Employee Theft

The Employment Law Perspective

Gordon Hill
(813) 222-8506
ghill@hwhlaw.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
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