

VESSA's Expanded Recording Protections: What Illinois Employers Must Do Now

Labor & Employment Law Update

By Milt Castro on January 13, 2026

Effective January 1, 2026, the Illinois Victims' Economic Security and Safety Act (VESSA), as recently amended, now prohibits employers from disciplining employees for using company-issued technology such as phones, laptops, or tablets to record evidence of domestic, sexual, or gender-based violence, whether inside or outside of the workplace.

This change in the law immediately puts many employers at odds with their own "no-recording" and "acceptable use" policies, which often prohibit any form of recording on company property or devices. Navigating conflicting policies and avoiding liability under VESSA will require employers to exercise extreme caution.

Protected Recording Activity Under VESSA

Under the amended VESSA, employees may now utilize employer-owned equipment to document or preserve evidence of violence committed against themselves or a member of their family or household. This right extends beyond audio recordings and includes a broad spectrum of protected activity, such as:

- **Photographing Physical Evidence.** Employees may use company devices to document injuries or property damage resulting from a covered incident of violence.
- **Preserving Communications.** Saving or screenshotting threatening text messages, emails, or voicemails on company-issued smartphones is now a legally protected act.
- **Recording Live Incidents.** Documenting a confrontation, stalking incident, or harassment occurring at the workplace or a client site.

Additionally, employers must now grant employees access to any photographs, voice or video recordings, or other digital communications stored on company devices that relate to such violence. For example, if an employee believes an abuser is calling their workplace to monitor their presence, they have a right to review those phone records.

Tension Between VESSA and Reasonable Employer No-Recording Policies

While these rights are sweeping, they are not without limits. Employees must still comply with “reasonable employment policies” and continue to perform their essential job duties. However, VESSA does not define what constitutes “reasonable.” This ambiguity will likely lead to litigation. Consider these scenarios:

- **Confidentiality vs. Safety.** A no-recording policy in sensitive areas may be reasonable for protecting trade secrets, but if it prevents a victim from documenting a spontaneous act of violence, it could be deemed unlawful. And if the employer fires the employee for a security breach, they may be sued for violating the law’s protection of “documenting” acts of violence.
- **Auto-Delete Protocols.** An employer risks liability if VESSA-protected content is deleted—even by an automated system—if the employer was otherwise on notice of its existence. The employer will also likely have the burden of proving that their technical or security constraints do not inadvertently strip a victim of their statutory rights.

Steps Illinois Employers Should Take Now

The lack of a “safe harbor” definition for reasonableness means that this potential defense for employers will be litigated on a case-by-case basis. To mitigate significant risk here, employers should take the following precautions:

1. **Document Essential Duties.** Any performance-based discipline for an employee who has also engaged in protected recording must be meticulously documented. Management must clearly distinguish performance issues from the VESSA-protected activity to defend against “pretext” arguments in litigation.
2. **Segment Sensitive Data.** In high security environments, policies should explicitly state where recordings are strictly prohibited due to third-party privacy (e.g., patient rooms), while providing an alternative safe method for documenting VESSA-related incidents.
3. **Amend Handbook Policies.** Immediately update electronic communications and “no-recording” policies to include a specific carve-out stating that nothing in the policy limits an employee’s rights under VESSA to document violence.
4. **Implement Access Protocols.** Develop a formal, confidential procedure for employees to request and receive copies of digital evidence stored on employer servers to comply with VESSA’s access mandate.
5. **Conduct Supervisor Training.** Train HR and frontline managers to recognize that the act of recording on a company device is now a protected activity, and a “zero-tolerance” approach cannot be applied to VESSA-covered events.

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