

# “May I Record A Conversation With My Employee Without His Knowledge?”

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## Working Together

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At the Pullman & Comley Labor, Employment, and Employee Benefits Seminar recently, I was asked by one of the attendees, an HR Director, whether she could record a disciplinary meeting with a troublesome employee without telling the employee. This is a question that comes up from time to time. More often, it's an employee who has surreptitiously recorded conversations, and seeks to use the recordings against the employer in legal or administrative proceedings.

This is a more complicated subject than you might think. Among other things, it's important to distinguish between phone calls and face-to-face conversations, and to distinguish employer-employee conversations from other conversations. In Connecticut:

1. It's illegal (a class D felony) to record (or overhear using any device) a phone conversation of which you're neither the sender nor receiver, without the consent of either the sender or the receiver. *See Conn. Gen. Stat. §§ 53a-187 through 53a-189.*
2. It's illegal (an unclassified misdemeanor) for an employer to monitor (audio or video) employees in areas designed for their personal comfort or for safeguarding their possessions, such as rest rooms, locker rooms or lounges. *See Conn. Gen. Stat. § 31-48b(b).*
3. It's illegal (an unclassified misdemeanor) for an employer to intentionally overhear or record any conversation about employment contract negotiations with an employee or employee representative unless all parties to the conversation consent. *See Conn. Gen. Stat. § 31-48(b)(d).* The statute clearly applies to collective bargaining negotiations, but may also apply to other circumstances.
4. Conn. Gen. Stat. § 31-48d requires employers who engage in any form of electronic monitoring of employees -- including both audio and video recording -- to warn employees in writing and/or post a notice in a conspicuous place that describes the types of monitoring that the employer may use. Violation of the statute may subject the employer to civil penalties. It's not clear whether recording a disciplinary meeting, such as discussed in the article, would fall under this statute. The statute doesn't apply if the employer has reasonable grounds to believe that employees are violating the law, violating the legal rights of the employer or other employees, or creating a hostile workplace environment, and electronic monitoring may produce evidence of the misconduct.

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5. It's not illegal in the criminal sense, but you can be sued civilly for recording a phone conversation - even one in which you participate - unless you obtain the consent of all parties, or warn all parties at the beginning of the conversation, or use a device that produces a warning tone every 15 seconds. *See* Conn. Gen. Stat. § 52-570d. There are a number of exceptions to this prohibition, mostly related to law enforcement.
6. There is no law in Connecticut that penalizes you for recording a face-to-face conversation in which you participate, even without the consent of the other person. One court decision suggests that the other person could sue you for the tort of invasion of privacy, but I suspect the case is an aberration. *See WVIT v. Gray*, 1996 WL 649335, 18 Conn.L.Rptr. 203 (Sup. Ct. October 25, 1996).
7. Of course, none of the above addresses the question whether the recording – even if legally made – will be admissible in evidence in any suit or other proceeding. That’s a possible subject for another blog post.

Bottom line -- don't record phone conversations without everyone's consent, or at least providing notice. In general, outside the employment context, you can secretly record a face-to-face conversation in which you participate, but you could be sued for invasion of privacy. In the workplace, it's probably ok to surreptitiously record face-to-face conversations if you're the employee, again at some risk of an invasion of privacy claim. If you're an employer who wants to secretly record an employee (such as the disciplinary meeting I was asked about) tread very carefully. Call your attorney and discuss the specific circumstances to understand your risks.

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