



Recording or monitoring business phone calls

Background

With a growing number of agency management systems now able to archive phone recordings and voice mails in client files, for both E&O and customer services purposes, agencies are looking at ways to incorporate these recordings into their procedures as part of their record retention policy. This Q&A reviews legal compliance issues with regard to phone recordings and voicemail messages.

Q&A

1. Is there a specific statute which makes it illegal to record or monitor telephone calls without the prior consent of all parties?

Yes. The requirement that all parties provide consent prior to the recording or monitoring of telephone calls is governed by:

- in Delaware: [the Delaware Criminal Code, specifically 11 Del.C. Section 1335\(a\)\(4\) and 11 Del.C. Section 2402](#)
- in Maryland: [Md Code, Courts & Judicial Proceedings, Section 10-402\(c\)\(3\)](#)
- in Pennsylvania: [the Wiretapping and Electronic Surveillance Control Act \(18 Pa.C.S.A. Sections 5701-5782\).](#)

2. If I want to record or monitor incoming business phone calls to my agency, is it necessary to notify the caller that the call is going to be, or may be, recorded or monitored?

Yes. Delaware, Maryland and Pennsylvania are all “two-party” states, which means that all parties to a conversation must consent PRIOR to any recording or monitoring of the conversation. You must both notify the caller, and obtain the caller’s consent, in order to legally record or monitor a telephone conversation in any one of these states.

3. What if a business telephone call involves more than two people?

Consent must be obtained from each and every party to the telephone conversation.

4. What prerecorded message can I use in order to notify callers their conversation may be recorded or monitored?

The following phrase, or something substantially similar, would be acceptable: “This call may be

recorded or monitored for quality assurance purposes.”

5. What if we don’t intend to use a prerecorded message for notification purposes?

In the alternative to using a prerecorded message, agents and employees should verbally notify third parties, using the same language as referenced above.

6. Is it necessary for the third party to actually tell me they consent in order for the recording or monitoring to be legal?

No. If the caller remains on the telephone after being provided proper notification, this would constitute “implied consent” to the recording or monitoring.

7. Are notification and consent also required if it's an outbound call (our staff initiates the call to a third party)?

Yes, if the call is going to be recorded.

8. Can I still record or monitor the telephone call if the third party informs me they do not wish to have the call recorded or monitored?

No. Such recording or monitoring is prohibited and would be illegal. (See Question #13 for potential penalties and consequences)

9. Do I still need to obtain consent if all I am doing is archiving a voicemail left by a customer? The customer knew he or she was being recorded.

No. When a customer leaves a voicemail message, the customer knew he or she was being recorded, and, by the act of leaving the voicemail message, has implicitly provided consent to the recording.

10. Does this mean I need to obtain the consent of my employees as well, since they will also be party to the recorded or monitored phone calls (and Delaware, Maryland & Pennsylvania are “two-party” states)?

Yes. While staff and employee consent may be provided verbally, the best practice is to obtain their prior, signed, written consent. IA&B has developed a sample notification and consent form, which you may use and/or adapt as necessary.

Access [IA&B’s sample employee notification and consent form.](#)

11. Is it permissible for me to record or monitor personal calls of my employees?

No. While the recording or monitoring system which an agency implements may result in the inadvertent recording or monitoring of personal calls conducted over business telephones, neither the employer, nor any other party authorized by the employer, is permitted to listen to a personal call beyond the point necessary to determine that the employee is not engaged in a business telephone conversation.

12. Are there any steps the agency should take to attempt to alleviate any employee concerns? My main goal in recording or monitoring phone calls is to better document contacts with customers.

Prior to the implementation of any recording or monitoring system, it is strongly suggested that any rules, regulations, practices and procedures associated therewith be succinctly outlined and delineated in a written policy. This policy should be carefully and clearly discussed with, and acknowledged by, all agency staff. Some items to be addressed may include:

- The goals and objectives the agency seeks to achieve;
- The manner by which calls will be recorded or monitored;
- The times and circumstances under which recording or monitoring will occur; and
- Whether or not it is permissible to use business phones for personal calls, and, if so, that personal calls may be inadvertently recorded or monitored

In addition, once a clear, written policy has been disclosed and established, if deemed appropriate, it may be prudent to conspicuously display written reminders (either in the office or on or near business telephones) noting that calls are subject to recording or monitoring.

13. Are there potential criminal and civil penalties for illegally recording or monitoring phone calls?

Yes. Potential *criminal* penalties are as follows:

- **in Delaware:** Each illegal recording or monitoring of a telephone conversation constitutes a class A misdemeanor, punishable by up to one (1) year of imprisonment, and a fine of not more than \$2,300 (11 Del.C. Section 4206(a)).
- **in Maryland:** Each illegal recording or monitoring of a telephone conversation constitutes a felony, punishable by up to five (5) years of imprisonment, and a fine of not more than \$10,000 (MD Code, Courts and Judicial Proceedings, Section 10-402(b)).
- **in Pennsylvania:** Each illegal recording or monitoring of a telephone conversation constitutes a felony of the third degree (18 Pa.C.S.A. Section 5703(1)), punishable by up to seven (7) years of imprisonment (18 Pa.C.S.A. Section 106(b)(4)), and a fine of not more than \$15,000 (18 Pa.C.S.A. Section 1101(3)).

In addition, for each state, any person whose call was illegally recorded or monitored could initiate a *civil* suit to collect damages.

Other tools

- Sample Employee notification and consent form (see Question #10)

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