

1485

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 10, 2011

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Introduced by M. of A. ROSENTHAL, MAISEL, JAFFEE, ZEBROWSKI, REILLY,  
GOTTFRIED, CAHILL, KELLNER -- Multi-Sponsored by -- M. of A. GALEF,  
HEASTIE, PHEFFER, SCHIMEL -- read once and referred to the Committee  
on Labor

AN ACT to amend the civil rights law, in relation to electronic monitor-  
ing

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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 TO ALL EMPLOYEES  
14    WHO ARE SUBJECT TO ELECTRONIC MONITORING. THE NOTICE REQUIRED BY THIS  
15    SUBDIVISION SHALL BE IN WRITING, IN AN ELECTRONIC RECORD, OR IN ANOTHER  
16    ELECTRONIC FORM AND ACKNOWLEDGED BY THE EMPLOYEE EITHER IN WRITING OR  
17    ELECTRONICALLY. EACH EMPLOYER SHALL ALSO POST THE NOTICE OF ELECTRONIC  
18    MONITORING IN A CONSPICUOUS PLACE WHICH IS READILY AVAILABLE FOR VIEWING  
19    BY ITS EMPLOYEES.  
20    (B) FOR PURPOSES OF WRITTEN NOTICE REQUIRED BY PARAGRAPH (A) OF THIS  
21    SUBDIVISION, AN EMPLOYEE SHALL BE ADVISED THAT ANY AND ALL TELEPHONE  
22    CONVERSATIONS OR TRANSMISSIONS, ELECTRONIC MAIL OR TRANSMISSIONS, OR  
23    INTERNET ACCESS OR USAGE OF BY AN EMPLOYEE BY ANY ELECTRONIC DEVICE OR

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

LBD01390-01-1

1 SYSTEM, INCLUDING BUT NOT LIMITED TO THE USE OF A COMPUTER, TELEPHONE,  
2 WIRE, RADIO OR ELECTROMAGNETIC, PHOTOELECTRONIC OR PHOTO-OPTICAL SYSTEMS  
3 MAY BE SUBJECT TO MONITORING AT ANY AND ALL TIMES AND BY ANY LAWFUL  
4 MEANS.

5 3. THE ATTORNEY GENERAL MAY ENFORCE THE PROVISIONS OF THIS SECTION.  
6 ANY EMPLOYER FOUND TO BE IN VIOLATION OF THIS SECTION SHALL BE SUBJECT  
7 TO A MAXIMUM CIVIL PENALTY OF FIVE HUNDRED DOLLARS FOR THE FIRST  
8 OFFENSE, ONE THOUSAND DOLLARS FOR THE SECOND OFFENSE AND THREE THOUSAND  
9 DOLLARS FOR THE THIRD AND EACH SUBSEQUENT OFFENSE.

10 4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO PROCESSES THAT  
11 ARE DESIGNED TO MANAGE THE TYPE OR VOLUME OF INCOMING OR OUTGOING ELEC-  
12 TRONIC MAIL OR TELEPHONE VOICE MAIL OR INTERNET USAGE, THAT ARE NOT  
13 TARGETED TO MONITOR OR INTERCEPT THE ELECTRONIC MAIL OR TELEPHONE VOICE  
14 MAIL OR INTERNET USAGE OF A PARTICULAR INDIVIDUAL, AND THAT ARE  
15 PERFORMED SOLELY FOR THE PURPOSE OF COMPUTER SYSTEM MAINTENANCE AND/OR  
16 PROTECTION.

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