

Illinois Resurrects Anti-Recording Law

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Most states have laws restricting surreptitious recording of conversations, although the terms often vary as to what consent is required. While a prior Illinois law had been declared unconstitutional after a citizen was prosecuted for recording police officers, the law was revised this year. The new law prohibits recording private conversations surreptitiously “unless he or she does so with the consent of all other parties to the private conversation.”

For Illinois employers, this reaffirms an employer’s right to prohibit employees from recording workplace conversations. One of the keys to this law is that it prohibits surreptitious recordings. If an employee openly displays and activates a recording device, the recording would not be illegal. However, absent some contractual provision to the contrary, an employer is entitled to expressly refuse permission to record the conversation and order the employee to turn it off, and treat noncompliance as insubordination that would lead to disciplinary action, up to and including discharge.

Why refuse permission? There may be several reasons. First, recording only the audio portion of a communication can be misleading – one study found that 93% of communication is non-verbal and 55% is completely inaudible (such as facial expressions). Second, most supervisors are not professional speakers with prepared scripts; when they know their statements are being recorded, they may become so self-conscious that they fail to communicate effectively.

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The bottom line is that Illinois employers should not feel compelled to allow audio recordings of their private conversations.