

Birmingham BUSINESS JOURNAL

Vol. 21 No. 37

birmingham.bizjournals.com

The Business Voice of Metro Birmingham

\$1.50 September 10, 2004

Fumbled investigations can lead to legal woes

Embezzling employees can sue, wreak more financial havoc, if employer violates rights

The numbers are staggering. Over the past 30 years, embezzlement leads the pack as one of the top financial crimes, annually costing U.S. employers an estimated \$40 billion. Embezzlement, in a word, is expensive. And it also can be embarrassing.

Case in point: Joe Smith, the owner of XYZ Corp., discovered that his bookkeeper, Jane Doe, had misappropriated funds exceeding \$300,000. Smith knew the money was gone. Doe had gambled it away. But Smith wanted Doe punished for her misdeeds. He turned the matter over to the local district attorney, who took the case to the grand jury, obtained an indictment and took Doe to trial. Smith was armed only with his accountant's schedule detailing the difference between the daily cash reports and the bank deposits, and his own testimony. Doe was acquitted after 10 minutes of deliberation.

Doe, although allegedly guilty, immediately filed a \$1 million defamation suit against Smith, XYZ and its accountant.

Smith was about to lose twice.

Act quickly, carefully

Employers face the probability of getting burned twice by not understanding the importance of a properly structured investigation.

Here are 10 considerations, in no particular order of timing or importance, that can maximize the potential for a happier, less costly outcome for an employer who is the victim of embezzlement:

1. **Act quickly.** By the time embezzlement is discovered, the scheme probably has been occurring for a while. Minimize losses by quickly moving to stop the fraud.

2. **Contact your insurer.** Failing to put your insurer on notice can void coverage. Most policies have a 30- to 60-day notice provision.

3. **Contact legal counsel.** An attorney with employment experience can help you through the maze of employer and employee rights. Additionally, an attorney with fraud experience can be invaluable in developing and executing a litigation plan.

4. **Decide how to deal with the alleged perpetrator.** Avoid the urge to immediately terminate the employee. Suppose an assumption of guilt is later proven wrong. The employee may successfully sue for wrongful termination, defamation, slander and/or libel.

Retaining the employee is advantageous in that employees have a duty to cooperate with employers in a legitimate



Workplace Crimes

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investigation. This will make obtaining records needed to prove fraud easier. Only after sufficient evidence exists for a fraud examination should an employee

be placed on leave or terminated.

5. **Take immediate steps to preserve data.** Data to be secured includes anything a suspected employee has touched in connection with his role in the organization:

- Secure pertinent data, computers and media, preferably without the employee's knowledge.

- Search the employee's desk and office. Generally, both are property of the entity, and you are within your rights as the employer to conduct a search. However,

you can make a misstep here, so check with the attorney first.

- When an employee has been notified that he is the subject of an investigation, do not allow the employee to touch or remove anything from the office except for personal items. The employee should be accompanied at all times while in the office, then escorted from the premises.

- Don't overlook home computers the employee may have used for work-related purposes.

See **INVESTIGATION**, Page 23

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INVESTIGATION: *Be aware of employee's legal rights*

FROM PAGE 19

- Terminate the employee's access to computers within and outside of the office. Change all passwords to prevent unauthorized access or destruction of evidence.

6. Hire a certified fraud examiner (CFE). Conducting an embezzlement investigation can be a complex undertaking. The plan developed by a CFE will maximize efficiency and, ultimately, the effectiveness of the investigation.

7. Know your rights and responsibilities as an employer. You have a right to conduct a fraud examination. You also have a responsibility to stockholders to investigate and seek to recover any losses suffered through theft.

Laws dealing with employee rights in the workplace do not have to hamper the examination, but they must be followed. Best rule of thumb: Treat all employees consistently.

8. Know your employees' rights and responsibilities. Remember, not only do you have rights as an employer, but the

■ STEPS TO MINIMIZE EMBEZZLEMENT

Review hiring practices.

Restrict access to employee master files.

Institute strict procedures for additions and modifications to vendor files.

Keep interested in your own career, however humble; it is a real possession in changing fortunes of time.

Separate duties.

Keep check stock under lock and key.

Directly mail vendor checks; do not return checks to person requesting payment.

Reconcile bank accounts in a timely manner. This should be done separately of responsibilities for issuing checks and handling deposits.

Regularly rotate personnel or functions in critical financial areas.

employee also has rights. Before taking adverse action against an employee, consult your attorney to protect yourself from possible legal retaliation.

9. Facilitate background and credit checks. Need and greed often can be

identified with some basic checks.

However, provisions of the U.S. Fair Credit Reporting Act require disclosure of a report to the employee.

10. Remember the Iceberg Principle. What may initially appear to be a simple scheme could prove to be a much bigger operation with players inside and outside the entity. Don't stop digging too soon.

Conclusion

A successful outcome requires the interplay of diverse elements, not to mention a delicate balance between the rights and responsibilities of both the employer and the employee.

Hiring seasoned professionals on the legal and accounting fronts will help an employer avoid missteps. They also may help identify faulty accounting procedures and ways to correct them.

A professionally managed fraud investigation may provide an invaluable benefit – the prevention of the double loss. That is, the loss from the embezzlement plus the additional loss when not handled properly.
