



CONFRONTING EMPLOYEE THEFT

Responding to Employee Theft

To best protect its interests, an employer who suspects that one of its employees is stealing should immediately consult the company's attorney for advice. Typically, the attorney will advise the employer to take steps that include the following:

Commence the Investigation Promptly: A small business owner should initiate the investigation of a purported theft by an employee immediately. This prevents the employer from running afoul of criminal and civil statutes of limitation.

Place a Third-party Employee in Charge of the Investigation: A management employee other than the supervisor who first observed or reported the theft should perform the investigation. This avoids the taint of bias that a more involved player would bring to the investigation. In addition, the employer should interview the accused in the presence of a witness.

Maintain Strict Confidentiality: Maintaining strict confidentiality throughout the investigation is essential. Failure to act discretely in handling an employee theft can subject the company to defamation claims by the accused employee.

Document the Investigation: It is also important to document all interviews when investigating the claimed theft. The employer should gather evidence that sufficiently assures that the theft from the company occurred and was committed by the employee. This evidence will be useful in several arenas: in furthering a criminal or civil prosecution of the accused, in collecting from an insurance company if the company is insured against employee theft, and in defending against a possible wrongful discharge action against the employer.

Notify the Bonding Company or Insurance Company: If the company maintains a fiduciary bond or employee dishonesty insurance, then the company must notify the bonding company or insurance company immediately upon finding out about the loss.

Notify the Authorities: The employer may wish to file criminal charges against the former employee. If the company files a criminal complaint, an investigation by the police or other governmental agents would occur. If the prosecutor decides to pursue the case, the employer can seek restitution through a criminal proceeding without having to file a civil action. Regardless of whether a criminal action is maintained, the employer should consider filing a civil action against the former employee to recover the value of the stolen items.

Preventing Employee Theft

To proactively help a small business owner control employee theft, an attorney will counsel the small business owner as to what is permissible under the law. Several deterrent steps can be taken, such as the following:

Supervision: The employer should have in place regularly scheduled reviews, reporting processes, and other forms of checks and balances which enhance the likelihood of discovering any breaches of honesty. A small business owner is wise not to concentrate supervisory responsibilities in any one employee, but rather to create a structure designed to assure a business ethic of cooperative and appropriate teamwork.

Audits: In the fiscal realm in particular, it is prudent for an employer to have audits and other financial oversight procedures in place. Both external and internal financial controls should be a routine part of the company's management.

Video Surveillance: The small business owner may consider other, more creative ways of supervising the work area, such as maintaining video surveillance of its employees in the workplace. However, the video surveillance cannot include sound, as surveillance using sound recording has been found to violate an individual's right to privacy. Video surveillance must be limited to areas which are not inherently private in nature, such as a dressing room or a bathroom.

E-mail Access: Additionally, employers should have an employment policy allowing them free access to all employee e-mails. The attorney will advise the business owner as to how to protect its interests without infringing on the constitutional rights of its employees.

THIS ARTICLE IS NOT INTENDED TO PROVIDE LEGAL ADVICE. IF YOU WOULD LIKE TO DISCUSS HOW THIS INFORMATION RELATES TO YOUR SPECIFIC SITUATION, PLEASE CONTACT ME AT nlanard@lanardlaw.com OR 215-525-1165.

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