

Is it legal for employees to secretly record their performance evaluation meetings?

Q. One of our employees secretly used his iPhone to make an audio recording of his review meeting. Is that legal?

A. Possibly. Most states, including Minnesota, currently have single-party consent laws that permit anyone to record a conversation without another's consent. Some states, however, require all parties to consent to the recording.

Technological advancements and the growth of smartphones have made it easier for employees to secretly record conversations. Smartphones with cameras also increase the risk that employees may take and publicize photographs or videos of the workplace, co-workers or clients. That raises potential privacy and proprietary business concerns.

As a result, your company may want to consider a policy prohibiting unauthorized audio recording, videotaping or photography. It could dissuade such conduct and better position the company to discipline individuals who violate the policy.

Even with such a policy, however, be cautious. If a recording, video or photo involves legally protected activity by the employee, such as whistle-blowing or the exercise of other employment or labor law rights, you may face legal risks if you take adverse action.

For example, the National Labor Relations Board, which has jurisdiction over employees' labor law rights in both unionized and nonunionized settings, held earlier this year that an employer committed an unfair labor practice when it fired an employee who secretly recorded a meeting with management about the employee's labor law rights.