
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1001 Session of
2001

INTRODUCED BY FUMO, BELL, TARTAGLIONE, MOWERY, LAVALLE, CONTI,
COSTA, THOMPSON, LOGAN, O'PAKE, BOSCOLA, KASUNIC, SCHWARTZ,
KITCHEN, KUKOVICH AND STACK, JUNE 18, 2001

REFERRED TO COMMUNICATIONS AND HIGH TECHNOLOGY, JUNE 18, 2001

AN ACT

1 Providing for notice to employees of electronic monitoring by
2 employers of network and information technology resources;
3 and imposing civil penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Workplace
8 Electronic Message Monitoring Act.

9 Section 2. Legislative findings and intent.

10 (a) Findings.--The General Assembly hereby finds and takes
11 notice that workplace electronic communication, specifically e-
12 mail messaging, has become a pervasive and standard form of
13 communication for most individuals, rivaling the use of
14 telephonic communications. Because of such widespread and
15 routine usage, e-mail messaging has become an accepted means
16 through which individuals communicate business-related or
17 nonbusiness-related information, including private or personal
18 information. As a result, the General Assembly recognizes that,

1 unless explicitly notified to the contrary, users of e-mail have
2 a reasonable and recognized expectation of privacy to their
3 electronic communication. Furthermore, the General Assembly also
4 recognizes that employers have a legitimate interest in ensuring
5 that their e-mail messaging systems are not being used in a
6 manner that is prohibited by law, constitutes discriminatory
7 conduct toward others or exposes the employer to civil
8 liability.

9 (b) Intent.--It is the intent of the General Assembly to
10 balance the expectations of privacy of employees who may use
11 workplace e-mail messaging systems to communicate personal or
12 private information with the legitimate needs of employers to
13 prevent misuse or abuse of their e-mail systems. To this end,
14 the General Assembly hereby enacts this act in an effort to
15 preserve the functionality of e-mail as a business tool for
16 increasing productivity and efficiency in the workplace and to
17 restore a higher sense of dignity to this growing form of
18 electronic communication by prohibiting employer monitoring of
19 e-mail communications unless employees have been clearly
20 notified of the possibility of such monitoring.

21 Section 3. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Electronic communication." Any transfer of signs, signals,
26 writing, images, sounds, data or intelligence of any nature
27 transmitted in whole or in part by a wire, radio,
28 electromagnetic, photoelectronic or photo-optical system.

29 "Electronic monitoring." The use of an electronic device to
30 record, check, track, review or otherwise inspect e-mail or

1 electronic communication.

2 "E-mail." A message or messages sent or received
3 electronically over a computer network, including any and all
4 graphics and/or audio information and other electronic file
5 attachments.

6 "Employee." Any person who performs services for an
7 employer, whether as an employee or otherwise, and has
8 authorized access to the employer's e-mail and other electronic
9 communications equipment and computer system, including computer
10 equipment, network, Internet access, data bases, electronic
11 files, software, telephone, radio or other types of information
12 technology.

13 "Employer." Any person, firm or corporation, including the
14 Commonwealth and any political subdivision of the Commonwealth
15 that has employees.

16 Section 4. Notice of monitoring.

17 (a) General rule.--Except as provided in section 5, an
18 employer who intentionally, by any electronic means, reads,
19 listens to or otherwise engages in electronic monitoring of any
20 electronic communication or e-mail, or otherwise monitors the
21 computer usage of an employee, without first having provided the
22 employee with notice meeting the requirements of subsection (b),
23 shall be liable to the employee for relief as provided under
24 section 8.

25 (b) Form of notice.--A notice under this section shall be in
26 a clear and conspicuous written form distributed to and
27 acknowledged by all employees, written or electronically, in a
28 manner reasonably calculated to provide actual notice. The form
29 of notice required by this section may but need not be in the
30 following form:

1 (Name of Company)

2 (Address of Company)

3 (Telephone Number of Company)

4 This notice is to inform you of (name of company)'s
5 (hereinafter the "company") intention to inspect, review
6 or retain electronic communications created, sent,
7 displayed, received or stored on or over its information
8 technology, network, Internet access, computer equipment,
9 data bases, files and software (collectively the
10 "computer system"). Company may monitor at any time,
11 without further notice to you, electronic communications
12 created, sent, displayed, received or stored on or over
13 its computer system, whether related to the company's
14 business or not. EMPLOYEES SHOULD NOT HAVE AN EXPECTATION
15 OF PRIVACY IN ANYTHING THEY CREATE, STORE, SEND, RECEIVE
16 OR DISPLAY ON OR OVER THE COMPANY'S COMPUTER SYSTEM. The
17 company may use human or automated means to monitor the
18 contents or use of its computer system.

19 Employee Acknowledgment

20 I acknowledge having received, read and understood the foregoing
21 notice regarding monitoring electronic communications.

22 Employee's Signature:_____

23 (c) Additional notice.--This section sets forth minimum
24 notice requirements for employers. Nothing in this section shall
25 preclude an employer from expressly providing employees
26 additional notice of the employer's monitoring activities.

27 Section 5. Exception to notice requirement.

28 An employer may conduct electronic monitoring without the
29 notice required under section 4 if the employer has reasonable
30 grounds to believe that a particular employee of the employer is

1 engaged in conduct that:

2 (1) violates the legal rights of the employer or another
3 person;

4 (2) involves significant harm to the employer or such
5 other person; and

6 (3) the electronic monitoring is reasonably calculated
7 to lead to evidence of such conduct.

8 Section 6. Construction.

9 Notice set forth in accordance with section 4 shall not be
10 construed to impose an obligation upon an employer to actually
11 monitor e-mail or electronic communications or to constitute the
12 employer's constructive notice of any activity occurring on or
13 over its computer network and/or other computer resources or
14 information technology.

15 Section 7. Verification.

16 Upon distributing notice to employees in accordance with
17 section 4, the employer shall require every affected employee to
18 sign or electronically verify that the employee has received,
19 read and understood the notice. If an affected employee to whom
20 notice has been provided declines to sign or electronically
21 verify that the employee has received, read and understood the
22 notice, the employer may comply with the requirements of this
23 section by having the person who provided the notice to the
24 affected employee sign and retain a statement to that effect and
25 provide a copy of that statement to the affected employee.

26 Section 8. Civil action.

27 (a) Cause of action.--Any employee whose e-mail
28 communication has been monitored in violation of this section in
29 which the employer's conduct constituting the violation is
30 engaged in with a knowing or intentional state of mind may, in a

1 civil action, recover from the employer or entity which engaged
2 in the violation such relief as may be appropriate.

3 (b) Relief.--In a civil action under this section,
4 appropriate relief includes, but is not limited to, such
5 preliminary and other equitable or declaratory relief as may be
6 appropriate, damages under subsection (c) and attorney fees and
7 other litigation costs reasonably incurred.

8 (c) Damages.--A court of competent jurisdiction may assess
9 as damages in a civil action under this section the sum of the
10 actual damages suffered by the plaintiff and any profits made by
11 the violator as a result of the violation as well as punitive
12 damages, but in no case shall a person entitled to recover
13 receive less than the sum of \$2,000.

14 (d) Limitation.--A civil action under this section may not
15 be commenced later than one year after the date upon which the
16 claimant first discovered or had a reasonable opportunity to
17 discover the violation.

18 Section 9. Applicability.

19 The provisions of this act shall not apply to a criminal
20 investigation. Any information obtained in the course of a
21 criminal investigation through the use of electronic monitoring
22 may be used in a disciplinary proceeding against an employee.

23 Section 10. Effective date.

24 This act shall take effect in 90 days.