

3871--A

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. ROSENTHAL, MAISEL, JAFFEE, ZEBROWSKI, REILLY, GOTTFRIED, CAHILL, JOHN, PERALTA, KELLNER -- Multi-Sponsored by -- M. of A. GALEF, HEASTIE, KOON, PHEFFER, SCHIMEL -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to electronic monitoring

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The civil rights law is amended by adding a new section
2 52-a to read as follows:
3 S 52-A. EMPLOYERS ENGAGED IN ELECTRONIC MONITORING; PRIOR NOTICE
4 REQUIRED. 1. FOR PURPOSES OF THIS SECTION, EMPLOYER MEANS ANY INDIVID-
5 UAL, CORPORATION, PARTNERSHIP, FIRM, OR ASSOCIATION WITH A PLACE OF
6 BUSINESS IN THE STATE. IT SHALL NOT INCLUDE THE STATE OR ANY POLITICAL
7 SUBDIVISION OF THE STATE.
8 2. (A) ANY EMPLOYER WHO MONITORS OR OTHERWISE INTERCEPTS TELEPHONE
9 CONVERSATIONS OR TRANSMISSIONS, ELECTRONIC MAIL OR TRANSMISSIONS, OR
10 INTERNET ACCESS OR USAGE OF OR BY AN EMPLOYEE BY ANY ELECTRONIC DEVICE
11 OR SYSTEM, INCLUDING BUT NOT LIMITED TO THE USE OF A COMPUTER, TELE-
12 PHONE, WIRE, RADIO, OR ELECTROMAGNETIC, PHOTOELECTRONIC OR PHOTO-OPTICAL
13 SYSTEMS, SHALL GIVE PRIOR WRITTEN NOTICE UPON HIRING AND ONCE ANNUALLY
14 TO ALL EMPLOYEES WHO ARE SUBJECT TO ELECTRONIC MONITORING. THE NOTICE
15 REQUIRED BY THIS SUBDIVISION SHALL BE IN WRITING, IN AN ELECTRONIC
16 RECORD, OR IN ANOTHER ELECTRONIC FORM AND ACKNOWLEDGED BY THE EMPLOYEE
17 EITHER IN WRITING OR ELECTRONICALLY. EACH EMPLOYER SHALL ALSO POST THE
18 NOTICE OF ELECTRONIC MONITORING IN A CONSPICUOUS PLACE WHICH IS READILY
19 AVAILABLE FOR VIEWING BY ITS EMPLOYEES.
20 (B) THE NOTICE SHALL CONTAIN THE FOLLOWING:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

1 (I) THE FORM OF COMMUNICATION AND/OR COMPUTER USAGE THAT WILL BE MONI-
2 TORED,

3 (II) THE MEANS BY WHICH MONITORING WILL BE ACCOMPLISHED,

4 (III) THE FREQUENCY OF MONITORING, AND

5 (IV) THE MANNER IN WHICH THE INFORMATION OBTAINED BY SUCH MONITORING
6 WILL BE COLLECTED, STORED, AND USED.

7 3. IN ANY CIVIL ACTION ALLEGING A VIOLATION OF THIS SECTION, THE COURT
8 MAY:

9 (A) AWARD DAMAGES AND REASONABLE ATTORNEYS' FEES AND COSTS TO A
10 PREVAILING PLAINTIFF; AND

11 (B) AFFORD INJUNCTIVE RELIEF AGAINST ANY EMPLOYER THAT COMMITS OR
12 PROPOSES TO COMMIT A VIOLATION OF THIS SECTION.

13 4. THE ATTORNEY GENERAL MAY ENFORCE THE PROVISIONS OF THIS SECTION.
14 ANY EMPLOYER FOUND TO BE IN VIOLATION OF THIS SECTION SHALL BE SUBJECT
15 TO A MAXIMUM CIVIL PENALTY OF FIVE HUNDRED DOLLARS FOR THE FIRST
16 OFFENSE, ONE THOUSAND DOLLARS FOR THE SECOND OFFENSE AND THREE THOUSAND
17 DOLLARS FOR THE THIRD AND EACH SUBSEQUENT OFFENSE.

18 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO PROCESSES THAT
19 ARE DESIGNED TO MANAGE THE TYPE OR VOLUME OF INCOMING OR OUTGOING ELEC-
20 TRONIC MAIL OR TELEPHONE VOICE MAIL OR INTERNET USAGE, THAT ARE NOT
21 TARGETED TO MONITOR OR INTERCEPT THE ELECTRONIC MAIL OR TELEPHONE VOICE
22 MAIL OR INTERNET USAGE OF A PARTICULAR INDIVIDUAL, AND THAT ARE
23 PERFORMED SOLELY FOR THE PURPOSE OF COMPUTER SYSTEM MAINTENANCE AND/OR
24 PROTECTION.

25 S 2. This act shall take effect on the one hundred eightieth day after
26 it shall have become a law.