



Employee theft in the workplace is a growing problem that affects many employers. Nearly 95 percent of all businesses suffer from theft in the workplace and approximately 75 percent of all employees steal from their employers at least once. Studies have shown that it is more often the younger employee (younger than 35) who steals from an employer. However, when older workers engage in theft, they tend to take much more than their younger counterparts. Managers are the usual culprits for the worst cases of fraud. All too often, it is the long-term and trusted employee who ends up being the culprit. Because of this growing problem, it is important to be aware of the signs and understand how to prevent the theft from occurring.

WHY DO EMPLOYEES STEAL?

Understanding why employees steal may reveal how to prevent employee theft within the workplace. Although there are various reasons why employees steal from their employers, the most common explanation is that the opportunity is there. Employees who have no criminal background and who are not necessarily prone to stealing are more enticed to steal if the opportunity is present. Other common reasons why employees steal from their employers are:

- they feel their employer has wronged them or underpays them for their hard work
- they believe the employer is insured for such losses and is not affected
- the consequences set in place by the employer for theft are minimal or are not enforced.

Smart hiring

1. Conduct background investigations. One of the best ways to prevent stealing in the workplace is to conduct a complete background investigation of an applicant before he or she is hired. The first step in any background check is gathering information directly from the job candidate. Applicants should provide information on their work history and their educational background.

Employers should also meet job candidates and take the time to ask follow-up questions about their resumes and background. Relying on verbal interviews alone is risky. An applicant may ignore or gloss over long periods of unemployment or reasons for leaving a prior job. It is easy in a conversation for the discussion to jump around. However, if the hiring manager has a paper that asks for specific time periods of employment and reasons for leaving, he or she will have a roadmap that identifies questions regarding the applicant's job history. The hiring manager can then evaluate discrepant or incomplete responses to interview questions regarding gaps in the written application or resume. Gut instinct still goes a long way when making a decision to hire.

In gathering information from an applicant, avoid discrimination. An employer cannot single out individuals based on gender or ethnicity for certain types of questioning. For example, an employer who asks only African-American or Hispanic males younger than 35 if they have a record of criminal convictions, or who checks the references only of employees who are of Asian ancestry and were not born in the United States, is likely engaging in discriminatory hiring practices. The best practice is to use the same hiring process for all applicants to the same job.

A thorough pre-employment background check should include:

- criminal history for crimes involving violence, theft, and fraud (in California there is a limit on how far back you can check)
- civil history for lawsuits involving collections, restraining orders, and fraud
- driver's license check for numerous or serious violations
- education verification for degrees from accredited institutions
- employment verification of positions, length of employment, and reasons for leaving.

2. Conduct criminal conviction checks. Most public records services (such as Nexis or ChoicePoint) have criminal conviction records for almost every large county in the United States. If not, an employer may go to the courthouse and search the criminal conviction records in the criminal courts division of the employee's county of residence, or other counties in which he or she previously resided. In California, most employers are prohibited by law from inquiring about or considering information about an arrest that did not result in a conviction, convictions for certain types of marijuana-related crimes or convictions that have been expunged. Because violation of these laws can be charged as a misdemeanor, employers who are undertaking their own criminal background checks should be sure that they know the limits of the information they can legally obtain and use.

Generally, an employer can't gather information on:

- most arrests that did not result in convictions
- convictions that have been expunged, sealed or statutorily eradicated
- convictions in which the applicant was referred to or participated in any pre- or post-trial diversion program
- misdemeanors for which probation has been successfully completed or otherwise discharged, and the case has been judicially dismissed
- certain marijuana-related misdemeanors that occurred more than two years ago.

Recently, a class-action lawsuit was filed against a number of restaurants and other California businesses that requested prohibited information in the employment application form. All employers should review their applications to make sure they do not request criminal history information within these five categories. In addition to inquiring into a candidate's criminal background, an employer should also check all references provided.

Note: Employers in San Francisco with 20 or more employees are prohibited from asking about an applicant's criminal history on a job application, including "checking the box" to indicate criminal convictions or other criminal justice system involvement. It also prohibits covered employers from asking about criminal history during an initial interview. Background checks cannot be performed

until after the first live interview or after a conditional job offer is made. The employer must provide the applicant with a written notice before making any inquiry into the applicant's criminal history. Employers who fall into this category should make sure their applications do not ask these questions.

3. **Verify past employment.** Even though most employers will only verify position and dates of employment, a prospective employer can often tell by the tone of voice what the former employer thinks of the employee. A prospective employer should consistently ask previous employers whether the applicant is eligible for rehire.

4. **Use care with drug screening.** Many companies are now conducting drug screenings for potential hires as well as current employees. People who are frequent drug users can be more prone to theft or fraud. However, there are strict requirements about how pre-employment drug testing can be conducted in California, who can conduct such tests and how information about the results is to be communicated. It is important to consult with either an attorney or an experienced HR advisor before implementing a pre-employment drug screening program.

5. **Check in with reference.** Amazingly, very few employers actually call the references a candidate provides. Most operate under the theory that someone would not provide a bad reference. However, many times people will list important-sounding individuals as references with the hope that they will not be called or on the false assumption that a former supervisor or co-worker will provide a good reference.

Even if the reference provided is limited to confirming job title, dates of employment, rates of pay and eligibility for rehire, such information can be quite revealing. It may show unexplained gaps in employment. Inflation of job title or rates of pay at a prior job, in order to obtain a more responsible position in a new job can be indicative of dishonesty.

6. **Verify education and certifications.** While it is not imperative, it is always a good idea to verify the applicant's educational history. If the person claims to have a license or other certification that relates to the job he or she will be doing, make sure the license is current. Even if the employee is not going to be working under the license, it is good practice to verify the licensure to see if there is any history of discipline or if the license is no longer current. It is not uncommon for an applicant to claim a certification or license that has actually been revoked due to a disciplinary action. Most licensing or certification organizations will report if any disciplinary action has been taken against a particular individual.

7. **Get candidate consent.** Numerous federal and state laws, such as the Federal Fair Credit Reporting Act and the California Investigative Consumer Reporting Agencies Act (ICRAA), govern the gathering and use of information for pre-employment purposes. Many of these laws require that an employer obtain written consent from the candidate before gaining some types of information listed above. It is also a good idea to obtain a signed authorization and release from a potential candidate. Consult with human resources and/or legal counsel to ascertain the laws applicable to the particular company and to obtain the proper authorization forms.

8. **Obtain consumer credit reports only for certain positions.** Employers should also avoid using consumer credit reports for hiring and personnel decisions because consumer credit reports often include criminal histories. Under the ICRAA, an employer is permitted to use consumer credit reports only if the individual is applying for or works in the following positions that

would be applicable to a restaurant: a managerial position; a position where the individual would be a named signatory on the employer's bank or credit card account and/or authorized to transfer money on behalf of the employer; or a position that affords access to confidential or proprietary information. [Labor Code 1024.5]. Before ordering a consumer credit report concerning a job applicant or employee, the employer must notify the individual in writing of the basis under Labor Code section 1024.5 for permissibly using the consumer credit report (e.g., because the individual is applying for or holds a managerial position, etc.).

In California, an employer may use an outside screening agency to conduct the investigation upon obtaining the written consent of the employee. Such written consent must disclose the purpose of the report; give the name, address, and telephone number of the screening company; and include a summary of the applicant's rights to see and copy any report.

NOTE: If a company does the background check, such as asking for records, it is not required to use the same notice rights as stated above. However, California law requires certain written disclosures when investigating the "general background" or "mode of living" of an applicant and imposes restrictions on the type of information that can be obtained. Accordingly, the employer should be cautious to limit such self-directed inquiries to criminal convictions within the past seven years. The employer must also allow the applicant/employee an opportunity to see a copy of whatever reports you obtain.

The primary exception to the notice requirement is if the object of the investigation is already employed and suspected of misconduct. In that instance, the employer can obtain certain reports without providing notice of the employee's right to obtain a copy.

Preventing fraud and theft

Employees who perceive that they will be caught engaging in occupational fraud and abuse are less likely to commit it. Increasing the perception of detection may well be the most effective fraud prevention method.

Provide clear written policies. The employer should have clear written policies posted in the workplace regarding stealing, what types of acts constitute stealing and the consequences that will be enforced if an employee is caught stealing. The employer should also have an employee handbook that covers the penalties for theft.

Advise employees of the effects of stealing. When profits are down, employees do not receive raises or bonuses. If an employee understands that his or her job can be affected by another employee's theft, that employee will be more willing to come forward and report when others are stealing.

Conduct inventory more than just once a month. Keeping a close watch on the products in a restaurant can help employers notice when certain items are missing.

The work environment matters. An efficient and positive work culture will prove to be a motivation for the right employees and a deterrent for dishonest people. The work culture begins with management and owners. A cavalier attitude toward rules and regulations by management will soon be reflected in the attitude of employees. Every employee — regardless of position — should be held accountable for his or her actions.

Improve the handling of money. Employers should separate accounting tasks and procedures. Additionally, employers should limit who has access to the cash register or safe. Employers should also rotate positions of employees that handle the books and records as a means of checks and balances. All too often an employee who has handled the cash for years will know the loopholes in the system and can siphon small amounts. Recently, a 10-year employee was convicted of stealing more than \$250,000 from her employer over a seven-year period. The amount was accumulated by simply making returns to the employee's credit card in amounts under \$50. It wasn't until she was out ill and another employee discovered the thefts.

Increase protection of items. Limiting access to storage areas or excess inventory can greatly reduce theft in the workplace. While it is more burdensome for the manager or employer who has the access to the inventory to unlock or supervise each employee who needs to retrieve an item from the inventory, limiting access to such areas will remove the opportunity for employees to steal.

Purchase new computer programs. Employers can install an integrated computer system that tracks purchasing, inventory, receiving and point-of-sale activities. In restaurants, there should also be a computerized system for food servers to input their orders that also allows a manager or supervisor to check what items a food server has charged to a customer's bill at any time. This could reduce the rate of "freebies" that a server provides to friends and family who come into the restaurant to dine.

Install surveillance cameras. In California, an employer can install a surveillance camera in areas where employees do not have a reasonable expectation of privacy. Areas that are controlled by the employer, such as an alley, are not areas that an employee would likely consider private. The camera may only record video and not audio.

Use private investigators. Hire private investigators to act as mystery shoppers. An investigator can observe employees while they work to spot any type of illegal activity. Call the CRA Member Helpline at [800.765.4842](tel:800.765.4842) for referral assistance.

Anonymous tips. Set up a system for employees to provide anonymous tips about theft. Employees are much more likely to come forward with information about employee theft if they believe their identity will remain anonymous so they are not persecuted for turning in a coworker.

Create a positive environment. Try to maintain open lines of communication with employees, regularly praise or recognize quality performance and maintain reasonable job expectations so that employees feel valued and understood.

Take legal action against employee theft. Although legal recourse against an employee who is caught stealing can be costly, it may be a strong deterrent to other would-be thieves. Of course, seek the assistance of legal counsel before pursuing this route

Dealing with a possible thief If an employer suspects a specific employee or employees of internal theft, he should approach the situation with caution. Employers are advised to try to follow the steps below when handling a suspected thief.

The first step is always to form a plan. Many times an employer learns of an employee theft and

charges ahead without determining what needs to be done to preserve evidence. However, taking just a few moments to outline what information is required, how to obtain it, how to document what has occurred and to form a plan of action will go a long way in aiding the employer in recovery of stolen goods or money.

Don't immediately advise the employee that there is an investigation. If an employee knows he or she is under investigation, the employee can start destroying evidence, moving money around and concealing the crime. It is a much better approach to begin gathering evidence before alerting the employee or taking action against him or her.

Consider hiring a private investigator. Many private investigators have experience in conducting a workplace investigation. Employers can use them to advise on how to proceed and gather evidence or they can actually interview employees and gather evidence. If legal counsel recommends the services of a private investigator to obtain proof, employers should make sure the investigator is licensed and can produce proof of insurance coverage. Also, employers are advised to make sure their insurance covers any liabilities incurred by the investigator.

Contact the police. Most cities have a fraud and theft division and will have an officer walk through what evidence needs to be gathered.

Create a list of questions. It is always a good idea to outline what needs to be proven so that the person conducting interviews or gathering evidence covers all points. Often times, the employer does not have sufficient information to create a complete list of questions. Start by creating a list of known facts and ask questions about those facts, for example:

- Who is responsible for ordering?
- How does ordering take place?
- Who receives an order?
- Who books the payment?

Many times employers believe they know their systems, but it is good practice to review the established procedures. In most theft situations it is discovered that protocol was not followed.

Interview co-workers. The best sources of information often are the people who work together and see one another day after day. Over time, they learn what constitutes "normal" behavior in co-workers and can spot abnormal behavior within minutes. So when a theft occurs, employees are often privy to impressions as well as information about others on staff that no background investigation could ever reveal. These interviews should be confidential to the reasonable extent and conducted in a discreet manner. In the interview, employers should ask the employee(s) general information about what they know or what they saw. Employers should never disclose to anyone during the interview which employee they suspect is guilty of stealing.

However, employees are frequently concerned that by providing information to investigators, they may be labeled as "snitches" or subjected to retaliation. Employees need to be told two important things when conducting an investigation: they will not be fired for being honest about what they

know and that the future of the company, and hence their employment, depends on their honesty. Never promise an employee that he or she will not be terminated for involvement in dishonesty or criminal conduct. Rather it's important to emphasize that an employee will not be retaliated against for being truthful. If employees ask if they could lose their jobs, it is important to state that it depends on their involvement in the conduct, but that dishonesty during the investigation will be grounds for termination.

An employee will provide information about a workplace theft only if his or her loyalty to the employer, and interest in protecting the employer's interests, exceeds the employee's loyalty to the guilty co-worker. It is easy for employees to feel loyal to someone they work with daily, especially if that person has become a friend. Therefore, it is important for the company to consider who conducts interviews the employee. Sometimes a trusted manager with whom employees have regular interactions will elicit more information than an outside investigator.

Gather documents. It's important to preserve all possible evidence when conducting an investigation. If an employee is suspected of stealing, IT should be engaged to copy the employee's work center, whether it's a register or a computer, and download and preserve e-mails. Copies should be made of all documents related to an employee's job, including time cards, punch records, data access records of when employees come and go, and video surveillance of the premises. If an employee has a social networking page, all pages should be printed out immediately, as this information may be lost if not immediately gathered.

Contact legal counsel. Before taking any action regarding disciplinary action, suspension or termination, consult legal counsel. There are certain considerations regarding recovery of the goods or monies that were stolen, which may be jeopardized if the employee is terminated. In addition, even if the facts support termination, the overly-broad communication of those facts or the manner in which the termination is conducted can create the risk of liability for discrimination, invasion of privacy, defamation, or intentional torts.

Relax and be careful about what is said. Once an employer has received confirmation that an employee is guilty of theft and the employer is ready to confront the employee with that information, the employer should be careful of how or what is said during this meeting. The employer should not approach the suspected employee while still angry or emotional, which could create a volatile or explosive situation at the work place. The suspected employee should be approached calmly to discuss his or her employer's concerns. Employers should be careful not to refer to the employee as a "thief." This type of reference can lead to a defamation lawsuit.

Enforce written policies. After confronting the suspected employee, employers should make sure to enforce whatever written discipline policies exist regarding theft in the workplace. If the written policy is to terminate employment, then that policy should be enforced. Setting the example about how employee theft will be dealt with will serve as a deterrent to future incidents of theft.

Do not deduct amounts from the employee's paycheck. California law imposes very strict limits on the circumstances under which an employer is permitted to deduct amounts from an

employee's paycheck. Even if an employer suspects an employee of stealing, the CRA recommends seeking legal advice before deducting the value of stolen items or cash from the employee's paycheck.

Recovering stolen property

The most common legal question presented by workplace theft is "Can the money or items be recovered?" Many times the answer is yes, if the employer acts properly to investigate, document evidence and involve legal counsel early.

If counsel is engaged early on in the investigation, they can seek court orders to freeze an employee's assets and have property returned. Such court actions can be commenced prior to or contemporaneously with the employee being terminated.

EXAMPLE: An employee was notified that she was being terminated for stealing through falsification of expense reimbursements. She was confronted with documents evidencing returns to her credit card for merchandise that was never purchased. The police were then brought into the room and the employee was asked if she wanted to make a statement, at which time she confessed much of her wrongdoing. The next morning the employer went to court and obtained an order freezing the employee's assets. Through a detailed investigation before termination and prompt assistance of legal counsel, the employer was able to recover almost all of the six figure theft.

Monies and stolen property can also be recovered through a criminal action. A properly prepared investigation can be presented directly to the district attorney's office, and when the employee is arrested and undergoing criminal prosecution, he or she will often be offered a significantly reduced jail sentence if restitution is made. With the increasing demands on district attorneys' offices it can often be difficult to obtain their involvement in complaints for non-violent crimes such as employee theft. However, a properly prepared and documented investigation that can be handed over to the authorities greatly increases the likelihood of a criminal prosecution. Many employees, when faced with prison, will find the means to make financial restitution, including borrowing from family members.

Other resources:

Small Business Fraud Prevention Manual

Available from the Association of Certified Fraud Examiners (ACFE), this manual "provides information on the most common internal and external fraud schemes committed by customers, employees and vendors against small businesses as well as tips on how to prevent these schemes from happening to you."
