

How Should An Employer Respond to Employee Theft?

By Nancy Lanard



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 these steps without delay:

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 discreetly 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. As a matter of preventive policy, certain deterrent measures can be taken:

Supervision. The employer should have in place regularly scheduled reviews, reporting processes, and other forms of checks and balances which enhance the likeliness 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. Nor may video surveillance extend into areas that are inherently private in nature, such as dressing rooms or bathrooms.

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. **N**

For over 25 years, Nancy Lanard, Senior Partner at Lanard Law, has counseled clients on general corporate and real estate matters in the Philadelphia, PA area (including negotiating and drafting contracts, handling the purchase and sale of businesses, and representing businesses in the buying, selling, developing, managing, and leasing of real estate); assisted with hiring, firing, promoting, and managing employees and the issues surrounding those actions; prepared financing documentation; advised on Federal regulations. Nancy and her firm draft and negotiate documentation for the sale and acquisition of franchises for clients nationwide, including preparing Franchise Disclosure Documents and franchise agreements. Learn more about Nancy Lanard at www.lanardlaw.com.