

Electronic Monitoring Of Employees' Telephone Conversations: A Quick Reminder For Employers

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Some employers concerned with excessive use of business phones for personal use may wish to adopt a practice of monitoring employees' telephone calls placed over company phone lines. Other employers might wish to monitor phone usage in order to evaluate the level of customer service provided by their employees. And suspected wrongdoing by one or more employees may cause employers to want to monitor telephone usage. Whatever the reason for monitoring, employers need to be aware that the practice is not without risk.

For example, the Omnibus Crime and Safe Streets Act ("Wiretap Act") prohibits employers from intentionally intercepting any wire, oral or electronic communications that take place on their premises. Under the Wiretap Act, an aggrieved employee can recover a minimum award of \$10,000 or \$100 per day of violation — whichever is greater. An individual might also recover actual damages, punitive damages, and attorneys' fees and costs.

There are, however, exemptions to this prohibition. For example, under the Wiretap Act, it is not unlawful to intercept telephone or other communications if one of the parties to the communication has given prior consent. Therefore, employers can monitor their employees' incoming and outgoing calls if they obtain their consent beforehand. Perhaps the simplest way of limiting liability under the Wiretap Act is to circulate a memorandum or "telephone use" policy that outlines the Company's practice of monitoring incoming and/or outgoing conversations. Ideally, to establish actual consent, the memorandum or policy would include an acknowledgement form for the employees' signature.

There still remains the potential for liability under state law. California, for example, requires the consent of **each party**. Therefore, employers who wish to implement a practice of monitoring employee phone calls are encouraged to consult legal counsel.

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