

Employee Theft

The Employment Law Perspective

Gordon Hill

(813) 222-8506

ghill@hwlaw.com

The Investigation

- Confronting the Employee?
- Taking Statements – written, recorded

The Investigation

- Confidentiality & Defamation Concerns
 - Publicizing the name of the accused employee without proof
 - Defamation per se
 - Disclaimers:
 - “We’re not accusing anyone specific right now”, “We’re not saying Mr. Shimberg did it”
 - “This is very preliminary”, “We’re just trying to get to the bottom of this”

Employee Treatment Pending the Investigation

- Send them home?
- Paid vs. Unpaid Leave of Absence (Suspension)
 - Exempt Employees – must pay unless:
 - Out of work for a full workweek (even 1 hour counts)
 - “Guilty verdict”
 - Non-Exempt Employees – can be unpaid

Self-Help Deductions

- Final Paycheck – Wages/Salary
 - Exempt Employees → yes ... but how sure are you?
 - Non-Exempt Employees → yes, but consider minimum wage ... how sure are you?
 - Some States - written policy or signed authorization required

Self-Help Deductions

- Bonuses, Commissions
 - What does the contract/policy say?
 - “Must be here to get paid”
 - “Forfeit upon termination for cause”
- Vacation/Sick/PTO?
 - What does the contract/policy say?
 - “Can’t take it with you and no cash value”
 - “Forfeit upon termination for cause”

Self-Help Deductions

- Stock, Options?
 - What does the contract/policy say?
- Pension, 401(k), Retirement?
 - Cannot touch; have to pay to the employee
 - But can work with Prosecutor if employee consents

What Can You Do Now?

- Review Your:
 - Contracts – bonuses, commissions,
 - Policies and Procedures
 - Vacation/Sick/ PTO
 - Cash Shortages
 - Return of Property (big ticket items)
- Written Authorizations for Deductions



Employee Theft

The Employment Law Perspective

Gordon Hill

(813) 222-8506

ghill@hwlaw.com



This presentation is made available by Hill Ward Henderson for educational purposes only to provide you general information and a general understanding of the law, it is not intended to provide nor does it constitute legal advice. The presentation should not be used as a substitute for specific legal advice from a licensed professional attorney. Further, the subject matter contained in this presentation is complex and subject to change. Any tax statements in this material are not intended to suggest the avoidance of U.S. federal, state or local tax penalties.