

THEFT IN THE WORKPLACE

by Erin Connick

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From an employee taking an item off the shelf of a supermarket, to pocketing office supplies, all the way to taking money out of a till, thefts happen in the workplace. The first thought is usually to fire the employee, but this might cause problems for the business owner. It is up to the employer to minimize the risk of theft in the workplace, and when a theft does occur, address it in a manner that will not result in a wrongful dismissal claim or a grievance by the employee.

What can an employer do upon learning there has been a theft by an employee? In some cases it may be appropriate to terminate the employee for cause. In other cases, firing may be too harsh and a suspension would be more appropriate. The response to the theft will vary according to the specific facts of the case. There is no magic formula.

When making the decision as to how to handle the employee's theft, employers should recognize that the "punishment should fit the crime". It is recommended that employers consider the following factors:

- the length of the employee's service and his or her work history;
- whether this was a single offence or whether the theft has been ongoing;
- how serious is the offence;
- whether the theft was premeditated;
- the credibility of the employee;
- whether the employee admits to the theft and the sincerity of the apology;
- whether the employer has a clear policy;
- the age of the employee.

Where a long-time employee commits a single theft of an item of little value, admits to the theft and apologizes for it, one might expect he or she would be treated less harshly than an employee who has a history of disciplinary action, has been engaging in acts of theft for a period of time, stole an item of significant value and denies any involvement when confronted by the employer. Of course, as the facts of each case vary, employers can expect to be faced with a variety of scenarios.

Another factor to consider is whether the employee's judgment has been affected by stress, depression, or addiction problems. The existence of these may be mitigating factors and may lessen the employee's culpability. In addition, the employer may be in a situation where a duty to accommodate arises under Human Rights legislation. The employer must be aware of the entire picture.

When considering the above factors, the most important question to be answered is whether the employment relationship can be salvaged. Can the employer rebuild the trust in the employee? If the answer is no, termination may be the only option. If the answer is yes, then the employer must canvas alternate forms of discipline such as suspension. While the case law is fact specific, it is rare for a suspension to be more than six months.

As with most labour and employment issues, prevention is the best alternative. In addition to appropriate reporting and supervision practices, employers should consider establishing a clear policy statement that theft will not be tolerated and identify the possible consequences. In

addition, when faced with an allegation of theft, the employer must react, but not overreact. For example, the employer must conduct an investigation and deal with the allegations promptly. An immediate termination of the employment based on a mere suspicion of theft is not appropriate.

Theft in the workplace will always continue to be a problem. With appropriate prevention mechanisms and appropriate investigation and disciplinary practices, however, it is possible for employers to minimize the occurrence of and the ultimate economic effect of theft in the business.

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