

“Addressing Theft in the Workplace”

By: Andrew Kantor, Esq.

Employers must be continuously mindful of having appropriate checks and balances to address and avoid the misappropriation of money and product by their employees. Because small business owners are “stretched” where sometimes they are unable to hire an individual or individuals designated to oversee and ensure that employees are acting appropriately, the business owner sometimes becomes prey to the unscrupulous employee who is motivated and has the opportunity to commit theft against his/her employer. It is important that business owners have appropriate oversight concerning the accounting functions of a business and inventory controls.

However, when the employer determines that an employee has committed a theft against it, it is important to be diligent in investigating the case, including speaking with individuals who have knowledge of the circumstances and securing documents that will assist in putting the case together. If there is a reasonable basis to believe that the employee has committed a crime, it is important that law enforcement be notified. It is imperative that the business owner provide all necessary information and the assistance requested by law enforcement. More importantly, the accuracy of the business owner's representations are paramount.

A law enforcement officer will make a determination as to whether there is probable cause to arrest the individual. Once the arrest is made, a prosecutor will determine if the State can prove beyond a reasonable doubt that the crime was committed by the individual charged. A prosecutor is only as good as the evidence presented to him. Therefore, it is important that the business owner cooperate with the prosecutor and provide the necessary information to file the criminal charges. When a prosecutor has insufficient evidence to proceed, the case will be dropped.

Regardless of the disposition in the criminal matter, the business owner has the ability to proceed civilly against an employee. A civil cause of action may be initiated against the employee for theft. In a civil theft prosecution, an employer has a cause of action for threefold the actual damages sustained. Not only may the employer receive threefold the actual damages, but also, may


be entitled to reasonable attorney fees and court costs.


However, when a criminal case is dropped by the prosecution, the business owner may subject himself to a civil suit by the employee who allegedly committed the crime, if accurate information has not been provided by the business owner to law enforcement. A civil suit may be commenced by an employee for malicious prosecution if the charges are dropped and it is proven that the employer knew or should have known that inaccurate information was provided. The employee would attempt to receive amounts in the form of damages for being improperly arrested.

It is important to address thefts committed within the workplace. There are instances where an employee has moved from employer to employer committing crimes of dishonesty where the employer did not pursue criminal charges. However, it is important that in developing a case

against an employee and in presenting the case to law enforcement that accurate information be provided.

In conclusion, a business owner has both criminal and civil remedies available when an employee commits theft. Regardless of whether a criminal or civil prosecution is initiated, the evidence in support of the allegations must be developed to properly initiate an action.

Andrew Kantor was an Assistant State Attorney for the Fourth Judicial Circuit of Florida for fourteen (14) years. Mr. Kantor was the head of the “Public Interest Section”, specializing in white collar crime, including embezzlement, racketeering, and various frauds. Mr. Kantor prosecuted numerous employees who misappropriated property from their employers during his career. He can be reached at (904) 366-7318 and akantor@bmdpl.com. 



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