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# Starting on May 7, 2022, New York Requires Electronic Monitoring Notices to Employees

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On November 8, 2021 New York Governor Kathy Hochul signed an amendment to the New York Civil Rights Law which requires employers provide notice to employees of electronic monitoring of telephone, email, and internet access and usage. The law, as described briefly below, is scheduled to go into effect on May 7, 2022.

Once effective, the law requires all New York employers (regardless of size) to provide written notice, upon hire, to new employees *if* the employer does and/or plans to monitor or intercept their telephone or email communications or internet usage. The notice must be in writing (either hard copy or electronic), and it must be acknowledged by new employees. Although employers need not obtain acknowledgements from existing employees, they will be required to post a notice in a "conspicuous place which is readily available for viewing" by existing employees subject to electronic monitoring.

The notice should inform 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," including, but not limited to, "computer, telephone, wire, radio or electromagnetic, photoelectronic or photo-optical systems," may be subject to monitoring "at any and all times by any lawful means."

"Conspicuous place" is not defined in the statute. Therefore, employers who have safe harbor policies in their handbooks allowing electronic monitoring may consider posting a stand-alone notice of their electronic monitoring policy in a place in which employees can easily and readily access and review the policy.

Notably, the law does *not* apply to processes that:

1. are designed to manage the type or volume of incoming or outgoing electronic mail or telephone voice mail or internet usage;
2. are not targeted to monitor or intercept the activities of a particular individual; and
3. are performed solely for the purpose of computer system maintenance and/or protection.

**Violations**

There is no private right of action available for violations. The Office of the New York State Attorney General is tasked with enforcing the law. Employers who are determined to have violated the law will be subject to fines of up to $500 for the first offense, $1,000 for the second offense, and $3,000 for the third and each subsequent offense.

### Related People

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**Takeaway**

On or before the effective date (May 7), New York employers who currently and/or plan to conduct electronic monitoring of employees should prepare to provide: (1) an acknowledgement form to new employees upon hire; as well as (2) notice of the electronic monitoring policy to existing employees.

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The following Gibson Dunn attorneys assisted in preparing this client update: Harris Mufson, Danielle Moss, and Lizzy Brilliant.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Labor and Employment practice group, or the following:

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