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New York Employers That Monitor Employee Phone Calls, Emails and Internet Usage Must Notify Workers

By Matthew Berger

Gov. Kathy Hochul recently signed into law an amendment to the New York Civil Rights Law requiring that New York employers provide written notice to workers if they monitor or intercept employee telephone conversations or transmissions, emails, or internet access or usage.

The new law takes effect May 7, 2022 and requires that employers provide either written or electronic notice of their monitoring practices to all new hires and post the monitoring notice in a conspicuous location that is readily available for employees to view. All affected employees must also acknowledge, either in writing or electronically, that they have received the monitoring notice. If the New York Attorney General finds that an employer failed to comply with these requirements, the Attorney General can impose civil penalties of \$500 for the first violation, \$1,000 for the second violation and \$3,000 for each subsequent violation.

Many employers already include general policies concerning the lack of employee privacy when using company email and computer systems in their employee handbooks. However, employers that monitor electronic communications and internet usage must now go further and explicitly inform employees that such communications and usage are monitored by the employer. Even if an employer does not currently monitor such communications and usage, but may do so in the future or otherwise reserves the right to do so, it is recommended that they comply with the notice and acknowledgment requirements of this law. This notice can and should be included in employee handbooks, but employers should

strongly consider also including language in the handbook for employees to explicitly acknowledge the monitoring policy and/or preparing a standalone policy for employees to sign.

For more information about this alert, please contact Matthew C. Berger at mberger@foxrothschild.com or 646.601.7658, or any member of the firm's New York Labor & Employment Group.