

Introduced by Senator Bowen

February 20, 2004

An act to add Section 436 to the Labor Code, relating to electronic monitoring of employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1841, as introduced, Bowen. Electronic monitoring of employees.

Existing law prohibits an employer from recording an employee in certain areas of the workplace without a court order. Existing law makes a violation of the prohibition on recording employees a misdemeanor.

This bill would prohibit employers from engaging in electronic monitoring, as defined, of employees, as defined, without first providing notice to the employees, except in certain specified circumstances. The bill would permit employees to bring a civil action against employers that violate the bill's provisions and would specify the damages to which employees are entitled.

Because violations of these provisions would constitute a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 436 is added to the Labor Code, to read:

2 436. (a) For purposes of this section:

3 (1) "Electronic monitoring" means the collection of
4 information concerning employee activities or communications
5 by any means other than direct observation, including the use of
6 a computer, telephone, wire, radio, camera, or electromagnetic,
7 photo-electronic, or photo-optical system.

8 (2) "Employee" means any person who performs services for
9 wages or salary under a contract of employment, express or
10 implied, for an employer. "Employee" does not include a vendor.

11 (3) "Employer" means any person, partnership, corporation,
12 or other organization engaged in commerce, or any other person
13 or organization that obtains the services of individuals in exchange
14 for financial remuneration.

15 (b) (1) Except as provided under subdivision (d), an employer
16 that intentionally engages in electronic monitoring of an employee
17 without first having provided the employee with notice pursuant
18 to subdivision (c) is liable to the employee for relief as set forth in
19 subdivision (e).

20 (2) Not later than one year after first providing notice of
21 electronic monitoring to an employee, and annually thereafter, an
22 employer shall provide notice pursuant to subdivision (c) to all
23 employees who are subject to electronic monitoring.

24 (3) Before implementing a material change in an electronic
25 monitoring practice, an employer shall provide notice pursuant to
26 subdivision (c) to all employees who will be subject to electronic
27 monitoring as a result of the change in practice.

28 (c) (1) Notice meeting the requirements of this subdivision
29 constitutes clear and conspicuous notice to each employee if given
30 to each employee either electronically or in writing, in a manner
31 reasonably calculated to provide actual notice, if the notice
32 describes:

33 (A) The form of communication or type of computer usage that
34 will be monitored.

35 (B) The means by which the monitoring will be accomplished.

36 (C) The kinds of information that will be obtained through the
37 monitoring, including whether communications or computer



1 usage not related to the employer’s business are likely to be
2 monitored.

3 (D) The frequency of the monitoring.

4 (E) The manner in which information obtained by the
5 monitoring will be stored, used, or disclosed.

6 (2) Notice by placing signs in the workplace does not constitute
7 clear and conspicuous notice pursuant to this section.

8 (d) Notwithstanding this section, an employer may conduct
9 electronic monitoring without notice to an employee if the
10 employer has reasonable grounds to believe that:

11 (1) A particular employee is engaged in behavior that violates
12 the legal rights of the employer or another person and may result
13 in significant harm to the employer or another person.

14 (2) Electronic monitoring will produce evidence of the
15 employee’s behavior and will be conducted in accordance with
16 other applicable state and federal laws.

17 (e) Any person aggrieved by any act in violation of this section
18 may file a civil action and may recover actual damages, but not less
19 than liquidated damages in the amount of five thousand dollars
20 (\$5000), punitive damages, reasonable attorney’s fees and other
21 litigation costs reasonably incurred, and any other preliminary and
22 equitable relief as the court deems appropriate.

23 (f) The rights set forth in this section may not be waived by
24 contract or otherwise, unless the waiver is part of a written
25 settlement to a pending action or complaint.

26 (g) Nothing in this section may be construed to preempt,
27 modify, or amend any county or local law, ordinance, or regulation
28 providing greater protection to employees.

29 SEC. 2. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

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