



DEPARTMENT OF THE ARMY  
DEFENSE LANGUAGE INSTITUTE FOREIGN LANGUAGE CENTER  
PRESIDIO OF MONTEREY  
OFFICE OF THE STAFF JUDGE ADVOCATE  
1336 PLUMMER STREET, BLDG. 275  
MONTEREY, CALIFORNIA 93944

ATZP-JA

28 March 2019

MEMORANDUM FOR ALL

SUBJECT: Electronic Recording of Conversations

1. Purpose: To provide guidance on recording laws for military and civilian members assigned to, attached, or performing Temporary Duty at the DLIFLC and POM.

2. References

a. 18 U.S.C. § 2511, Interception and Disclosure of Wire, Oral, or Electronic Communications Prohibited, 14 January 2019

b. California Penal Code § 632, Eavesdropping on Confidential Communication; Punishment, 1 January 2017

3. Background: Surreptitiously (secretly) recording or eavesdropping upon conversations in the Federal workplace negatively impacts productivity and professional relationships; failure to comply with applicable state and federal law may subject employees to criminal punishment and/or administrative discipline.

4. Recording Laws: One-Party and All-Party Consent

a. The majority of states have adopted “one-party” consent requirements with respect to recording communications. In these jurisdictions, only one party to a confidential communication, such as an in-person or telephonic conversations, is required to consent to the recording of a conversation or communication. Federal law also only requires that one party consent to recording. See 18 U.S.C. § 2511.

b. However, *California is not a one-party consent state*. Instead, under California law, *all parties* to a confidential communication, including in-person and telephonic conversations, must give consent before the communication can be recorded. Cal. Penal Code § 632(a). Accordingly, surreptitiously recording or eavesdropping upon a confidential communication in California without the consent of *all parties* is illegal

(1) The above restrictions apply only to “confidential” communications. A confidential communication means any conversation carried on in circumstances which reasonably indicate that *any* party to the communication intended the communication to be restricted solely to the present parties. Cal. Penal Code § 632(c).

(2) In addition, an individual must “intentionally” record or eavesdrop upon a conversation to be subject to criminal punishment under the above.

c. Civilian employees and military personnel should also be aware that California’s all-party consent requirements *likely apply* even when a confidential communication occurs in part in a one-party consent state and in part in California. Thus, a communication between a party in a one-party consent state, and a party in California, an all-party consent state, requires the consent of *all* parties to lawfully record the communication.

## 5. Discussion.

a. Communications by DLIFLC and POM employees that occur in California, including at the DLIFLC and the POM, are subject to California state law.

(1) DLIFLC employees assigned to DLIFLC locations outside of California (e.g. another state or foreign assignment) should be aware that their communications with individuals physically located in the state of California, *including other DLIFLC and POM employees*, are subject to California law.

(2) California law *would not* apply to DLIFLC employees assigned to locations outside of California if *none* of the parties to the conversation are physically located in California. In such cases, DLIFLC employees would be subject to the laws of the state(s) where the parties are located.

b. Faculty may record themselves teaching for education development or certification purposes; however when doing so, he/she must ensure that no students are recorded speaking. If faculty wishes to include students in the recording, he/she must obtain consent from the student prior to recording.

c. As noted above, California recording laws do not include recording of communications which parties do not reasonably expect would be private. Recording laws also do not apply to certain situations in which applicable state law eliminates consent requirements, or otherwise makes exempt from recording laws; for example, the use of hearing aids or similar devices by hearing impaired individuals would not violate California recording statutes Cal. Penal Code § 632(f).

6. Point of contact is the undersigned at (831) 242-6414.

Karen L. Judkins  
Chief, Administrative Law