

EMPLOYER ALERT: New York Employers Must Notify Employees of Electronic Monitoring

Governor Kathy Hochul recently signed into law a bill requiring all private employers to provide employees with notice that it monitors the employee's phone, email, and/or internet usage. This new law goes into effect on May 7, 2022. Provided below is a summary of the new law's provisions and how New York employers are impacted.

What is Covered?

The notice requirement applies to any New York private 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 an electronic device or system."

This statutory language raises the question of whether this notice requirement applies to employers who do not regularly monitor employee's electronic systems, but still have the ability to do so when the employer finds it appropriate (i.e. workplace investigations, complaints of inappropriate internet usage, etc.). Given that the law does not specifically address this question, employers who engage in electronic monitoring on an as-needed basis, may wish to err on the side of caution and provide employees with the requisite notice.

How Must Employees be Notified?

Employers must notify new employees of electronic monitoring upon being hired. The notice must be "in writing, in an electronic record, or in another electronic form and acknowledged by the employee either electronically or in writing." In addition, employers must post a notice of electronic monitoring in a conspicuous place that is readily available to any employees who are subject to electronic monitoring.

Such notice must advise all employees: "that any and all conversations or transmissions, electronic mail or transmissions, or internet access or usage . . . 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 time and by any lawful means."

Civil Penalties

The new law provides that the Attorney General may bring an action for civil penalties against those employers who violate the law. Employers who violate the new law could be subject to: (a) \$500 for the first offense; (b) \$1,000 for the second offense; and (c) \$3,000 for any offense thereafter. However, the law does not include a private cause of action.

Exceptions

The law provides one exception to this notice requirement. In particular, the law does not apply to "processes that are designed to manage the type or volume of incoming or outgoing electronic mail or telephone voicemail or internet usage, that are not targeted to monitor or intercept the electronic mail or telephone voicemail or internet usage . . . , and that are performed solely for the purpose of computer system maintenance and/or protection."

KD IS HERE TO HELP

The experienced Labor and Employment attorneys at Kaufman, Dolowich & Voluck are available to assist with the preparation of the requisite electronic monitoring notice or any questions you may have regarding this new law. Should you need any assistance in developing the electronic monitoring notice, please contact Keith J. Gutstein (KGutstein@kaufmandolowich.com) co-managing partner of KD's Long Island office, and co-chair of our labor & employment law practice group, or attorney Edward H. Grimm (EGrimm@kaufmandolowich.com) by email.