

New York to Require Employers to Inform Workers of Electronic Monitoring

November 12, 2021

On November 9, 2021, New York Gov. Kathy Hochul signed into law a bill that will require employers in New York State who engage in any electronic monitoring of employees' telephone, email and internet access and usage to provide notice to employees about such monitoring. The law takes effect on May 7, 2022.

Affected employers

The law applies to any employer with a place of business in New York State that monitors employees' telephone, email and internet access and usage. There is no employer size threshold.

Notice requirements

The written notice must inform employees that all telephone or email transmissions or conversations, or any internet access or usage via any electronic device or system, may be subject to monitoring at all times and by any lawful means. Employers must provide written notice upon hire to new employees that is acknowledged by the employee. In addition, employers must conspicuously post the notice.

Exceptions and limitations

The law does not define what constitutes "electronic monitoring." For example, it is not clear whether an employer needs to give notice if it reviews employee emails after employment termination, requires sales employees to log phone calls or reviews system logs after prohibited content is flagged.

Instead, the law enumerates three acceptable practices that alone would not trigger the notice requirement. Specifically, electronic monitoring does not require notice when:

- It is designed to manage the nature or volume of incoming or outgoing electronic mail or telephone voicemail or internet usage.
- It is not targeted to monitor or intercept the activities of any individual employee.
- It is performed solely for the purpose of computer system maintenance and/or protection.

Notably, the law does not prevent employers from monitoring employees' telephone, email, and internet access and usage. Rather, employers retain the right to monitor all such activity, as long as employees are given proper notice.

Violations

Employers who violate 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. Only the New York attorney general has authority to enforce this new law, and there is no private right of action.

Action items for employers

Once the law takes effect, New York employers who monitor employees' electronic telephone, email, and internet access and usage should prepare to disseminate notices to new hires and conspicuously post the notice. Given the many valid uses of employer IT system and communication monitoring, we anticipate that most employers will issue the required notices notwithstanding if they currently monitor IT systems or communications.

We are closely tracking this new law and will publish further guidance when additional information becomes available. If you have any questions related to this law, please reach out to a member of the Cooley employment team.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may be considered **Attorney Advertising** and is subject to our [legal notices](#).

Key Contacts

| | |
|------------------------------------|--|
| Ann Bevitt London | abevitt@cooley.com +44 (0) 20 7556 4264 |
| Wendy Brenner Palo Alto | brennerwj@cooley.com +1 650 843 5371 |
| Leslie Cancel San Francisco | lcancel@cooley.com +1 415 693 2175 |
| Helennane Connolly Reston | hconnolly@cooley.com +1 703 456 8685 |
| Joseph Lockinger Washington, DC | jlockinger@cooley.com +1 202 776 2286 |

| | |
|---------------------------------|--|
| Joshua Mates San Francisco | jmates@cooley.com +1 415 693 2084 |
| Gerard O'Shea New York | goshea@cooley.com +1 212 479 6704 |
| Miriam Petrillo Chicago | mpetrillo@cooley.com +1 312 881 6612 |
| Ryan Vann Chicago | rhvann@cooley.com +1 312 881 6640 |
| Summer Wynn San Diego | swynn@cooley.com +1 858 550 6030 |
| Steven A. Zuckerman New York | szuckerman@cooley.com +1 212 479 6647 |

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.