

## **General Notice: Electronic Monitoring Law**

Effective May 7, 2022, New York State requires private individual or entity with a place of business in the state to provide notice to employees for certain types of electronic monitoring.

The electronic monitoring law applies broadly to telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage of or 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 systems.

Employers that monitor or otherwise intercept their employees' telephone calls, email or internet access or usage as defined under the law must provide written notice to all employees hired on or after May 7, 2022 and post a notice of electronic monitoring in a conspicuous place which is readily available for viewing by affected employees.

The law requires that the written notice advise employees 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 systems may be subject to monitoring at any and all times and by any lawful means." The law further requires that new employees acknowledge receipt of this notice either in writing or electronically. It is important to note that notice requirements under the law applies to Acceptable Use policies and Bring-Your-Own-Device (BYOD) programs and is not strictly limited to employees who are provided with employer-issued devices.

However, the electronic monitoring law does not apply to processes used to manage the type or volume of email, telephone or internet usage; is not targeted to monitor a particular employee; and is performed solely for the purpose of computer system maintenance and/or protection.

Failure to comply with the new law could result in financial penalties of \$500 for the first offense, \$1,000 for the second offense and \$3,000 for the third and each subsequent offense.