



# International Laws Vary on Secret Recordings at Work

By Leah Shepherd

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**S**ince audio recordings are now so easy to make, it's becoming common for employees to secretly record conversations and meetings at work.

This growing practice may or may not be legal, depending on what country you are in. The law in other countries differs from what's expected in the United States ([www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/secret-recordings.aspx](http://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/secret-recordings.aspx)). Before taking disciplinary action against an employee who recorded someone, learn the relevant laws in order to avoid a lawsuit.

## Australia

In Australia, the legality of secret recordings depends on where an employer is located. In Queensland, the Northern Territory, Victoria and South Australia, it's legal for an employee to record a conversation covertly, if he or she is a party to the conversation.

In every other state and territory, it's unlawful for an employee to record a conversation without the consent of the other parties to the conversation. There are, nonetheless, exceptions in each state and territory, according to Elizabeth Ticehurst, an attorney with KPMG Law in Sydney.

## Canada

In Canada, it's legal for employees to record, so long as the employee making the covert recording is one of the people openly participating in the conversation. By contrast, employers must give notice to their employees before recording, and they would need to do it for broader reasons, not just to target one person, according to Lisa Stam, an employment lawyer with the Canadian law firm SpringLaw in Toronto.

## U.K.

In the United Kingdom, an employee making secret recordings at work could be found guilty of misconduct, depending on the circumstances. To determine whether an employer could legally fire an employee for secretly recording, the U.K.'s Employment Appeal Tribunal would consider a number of factors, such as:

- Whether the secret recording undermines trust between the employer and employees.

- The purpose of the recording.
- The employee's blameworthiness.
- The content of what has been recorded.
- Evidence of the employer's official policy toward recording.
- Evidence of discrimination.

These factors were outlined in a U.K. case decided last year called *Phoenix House Ltd. v. Stockman*. The tribunal noted that an employee could have reasons to record other than to entrap the employer or gain a dishonest advantage.

If the recording contains personal information or confidential information about another employee, the tribunal would probably not admit that as evidence, said Terese Connolly, an attorney with Culhane Meadows in Chicago.

The tribunal would be likely to rule in the employer's favor if the employee lied about making a recording or if the employee was previously told not to record any meetings.

When it comes to the employer recording an employee, there must be a legitimate reason to record, such as a solid basis to suspect serious employee misconduct, said Tessa Cranfield, an attorney with Seyfarth in London. The employer also must go to lengths to minimize the privacy impact, such as keeping the number of employees recorded and the length of the recording to a minimum, excluding any personal discussion, and limiting the use of and access to the recordings.

*[SHRM members-only toolkit: Introduction to the Global Human Resources Discipline ([www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/introglobalhr.aspx](http://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/introglobalhr.aspx))]*

### Action Steps

Privacy is a concern when recordings are made. Employers will "look at how do we protect ourselves and protect our employees and personal information and confidential information?" Connolly said.

It's important for HR professionals to understand any changes to the laws in their jurisdiction and draft corporate policies that are compliant. The company policy on recording should establish what is and isn't permitted, as well as the consequences for breaching that policy.

If an employer wants to record an employee, it's a good practice to explain why and obtain consent in writing. For example, an employer may wish to record all disciplinary proceedings, grievance proceedings, performance review meetings, board meetings or management meetings. That may be legal in some countries, but not others.

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