

# What to do when you suspect an employee is stealing from the company

Few HR dilemmas are as sticky as dealing with the possibility that an employee is stealing from the company. You need to handle it with almost surgical precision to guarantee the company does not overstep its bounds and expose itself to liability.

If you suspect an employee is stealing, you will have to decide either to conduct an internal investigation or to call in outside expertise. An internal investigation will probably cost less, but consider whether you can do so fairly and without bias, and whether you have the necessary resources.

Your company's insurance carrier can provide assistance. If you decide to involve your carrier, promptly notify it and comply with all policy provisions. Note that the insurer may require the police to get involved.

## Elements of investigation

Whether performed in-house or through an outside investigator, your investigation should include the following steps:

- Gather facts and compile documentation (information about witnesses, documents and physical evidence).
- Audit computer files, financial records, etc.
- Preserve evidence, such as documents, computer files and e-mails.
- Maintain a chain of custody to document the movement of physical evidence. Later, you may have to prove exactly who held the evidence and whether anyone had an opportunity to manipulate it.
- Conduct interviews.
- Document all investigative steps taken and summarize your interviews. The resulting investigative report may be a key document in the event of any subsequent legal action.

## Conducting interviews

When getting ready to interview the suspected employee and any witnesses, you should be prepared. Create an outline for the interviews so you can anticipate difficult issues. Know the company's policy if an employee refuses to be interviewed. Will that refusal subject the employee to discipline?

In a union setting, an employee has the right to have a union representative or co-worker (not a lawyer) present during any interview that the employee reasonably expects could result in the imposition of discipline.

Evaluate whether to administer a lie detector test. The federal Employee Polygraph Protection Act governs the use of polygraph exams in the workplace.

## Decide whether to discipline ...

If your investigation shows misconduct, decide which type of discipline to impose. First, review the employee's

past disciplinary record to see whether there have been other incidents and warnings. Then, research past discipline imposed against other employees for the same or similar conduct. This will help you avoid claims of discrimination for disparate impact or disparate treatment. Also, evaluate the severity of the conduct and the likelihood that the employee will engage in similar behavior in the future.

Finally, determine whether the wrongdoer poses a risk for retaliation or physical harm. If so, take steps to mitigate the risk.

Based on this information and the company's policies, decide what action to take. Wording can be important. "Theft" is a loaded word; using it could expose your organization to a defamation claim. Can the employee be accused of "violating company policy" or a "cash handling violation"?

### **... or press charges**

If the offense is serious, you will have to consider pursuing criminal action. Consult your attorney before you do.

Pennsylvania courts have ruled that criminal proceedings initiated upon the advice of counsel are conclusively presumed to be supported by probable cause—if the employer seeks the advice of counsel in good faith and the attorney gives the advice armed with full knowledge of the facts. In other words, getting your attorney's opinion and following his or her advice greatly decreases the chance that your employee will successfully sue you for malicious prosecution.

Prevention is almost always better than the cure. Whether this is a first-time occurrence for your company or a lingering problem, it is best to review—or create, if necessary—loss prevention policies and procedures. Let employees know that dishonest acts are serious infractions. Advise employees that if they know of another employee's dishonesty and fail to report it, they can be subject to discipline as well.

## **To catch a thief**

There are a number of ways an employee can steal from a company. Some typical examples:

- A checkout clerk at a retail store steals from the cash register or takes money from customers and then voids the sale.
- An office employee with access to company money (for example, a sales representative or financial officer) falsifies expense accounts or issues nonbusiness-related checks.
- An employee (of any kind) steals tools or equipment.

Most employees who steal leave a trail. Watch for:

- Frequent cash balance variances
- Inventory shortages
- Missing tools and equipment
- Changes in employee behavior or spending patterns (buying new clothes or a new car)
- Complaints from other employees about missing items.