation at the federal level. States such as Connecticut and Delaware have similar laws addressing electronic monitoring by employers in the workplace. Further, surveillance and biometric issues have been a particularly hot topic (see our prior [alert](#)). Last year New York City enacted a biometric identifier information law that

requires certain retail establishments to have signage posted at the entrance advising patrons of the use of technology to record biometric information, such as facial scans.

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### For More Information

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

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