

## Global Data Privacy and Security Team

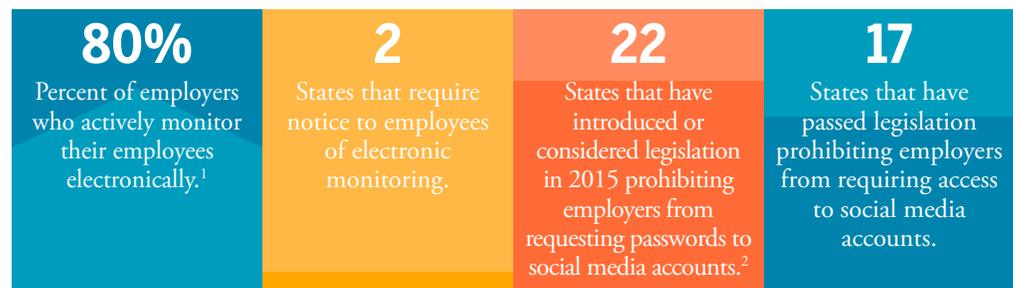
# Employee Monitoring in the Workplace: At A Glance

Federal laws that prohibit interception of another's electronic communications have multiple exceptions that allow employers to monitor employees' email and internet use. As a result, under federal law when employees use a company's computer system, monitoring their behavior is virtually unfettered.

Although monitoring is permitted under federal law, some states require that employers provide notice of monitoring to employees. Even in states that do not require such notices, employers often choose to provide notice as employees who believe they are being monitored are less likely to misuse company systems.

Employers may also monitor what an employee posts publicly to social media; however, they cannot, under state laws, request that an employee provide their username and password to a social media account in order for the employer to see private posts. In addition, some state laws prohibit employers from requiring that their employees accept a friend request that would permit the employer to view friends-only social media posts.

Finally, monitoring telephone calls in the workplace is permissible, but depending on the state requires the consent of one or both parties.



### What to consider when crafting employee monitoring policies:

✓	Does your company publish an acceptable use policy?	✓	If your company monitors phone calls, do you have a policy to cease monitoring when a call is clearly personal in nature, and do you follow it?
✓	Does the acceptable use policy explain what employees may and may not do over the Internet while at work?	✓	Have you considered what an employee's reasonable expectation of privacy in their work emails or work phone calls might be?
✓	Does the acceptable use policy explain the disciplinary consequences of violating the policy?	✓	Are you monitoring emails to or from password-protected personal accounts?
✓	Do you have the ability to block or otherwise restrict access to Internet sites that constitute a violation of the acceptable use policy?	✓	Are your employees using their own computer equipment to send email or surf the Internet?
✓	Does your employee handbook make employees aware of monitoring?		
✓	Does the state in which the employee works require single or dual consent for monitoring telephone conversations, and have your employees consented?		

Bryan Cave's Global Data Privacy and Security Team helps clients safely collect, utilize, transfer, and monetize data.

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<sup>1</sup> Source: SpectorSoft, maker of user activity monitoring software; Society for Human Resource Management (viewed May 2015).

<sup>2</sup> Source: National Conference of State Legislatures (verified May 2015).