



April 11, 2022

NYS Law Requires Notice of Employee Electronic Monitoring

New York Governor Kathy Hochul signed into law a bill requiring New York private sector employers to provide prior written notice to employees before engaging in electronic monitoring of employees' activities in the workplace. This new law will take effect on May 7, 2022.

<p>Who is a covered employer?</p>	<p>Any employer with a place of business in New York state, regardless of size.</p> <p>The law does not define who is a covered employee, or the impact on remote work.</p>
<p>What is considered "electronic monitoring" of an employee?</p>	<p>Monitoring telephone conversations, email or internet access or usage by any electronic device or system.</p> <p>This law does not apply to processes that are designed to manage the type or volume of incoming or outgoing email or telephone voice mail or internet usage, that are not targeted to monitor or intercept the email or telephone voicemail or internet usage of a particular individual, and that are performed solely for the purpose of computer system maintenance and/or protection.</p>
<p>What notice is required to new employees?</p>	<p>The employer must give prior written notice upon hiring to all employees who are subject to electronic monitoring. The notice must be in writing, in an electronic record, or in another electronic form, <u>and acknowledged by the employee either in writing or electronically.</u></p> <p>The notice must state 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."</p> <p>As of the date of this Alert, NYS has not issued a model notice.</p>
<p>Must the employer also post a notice?</p>	<p>Yes, each employer <u>must also post</u> the notice of electronic monitoring in a conspicuous place which is readily available for viewing by its employees who are subject to electronic monitoring.</p>



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Are there penalties?	The Attorney General enforces this law. Any employer found to be in violation will be subject to a maximum civil penalty of \$500 for the first offense, \$1,000 for the second offense and \$3,000 for the third and each subsequent offense.
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