

THANKSGIVING LATE NIGHT PHONE CALL TO CO-WORKER LEADS TO EMPLOYEE'S TERMINATION



A woman's late-night phone call to a co-worker on Thanksgiving was ultimately the reason she lost her job. She filed a lawsuit against her employers, alleging that the call she made had been illegally recorded and played for others. The woman was employed by Merrill Lynch. In 2005, she made a complaint to HR which eventually led to the termination of two other employees. A supervisory position was subsequently available, and though the woman didn't apply for the job and later claimed she wasn't interested in it, she stated that she felt "overlooked" when it was awarded to someone else. That same year, the woman believed that a co-worker was performing some of her job duties. Around nine o'clock on Thanksgiving evening, she telephoned her fellow employee at home to confront him on the apparent impingement. She later admitted to being "all riled up" and acknowledged that, had she received a similar call, she would have felt threatened. The co-worker's wife heard the woman's loud voice and because of the late hour, coupled with the fact that the woman was using profanity, began recording the conversation on the answering machine. The man's wife wanted to call the police, but the employee instead reported the phone call to his supervisor. He played the recording to his superiors and after work notified the police. Two months later, in January 2006, the woman filed a police report, too – accusing the couple of violating the Illinois eavesdropping statute, which prohibits recording phone conversations without the permission of one or both parties. The woman was fired a month later for the phone call. She filed a civil suit against the company, the co-worker and his wife. Her claims included: violation of the eavesdropping statute by recording the call and playing it for supervisors; sex discrimination; hostile work environment; retaliation (for the HR complaints); breach of contract; violations of the Illinois Wage and Payment Collection Act; tortious interference; intrusion upon seclusion (a privacy law); and intentional infliction of emotional distress. The district court determined that the recording fell within the statute's fear of crime exemption, and as the plaintiff could not prove otherwise, ruled in the defendants' favor. The fear of crime exemption allows phone call recordings when a person fears a crime is being or will be committed. On appeal, the woman focused her argument on the wife's "reasonable suspicion" that a crime or the potential for criminal activity was a factor. In this case, the wife wasn't a party to the conversation, but the plaintiff didn't note this in her arguments. The woman asserted that the wife's motivation was not a fear of crime but rather that the plaintiff would report her husband to HR. She further questioned the wife's credibility, alleging that she had "personal mental problems." But seeking counsel from clergy was not proof of the alleged "problems," and the plaintiff offered no evidence to show that the wife's fear of crime was not genuine. The plaintiff also cited the fact that the police decided not to prosecute her for the call, but this wasn't addressed in district court and was thus dismissed by appellate judges. The judgment favoring the defendants was consequently affirmed.