

Recording Conversations in the Workplace—Take Two: Can an employer have a policy forbidding the recording of conversations in the workplace?

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Our October 7th blog post explored the question [whether or not employers could legally record conversations in the workplace](#). The answer was of course . . . it depends. But that blog generated a new question from our readers (thank you for reading). To avoid the thorny legal issue, can employers institute a policy prohibiting the recording of conversations in the workplace. Sounds reasonable, but not so fast... for private employers the short answer **NO**.

For Private Employers the Short Answer is NO

Employers subject to the NLRA—which includes all private employers—are currently prohibited from having policies barring employers from recording conversations. This ruling was established by the NLRB's 2014 decision in [Whole Foods Market Inc. and United Food Workers, Local 919](#). While this decision is currently being appealed to the Second Circuit, employers should continue to follow its guidance until a decision is issued by the Second Circuit.

For Public Employers the Short Answer is YES (for now)

While public employers in New Jersey are not subject to the NLRA, they do have to comply with the Employer-Employee Relations Act (EERA). Thus far, the issue of recording conversations has not been specifically addressed under the EERA, the fact that the NLRA is being read expansively to bar such recordings suggests that a court may reach a similar conclusion regarding the EERA might be reached. However, the EERA does not specifically address concerted activity, and instead frames the rights of employees with respect to joining and aiding labor unions. Notably, in a recent unpublished case, the New Jersey Appellate Division upheld a police department's policy banning "surreptitious recording" of conversations. *Palladino v. Township of Waterford*, 2016 WL 1723908 (App. Div. 2016). However, the panel did not address the EERA, and instead only analyzed the policy under CEPA, the federal Constitution, and the New Jersey Constitution. Additionally, the panel's holding relied on the fact that the case involved a police department.

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