



ALERTS

New York Law Requires Employee Notice Of Electronic Monitoring

February 7, 2022 | [New York](#)

Highlights

New York employers will be required to provide written notice to new hires, effective May 7, about monitoring employee phones, emails and/or internet usage

Employers do not have to provide written notice to existing employees, but must post such a notice in the workplace

Employers could be subject to significant fines for failure to provide proper notifications

The new year brings a new law regarding electronic monitoring of employee communications. Effective May 7, 2022, New York employers will be required to [provide notice to employees for certain types of electronic monitoring](#); the new state law applies to all private employers with a place of business in the state.

Any employer that electronically monitors phones, emails, and/or internet usage must give prior written notice of that monitoring to all new employees and obtain a written acknowledgment (which may be in electronic form) from those employees before monitoring them. Notably, employers do not have to provide written notice to existing employees,

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and existing employees do not need to acknowledge that their communications may be monitored. However, employers must post a conspicuous notice regarding the electronic monitoring where those who are being monitored can see it.

The New York State Office of the Attorney General has the authority to enforce the law. Employers who violate the law may be fined \$500 for a first offense, \$1,000 for a second offense, and \$3,000 for third and subsequent offenses. Significantly, there is no private right of action for affected individuals. As such, the law will likely not motivate large class action lawsuits as other recent privacy laws have done, such as the biometric privacy law recently enacted by New York City. However, if employers fail to provide new employees with proper notice, accumulated fines could become significant – at \$3,000 for each violation.

The new law will not apply to processes designated to manage the volume or type of incoming or outgoing email, voicemail, or internet usage; targeted to monitor or intercept any specific individual's communications; or performed solely for purposes of system maintenance or protection.

Employers should consider preparing the necessary notification forms and acknowledgements for new employees and postings for existing employee, ahead of the May effective date. While the new law does not specifically require notification in employers' employee handbooks, a reference to electronic monitoring in an employer's handbook and other relevant policies will be useful to notify employees that electronic monitoring is occurring and will likely bolster an employer's defense that employees had adequate notice about monitoring.

For more information, please contact the Barnes & Thornburg attorney with whom you work or David Ritter at 312-214-4862 or david.ritter@btlaw.com, Doug Oldham at 614-628-1422 or douglas.oldham@btlaw.com, or Kenneth Yerkes at kenneth.yerkes@btlaw.com or 317-231-7513.

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