

REMINDER – NEW YORK EMPLOYEE ELECTRONIC MONITORING LAW BECAME EFFECTIVE ON MAY 7, 2022

Hodgson Russ Labor & Employment Alert
May 17, 2022

Pursuant to an amendment to the New York Civil Rights Law that took effect on May 7, 2022, private-sector employers who monitor their employees' use of telephones, email, and the internet must now notify employees of electronic monitoring practices.

As we stated in a previous alert, found [here](#), the new law has several notice requirements to which private employers, regardless of size, with “a place of business in” New York State must adhere. First, employers must provide to employees “prior written notice upon hiring” which informs employees that any and all telephone and email transmissions or conversations, or any internet access or usage, via the use of any electronic device or system, may be subject to electronic monitoring by the employer at any and all times and by any lawful means. Second, each employee must acknowledge the notice either in writing or electronically. Finally, all employers must post the notice of electronic monitoring in a conspicuous location which is easily visible to all employees who are subject to the electronic monitoring.

As we observed in our previous alert (linked above), the new law applies to an employer's monitoring of the electronic communications of a remote employee in New York State, so long as the employer “has a place of business in” New York State. However, the statute does not define “a place of business.” Rather than engage in litigation over whether a remote employee's home office is considered “a place of business in” New York, we believe that the prudent course will be for such out-of-state employer to provide the required notice to the employee based in New York State (and to obtain the required written acknowledgment from the employee).

Accordingly, if employers with employees in New York have not already done so, they need to determine now if they engage in electronic monitoring practices that trigger the new statute's notice obligations. If the employer concludes that it must provide the notice, it needs to draft and distribute the notice of electronic monitoring to all new hires and to all existing employees now. The employer must also conspicuously post the notice of electronic monitoring in the workplace. Further, management should adopt an ongoing procedure to make sure that all new hires receive the notice and return the required acknowledgement, and that the employer retains every acknowledgement.

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If you have any questions about this employee monitoring statute, please contact [Charles H. Kaplan](#) (646.218.7513),
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