

AMENDED IN ASSEMBLY JUNE 23, 2004

AMENDED IN ASSEMBLY JUNE 8, 2004

AMENDED IN SENATE MAY 24, 2004

AMENDED IN SENATE APRIL 19, 2004

**SENATE BILL**

**No. 1841**

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**Introduced by Senator Bowen**

February 20, 2004

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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.

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 through the use of an electronic  
6 device including, but not limited to, a computer, telephone, wire,  
7 radio, camera, or electromagnetic, photo-electronic, or  
8 photo-optical system.

9 (2) "Employee" includes, but is not limited to, an individual  
10 employed by the state or any subdivision thereof, any county, city,  
11 city and county, including any charter city or county, and any  
12 school district, community college district, municipal or public  
13 corporation, political subdivision, or the University of California.

14 (b) (1) Except as provided under subdivision (d), an employer  
15 ~~that intentionally engages~~ *may not intentionally engage* in  
16 electronic monitoring of an employee without first having  
17 provided the employee with notice pursuant to ~~subdivision (e) is~~  
18 ~~liable to the employee for relief as set forth in Part 13~~  
19 ~~(commencing with Section 2698).~~ *to subdivision (c).*

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

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

29 (A) The form of communication, type of computer usage, or  
30 type of electronic device that will be monitored.

31 (B) The kinds of information that will be obtained through the  
32 monitoring, including whether communications or computer



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

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

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

8 (1) A particular employee is engaged in unlawful conduct.

9 (2) Electronic monitoring will produce evidence of the  
10 employee’s unlawful conduct and will be conducted in accordance  
11 with other applicable state and federal laws.

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

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

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

21 (h) An employer who provides notice to employees of the  
22 monitoring or recording of telephone conversations pursuant to  
23 the California Public Utilities Commission’s General Order 107-B  
24 is deemed to be in compliance with the notice requirements set  
25 forth in this section with regard to the monitoring or recording of  
26 employee telephone conversations.

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

