

Can we listen in on employees' phone calls?

Q. We have a good reason to believe that one of our employees is divulging proprietary company information to a friend of his who works for our competition. We have a device that would allow us to listen in on his phone conversations, but not record it. Is it within our rights as an employer to listen in on his calls?

A. Generally, yes. Under federal law, employers may monitor employee conversations if the monitoring occurs in the ordinary course of business, or if there is employee consent. (See [**Electronic Communications Privacy Act**](#), 18 U.S.C. 2510 *et seq.*)

For example, if employees are told not to make personal calls from company phones or are notified that calls are monitored, the employees have no reasonable expectation of privacy, and know they run a risk of having personal calls monitored. (Note that if parties to the call are in California, state law requires that they be informed the conversation is being recorded or monitored by either playing a beep tone or a recorded message.)

Of course, the employee could use his or her personal cell phone, which would not be subject to your monitoring.

If you believe an employee is divulging proprietary information to a competitor, consult your attorney.