

## Amendments to Illinois's Eavesdropping Statute Signed Into Law

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On December 30, 2014, Illinois Governor Pat Quinn signed [Senate Bill 1342](#) into law, amending the Eavesdropping Article of the Illinois Criminal Code (720 ILCS 5/14) that was struck down by the Illinois Supreme Court last year as unconstitutional. (Our April 2014 blog post, "[Illinois Supreme Court Strikes Down Eavesdropping Statute as Overly Broad](#)," covers the Illinois Supreme Court's decision in detail.) The [revised eavesdropping statute](#), which is effective immediately, criminalizes the recording of private conversations without the consent of all parties to the conversation. The revised law provides employers with a safeguard against employees' covertly recording coworkers in the workplace, but employers should still adopt policies banning nonconsensual recordings of private workplace conversations. Additionally, employers should be wary of taping interviews, telephone conversations, and the like—even for legitimate business reasons.

### Key Amendments to Previously Invalidated Eavesdropping Law

As we discussed in our [April 2014 blog post](#), the Illinois Supreme Court previously ruled that the eavesdropping statute was unconstitutional based on the statute's overly broad criminalization of *any* conversation recorded without consent, regardless of whether the parties intended the conversation to be private or had an expectation of privacy. The revised statute attempts to remedy this by specifying that it only applies to a "private conversation," defined as "an oral communication between 2 or more persons . . . when one or more of the parties intended the conversation to be of a private nature under circumstances reasonably justifying that expectation."

The Act also changes the term "electronic communication" to "private electronic communication," defined as "any transfer of signs, signals, writing, images, sounds, data or intelligence . . . transmitted in whole or part by a wire, radio, pager, computer . . . when the sending or receiving party intends the electronic communication to be private under circumstances reasonably justifying that expectation."

Applying these definitions, the statute limits the crime of eavesdropping to instances when an individual surreptitiously records a private conversation without the consent of *all* parties to the conversation. The Act further prohibits an individual from intercepting, recording, or transcribing a private electronic communication that he or she is not a party to without the consent of all parties to the electronic communication.

### What This Means for Employers

The revised eavesdropping statute provides employers with a ready-made eavesdropping policy and removes the cloud of confusion that has hung over employers since the Illinois Supreme Court invalidated the eavesdropping statute last March. However, it is not enough for employers to merely rely on the law's restrictions—employers should disseminate an eavesdropping policy that prohibits employees from recording private workplace conversations without consent. Public sector employers in particular should pay close attention to the Act's limitations and ensure that they do not restrict the rights employees have under the Act to record non-private conversations in the workplace. Lastly, employers should not deem themselves above the Act's restrictions. An employer that records an investigatory interview or disciplinary meeting will violate the Act, notwithstanding the fact that the employer may have a legitimate business reason for doing so.

Employers should also be careful on how they craft their policies in light of pending cases before the National Labor Relations Board challenging the legality, under Section 7 of the National Labor Relations Act (NLRA), of employer policies that restrict employees' ability

to record conversations. Employers are encouraged to work with their legal counsel to craft a policy that contemplates possible NLRA issues. Lastly, employers should not deem themselves above the Act's restrictions. An employer that records an investigatory interview or disciplinary meeting will violate the Act, notwithstanding the fact that the employer may have a legitimate business reason for doing so.

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**January 8, 2015 | TAGS: Eavesdropping Article of the Illinois Criminal Code, eavesdropping in the workplace, electronic communication, Illinois Governor Pat Quinn, private conversations, private electronic communication, recording workplace conversations, workplace privacy.**

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