

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 561 Session of
2011

INTRODUCED BY CORMAN, BROWNE, TOMLINSON, ALLOWAY, ERICKSON,
GORDNER, TARTAGLIONE, BREWSTER, BRUBAKER, COSTA, EARLL,
FARNESE, KASUNIC, RAFFERTY, STACK, WASHINGTON, D. WHITE AND
WOZNIAK, FEBRUARY 17, 2011

REFERRED TO COMMUNICATIONS AND TECHNOLOGY, FEBRUARY 17, 2011

AN ACT

1 Providing for notice to employees of electronic monitoring by
2 employers of network and information technology resources;
3 establishing a cause of action; 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

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

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

22 Section 3. Definitions.

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

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

30 "Electronic monitoring." The use of an electronic device to

1 record, check, track, review or otherwise inspect e-mail or
2 electronic communication.

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

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

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

17 Section 4. Notice of monitoring.

18 (a) General rule.--Except as provided in section 5, an
19 employer who intentionally reads, listens to or otherwise
20 engages in electronic monitoring, 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 9.

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

18 Employee Acknowledgment

19 I have received, read and understand the foregoing notice
20 regarding monitoring electronic communications.

21 Employee's Signature:

22 (c) Prior notification.--Where an employer has previously
23 provided notice of electronic monitoring prior to the effective
24 date of this act, in a manner substantially similar to the form
25 provided for in subsection (b), the employer need not provide
26 notice of monitoring again.

27 (d) Additional notice.--This section sets forth minimum
28 notice requirements for employers. Nothing in this section shall
29 preclude an employer from expressly providing employees
30 additional notice of the employer's monitoring activities.

1 Section 5. Exception to notice requirement.

2 An employer may conduct electronic monitoring without the
3 notice required under section 4 if the employer has reasonable
4 grounds to believe that a particular employee of the employer is
5 engaged in conduct that:

6 (1) violates the legal rights of the employer or another
7 person;

8 (2) involves significant harm to the employer or such
9 other person; and

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

12 Section 6. Construction.

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

19 Section 7. Investigation.

20 Nothing in this act shall be construed to prohibit an
21 employer who chooses not to monitor his employees from
22 investigating an employee's conduct as long as the employer is
23 in compliance with section 5.

24 Section 8. Verification.

25 Upon distributing notice to employees in accordance with
26 section 4, the employer shall require every affected employee to
27 sign or electronically verify that the employee has received,
28 read and understood the notice. If an affected employee to whom
29 notice has been provided declines to sign or electronically
30 verify that the employee has received, read and understood the

1 notice, the employer may comply with the requirements of this
2 section by having the person who provided the notice to the
3 affected employee sign and retain a statement to that effect and
4 provide a copy of that statement to the affected employee.

5 Section 9. Civil action.

6 (a) Cause of action.--An employee whose e-mail communication
7 has been monitored in violation of this section may bring a
8 civil action to recover from the employer or entity which
9 engaged in the violation:

10 (1) Such preliminary and other equitable or declaratory
11 relief as may be appropriate and attorney fees and other
12 litigation costs reasonably incurred.

13 (2) The actual damages suffered by the plaintiff and any
14 profits made by the violator as a result of the violation as
15 well as punitive damages, but in no case less than the sum of
16 \$2,000.

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

21 Section 10. Applicability.

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

26 Section 11. Effective date.

27 This act shall take effect in 90 days.