

By Ms. Tracy of Boston, petition of Susan M. Tracy and other members of the General Court relative to electronic monitoring in the workplace. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT TO PREVENT POTENTIAL ABUSES OF ELECTRONIC MONITORING IN THE WORKPLACE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 19D is added to Chapter 149 of the General Laws to
2 read as follows: —

3 Section 19D. Electronic monitoring; notice; access to records;
4 privacy; due process; regulations.

5 (1) Definitions. As used in this section: — (a) “electronic
6 monitoring” means the collection, storage, analysis and reporting
7 of employees’ activities by means of computer, electronic
8 observation and supervision, remote telephone surveillance,
9 telephone call accounting and other forms of auditory and
10 computer-based surveillance conducted by any transfer of signs,
11 signals, writing, images, sounds, data or intelligence of any nature
12 transmitted in whole or in part by a wire, radio, electromagnetic,
13 photoelectronic or photooptical system;

14 (b) “employee” means a person currently employed or formerly
15 employed by an employer;

16 (c) “employer” means each private and public sector employer
17 of twenty-five employees or more in the Commonwealth including
18 an individual, corporation, partnership, labor organization,
19 unincorporated association or any other legal business, public or
20 private, or commercial entity, the Commonwealth, counties,
21 cities, towns and other political subdivisions therein, and any
22 agents of the employer;

23 (d) "individual data" means any information concerning an
24 employee which because of name, identifying number, mark or
25 description can be readily associated with a particular individual
26 and includes information contained in printouts, forms or written
27 analyses or evaluations; and

28 (e) "prospective employee" means an individual who has
29 applied for a position of employment with an employer.

30 (2) Notice. (a) An employer shall provide an employee with
31 prior written notice regarding electronic monitoring directly
32 affecting the employee. The notice shall inform the employee of
33 the types of monitoring the employer uses, what individual data
34 is to be collected, a full description of how monitored information
35 is used and the frequency of monitoring activity.

36 (b) An employer shall inform a prospective employee at any
37 personal interview or meeting of existing forms of electronic
38 monitoring which may directly affect the prospective employee
39 if he or she is hired by the employer.

40 (c) If an employer engages in telephone service observation, the
41 employer shall prominently place in each of its written
42 advertisements and in each of its customer bills a statement that
43 the employer is engaging in such observation.

44 (d) Notwithstanding the provisions in subparagraph (a) above,
45 an employer who is engaged in electronic monitoring on the
46 effective date of this section will have ninety days from said
47 effective date to provide each affected employee with the above
48 requirements.

49 (3) Privacy. (a) It shall be unlawful for an employer to collect
50 individual data on an employee through electronic monitoring
51 which is not relevant to the employee's work performance.

52 (b) It shall be unlawful for an employer to maintain, collect,
53 use or disseminate individual data obtained by electronic
54 monitoring which describes how an employee exercises rights
55 guaranteed by the First Amendment unless expressly authorized
56 by statute or by the employee to whom the data relates or unless
57 pertinent to and within the scope of an authorized law
58 enforcement activity.

59 (4) Access to Records. (a) It shall be unlawful for an employer
60 not to allow an employee, or the employee's authorized agent,
61 access to all individual data obtained by electronic monitoring of
62 his work, as outlined in section 52C of this chapter.

63 (b) It shall be unlawful for an employer not to allow an
64 employee the opportunity to comment on any record obtained
65 through electronic monitoring of his performance, as outlined in
66 section 52C of this chapter.

67 (5) Due Process. (a) It shall be unlawful for an employer to
68 use individual data obtained by electronic monitoring as a basis
69 for individual employee performance evaluation or disciplinary
70 action unless the employee is provided with an opportunity to
71 review said data in a timely manner.

72 (6) Regulations. The Department is empowered to make rules
73 and regulations to carry out the provisions of this section.

74 (7) Miscellaneous. (a) No waiver of the provisions of this
75 section by an employee or prospective employee shall be a defense
76 to either criminal prospective or civil liability.

77 (b) This section shall not apply to electronic monitoring
78 administered by law enforcement agencies as may otherwise be
79 permitted in criminal investigations.

