



Labor and Employment Law Seminar

**2026
LAS VEGAS**

HR AND LITIGATION RISK:

**THE EVIDENCE EMPLOYERS
FORGET EXISTS: SCREENSHOTS.
SECRET RECORDINGS.
SLACK. TEAMS. TEXTS.
PERSONAL DEVICES. AI
TRANSCRIPTS.**

What your employee may already have before you know there is a claim.



Presented by

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HR AND LITIGATION RISK:

**THE EVIDENCE EMPLOYERS
FORGET EXISTS:
SCREENSHOTS. SECRET
RECORDINGS. SLACK.
TEAMS. TEXTS. PERSONAL
DEVICES. AI TRANSCRIPTS.**

**THE CASE YOU
THINK YOU HAVE
VS.
THE CASE THEY
ACTUALLY HAVE**

YOUR INVESTIGATION IS NOT THEIR EVIDENCE FILE

Employer reviews

- Personnel file, written warnings
- Performance reviews, email
- HR complaints, time records
- Company policies

Employee may bring

- Phone screenshots, audio recordings, texts
- Slack & Teams chats, photos of screens
- Downloaded PDFs, personal notes
- AI meeting transcripts
- Messages later edited or deleted

The employer's file and the employee's file may be very different.

TWO VERSIONS OF THE SAME INTAKE

WHICH CASE GETS SIGNED?

Employee A

“My supervisor told me I was too old for the position.”

Employee B

“My supervisor told me I was too old for the position.”

Then: “Would you like to hear the recording?”

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EMPLOYEES HAVE FIGURED THIS OUT

Online workplace advice

- Document it.
- Screenshot it.
- Record it.
- Save it before your access disappears.
- Get it off the company system.
- Keep a copy the employer cannot wipe.

Employee-style quotes

“Take screenshots of everything.”

“Pull the Teams chats.”

Save copies before losing company access.

This is not what employers are teaching employees. Employees are teaching each other.

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**SCREENSHOTS
CHANGED
EVERYTHING**

SCREENSHOT CULTURE

A screenshot takes less than one second.

- Slack, Teams and texts
- Scheduling changes and performance dashboards
- Group chats and HR responses
- Compensation information and job postings
- Calendar invitations and coworker statements

The evidence may leave the company system the instant it appears on the screen.

DELETING THE MESSAGE DOES NOT DELETE THE EVIDENCE

- **10:04 a.m.** Manager sends inappropriate message
- **10:05 a.m.** Employee screenshots it
- **10:06 a.m.** Manager deletes it
- **10:07 a.m.** Screenshot sent to spouse and saved to cloud storage
- **Six months later:** it is attached to plaintiff counsel's demand

**"DELETED" AND "GONE"
ARE NOT THE SAME THING.**

SOMETIMES THE SCREENSHOT IS THE CLAIM

Employees have posted online alleging managers tied career opportunities to family status, pregnancy, or travel assumptions.

IMAGINE DEFENDING THAT SENTENCE.

Source: Reddit post, employee allegation (new parent removed from career-development consideration over travel). Not an established fact.

#managers · Slack

Manager

“Don’t promote her. She just had a baby and doesn’t need the stress.”

Reddit allegation: a new parent was removed from career-development consideration over travel. Not an established fact.

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SCREENSHOTS CHANGE THE CONVERSATION.

WITHOUT THE SCREENSHOT

Employee: "He said I was too old."

Manager: "I never said that."

Witness: "I don't remember."

WITH THE SCREENSHOT

Manager · 2:14 PM

**We need someone younger
for this role.**

Now the manager has to explain the
message.

A screenshot can turn a disputed allegation into documented evidence.

SCREENSHOTS CAN HELP THE EMPLOYER TOO

- Can establish misconduct, threats, harassment, dishonesty, insubordination, policy violations, time theft, and inconsistent stories
- Statements that contradict later testimony

**Do not assume employee-created digital evidence only hurts the employer.
Ask for it. Preserve it. Investigate it.**

THE SECRET RECORDING IN THEIR POCKET

EVERYONE IS CARRYING A RECORDING DEVICE

Twenty years ago, secretly recording the boss required planning. Today the device may sit face-up on the conference table.

- iPhone Voice Memos, Android recorders, smart watches, AirPods
- Zoom and Teams transcription, or other AI meeting assistants
- Screen recording and laptop audio capture

A termination meeting can be recorded without anyone visibly pressing “record.”

THIS IS NOT HYPOTHETICAL

- Employee online posts describe recording managers in workplace conversations
- Recordings alleged to show intimidation or inconsistent explanations
- Employees researching state recording laws first
- Saving recordings in multiple places

Employees think about recording law + company policy + evidence preservation. Their managers may not.

THE TERMINATION MEETING HYPOTHETICAL

HR: “We have received several complaints regarding your performance.”

Employee: “What complaints?”

Manager: “Honestly, you’ve been difficult ever since you complained about Susan.”

EVER SINCE

Protected activity →

changed treatment →
adverse action.

THE DANGEROUS CONVERSATION COMES AFTER HR LEAVES

The formal meeting ends and HR logs off. The manager calls privately:

**THE UNOFFICIAL
CONVERSATION MAY
BECOME THE BEST
EVIDENCE IN THE CASE.**

Manager: "Between you and me, this wasn't my decision."

Manager: "You probably shouldn't have gone to HR."

Manager: "I told them your pregnancy wasn't a problem."

SECRET RECORDING RULES ARE NOT SIMPLE

Do not give managers the rule "Secret recording is prohibited. Fire anyone who does it."

- State consent laws and where participants were located
- Company policy, retaliation, and whistleblower activity
- Protected concerted activity, privacy, confidential information
- Discoverability and admissibility

Legality, policy compliance, discoverability, admissibility, and retaliation risk are different questions.

THE RECORDING CHANGES THE VALUE OF THE CASE

Version A: "My boss made discriminatory comments."

Version B: same allegation, plus "HERE IS THE AUDIO FILE."

SAME ALLEGATION. VERY DIFFERENT CASE.

**SLACK IS NOT THE
WATER COOLER**

PEOPLE WRITE THINGS IN SLACK THEY WOULD NEVER PUT IN EMAIL

**Informality lowers
judgment. It does not
lower discoverability.**

Slack: "She's crazy."

Slack: "He's too old for this."

Slack: "Let's get rid of her before FMLA."

Slack: "She complained again 🙄"

Slack: "Don't put that in email."

Slack: "LOL HR will never approve that."

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ONE SLACK CONVERSATION. TWO LEGAL RISKS.

RISK 1: HARASSMENT

Offensive messages appear in a workplace Slack channel.



RISK 2: RETALIATION

An employee complains and later experiences adverse treatment.

The messages create the concern.

The response to the complaint can multiply the risk.

THE SECOND CONVERSATION PROBLEM

Manager: "Here we go again."

Manager: "She's always complaining."

Manager: "How do we get rid of her?"

Manager: "Let's document everything."

Manager: "We need to manage her out."

Conversation 1: employee complains

Conversation 2: managers privately discuss the complaint

Sometimes the reaction to the complaint is better evidence than the complaint itself.

**TEAMS IS A
DISCOVERY
GOLD MINE**

DON'T OVERLOOK THE TEAMS CHATS.

When investigating a workplace complaint, look beyond email.

1

What did the manager say in Teams?

2

Were there private or group conversations?

3

Were relevant messages edited or deleted?

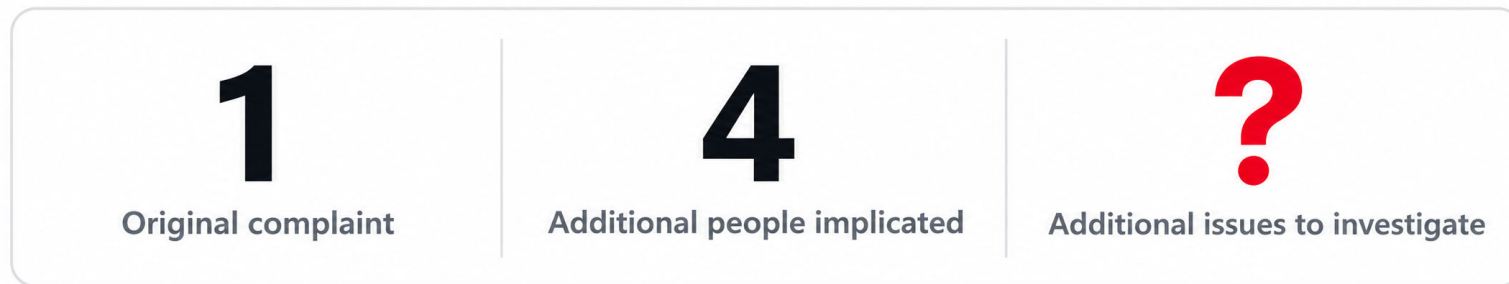
4

Have the relevant chats been preserved?

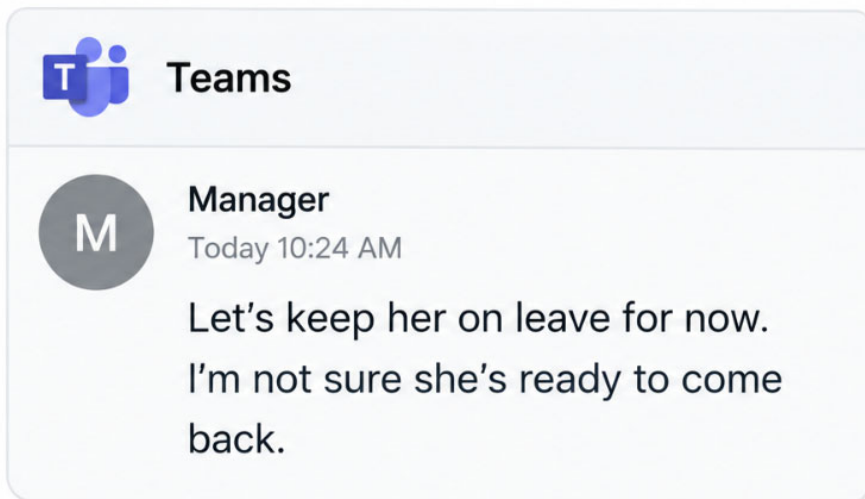
The conversation that matters most may never appear in an email.

ONE COMPLAINT. MULTIPLE INVESTIGATIONS.

Employee A files a harassment complaint. HR reviews Teams messages and discovers unrelated misconduct involving other employees and a manager.



One investigation can uncover problems nobody was looking for.



THE TEAMS MESSAGE THAT COMES BACK TO HAUNT YOU

Would HR have said the same thing if this message had been an email copied to employment counsel?

A casual Teams message can raise serious questions about an employment decision.

**THE EVIDENCE IS
NOT ALWAYS ON A
COMPANY DEVICE**

YOUR COMPANY DOESN'T OWN THE PHONE. BUT THE EVIDENCE MAY STILL MATTER.



PERSONAL TEXTS

iMessage, SMS, WhatsApp,
Signal



PRIVATE MESSAGES

Social DMs, group chats,
Messenger



PERSONAL ACCOUNTS

Gmail, cloud storage,
downloaded files

A personal device doesn't make work-related evidence irrelevant.

THE GROUP CHAT HR NEVER SAW

Managers Only

MANAGER 1

"She complained to HR again."

MANAGER 2

"She's becoming a problem."

MANAGER 3

"We need to figure out how to get rid of her."

HR may never see the conversation. Plaintiff's counsel might.

THE TEXT THREAD HR DOESN'T KNOW EXISTS

Monday: employee complains to HR

Supervisor, Monday night: "She went to HR today."

Director: "Seriously?"

Supervisor: "Yep. We need to be careful with her now."

Two weeks later: written discipline

PLAINTIFF'S TIMELINE IS ALREADY WRITTEN.

Protected activity → knowledge → changed treatment.

THE TEXT HR NEVER SAW



HR later says: "We never received a request for leave."

The employee says: "I told my supervisor."

THE SCREENSHOT THAT NEVER ENTERED THE HR FILE

Employee: "I think I'm being treated differently because I'm pregnant."

Manager: "You're overthinking it."

Employee: "Can I talk to HR?"

Manager: "I wouldn't make this a bigger deal than it needs to be."

HR file

No complaint documented.

EMPLOYEE'S PHONE

**Complete complaint
documented.**

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SOCIAL MEDIA DMs CAN BECOME WORKPLACE EVIDENCE

Supervisor, Instagram reply: "Looking good 🥰"

Supervisor, later: "You never dress like that at work."

Supervisor: "Come have a drink with me after shift."

Also Messenger, Snapchat, TikTok, and LinkedIn messages.

The platform does not determine whether the conduct is work-related. Context does.

THE MANAGER WHO "FRIENDS" EVERYONE

- Pregnancy, medical conditions, and disability information
- Religious and political activity, vacations, second jobs
- Complaints about work and family issues

Then an employment decision occurs.

Plaintiff's argument: "MY MANAGER KNEW." Even if HR did not.

THE SOCIAL MEDIA BACKCHANNEL

Employee post: "Worst workplace ever."

Manager to manager: "We need to deal with this tomorrow."

- Protected concerted activity and retaliation
- Off-duty conduct, policy enforcement, consistency
- Selective discipline

What management said and did after seeing the post may become evidence too.

WHATSAPP, SIGNAL AND GROUPME: THE SHADOW WORKPLACE

Restaurant managers on WhatsApp, sales teams on GroupMe, executives on Signal, employees on Discord for scheduling.

- Scheduling, complaints, and performance
- Discipline, medical absences, and harassment
- Pay issues and termination discussions

If employees are doing business there, it may become business evidence.

"BUT IT WAS ON MY PERSONAL PHONE"

That is not the end of the analysis. Personal devices may hold communications about complaints, discipline, leave, accommodation, pay, termination, and investigations.

BETTER QUESTION: was the communication relevant to the employment dispute?

Not: "Who owned the phone?"

THE FORMER MANAGER PROBLEM

A manager leaves. Six months later, an employee sues.

The former manager still has texts with HR and executives, WhatsApp conversations, screenshots, personal emails, photos, and voice memos.

YOUR EVIDENCE CAN WALK OUT THE DOOR IN SOMEONE'S POCKET.

WHAT THE FILE SAYS VS. WHAT THE MANAGER TEXTED

OFFICIAL TERMINATION REASON

Terminated for poor performance.

Documented in the personnel file.

PRIVATE MANAGER TEXTS

"She's become a headache since she complained."

"I'm done dealing with her leave issues."

The personnel file explains the decision. The texts may suggest a different motive.

"DON'T PUT THIS IN EMAIL"

Manager: "Call me."

Manager: "Don't email this."

Manager: "Text me on my personal."

Manager: "Use Signal."

Manager: "Let's discuss offline."

NOTHING MAKES A LAWYER MORE CURIOUS.

These phrases do not prove wrongdoing, but they invite questions. Trying not to create a record can itself become part of the record.

DISAPPEARING MESSAGE DOES NOT MEAN DISAPPEARING EVIDENCE

- Screenshots and screen recordings
- Forwarding, exporting chats, photographing another device
- Cloud backups, copying into Notes, sending to a spouse or friend

EPHEMERAL MESSAGING IS ONLY EPHEMERAL IF NOBODY PRESERVES IT.

SOCIAL MEDIA CAN CREATE COMPARATOR EVIDENCE

Employee claims "I was fired for calling out sick" and produces messages showing another employee missed work repeatedly, a manager joked about it, and no discipline followed.

- Comparator evidence and bias
- Knowledge and pretext
- Inconsistent enforcement

COWORKER GROUP CHATS

Private employee chats may discuss who complained, what the manager allegedly said, pay, discipline, layoffs, and retaliation.

HELP PLAINTIFF

**Contemporaneous
corroboration**

HELP EMPLOYER

**Coordination, exaggeration,
inconsistent accounts**

ASK WHETHER THE GROUP CHAT EXISTS.

WHAT HAPPENS WHEN DISCOVERY REACHES BEYOND EMAIL?

Opposing counsel asks for:

- Company email and Teams
 - Work-related personal texts
- Slack and group chats
 - Relevant private messages

Did your preservation efforts identify where those conversations happened?

THE POLICY PROBLEM

POLICY

"Do not conduct company business through personal messaging applications."

PRACTICE

Manager: "Text me if you're late."

Manager: "Send me a picture of the schedule."

Manager: "WhatsApp the team."

THE WRITTEN POLICY DOES NOT ERASE ACTUAL PRACTICE.

Keep work communications on approved systems or accept that relevant evidence exists elsewhere and address it.

PRIVATE MESSAGES. PUBLIC CONSEQUENCES.

- WHAT THE MANAGER THINKS

"It's just a text."

- WHAT THE JURY MAY SEE

"Exhibit A."

ADD THIS TO YOUR INVESTIGATION CHECKLIST

- Did you text anyone about this employee? Did anyone text you?
- Any WhatsApp or Signal? Social-media DMs? Group chats?
- Did you send screenshots or discuss the complaint on a personal phone?
- Did you communicate with the employee outside company systems?
- Did you delete anything? Did anyone suggest moving off email?

Much more useful than: "DO YOU HAVE ANY DOCUMENTS?"

THE ASYMMETRY AND PRESERVATION PROBLEM

THE EVIDENCE YOU CAN'T FIND MAY STILL EXIST.

WHAT THE EMPLOYER FINDS

- Litigation hold issued
- Microsoft 365 searched
- No damaging messages found

Conclusion: Nothing concerning.

WHAT THE EMPLOYEE HAS

- Deleted chat screenshots
- Personal text messages
- Audio recordings
- AI transcripts
- Downloaded documents

Just because you can't find it doesn't mean it doesn't exist.

WHEN EVIDENCE DISAPPEARS, THE CASE CAN GET WORSE.

What employers may lose:

- Manager texts and Teams messages
 - Laptop files and backup data
 - Recordings of employee complaints
 - Handwritten notes and comparator records
- The problem: Once litigation is reasonably anticipated, relevant evidence may need to be preserved.

Bad evidence can hurt your case. Missing evidence can hurt it even more.

THE DIGITAL EVIDENCE ICEBERG

WHAT EMPLOYERS TYPICALLY REVIEW

Email · Personnel Files · HRIS

MESSAGES & CHATS

Slack, Teams, texts, private group chats

RECORDINGS & IMAGES

Voice memos, screenshots, screen recordings

HIDDEN DIGITAL RECORDS

Drafts, edits, reactions, AI notes

PERSONAL STORAGE

Phones, cloud backups, downloaded files

What you collect may be only a fraction of what exists.

EVEN THE EMOJI MAY BECOME EVIDENCE

Employee: "I complained to HR today about John's comments."

Manager: 👍

Manager to supervisor: "She's becoming a problem."

Reply: 😂

Three weeks later the employee is terminated.

INFORMALITY DOES NOT MAKE COMMUNICATION IRRELEVANT.

WHAT EMPLOYERS SHOULD DO DIFFERENTLY

RULE 1: WRITE FOR THE JURY

Would I be comfortable seeing this enlarged on a 10-foot trial screen? If not, don't type it.

And don't say it either. The phone may be recording.



RULE 2: DON'T LET MANAGERS RUN A SHADOW INVESTIGATION.

When an employee complains, managers should NOT:



DISCUSS THE COMPLAINT IN SIDE CHATS

Slack, Teams, or private messages



COMPARE OR COORDINATE STORIES

Conversations with coworkers or witnesses



SPREAD WORD OF THE COMPLAINT

Unnecessary discussions about who went to HR



MOVE SENSITIVE DISCUSSIONS OFF-SYSTEM

Personal texts, Signal, or group chats

One coordinated investigation. No side investigations.

RULE 3: YOUR LITIGATION HOLD NEEDS TO GO BEYOND EMAIL.

Ask where employees actually communicate and store information.



MESSAGES & CHATS

Teams, Slack, texts, WhatsApp, Signal, social DMs



RECORDINGS & AI

Meeting recordings, Zoom, AI transcripts, voice notes



DEVICES & FILES

Personal devices used for work, photos, downloads, drafts

HIDDEN RISKS

Auto-delete settings, version history, departing employees

Don't just ask whose email to preserve. Ask where the evidence lives.

RULE 4: ASK ABOUT THE EVIDENCE DURING THE INVESTIGATION.

When an employee reports a workplace concern, HR should ask:

- 1** Do you have any texts, screenshots, or messages?
- 2** Did anyone record a conversation or meeting?
- 3** Are there relevant photos, documents, or other records?
- 4** Who else may have evidence?

Don't wait until litigation to learn what evidence exists.

RULE 5: ASK MANAGERS WHAT THEY SAID OUTSIDE COMPANY SYSTEMS

During an investigation, ask the manager:

1. Did you text anyone about this employee or complaint?
2. Did you discuss it in a group chat or messaging app?
3. Did you send screenshots, photos, or messages to anyone?
4. Did you record or save any conversations?
5. Have you deleted any related messages or changed any auto-delete settings?

Don't just ask what happened. Ask where the conversations happened.

**WHAT SHOULD
YOU REMEMBER?**

Takeaways

- 1 Your personnel file isn't the whole story.
- 2 Deleted doesn't always mean gone.
- 3 Today's Slack message is tomorrow's Exhibit A.
- 4 The smoking gun may be on someone's phone.
- 5 Don't let plaintiff's counsel surprise you with your own evidence.

FINAL HYPOTHETICAL: WOULD YOU STILL TAKE THIS CASE?

WHAT YOU KNOW

- Strong personnel file
- Documented discipline
- Legitimate termination reason
- Manager denies misconduct

Initial assessment: Strong defense.

WHAT OPPOSING COUNSEL SENDS

- Screenshots and text messages
- A recorded conversation
- Teams and WhatsApp chats
- Photos of manager communications

New assessment: More questions.

SAME CASE. DIFFERENT EVIDENCE. DIFFERENT RISK.

ASSUME IT CAN BE SCREENSHOTTED.

ASSUME IT CAN BE RECORDED.

ASSUME IT CAN BE DISCOVERED.

ACT ACCORDINGLY.

The evidence employers forget exists is often the evidence the jury remembers.

Discussion

What digital evidence are you most worried your organization is not capturing?



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Questions?



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Thank you.