

## Notice Requirements for Electronic Monitoring

On November 8, 2021, New York Governor Hochul signed into law a bill requiring notice to employees of the types of electronic monitoring their employer may conduct upon hiring. The law, which goes into effect on May 7, 2022, applies to all private employers regardless of size.

Employers must now provide written notice upon hiring to any employee who is subject to electronic monitoring. The notice must be in writing or provided electronically, and it must be acknowledged by the employee either in writing or electronically. There is no requirement that the notice be separate and distinct from other documentation; therefore, while it is likely permissible for the notice to be part of a larger document (such as an employee handbook), employers should still require an acknowledgment specific to the notice of electronic monitoring. Employers must also post the notice in a conspicuous place that is readily available to all employees who are subject to electronic monitoring.

The New York Department of Labor has not issued a form notice, but the law states that employees should be advised "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 system may be subject to monitoring at any and all times and by any lawful means." Employers may consider adopting this language for their written notice and poster, taking into account the types of monitoring they conduct.

However, employees do not need to be informed of processes that are 1) merely designed to manage the type or volume of incoming or outgoing e-mail, voicemail, or internet usage, 2) are not targeted to monitor or intercept the e-mail, voicemail, or internet usage of a particular individual, *and* 3) are performed solely for the purpose of computer system maintenance and/or protection.

Violations of the new law are subject to enforcement by the New York attorney general and may result in fines of up to \$5,000 for the first offense, \$1,000 for the second offense, and \$3,000 for each subsequent offense. The law does not provide for a private right of action.

## For questions relating to this client alert, please contact:



**Damian Cavaleri**

212.689.8808  
dcavaleri@hnrklaw.com

Damian represents clients in all capacities, with expertise in business and employment litigation. He advises both employers and employees on employment agreements, employment separation agreements, internal employment issues, and non-competition restrictions and covenants.



**Emily Hogan Long**

212.689.8808  
ehogan@hnrklaw.com

Emily is a litigator with experience in employment, commercial, insurance, and white collar proceedings. Her breadth of experience includes actions in state and federal courts as well as U.S. and international arbitration.



**Randi May**

212.689.8808  
rmay@hnrklaw.com

On behalf of employers, Randi's counseling experience includes advising a broad range of clients concerning all aspects of the employment relationship to avoid litigation. She advises employers about hiring and termination of employment, policies, and practices, employee misconduct, restrictive covenants, leaves of absence, and compliance with federal, New York state, and New York City laws governing employment. Randi also regularly drafts, reviews, and negotiates employment and executive compensation agreements, restrictive covenants, and separation agreements.

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