

# NEWSLETTER

The Official Newsletter of  
SEENA Legal Consult.



## IN THIS EDITION:

**Page 1**

Preface

**Page 2**

Secret Recordings in the  
Workplace: Legal and  
Practical Challenges in the  
Namibian Labour Context

**Page 4**

Annual Increase

Contact Us

## PREFACE:

The modern workplace continues to evolve, bringing with it new challenges for employers and employees alike. One issue that has become increasingly prevalent is the use of secret recordings during workplace meetings, disciplinary proceedings and other employment-related interactions. While advances in technology have made covert recordings easier than ever, they also raise complex legal, ethical and practical questions. In this edition, we examine the implications of secret recordings within the labour law context, offering practical guidance on how employers can respond while maintaining fair labour practices.

At the same time, we remain committed to keeping our members informed about developments affecting our services. As communicated in this newsletter, our annual membership fees will be adjusted with effect from 1 November 2026. This increase enables us to continue delivering the comprehensive labour law support you rely on, including training, practical workplace solutions, compliance assistance and professional service at your premises in an ever-changing employment law landscape. We sincerely appreciate your continued trust and support, and remain committed to delivering value that assists you in navigating the complexities of labour relations.

Thank you for your continued partnership. We trust that you will find this edition both informative and practically useful.

Kind regards,

Koos Barkhuizen  
Managing Director

## Secret Recordings in the Workplace: Legal and Practical Challenges in the Namibian Labour Context

The increasing accessibility of smartphones and recording technology has introduced a complex and evolving challenge within the Namibian workplace: secret or covert recordings of conversations, meetings, and interactions between employees and management. While such recordings are often justified by employees as a means of protecting themselves during disputes, they raise significant legal, ethical and operational concerns for employers. Managing this issue requires a careful balance between privacy expectations, workplace trust, procedural fairness and the legitimate interests of both employers and employees.

Secret recordings frequently arise during disciplinary enquiries, performance discussions, grievance meetings and other sensitive workplace interactions. Employees may record supervisors or managers without their knowledge in order to preserve evidence for possible labour disputes or arbitration proceedings. From the employee's perspective, covert recordings may serve as protection against perceived unfair treatment, intimidation or later disputes regarding what was said.



From the employer's perspective, however, secret recordings may undermine workplace trust, compromise confidentiality, inhibit open discussion and create a culture of suspicion.

### The Current Legal Position in Namibia

Namibian labour legislation does not presently contain detailed statutory provisions regulating covert recordings in the employment context. Nor has the Namibian judiciary developed a comprehensive body of case law dealing specifically with secret workplace recordings. Consequently, these matters are generally governed by broader legal principles relating to procedural fairness, privacy, confidentiality, contractual obligations and the particular circumstances of each case.

Although Namibian law does not expressly authorise or prohibit participant recordings, there is presently no general legal principle that automatically renders every covert recording made by a participant to a conversation unlawful. Equally, there is no legal principle that automatically entitles an employee to record workplace discussions without consequence.

The legality and propriety of a covert recording will depend upon the facts of each individual case, including the purpose of the recording, the nature of the conversation, the legitimate expectations of privacy of those involved, and the use subsequently made of the recording.

This legal uncertainty requires employers to regulate workplace recordings carefully through clearly drafted workplace policies, while recognising that the mere existence of such a policy will not necessarily determine the admissibility of a recording in subsequent labour proceedings.

### Privacy Considerations

The Namibian Constitution recognises the right to privacy. However, like many constitutional rights, the right to privacy is not absolute and must often be balanced against competing rights and legitimate interests.

Whether a covert workplace recording infringes privacy will depend largely upon the surrounding circumstances. Conversations taking place during confidential disciplinary hearings, legal consultations, management strategy meetings or discussions involving sensitive personal information are likely to attract stronger privacy interests than routine operational discussions conducted openly in the ordinary course of business. The more confidential the subject matter, the stronger the employer's interest in restricting unauthorised recordings.

### Admissibility of Secret Recordings

One of the most common misconceptions is that evidence obtained secretly will automatically be excluded from labour proceedings. That is not necessarily the case.

Labour tribunals generally enjoy a broad discretion regarding the admissibility of evidence and frequently

prioritise substantive fairness over strict technical rules of evidence. A covert recording that is relevant, reliable and assists in determining the true facts may therefore be admitted, notwithstanding questions surrounding the manner in which it was obtained.

This does not mean that the manner in which the evidence was obtained is irrelevant. The circumstances under which the recording was made may influence both the admissibility of the evidence and, importantly, the weight ultimately attached to it by the tribunal. Employers should therefore avoid assuming that the covert nature of a recording will, in itself, prevent it from being considered during arbitration or litigation.

### **May an Employee be Disciplined for Secretly Recording Conversations?**

The answer is not always straightforward.

The mere act of making a covert recording will not necessarily justify disciplinary action or dismissal. Whether disciplinary action is appropriate will depend upon the surrounding circumstances and the seriousness of the employee's conduct.

Important considerations may include:

- whether the recording breached a lawful and reasonable workplace rule;
- whether confidential commercial or personal information was recorded;
- whether the recording formed part of a legitimate attempt to preserve evidence of alleged misconduct;
- whether the employee acted dishonestly or maliciously;
- whether the recording was subsequently distributed to third parties or published on social media;
- whether the recording damaged the employment relationship or the employer's legitimate business interests.

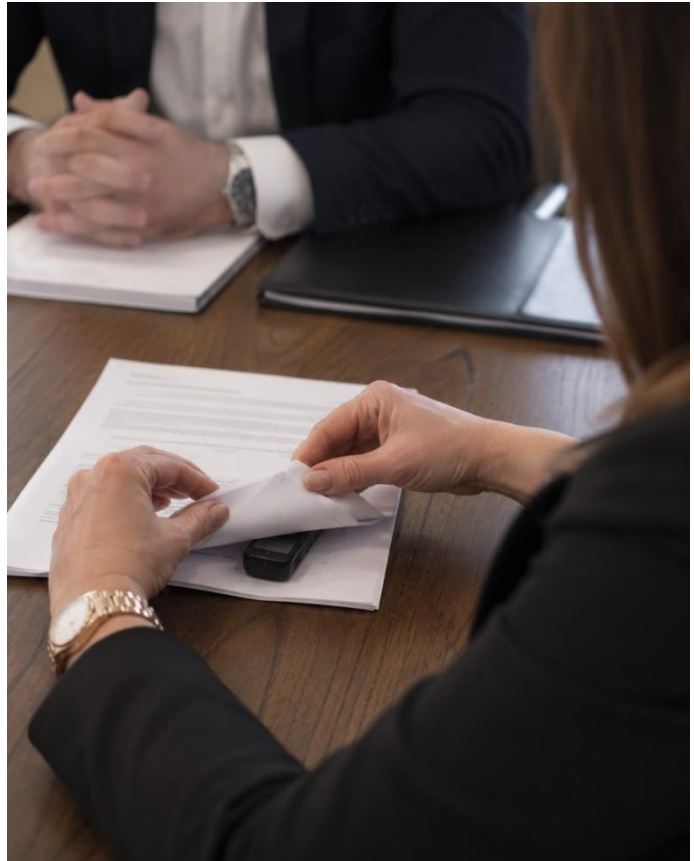
For example, an employee who secretly records confidential commercial discussions and distributes the recording publicly presents a materially different situation from an employee who records an alleged act of workplace harassment solely for use during legal proceedings.

Similarly, an employee who secretly records legally privileged discussions between management and legal advisers may expose themselves to significantly more serious disciplinary consequences than one who records an ordinary workplace conversation.

Accordingly, each matter should be evaluated on its own facts, and employers should avoid adopting blanket assumptions that every covert recording constitutes serious misconduct.

### **Confidentiality and Data Protection**

Many workplace discussions involve confidential information relating to the employer's business operations, clients, finances or strategic decision-making. Others may involve personal information



concerning employees, disciplinary matters, medical information or remuneration.

Where covert recordings capture such information, additional legal obligations relating to confidentiality, contractual duties and the protection of personal information may arise. Even where the act of recording itself is not necessarily unlawful, the subsequent disclosure or dissemination of confidential information may constitute serious misconduct or give rise to other legal remedies.

### **The Importance of Workplace Policies**

Employers are not without recourse.

Well-drafted workplace policies can play an important role in regulating recording practices, particularly in environments where confidential information is routinely discussed. Rather than merely prohibiting recordings, policies should clearly explain the legitimate business reasons for such restrictions.

These may include protecting:

- confidential commercial information;
- client confidentiality;
- personal information of employees;
- the integrity of disciplinary and grievance processes;
- legally privileged communications;
- workplace trust and effective communication.

Any workplace policy regulating recordings should be reasonable, clearly communicated to employees, consistently enforced and capable of being justified should it later be scrutinised during arbitration or litigation.

### Practical Guidance for Employers

Where an employer suspects that a meeting is being recorded covertly, a measured and professional response is generally preferable to an emotional reaction.

Employers should consider:

- calmly asking whether the meeting is being recorded;
- recording the employee's response in the meeting minutes;
- reminding the employee of any applicable workplace policy governing recordings;
- considering whether confidential discussions should be postponed where appropriate;
- investigating the circumstances fully before taking disciplinary action; and
- distinguishing between the act of recording itself and any subsequent misuse or publication of the recording.

Employers should avoid confiscating personal devices or taking impulsive disciplinary action without first considering the surrounding circumstances and obtaining appropriate legal advice where necessary.

### Workplace Culture

The increasing prevalence of secret recordings may also indicate underlying workplace trust issues. Employees who feel that processes are transparent and fair are generally less likely to feel compelled to preserve conversations secretly. Employers should therefore regard covert recordings not only as potential disciplinary concerns, but also as possible indicators of broader organisational issues.

Promoting respectful communication, ensuring procedurally fair disciplinary processes and training managers to conduct meetings professionally may significantly reduce the perceived need for covert recordings.

### Conclusion

Covert workplace recordings present competing legal and practical considerations. Employees may seek to protect their rights by preserving evidence of workplace interactions, while employers have legitimate interests in maintaining confidentiality, protecting sensitive information and preserving trust within the employment relationship.

Until Namibian courts provide more definitive guidance, disputes concerning secret workplace recordings are likely to continue being determined on a case-by-case basis. Relevant considerations will include the employee's purpose in making the recording, the confidentiality of the information recorded, the existence and reasonableness of workplace policies, the extent of any prejudice suffered by the employer, and the overall interests of justice.

The safest approach for employers is therefore neither to assume that all covert recordings are unlawful nor to ignore them altogether. Instead, employers should

adopt clear and reasonable workplace policies, conduct fair and transparent workplace processes, and carefully assess each situation on its own facts before deciding upon an appropriate response.

## ANNUAL INCREASE

All members are advised that our service fees will increase by 4.5%, with effect from 1 November 2026.

Clients who concluded new service agreements during the six-month period immediately preceding 1 November 2026 will not be affected by this adjustment.

We appreciate your continued support and remain committed to providing you with reliable, quality service.

## CONTACT US:

### Windhoek Office

Tel: (061) 309 260

Email: [windhoek@seenalegal.com](mailto:windhoek@seenalegal.com)

### Swakopmund Office

Tel: (064) 416 100

Email: [swakop@seenalegal.com](mailto:swakop@seenalegal.com)

### Otjiwarongo Office

Tel: (067) 304 915

Email: [otjiwarongo@seenalegal.com](mailto:otjiwarongo@seenalegal.com)

### Keetmanshoop Office

Tel: (063) 225 931

Email: [keetmans@seenalegal.com](mailto:keetmans@seenalegal.com)

### Tsumeb Office

Tel: (067) 222 900

Email: [tsumeb@seenalegal.com](mailto:tsumeb@seenalegal.com)

### General Account Queries

Tel: (064) 416 100

Email: [accounts@seenalegal.com](mailto:accounts@seenalegal.com)

If you are interested in our **training** products, please send an email to [training@seenalegal.com](mailto:training@seenalegal.com)

To view our previous **newsletters**, visit our website at [www.seenalegal.com/download-newsletters/](http://www.seenalegal.com/download-newsletters/)

For a quote for any of our other products, send an email to [hka@seenalegal.com](mailto:hka@seenalegal.com)