
New York Enacts Employee Monitoring Notice Requirements for Private Employers

December 6, 2021

On November 8, 2021, Governor Hochul signed into law A.430, a bill that requires private employers in New York State to provide written notice of electronic monitoring to new employees. The new law seeks to ensure that employees have full knowledge of their employer's electronic monitoring policies, while supporting the employer's ability to monitor internet activity within their organization.

The newly signed legislation defines "employers" broadly to include "any individual, corporation, partnership, firm, or association with a place of business in the state." New York State and its political subdivisions are excluded from the new requirements.

Under the requirements of the new law, "[a]ny employer who monitors or otherwise intercepts telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage of or 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, shall give prior written notice upon hiring to all employees who are subject to electronic monitoring." In addition to providing notice of electronic monitoring to new hires, employers are required to post the notice of electronic monitoring in a "conspicuous place which is readily available for viewing by its employees who are subject to electronic monitoring."

The written notice provided to new employees and posted in the workplace should advise the employee 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."

Only the New York State Attorney General is authorized to enforce these new requirements. Violators may be subject to escalating fines of \$500 for the first offense, \$1000 for the second offense, and \$1500 for the third offense and each offense thereafter.

The new law takes effect on May 7, 2022. The COVID-19 pandemic changed the way that employers across the country operated, with many shifting to business models that encouraged employees to work outside of the office. Whether an employer responded to this shift with new electronic monitoring policies or maintained electronic monitoring policies that were in effect prior to the pandemic, employers may want to revisit their

policies in advance of the effective date to ensure compliance with the new requirements.

If you have questions regarding your organization's compliance with these new requirements, or any other aspect of employment law, please contact Thomas B. Wassel at twassel@cullenllp.com or (516) 357-3868, James G. Ryan at jryan@cullenllp.com or (516) 357-3750, Jennifer A. McLaughlin at jmclaughlin@cullenllp.com or (516) 357-3889, or Daniel J. Becker at dbecker@cullenllp.com or (516) 357-3788.

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