

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H1/22/99 H2/22/99

A Bill

HOUSE BILL 1045

5 By: Representative Lendall
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For An Act To Be Entitled

9 "AN ACT REQUIRING NOTICE TO EMPLOYEES OF ELECTRONIC
10 MONITORING BY EMPLOYERS; AND FOR OTHER PURPOSES."

Subtitle

13 "AN ACT REQUIRING NOTICE TO EMPLOYEES OF
14 ELECTRONIC MONITORING BY EMPLOYERS."

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. As used in this section:

20 (1) "Employer" means every person, firm, corporation,
21 partnership, stock association, agent, manager, representative, or foreman
22 having control or custody of any employment, place of employment, or of any
23 employee, including the public employers;

24 (2) "Employee" means any person who performs services for an
25 employer in a business of the employer, if the employer has the right to
26 control and direct the person as to the result to be accomplished by the
27 services and the details and means by which such result is accomplished; and

28 (3) "Electronic monitoring" means the collection of information
29 on an employer's premises or property concerning employees' activities or
30 communications by any means other than direct observation, including the use
31 of a computer, telephone, wire, radio, camera, electromagnetic,
32 photoelectronic or photo-optical systems.
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34 SECTION 2. (a) Except as provided in subsection (b) of this section,
35 each employer who engages in any type of electronic monitoring shall give
36 prior written notice to all employees who may be affected, informing them of

1 the types of monitoring which will occur. Each employer shall post, in a
2 conspicuous place which is readily available for viewing by its employees, a
3 notice concerning the types of electronic monitoring which the employer will
4 engage in. Monitoring is prohibited where an employee has an absolute
5 expectation of privacy such as bathrooms, locker rooms, and changing areas.

6 (b) When an employer has reasonable grounds to believe that employees
7 are engaged in conduct which violates the law, violates the legal rights of
8 the employer or the employer's employees, or creates a hostile workplace
9 environment, the employer may conduct monitoring without giving prior written
10 notice if the electronic monitoring may produce evidence of the misconduct.
11 Any information obtained in the course of a criminal investigation through the
12 use of electronic monitoring may be used in a disciplinary proceeding against
13 an employee.

14 (c) An employee shall have access to his or her records in order to
15 dispute any electronic findings.

16 (d) An employee is prohibited from waiving his or her protections under
17 this act.

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19 SECTION 3. The Director of the Department of Labor shall have the duty,
20 power, jurisdiction and authority to enforce this act.

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22 SECTION 4. (a) The Director of the Department of Labor may levy a
23 civil penalty in accordance with the provisions of 11-6-103 against any person
24 that the Director finds to be in violation of this act. The maximum civil
25 penalty shall be five hundred dollars (\$500) for the first offense, one
26 thousand dollars (\$1000) for the second offense and three thousand dollars
27 (\$3000) for the third and each subsequent offense.

28 (b) Each day the violation continues shall be deemed a separate
29 offense.

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31 SECTION 5. All provisions of this Act of a general and permanent nature
32 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
33 Revision Commission shall incorporate the same in the Code.

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35 SECTION 6. If any provision of this Act or the application thereof to
36 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the Act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 Act are declared to be severable.

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5 SECTION 7. All laws and parts of laws in conflict with this Act are
6 hereby repealed.

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/s/ Lendall

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