



Secret recording of an employee – Can it be used by an employer?

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The Federal Court (“**Court**”) in *Chappell v Griffin Coal Mining Company Pty Ltd*, [1] has granted an employee injunctive relief to restrain their employer, from using a video in any disciplinary proceedings against the employee. The video was secretly recorded by a security guard employed by the employer and involved the employee making offensive comments about the employer’s managers and owner, including racially abusive comments.

The employee argued that the video should not be used against him as:

- it was recorded secretly;
- he was not at work at the time, nor was he on company property;
- he was speaking to an “old friend”; and
- the recording could be a breach of the *Surveillance Devices Act*.

The Court determined that both the employer and the employee had arguable cases under employment law. However, the Court declined to form a final view on the matter. By granting the employee injunctive relief, the Court acknowledged that it was attempting to preserve the status quo.

The Court noted that whilst the employer could not take any disciplinary action against the employee under workplace law on the basis of the video, it could rely on the evidence of the security guard himself, who was a witness to the conversation.

Tips for Employers

- **ensure** you have workplace policies in place to help you deal with situations when they arise, in accordance with workplace law
- **seek advice** from an employment lawyer, if you are in doubt, about whether certain evidence can be used to take disciplinary action against an employee
- **keep up to date** with workplace law to ensure that you do not breach employment law, when disciplining an employee

Questions/Assistance

If you would like more information about this article or if you would like any assistance in other employment law matters including employment contracts or immigration law, from a workplace lawyer in Sydney, please feel free to speak with or email one of our specialist workplace lawyers on **(02) 9635 7966** or info@matthewsfolbigg.com.au

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as definitive or complete statement of the relevant workplace law.

[\[1\]](#) [2016] FCA 1248.