
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 175 Session of
2005

INTRODUCED BY CORMAN, FUMO, WONDERLING, GORDNER, COSTA, RHOADES,
TOMLINSON, KASUNIC, TARTAGLIONE, KITCHEN, MUSTO, O'PAKE,
LAVALLE, ERICKSON, D. WHITE, STACK, ORIE AND C. WILLIAMS,
FEBRUARY 7, 2005

REFERRED TO COMMUNICATIONS AND TECHNOLOGY, FEBRUARY 7, 2005

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/or 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 (relating
19 to exception to notice requirement), an employer who
20 intentionally reads, listens to or otherwise engages in
21 electronic monitoring, or otherwise monitors the computer usage
22 of an employee, without first having provided the employee with
23 notice meeting the requirements of subsection (b), shall be
24 liable to the employee for relief as provided under section 9
25 (relating to civil action).

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

1 following form:

2 (Name of Company)

3 (Address of Company)

4 (Telephone Number of Company)

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

20 Employee Acknowledgment

21 I have received, read and understand the foregoing notice
22 regarding monitoring electronic communications.

23 Employee's Signature:_____

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

29 (d) Additional notice.--This section sets forth minimum
30 notice requirements for employers. Nothing in this section shall

1 preclude an employer from expressly providing employees
2 additional notice of the employer's monitoring activities.

3 Section 5. Exception to notice requirement.

4 An employer may conduct electronic monitoring without the
5 notice required under section 4 (relating to notice of
6 monitoring) if the employer has reasonable grounds to believe
7 that a particular employee of the employer is engaged in conduct
8 that:

9 (1) violates the legal rights of the employer or another
10 person;

11 (2) involves significant harm to the employer or such
12 other person; and

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

15 Section 6. Construction.

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

23 Section 7. Investigation.

24 Nothing in this act shall be construed to prohibit an
25 employer who chooses not to monitor his employees from
26 investigating an employee's conduct as long as the employer is
27 in compliance with section 5 (relating to exception to notice
28 requirement).

29 Section 8. Verification.

30 Upon distributing notice to employees in accordance with

1 section 4 (relating to notice of monitoring), the employer shall
2 require every affected employee to sign or electronically verify
3 that the employee has received, read and understood the notice.
4 If an affected employee to whom notice has been provided
5 declines to sign or electronically verify that the employee has
6 received, read and understood the notice, the employer may
7 comply with the requirements of this section by having the
8 person who provided the notice to the affected employee sign and
9 retain a statement to that effect and provide a copy of that
10 statement to the affected employee.

11 Section 9. Civil action.

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

16 (1) Such preliminary and other equitable or declaratory
17 relief as may be appropriate and attorney fees and other
18 litigation costs reasonably incurred.

19 (2) The actual damages suffered by the plaintiff and any
20 profits made by the violator as a result of the violation as
21 well as punitive damages, but in no case less than the sum of
22 \$2,000.

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

27 Section 10. Applicability.

28 The provisions of this act shall not apply to a criminal
29 investigation. Any information obtained in the course of a
30 criminal investigation through the use of electronic monitoring

- 1 may be used in a disciplinary proceeding against an employee.
- 2 Section 11. Effective date.
- 3 This act shall take effect in 90 days.