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My iPhone Records Conversations and No One Has to Know: Is It Legal to Record Conversations in the Workplace?

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Poor Maxwell Smart—all he had was a shoe phone, with a rotary dial. Now we all have the James Bond equivalent of the latest recording devices at our fingertips or in our back pockets. But just because we *have* them, does it mean we can *use* them in the workplace? Whether to prove discrimination, harassment, or various other reasons, the recording of conversations is becoming more and more prevalent in the workplace. The 64,000 question—is it legal? The answer is not straightforward, it depends on a number of factors, including a myriad of applicable state and federal laws (note, the Federal Wiretap Act (18 U.S.C. 2511(2)(d)) is almost identical to New Jersey's, described below).

In New Jersey, if you want to record a conversation which you are having face-to-face with a co-worker/supervisor/etc., you are permitted to record the conversation. The key here is you must be a party to conversation. On the other hand, if you placed a recording device in an office in an attempt to catch co-workers speaking about you, you are not a party to the conversation and you may not record it. If you do, you may be subject to civil and criminal penalties, *unless* one of the aforementioned parties gave their consent to be recorded, then the recording may be permitted. One important caveat under New Jersey law, the acceptable recordings described above are explicitly not permitted to be "...intercepted or used for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of committing any other injurious act." *N.J.S.A. 2A:156A-4*.

Further, this issue becomes more convoluted if you are recording a phone conversation between yourself and a party in another state. Just because it may be legal in your state does not mean it is legal in the other party's state. To this end, it is important to remember these laws vary from state to state, for example New Jersey differs from New York.

At work, always communicate like you are being recorded because you might be!