



State of Wisconsin
2009 - 2010 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 30**

September 23, 2009 – Offered by Representative STASKUNAS.

1 **AN ACT to amend** 111.322 (2m) (a) and 111.322 (2m) (b); **to repeal and recreate**
2 111.322 (2m) (a) and 111.322 (2m) (b); and **to create** 103.12, 106.54 (8) and
3 111.91 (2) (im) of the statutes; **relating to:** employer monitoring of employee
4 computer, computer program, computer network, and computer system use.

Analysis by the Legislative Reference Bureau

Current law does not regulate employer monitoring of employee computer use. This substitute amendment prohibits any employer, including the state, from monitoring an employee's use of any computer, computer program, computer network, or computer system owned by the employer unless the employer first: 1) establishes a policy governing employee use of the employer's computers, computer programs, computer networks, and computer systems, including use of those computers, computer programs, computer networks, or computer systems to access the Internet or to send or receive electronic mail, text, or instant messages; and 2) provides a written notice of that policy to all employees who may be affected by that policy.

If an employer does not establish a policy governing employee computer, computer program, computer network, and computer system use or establishes such a policy, but does not provide notice of the policy to all employees who may be affected by the policy, the employer may not monitor employee use of the employer's computers, computer programs, computer networks, or computer systems, except if

the monitoring is conducted: 1) in cooperation with a law enforcement agency to which the employer has reported that an employee is suspected of engaging in any unlawful activity; 2) in cooperating with a law enforcement agency in an investigation of any other unlawful activity in which an employer is suspected to have engaged; 3) to comply with a court order; 4) to protect the employer from misappropriation of any trade secret or other confidential business information of the employer, from any liability for sexual harassment, or from any other loss or liability; or 5) to manage the Internet sites accessed through, or the electronic mail, text, or instant messages coming into or going out of, the employer's computerized communication system solely for the purpose of system maintenance, security, or protection and not for the purpose of monitoring the Internet sites accessed, or the electronic mail, text, or instant messages sent or received, by any particular employee.

Finally, under the substitute amendment, an employee whose computer, computer program, computer network, or computer system use is monitored in violation of the substitute amendment or who is discharged or discriminated against for opposing a practice prohibited under the substitute amendment, filing a complaint or attempting to enforce any right granted under the substitute amendment, or testifying or assisting in any action or proceeding to enforce any right under the substitute amendment may file a complaint with the Department of Workforce Development (DWD). DWD must process the complaint in the same manner as employment discrimination complaints are processed under current law, which processing may include the ordering of back pay, reinstatement, or compensation in lieu of reinstatement.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 103.12 of the statutes is created to read:

2 **103.12 Monitoring of employee computer use. (1) DEFINITIONS.** In this
3 section:

4 (a) “Computer” has the meaning given in s. 943.70 (1) (am).

5 (b) “Computer network” has the meaning given in s. 943.70 (1) (b).

6 (c) “Computer program” has the meaning given in s. 943.70 (1) (c).

7 (d) “Computer system” has the meaning given in s. 943.70 (1) (e).

8 (e) “Employer” includes the state and any office, department, independent
9 agency, authority, institution, association, society, or other body in state government

1 created or authorized to be created by the constitution or any law, including the
2 legislature and the courts.

3 (f) "Monitor" means to intercept, observe, review, or examine through the use
4 of any electronic or other device.

5 **(2) MONITORING OF EMPLOYEE COMPUTER USE.** (a) Subject to sub. (3), an employer
6 may not monitor an employee's use of any computer, computer program, computer
7 network, or computer system owned by the employer unless the employer first does
8 all of the following:

9 1. Establishes a policy governing employee use of the employer's computers,
10 computer programs, computer networks, and computer systems including use of
11 those computers, computer programs, computer networks, or computer systems to
12 access the Internet or to send or receive electronic mail, text, or instant messages.
13 The policy shall include notice of all computer, computer program, computer
14 network, and computer system usages that are prohibited or restricted by the
15 employer and of the types of monitoring that the employer may employ to enforce
16 those prohibitions or restrictions.

17 2. Provides a written notice of the policy under subd. 1. to all employees who
18 may be affected by that policy. The written notice may be in either paper or electronic
19 format and is required to be provided to an employee only once, except that an
20 employer shall provide an additional copy of the written notice to an employee on
21 request.

22 (b) If an employer establishes a policy under par. (a) 1. and provides notice of
23 the policy under par. (a) 2., the employer may monitor employee use of the employer's
24 computers, computer programs, computer networks, and computer systems as
25 provided in the policy and in sub. (3). If an employer changes its policy under par.

1 (a) 1., the changed policy may not take effect until the employer provides written
2 notice of the changed policy, in either paper or electronic format, to all employees who
3 may be affected by the changed policy.

4 (c) If an employer does not establish a policy under par. (a) 1. or establishes such
5 a policy, but does not provide notice of the policy under par. (a) 2., the employer may
6 not monitor employee use of the employer's computers, computer programs,
7 computer networks, or computer systems, including use of those computers,
8 computer programs, computer networks, or computer systems to access the Internet
9 or to send or receive electronic mail, text, or instant messages, except as provided in
10 sub. (3).

11 **(3) EXCEPTIONS.** An employer may monitor an employee's use of a computer,
12 computer program, computer network, or computer system owned by the employer,
13 including use of such a computer, computer program, computer network, or computer
14 system to access the Internet or to send or receive electronic mail, text, or instant
15 messages, without first complying with sub. (2) (a) and (b) if the monitoring is
16 conducted as follows:

17 (a) In cooperation with a law enforcement agency to which the employer has
18 reported a reasonable belief that an employee is suspected of engaging in any
19 unlawful activity.

20 (b) In cooperating with a law enforcement agency in an investigation of any
21 other unlawful activity in which an employer is suspected to have engaged.

22 (c) To comply with a court order.

23 (d) To protect the employer from the misappropriation of any trade secret, as
24 defined in s. 134.90 (1) (c), or other confidential business information of the employer,

1 from any liability for sexual harassment in violation of s. 111.36 (1) (b) or (br), or from
2 any other loss or liability.

3 (e) To manage the Internet sites accessed through, or the electronic mail, text,
4 or instant messages coming into or going out of, the employer's computerized
5 communication system solely for the purpose of system maintenance, security, or
6 protection and not for the purpose of monitoring the Internet sites accessed, or the
7 electronic mail, text, or instant messages sent or received, by any particular
8 employee.

9 (4) DISCRIMINATORY ACTIONS PROHIBITED. No employer may discharge or
10 otherwise discriminate against any person for opposing a practice prohibited under
11 this section, filing a complaint or attempting to enforce any right under this section,
12 or testifying or assisting in any action or proceeding to enforce any right under this
13 section.

14 (5) ENFORCEMENT. An employee whose computer, computer program, computer
15 network, or computer system use is monitored in violation of sub. (2) or who is
16 discharged or otherwise discriminated against in violation of sub. (4) may file a
17 complaint with the department, and the department shall process the complaint in
18 the same manner as employment discrimination complaints are processed under s.
19 111.39. If the department finds that a violation of sub. (2) or (4) has been committed,
20 the department may order the employer to take such action under s. 111.39 as will
21 effectuate the purpose of this section. Section 111.322 (2m) applies to a discharge or
22 other discriminatory act arising in connection with any proceeding under this
23 subsection.

24 **SECTION 2.** 106.54 (8) of the statutes is created to read:

1 106.54 (8) The division shall receive complaints under s. 103.12 (5) and shall
2 process the complaints in the same manner as employment discrimination
3 complaints are processed under s. 111.39.

4 **SECTION 3.** 111.322 (2m) (a) of the statutes, as affected by 2009 Wisconsin Acts
5 3 and 28, is repealed and recreated to read:

6 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
7 right under s. 103.02, 103.10, 103.12, 103.13, 103.28, 103.32, 103.455, 103.50,
8 104.12, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64 to
9 103.82.

10 **SECTION 4.** 111.322 (2m) (a) of the statutes, as affected by 2009 Wisconsin Act
11 (this act), is amended to read:

12 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
13 right under s. 103.02, 103.10, 103.12, 103.13, 103.28, 103.32, 103.34, 103.455,
14 103.50, 104.12, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64
15 to 103.82.

16 **SECTION 5.** 111.322 (2m) (b) of the statutes, as affected by 2009 Wisconsin Acts
17 3 and 28, is repealed and recreated to read:

18 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
19 held under or to enforce any right under s. 103.02, 103.10, 103.12, 103.13, 103.28,
20 103.32, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to
21 101.599 or 103.64 to 103.82.

22 **SECTION 6.** 111.322 (2m) (b) of the statutes, as affected by 2009 Wisconsin Act
23 (this act), is amended to read:

24 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
25 held under or to enforce any right under s. 103.02, 103.10, 103.12, 103.13, 103.28,

1 103.32, 103.34, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, or 146.997 or ss.
2 101.58 to 101.599 or 103.64 to 103.82.

3 **SECTION 7.** 111.91 (2) (im) of the statutes is created to read:

4 111.91 (2) (im) Employee computer, computer program, computer network, or
5 computer system use prohibitions or restrictions that provide fewer rights and
6 remedies to employees than are provided under s. 103.12.

7 **SECTION 8. Initial applicability.**

8 (1) This act first applies to an employee who is affected by a collective
9 bargaining agreement that contains provisions inconsistent with this act on the day
10 on which the collective bargaining agreement expires or is extended, modified, or
11 renewed, whichever occurs first.

12 **SECTION 9. Effective dates.** This act takes effect on the day after publication,
13 except as follows:

14 (1) MONITORING OF EMPLOYEE COMPUTER USE. The amendment of section 111.322
15 (2m) (a) and (b) of the statutes takes effect on April 1, 2010, or on the day after
16 publication, whichever is later.

17 (END)