

New York Mandates That Employees Be Informed of Electronic Monitoring

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New York recently amended the state's Civil Rights Law to require employers to provide their employees with prior notice of any telephone, email or internet monitoring. According to the amendment's sponsor, "notifying employees of computer monitoring protects employee privacy by making sure that they understand the consequences of inappropriate internet activity." Employers still have the right to monitor any such usage, so long as employees are informed beforehand of any the surveillance. The amendment is effective May 7, 2022.

Who must give notice?

Any employer in New York must provide the required written notice if the employer monitors or otherwise intercepts telephone conversations or transmissions; electronic mail or transmissions; or internet access or usage of or by any employee by any electronic device or system. This includes monitoring using computers, telephones, wires, radios, or electromagnetic, photoelectronic and photo-optical systems.

What notice must employers provide?

An employee must 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."

How is notice provided?

Employers must give prior written notice upon hiring to all employees who are subject to electronic monitoring. The notice must be in hard copy or in an electronic form and must be acknowledged by the employer in writing or electronically. Additionally, employers must post

the notice of electronic monitoring in a conspicuous place where it may be readily viewed by employees who are subject to monitoring.

Is there any exception to the notification requirement?

The notification requirement does not apply to processes that are designed to manage the type or volume of incoming or outgoing electronic mail, telephone voice mail or internet usage. These processes are excluded so long as they are not monitoring or intercepting electronic mail, voice mail, or internet usage of a particular individual and are solely performed for computer system maintenance or protection.

What is the penalty for non-compliance?

The New York Attorney General is authorized to enforce the notification requirement. Employers who violate it may be subject to a civil penalty of up to \$500 for the first offense, \$1,000 for the second offense, and \$3,000 for the third and each subsequent offense.

Employers in New York should review their policies and procedures and prepare appropriate written notices for their employees and postings for their workplaces. Contact your Vorys lawyer if you have questions about these notification requirements or other employee privacy issues.