AMENDED IN ASSEMBLY AUGUST 4, 2004

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

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.

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.

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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*, computer*
7 *software or other computer program*, telephone, wire, radio,
8 camera, or electromagnetic, photo-electronic, or photo-optical
9 system.
10   (2) "Employee" includes, but is not limited to, an individual
11 employed by *any corporation, sole proprietorship, partnership, or*
12 *any other business or entity or by* the state or any subdivision
13 thereof, any county, city, city and county, including any charter
14 city or county, and any school district, community college district,
15 municipal or public corporation, political subdivision, or the
16 University of California.
17   (b) (1) Except as provided under subdivision (d), an employer
18 may not intentionally engage in electronic monitoring of an
19 employee without first having provided the employee with notice
20 pursuant to subdivision (c).
21   (2) Before implementing a material change in an electronic
22 monitoring practice, an employer shall provide notice pursuant to
23 subdivision (c) to all employees who will be subject to electronic
24 monitoring as a result of the change in practice.
25   (c) (1) Notice meeting the requirements of this subdivision
26 constitutes clear and conspicuous notice to each employee if given
27 to each employee either electronically or in writing, in a manner
28 reasonably calculated to provide actual notice, if the notice
29 describes:
30   (A) The form of communication~~, type of computer usage, or~~
31 ~~type of electronic device~~ *or other activity* that will be monitored.

1   (B) The kinds of information that will be obtained through the
2 monitoring, including whether *activities or* communications or
3 computer usage not related to the employer's business are likely
4 to be monitored.
5   (2) Notice by placing signs in the workplace *by itself* does not
6 constitute clear and conspicuous notice pursuant to this section.
7   (d) Notwithstanding this section *and except for the provisions*
8 *of Section 435 of this code and Section 653n of the Penal Code*, an
9 employer may conduct electronic monitoring without notice to an
10 employee if the employer has reasonable grounds to believe that
11 *both of the following are true*:
12   (1) A particular employee is engaged in unlawful conduct.
13   (2) Electronic monitoring will produce evidence of the
14 employee's unlawful conduct and will be conducted in accordance
15 with other applicable state and federal laws.
16   (e) The rights set forth in this section may not be waived by
17 contract or otherwise, unless the waiver is part of a written
18 settlement to a pending action or complaint*, provided, however,*
19 *that the notice required by subdivision (b) may be set forth in a*
20 *contract if the notice otherwise complies with subdivision (c).*
21   (f) *The rights of employees under this section are cumulative to*
22 *and shall not diminish any other rights of employees under any*
23 *other federal, state, local or other constitutional provision, statute,*
24 *ordinance, rule, regulation, order, or other authority.* Nothing in
25 this section may be construed to preempt, modify, or amend any
26 county or local law, ordinance, ~~or regulation~~ *regulation, or*
27 *collective bargaining agreement* providing greater protection to
28 employees.
29 ~~(g) The provisions of this section may not be construed as~~
30 ~~enhancing or diminishing an employee's reasonable expectation~~
31 ~~of privacy under state or federal law.~~
32   ~~(h)~~
33   *(g)* An employer who provides notice to employees of the
34 monitoring or recording of telephone conversations pursuant to
35 the California Public Utilities Commission's General Order 107-B
36 is deemed to be in compliance with the notice requirements set
37 forth in this section with regard to the monitoring or recording of
38 employee telephone conversations.
39   SEC. 2. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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