



Ep. 07: The ABCs of Employee Theft

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Workplace theft can run the gamut from office supplies to petty cash to trade secrets. In this podcast, we're going to discuss the best practices for identifying, investigating, and then handling employee theft in the workplace.

Camille Bryant: Hello, my name is **Camille Bryant**. I am a member of McGlinchey Stafford's Labor and Employment team, and I want to welcome you to the ABCs of Investigating Theft in the Workplace. And I am excited to have with me **Dan Plunkett**, who is a member of our Commercial Litigation and White Collar sections to dig into this topic with me.

Dan Plunkett: Thank you, Camille. I appreciate that.

Camille Bryant: So to kick things off, why do we care about employee theft? For a lot of business owners, particularly smaller business owners, it's not one of the first things that you really think about. But now that we're seeing sort of a downturn in the economy, an emphasis is being put on profits more now than ever. So from your standpoint, Dan, why do we really care about theft in the workplace?

Dan Plunkett: First thing I think you've got to figure out is, what's been stolen, and figure out the proportionality of your response. If what's being stolen is office supplies, you're probably not going to make a federal crime out of this, right? You're going to send the supervisor down the hall to say, "Susie, that's not how we operate at this company," but if what's being stolen are trade secrets, you need to respond in a very different manner.

Camille Bryant: And I saw an article recently from SHRM, the Society for Human Resource Management, which actually estimated that 40% of employees steal at some point during their tenure. And so I think that goes to what you're saying, that it really depends upon the kind of theft. Are we talking about employees stealing office supplies, or are we talking about employees who may be padding time, versus employees who may be stealing trade secrets as you alluded to? And so I think it's important to definitely make, to distinguish between each of the different types of theft that may occur and prioritizing each type of



theft. And I guess one other question that I have for you is -- we talked about why an employer may care, but why do you think that theft may be on the rise? Because I know in our practice group, particularly, we have been seeing an uptick in some of these claims recently.

Dan Plunkett: I think you hit on it. The downturn in the economy has people looking for alternative sources of income. How can they stretch a dollar a little further? Well, if that means that they're taking cleaning supplies home from the office, it's one less thing they've got to buy at the store that weekend. And certainly at the other end of the spectrum, Camille, so from my world, we talk about the three P's of investigating theft: proportionality, precedence, and proof. So on the proportionality scale, that's where we're looking to see what's the value of what's being taken. How big a response do we need?

Camille Bryant: So that brings us into the next segue. You have a suspicion that an employee may be stealing something. From a criminal investigation standpoint, what's the first thing that you would want an employer to do?

Dan Plunkett: Assess the value. We've got to figure out the proportion, how big a response do we need? The second thing is, I want you to consider the precedential value of your response. So certainly you want the theft to stop, and you want that particular value of those particular goods to be returned to the company. But do you need to set the tone? Are you a new startup tech company that all of your fortunes are tied up in your coding, for example? If somebody walks out with coding, you need to lay down the law and make sure that never happens again, or there is no company to protect. On the other hand, if somebody took the can of Lysol during the pandemic, you're probably going to handle that in a little bit different way. You don't need to make a public embarrassment out of them. You don't need to send a message throughout the company. Handle it and move on.

Camille Bryant: So you've assessed the value and you've determined that this is a high value matter. Let's say maybe the employee is stealing trade secrets. When do you make the call on when to get the police involved? Because that's often a question that we get posed from employers, is that they automatically want to call the cops and get the cops involved. And what we have to explain to them is that once that happens, it's really out of our hands. So what's your position on that?

Dan Plunkett: It goes back to, figure out what's being taken. The police, local law enforcement are really good when we're talking about the theft of goods. If your employees are stealing stereos out of the back of your appliance store, call the police. That's what they're really good at handling. In contrast, Camille, if you think that trade secrets or customer data or information about your clients is what's walking out the door, the local police may not be so good at handling that. First of all, they may not understand what it is that's being taken. That's maybe out of their wheelhouse. So then you've got to think, do I take this to the federal government, federal law enforcement? The FBI, for example, may be better suited for your situation. Or handling the investigation either internally, or with the assistance of an outside security firm, may be your best bet.

Camille Bryant: Does your analysis change when we're dealing with cash theft? Because something else that we're seeing quite frequently is the employee who may put something on the charge card, or the employee that may take some petty cash. But over time that builds up and it can be a lot of money and detrimental to the business.

Dan Plunkett: Those sorts of employee thefts are fairly hard to trace, and that's why they happen over time. And you don't notice it until six figures is gone -- because a dollar here and \$20 there just isn't noticed. If it's going to be a hard task for you to piece all that together, just think how it's going to be for the local law enforcement. So hire yourself a forensic accountant, have them put together the basics. They don't have to track down every penny, but put your case together. So when you do go to the local law enforcement, you'll have their attention right away.

Camille Bryant: So when you're doing your own internal investigation, what we often advise our employment clients on is to have their HR team do it initially, to interview anyone that may have taken any part in the activities, to review any video surveillance footage that may be involved in the scenario. Are there any other tactical tips that you could give someone to investigate the claim locally before maybe it gets to the level of hiring outside counsel or going to the police?

Dan Plunkett: The end of the investigatory and prosecutorial process will be the trial at which the employee is convicted of theft. So you want to make sure that you are going to bring to local law enforcement that dossier of information and the witness who can best speak to it. So Bob and your shipping department might be the world's best at logistics, but if he gets really anxious speaking in front of people, perhaps he's not the one we want to designate as the spokesperson. It can be a supervisor, or it can be HR, or it can be your security department, but you want to make sure that it's somebody who's going to be able to tell the story effectively when you go to prosecute.

Camille Bryant: So that brings us to the next stage. You've investigated the employee. You've determined that something may or may not have happened, but you want to terminate them. And it's really important to collect all of that information that Dan just talked about and putting it into a nice, crisp claim package, and making sure that that is housed in the employee's personnel file, to the extent that litigation could ensue for wrongful termination. And another practice pointer that we like to give clients with regards to employee theft, is if you do terminate an employee for suspicion of employee theft, it's best to characterize it as "misconduct," instead of saying that an employee was terminated for theft. Because that can alleviate some defamation claims that could arise from this type of misconduct in the workplace.

And I think the other best practice point for employers is to create the most honest and ethical work environment that you can. You want your company culture to infiltrate all areas of the company. And a lot of that really starts with enforcing your roles. If you have a lax role on when employees may come in, then that can trickle down to other things. Then you may have employees who start to steal things from the mailroom, which can then trickle down to the petty cash and the credit card charges, which Dan alluded to, that can go on for years at a time. So it's really important to set the tone with

your employees at the onset, where you create an honest and ethical workplace and enforce your code of conduct for all of your employees.

Again, we want to thank you for tuning in I'm **Camille Bryant**, with my cohost **Dan Plunkett**, and for any questions regarding employees and theft, whether it be investigations or how to enforce various policies, please contact any member of our McGlinchey team.

Thanks for tuning into this episode of "More with McGlinchey." If you have a question or would like to propose a topic, we'd love to hear from you at podcast@mcglinchey.com. For additional resources on this topic, please visit mcglinchey.com. On behalf of the law firm that brings you more, we hope you'll join us next time.



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