

Bill A3950

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Porzio Client Alert

In the January 2022 issue of the Employment Law Monthly the article entitled, "New Jersey Now Prohibits Employers From Tracking Employees' Vehicles Without Warning," raised some concerning issues regarding the passage of bill A3950 for employers. As an update to our original article, please be aware that prior to approving the bill, on January 10, Governor Phil Murphy issued a conditional veto and sent the bill back to the legislature. On January 18, 2022, the bill was signed into law by the Governor. As the new law goes into effect on April 18, 2022, employers have time to prepare for this new requirement.

The article noted that, based on the definitions utilized in the original bill and some ambiguity in the language, employers who "make use of" an electronic communication device in a vehicle owned or operated by an employee could face liability even if that device was not actually being used for tracking an employee. The Governor had the same concern and the final version of the bill applies only to devices that are designed or intended to be used for the purpose of tracking employees. Therefore, an employer who calls an employee on a company cell phone while the employee is in the vehicle would not be covered by the bill because tracking is not the phone's intended use.

The bill also initially provided that there would be civil and criminal penalties for employers who track their employees' vehicles without providing notice. The Governor vetoed the provision that imposed criminal penalties and only civil penalties remain. Specifically, an employer who knowingly uses a tracking device in a vehicle used by an employee without providing written notice to the employee will be subject to a penalty of up to \$1,000 for the first violation and up to \$2,500 for each subsequent violation.

Key Takeaways:

Monitoring and surveillance have become more important particularly when managers and supervisors do not physically occupy the same space as employees. If an employer allows employees to operate company vehicles or wishes to track employees' movements, it is imperative that it check the laws in each state where it operates. The company policy should then be updated to ensure compliance with applicable state law.

For New Jersey employers now operating under this newly enacted law, the next step is to draft written notices which will be provided to all current and new employees if the company intends on using any devices to track its employees. It is recommended that employees sign an acknowledgement of receipt of the policy with the notice, to ensure employers have complied fully with the new requirement that written notice be provided to employees. Employers should keep a record of this documentation in the employees' personnel file.