

AMENDED IN SENATE APRIL 19, 2004

SENATE BILL

No. 1841

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 amended, 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 ~~*individually identifiable* information concerning employee~~
5 ~~activities or communications ~~by any means other than direct~~~~
6 ~~observation, including the use of ~~through the use of an electronic~~~~
7 ~~device including, but not limited to, a computer, telephone, wire,~~
8 ~~radio, camera, or electromagnetic, photo-electronic, or~~
9 ~~photo-optical system.~~

10 ~~(2) “Employee” means any person who performs services for~~
11 ~~wages or salary under a contract of employment, express or~~
12 ~~implied, for an employer. “Employee” does not include a vendor.~~

13 ~~(3) “Employer” means any person, partnership, corporation,~~
14 ~~or other organization engaged in commerce, or any other person~~
15 ~~or organization that obtains the services of individuals in exchange~~
16 ~~for financial remuneration.~~

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

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

26 ~~(3)~~

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

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

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

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



1 (C) The kinds of information that will be obtained through the
2 monitoring, including whether communications or computer
3 usage not related to the employer’s business are likely to be
4 monitored.

5 (D) The frequency of the monitoring.

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

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

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

13 (1) A particular employee is engaged in ~~behavior that violates~~
14 ~~the legal rights of the employer or another person and may result~~
15 ~~in significant harm to the employer or another person.~~ *unlawful*
16 *conduct.*

17 (2) Electronic monitoring will produce evidence of the
18 employee’s ~~behavior~~ *unlawful conduct* and will be conducted in
19 accordance with other applicable state and federal laws.

20 ~~(e) Any person aggrieved by any act in violation of this section~~
21 ~~may file a civil action and may recover actual damages, but not less~~
22 ~~than liquidated damages in the amount of five thousand dollars~~
23 ~~(\$5,000), punitive damages, reasonable attorney’s fees and other~~
24 ~~litigation costs reasonably incurred, and any other preliminary and~~
25 ~~equitable relief as the court deems appropriate.~~

26 ~~(f)~~

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

30 ~~(g)~~

31 (f) Nothing in this section may be construed to preempt,
32 modify, or amend any county or local law, ordinance, or regulation
33 providing greater protection to employees.

34 (g) *The provisions of this section may not be construed as*
35 *enhancing or diminishing an employee’s reasonable expectation*
36 *of privacy under state or federal law.*

37 SEC. 2. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or



1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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