

# WE'RE WATCHING YOU: NEW YORK EMPLOYERS MUST SOON PROVIDE NOTICE OF DIGITAL WORKPLACE MONITORING

Insights

Nov 9, 2021

New York employers who monitor employee's telephone calls, e-mails, or internet use must soon provide written notice to employees. The change comes during an era where many employees are communicating with each other via digital means on a near-constant basis, leading to the opportunity to look over workers' shoulders like never before. Such activity will now be regulated in New York, leading to new compliance obligations for employers. Here's what employers need to know about this new law, signed by the governor on November 8 and taking effect in May 2022.

## What the Law Entails

The new law requires private employers to provide written notice upon hiring to all employees if they monitor or intercept employee electronic communications, effective May 7, 2022. This includes any monitoring or interception of telephone calls, e-mail communications, and internet usage. The notice must be in writing or in an electronic form, and must be acknowledged by the employee. Employers are also required to post the notice in the workplace.

This law does not prevent you from engaging in the monitoring of employees — employers retain the right to monitor computer usage, so long as employees are informed of the surveillance. The stated aim of the law is to increase transparency within an organization and help to avoid invasion of privacy lawsuits.

The law does not apply to computer system maintenance/protection processes that employers go

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**Melissa Camire**

Partner

212.899.9965

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through to manage the type or volume of incoming or outgoing e-mail, telephone voice mail, or internet usage.

## **Enforcement**

The New York Attorney General has authority to enforce this new law. Employers who are non-compliant are subject to a maximum civil penalty of \$500 for the first offense, \$1,000 for the second offense, and \$3,000 for the third and each subsequent offense.

## **What Should You Do?**

If you monitor employees' telephone calls or computer activities, you must disseminate notice to your existing employees and to all new hires once this law takes effect. Additionally, you must post a notice in the workplace.

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting New York employers, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [New York City office](#).

*[Henry Thomson-Smith](#) contributed significantly to the development of this Insight.*