

Legal Risks of Recording Video Conference Calls

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As our video conferencing technology continues to advance and its popularity rises, so do the legal issues surrounding it and our heightened responsibilities to follow legal protocol.

State and federal wiretapping and recording laws become more relevant in our distanced state of operation, as we are often unaware of who is around to hear our conversations, and the ease of recording through this technology.

Each state has adopted its own version of wiretapping laws. States typically fall in the category of either one-party or two-party consent requirements. In a one-party consent state, a person can record a phone call or conversation, so long as one party has given consent. Therefore, a party of the conversation can record without getting any other parties' consent. However, in a two-party consent state, *all* parties to the conversation must give their consent to recording. Pennsylvania is a two-party consent state and makes it a felony to intercept or record a telephone call or conversation unless all parties to the conversation consent. Because each state has different requirements, it is important to know the relevant laws for each party in the recorded conversation to avoid criminal liability for illegal recording. If recording a Zoom call, it is important that all participants are aware that it is being recorded. Many of the video conference services make it clear that the call is being recorded, but any secretive recording functions should not be used.

At the federal level, the Electronic Communications Privacy Act - otherwise known as the Wiretap Act, prohibits the intentional or attempted interception, use, disclosure or procurement of any other person to intercept or endeavor to intercept any wire, oral or electronic communication or use of illegally obtained communications as evidence, with some exceptions.

In addition to avoiding criminal violations, video conference users should be aware that recorded calls may end up being used as evidence to support litigation over a business transaction gone awry or a claim by an employee of discrimination or harassment. Recorded video conference calls will preserve communications that would normally occur on unrecorded telephone lines.

To avoid issues, implement these best practices when using telecommunication technology to limit possible backlash in litigation:

Be aware of your conduct and statements. You may be unaware of who is in the background of the conversation. Do not speak about confidential or private information if there is a chance that someone could be listening in or recording as another person's presence could waive the expectation of privacy or privilege in the conversation.

Be cognizant of the recording tool. Many platforms notify the parties to the conversation when they are being recorded. Saying something confidential, private or potentially unhelpful could be saved forever and

resurface if a dispute arises.

Be clear. If you are recording a conversation on a video conference platform, make all parties aware the conversation is being recorded.

For further guidance on this topic, please reach out to partner [Justin Tomevi](#), or any of the attorneys in the [Barley Snyder Litigation Group](#).

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