

Employee Theft Investigation - Part 3

by J. Patrick Murphy



Termination

Terminations for theft should not be handled in a manner different from any other termination for cause. Termination is based on established policy and procedure. Sometimes, however, theft is judged on a sliding scale of value. Example: A jar was set up

on a desk to collect money for charity. An employee, needing lunch money, stole (was going to pay back the next day) \$2.00. The money was not the property of the company but the employee was terminated anyway. Theft of anything causes loss of confidence and not terminating may create a dangerous precedent.

1. Consult with your legal department or counsel regarding your investigation. Ultimately they will have to defend the actions of the company if it comes to that. Nothing can prevent someone from filing a civil suit. What is more important is that the actions are defensible in court and that the plaintiff does not prevail.

2. Consider terminating the employee for "Violation of Company Policy" versus theft. It is easier to defend as no intent is required or suggested.

3. Industries that hire young people are well aware of the parents' interest in the termination of their child. If the child is an adult (based on your State's definition of adult) then the parents do not have the right to know anything about the employee's actions. A minor child's

parents have no "rights" that compels a company to discuss their child's employment or any actions taken. However, discretion is sometimes the better path taken when the case is discussed. What the parent knows is usually vastly different than the truth. Check with your attorney before releasing any information.

Suspension

4. Suspension prior to termination is highly recommended. This serves as a sort of cooling off period to gather all of the pieces of the investigation together for review. While it may be a foregone conclusion that termination will occur, it is still a good practice.

Prosecution

As a percentage, few employees are actually prosecuted for theft. There are many reasons why, but frankly, there may just not be enough evidence that would make a prosecutor want to take the case to trial. Prosecution rarely results in full restitution to the company and if restitution is required, it is paid back over the lifetime of their probation. Prosecution has some worth but it is a business decision. Consider the following carefully when making that decision.

1. In most cases, calling the police immediately is not necessary. While it may be more dramatic, there is no need to send someone out the door in handcuffs. It is better to organize your investigation and take it to local law enforcement.

2. Your case may be well documented but the prosecutor may decide to plea bargain the case to a lesser charge. It's out of your hands.

3. Losing a criminal case may give rise to a civil action based on malicious prosecution.

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