

Conversation recorded by concealed voice recorder accepted as valid evidence

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Evidence used in employment cases must be obtained in a lawful manner and in accordance with fundamental rights, such as due process. However, a recent Supreme Court decision has fostered debate about the protection of fundamental rights within the context of an employment relationship.

On April 12 2018 the Supreme Court found that a conversation recorded without consent by a concealed voice recorder at a meeting could be considered valid evidence and did not violate the fundamental rights of the individuals recorded. The court based its decision on the reasonable confidential expectation doctrine, according to which a workplace conversation may be considered confidential or not based on:

- whether its context is hostile or friendly;
- the number of attendees (the more attendees, the less chance that the secret recording will be admitted as evidence);
- whether the content of the topics discussed are employment related or personal; and
- whether the company has clearly informed its employees about its expectation of confidentiality.

The Supreme Court decision does not conform with criminal regulations, in which secret recordings are not admitted unless expressly authorised by the individuals recorded.

For further information on this topic please contact [Ignacio Garcia](#) or [Fernando Villalobos](#) at Porzio Rios Garcia by telephone (+56 22 729 0600) or email (igarcia@porzio.cl or fvillalobos@porzio.cl). The Porzio Rios Garcia website can be accessed at www.porzio.cl.

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