

Workplace Privacy Podcast: AI Transcription for Work Meetings And Calls

(This transcript was generated through AI technology.)

Karla Grossenbacher

Hello everyone, and welcome to the Workplace Privacy Podcast where we discuss cutting edge legal issues at the intersection of employment and technology. I'm your host, Karla Grossenbacher, head of Seyfarth's national Workplace Privacy and Biometrics team. And I am so happy you're here today. My guest is Dave Baffa. Dave is the leader of Seyfarth's Labor & Employment Advice and Counseling practice. Dave advises some of the largest companies in the US and abroad on employment issues, and is a trusted advisor and amazing resource on any kind of Labor and Employment compliance issues. I'm so excited to have him here today to talk about an issue that is top of mind for many of our clients: using artificial intelligence to record meetings and calls. Dave, welcome to the podcast.

David Baffa

Thanks for having me. Karla, just honored to be part of it.

Karla Grossenbacher

Well, I'm excited because I can't think you know how, how many times I have the opportunity to just sort of talk with you for 20 minutes, so I'm excited. So I understand that you just got back from the ACC annual meeting in Philadelphia, where you actually spoke on a panel that is appropriate to our topic today about corporate artificial intelligence policy, design and practice. Can you give our listeners a few high points from that panel? I'm sure they'd be interested to hear about that.

David Baffa

Yeah, it was interesting. I was, you know, it was a Association of Corporate Council meeting, and so there's a lot of in house counsel of all types. I was the only outside counsel on the panel. And it was really fascinating, because it's broader than just labor and employment, right? It really is about people who are charged with managing artificial intelligence for their corporations from everything from supply chain to marketing to everything in between. And it really was about developing a framework and a process and a structure for how to deal with AI governance in the workplace in general. It was very interesting. I think the biggest surprise to me is we did some polling, live audience polling. It was a pretty big room. There was a couple, I mean, 1500 maybe people in the room or something. And it was, it was the largest audience I think I can remember speaking with, which was terrifying. But then when we did the polling, it was surprising - about half of the room made clear that they are not using any sort of ring fenced or closed environment AI. They're using AI for work related matters that is essentially public AI, you know, the same kind of AI you might use on your phone or just goofing around. They're using to advance sort of work projects and topics, in a way that I think surprised all of the panelists, because the panelists, the in house panelists, were pretty sophisticated organizations and sophisticated folks who had paid for the sort of ring fenced, more closed circuit environments for their AI usage and experimentation. So that was a surprise to all of us--and scary.

Karla Grossenbacher

Did you dive into why that was? I know you kind of previewed that the people on the panel had the money and spent the money to have these sort of housebound AI tools. Did people express that cost was the main thing, or is it just can't be bothered? Or what's the issue? If you got into it?

David Baffa

I think it is primarily cost. These are – solutions can be expensive to get an enterprise ring fence solution. And I also think it's a matter of a little bit of a chicken and egg problem. You know, you can't really begin to appreciate or understand how AI might support business operations and what you're trying to do until you make that investment, and you're reluctant to make the investment until you know how it can potentially streamline operations. So I do think we're in a a little bit of a chicken and egg problem for a lot of corporations these days.

Karla Grossenbacher

So basically, they've got to dabble in the public tools to understand whether it would be worth getting their own tool.

David Baffa

Yeah, exactly, exactly.

Karla Grossenbacher

Yeah, you're right. That is a chicken and egg thing. Well, let's shift to our actual topic for today, which is this issue of companies, and - you and I are employment lawyers, so specifically, we're talking about employers - who want to use artificial intelligence to record meetings or calls. What have you been seeing on that in your practice these days?

David Baffa

Yes, it's something that is coming up more frequently, most recently. I don't think it's new to anybody that these video conferencing tools that are often used at work, whether it's Zoom or WebEx or Teams, you know, they all have the capability to record the meeting. And it's, you know, it's made relatively apparent to all the participants that the meeting is being recorded. But there's quite a number now of, in addition to those video conferencing tools, there's other AI assistant sort of tools, sort of agentic AI tools that are sort of auto on to record all the time, like they're almost like personal assistant sort of AI tools, so that every time you get onto a internal call, the record button is already on and the meetings are being transcribed in real time. Often you can see the transcript like you're watching closed caption on TV. You know, the transcript will come up as you're meeting, or the meetings just being transcribed in the background to facilitate note taking, and of course, all those tools now recently use AI to generate a summary in addition to a transcription of the word spoken, that will produce a summary or memo, etc. So it's, I think, that technology is not it's this year new, I suppose, terms of its use. But what's happening, I think, is companies are waking up or realizing, Wait, should we be as quick to record these meetings, to transcribe these meetings? What's our process for how we're going to make sure those transcripts are accurate? Is it really necessary to record these meetings? What about meetings that involve lawyers or attorney client privilege, all kinds of issues that are starting to bubble up, you know, around the use of that kind of technology in the workplace?

Karla Grossenbacher

Yeah, I mean, I do agree that everyone, in theory, has known that, for example, tTams can record calls. But like you were saying, I don't recall getting the volume of calls I'm getting recently about, 'oh, should we be doing this? Oh, should we have a policy around this,' and, 'oh, we did this. And here's what's happened that wasn't so great' regarding the recording. I know you talked privileges one. So one thing that I think we need to delve into a little bit more is the distinction between the decision to use, for example, the recording feature on Teams, versus one of these newfangled technologies where it's some sort of personal assistant that will automatically record one of your meetings. For example, I was on a call the other day. It was to give investigation findings, and someone joined the call, and an automated thing went off that said, 'so and so, who is joining the call wants to record it.' And we were like, 'no, no, no, you know, don't let that person in the meeting.' And that person, when they finally

joined the meeting, was like, 'I wasn't trying to record the meeting. I didn't want to record it either. I'm so sorry.' But they have this virtual assistant thing that, you know, is doing its job whether you're thinking about it or not. And so different compliance issues when it comes to that, different things that need to go in your policy when it comes to that. So what kind of features are you seeing that are being addressed by way of policy?

David Baffa

Yeah, so to your point, I think it's right to think about both the recording aspect of the meeting, as well as the newer, I suppose, the concept of, you know, the meeting being transcribed and summarized by AI, but on the recording side, trying to balance, of course, the rights recognized by the National Labor Relations Act and other laws that allow, potentially provide a protected right, in some cases, for people to be able to record conversations where they're sort of worried about safety, or they're objecting to some discriminatory practice. You know, there's actually a balancing of rights there, as you know, that makes it, makes it tricky.

Karla Grossenbacher

Yes, for sure, and I think you're right in that people have been thinking about reporting in the workplace for a long time, and it's now this process of applying rules that are already in place, like the NLRA prescriptions against telling your employees, essentially that they can't record certain conversations, and applying them to the technology. I mean, you also have the Electronic Communications Privacy Act or the wiretap law. You've got the federal one, you've got various state ones, and it's a little tricky to apply them to artificial intelligence reporting, because we're seeing a lot of lawsuits in California that is under the California Invasion of Privacy Act, and what people are asserting, it's interesting, is that you're using this AI to record our meeting. You've told me you're recording the meeting, but you did not tell me that you were using X and Such vendor to record the meeting, and that this meeting transcript was being saved to their servers, so you technically haven't gotten all party consent to this, or even effective consent from me, because you didn't tell me everyone who was recording it. And those lawsuits are getting more prevalent, so now you're having to think on the policy side of well, if you're going to seek consent, which technically, yes, you need to, under wiretap laws, you need to word that consent to say it's not just us, it's our vendor if, in fact, you have a vendor -maybe you don't have a vendor, but most likely, you have a vendor -to avoid these lawsuits in California, and they could be in other places as well, but California is often the sort of birthplace of unique legal theory, which this is definitely one. What about this issue of - we spoke before about this issue, and you were telling me about a situation where you were advising a client on how to put guardrails against transcription, and you were talking about issues of retention, review of transcripts. Can you talk a little more about that?

David Baffa

Sure. Yeah, it's the other half of the coin that you teed up, which is that this idea that meetings now are not just recorded, but their AI is generating a transcript of the spoken word and then creating summaries and summary memos. And so you're it's generating, and most people, I think, innocently, appropriately, think, well, I'm going to be taking notes during the meeting. It will be nice to be backstopped by this technology so I can use it as a check against my notes. But you are generating a transcript, and you're generating summaries that ultimately probably would be discoverable if there was a subsequent litigation or some dispute that pertained into the meeting. And it gives rise to the question of and then, of course, there's other practical issues.

That call I got recently from a client was one where, as often happens, everybody got onto this joint video call. There was this auto recording in place, and two people that joined the call before anybody else joined were having a conversation waiting for others, and they knew each other well. And one was describing, you know, pretty intimate personal details and problems that they were having at home and

talking. They got it on the call early and had a good five minute chat about that before others started to join and they cut it off. Well, meanwhile, the AI, you know, transcribed both the pre-meeting and the meeting, and blasted the transcript out to everybody that was ultimately involved in the meeting, which, you know, was pretty embarrassing for this person, and pretty embarrassing in general.

And so there's lots of ways that left unchecked I think that the technology can get out of hand, and it begs the question, well, what process are we going to put in place to make the meeting host responsible for making sure that they've reviewed the transcript before it's disseminated, that it's accurate, to flag issues right away that they think don't reflect what was actually said in the meeting. So it's an interesting problem.

Karla Grossenbacher

Right, although, when you hear it the way you're describing it, it's no longer artificial intelligence is saving you time and being an aid right? Because it's spinning up all this work that you're describing on the background. Because if everyone just took their own handwritten notes, I wouldn't have to show them to you and be like, Hey, did you save it? My notes would be yes. Dave Baffa said this in the meeting, and you know you're entitled to your opinion, but these are my notes, right? So query whether you want to put yourself in a position of having to review a transcript for accuracy, and how you would address that in the policy. And just say, potentially, we create these transcripts, we're not representing they're accurate. They're as accurate as this tool can make them, and it's for our convenience for whatever it's worth, right? Like, I had a situation this week where an employee made a complaint about something that was said in a meeting, and we had the recording, and it didn't need to be 100% accurate of every single word for us to be like, you know, that's not basically what happened, right? I only, I don't even know the words, but I can tell you that what you're saying happened didn't really happen. And that was that was great to have, but this idea that you would have to sort of vet the transcript with the meeting attendees sounds like so much more work than, you know, you would want it to be.

David Baffa

And maybe people would think, Oh, you're making too much of this. Because if somebody's taking notes in the meeting, and their note says that you said something that you deny saying in the meeting, there's definitely going to be some back and forth around that, and testimony around that. But, you know, it's still ultimately a person's notes, and people are fallible, and these things can happen. If it's like an AI transcript, man, to prove that transcript was wrong, that becomes like expert witness territory. And, you know, just trying to convince a jury that you know this, that this exciting new technology got it wrong, you know, as compared to somebody's sort of own note taking, I mean, I just think you've got a much heavier lift to try to get into the He Said, She Said, battle in that situation, which, which really means making sure the transcript was right in real time before you put it in a box to potentially come out, come out in litigation two years later.

Karla Grossenbacher

Yeah, you know. And again, we're getting back to this issue of, is it really worth it to record meetings? Because often people come to you with this issue, with the idea, isn't it great, I don't have to take notes anymore. Isn't it fantastic? And they haven't thought through everything. Another issue that can come up is, I had a client who did a whole sort of - their IT department did an analysis vetting these various vendor tools for meeting transcription, and one of them noted that this technology has the feature of speaker identification in the meeting. And we do the voice print to say, I know that David's saying this and Karla's saying this because I am tracking the voice print. And I was like, Hey, this is a biometric privacy issue. And if we're collecting people's voice prints, or someone is collecting their voice prints, that's a whole other ball of wax that's, you know, sort of beyond this particular podcast episode. But as

is often the case in these workplace privacy issues, you've got multiple different sort of areas coming together on the compliance side, and it makes it really difficult.

David Baffa

I just did one of those policies just as you describe. And you know there has to be exceptions, because there are some company sponsored recordings that go on and or there might still be some other exception basis on which you still want to record a meeting, even if you don't have, if you have a no recordings policy, and so even for the exceptions, you still want to put some kind of process in place to review those transcripts and summaries that are being generated.

Karla Grossenbacher

Yeah, and that's a great point. And one thing we talk about is maybe you don't want individual employees recording things, but you as the employer might want to record a training session or something like that.

David Baffa

Open enrollment or sessions, or other examples of things that companies want to record so that people can hear, like the open enrollment sort of procedures and pitch for when they're ready to renew benefits, you know, as well as any number of other trainings that companies want employees to be able to listen to.

Karla Grossenbacher

Yeah, although there might be some issues, you know, recording an open enrollment thing where people are asking questions like, hey, what do you offer on, you know, IVF or something like that. That might be more of a no questions asked. We're going to do a one way recording. But it does bring up an issue that I see frequently, which is when people are thinking through the process for the policy, often they say, Well, we're going to have the pop up on, let's say the Teams platform. Just going to pick on Teams. But once the meeting starts, in our procedure, the host of the meeting is going to ask for everybody's verbal consent. And my response to that is usually, that's just going to derail your meeting, right, especially if someone objects, and especially if we're getting into issues of this is just the employer who wants to record a training session. You know, what's your thought? Would you say you need to ask people for consent? Or you would just pop up the notice and say, I'm the employer I'm recording my own training session. And that is that.

David Baffa

Yeah, I think I would, I would probably try to avoid the theater of having each person sort of verbally consent in the meeting. I don't know that it's necessary legally - I would have a policy that makes clear that, in fact, we put this in the policy I prepared that if you participate in an event that is being recorded and you've been notified in the beginning of the meeting that it's being recorded, by continuing to participate you're consenting to being recorded or heard. And if, I suppose you could go so far as to say, you can certainly take your camera down and put yourself on mute if you're not interested in being recorded as part of the meeting, right? I mean, if you wanted to take it that far, but I think, I don't know, I'm with you that going around to each participant and asking for kind of like being in the exit relative airplane, right? I mean, to have each person sort of authorize, yes, I consent to being recorded. Seems like overkill.

Karla Grossenbacher

Yeah. And, you know, as employers, we, you know, insist on things and don't ask consent, or sort of impose consent, right? Like, here's my dress code policy. You know, you can't come to work in shorts. Oh, you want to come to work in shorts, well, then go work somewhere else. So as we talk about all

these issues, it makes me think of a conversation that I had with a client that sort of serves as a metaphor for how difficult an issue this is. They had gone through all the analysis, vendor selection, IT identified how they were going to address all the issues. Here's our policy is going to look like. We get on a phone call to discuss everything, and the client gets on the call and says, 'Well, this is going to be a short call, because we've decided to pivot to a no recording policy.' Which is certainly easier from a compliance perspective, but also just serves as a reminder that once you start diving into these issues, there's no easy answers.

So Dave, I think we've raised all the issues that we're seeing in our practice. We don't have all the answers, but I think as we continue to walk this road with clients, we're going to see how things play out. Learn more as we go and help counsel our clients on the best way to approach it given their business priorities, using call recording versus risk tolerance, etc. So thank you so much for coming on the podcast and talking through these issues with me. I really appreciate it.

David Baffa

Thank you. It was my pleasure. Nice to speak with you, as always.