



Theft – A Common Sense and Legal Approach

Keeping abreast of reform and developments in the employment law area has always been a challenge. Perhaps never more so than at present. There will be times when you feel you simply can't keep up to date with all the employment legislation which the Irish Government and the EU set out let alone the interpretation of it by our Courts and Tribunals. You may be struggling to understand how to apply it to your business without losing sight of your plans.

We at Richard Grogan & Associates believe that it is vital to consider our client commercial objectives and pride ourselves on providing specialist employment law advice based on commerciality and not just on pure legal principles.

How to Avoid Theft in the Workplace

The first issue is to identify is theft a possibility or probability in your workplace.

If your workplace has a lot of cash or small valuable items then theft is a possibility.

Alarms and CCTV systems may protect your business from shoplifters and burglars, but not necessarily, from one of your own employees stealing from you.

Pre-Employment Screening

Research shows that the highest risk employees are those with less than 1 years' service as well as part time employees / casual employees, who do not have a stake in your business.

Taking time and effort in hiring the right people will pay off in the end. It is important to ask questions of all applicants. It is better to do so in the application form. You should ask about previous roles which they had and any disciplinary action which they had. You must make sure that you ask the same questions of all candidates. The reason for this is to avoid potential discrimination claims.

Offers of employment can and should be made conditional on relevant references and checks being carried out. Reference checks should be carried out before an employee starts work for you. Where this is not possible or practicable then they should be carried out as soon as possible. You should make the time yourself or ensure that a manager is tasked to do so.



What Should You Tell Potential Employees

All potential employees should be advised of what information will be checked. They should be advised as to what data and information will be processed in order to give their consent.

You must tell all applicants and must make sure that you carry this out in practice as well that every applicant will have an opportunity to explain any information which is not favorable.

It is advisable to make sure that a contract or application form states that any false information provided at information or application stage will lead to dismissals.

How do you Protect your Business

Every specialist employer lawyer will tell you that procedures are important. They must not only exist on paper but must apply in practice.

If you suspect an employee of stealing from you, you must have a procedure for investigating this. The procedure needs to be in writing. The procedure needs to set out what the steps are. It needs to advise the employee of the entitlement to be represented, whom they may be represented by, how the investigation will take place, their right to state their case, and, to cross examine witnesses and the penalties which may be put in place.

You need to look at your Staff Handbook and Policies. Specialist employment law advice is always required in this area. It is not simply a matter of downloading a policy from some “service provider” or getting a policy from another business whom you know. Every policy has to be tailored to the requirements of your business. Every business is different and every business needs a policy tailored to the requirements of that particular business. A “one size fits all approach” which some so called service providers give employers can cost you a lot more in the long term than a policy tailored to your business.

Why should there be different policies for different companies

The Disciplinary Policy for a large organisation will be entirely different than the Disciplinary Policy for a small organisation.

A large organisation can ensure that different individuals will investigate matters and separate individuals completely independent of the investigation will hear any disciplinary matter.

That is not always feasible or possible in a small organisation.



If your business is a retail business having a search policy for staff entering or leaving shops may be very appropriate. It may not be appropriate for other organisations.

From decision from the Employment Appeals Tribunal it is clear that where there is to be a search policy those search provisions must be clearly set out in the contract of employment / staff handbook. If you don't have such a policy now is the time to amend your policy or put one in place. We can help you with this.

The policy must clearly set out that where search procedures are carried out if an employee refuses to consent that this can be a disciplinary matter itself which can lead to dismissal.

The policy must also set out that if something is found that the employee has an opportunity to make their case prior to any dismissal.

The Use of CCTV

Some employers do consider using CCTV to prevent and record theft. However, the use of CCTV must be very clearly regulated. The use of CCTV raises complicated legal issues relating to the rights of privacy in the workplace. While you may legitimately install cameras throughout your shop or premises to watch your customers or staff you must make sure that you have signs informing people that they are under surveillance and you do not use hidden cameras to watch your staff.

The use of CCTV is regulated under the Data Protection Regulation

When dealing with the Data Protection Legislation consent is always the key issue.

CCTV cannot be excessive. The purpose of collecting data must be clear to the employee.

If the policy states that the CCTV is to be used to monitor staff for a particular purpose then they must be informed about it. The data recorded however cannot be used for any other purpose.

Hidden cameras are permitted only in very limited circumstances and appropriate legal advice must always be obtained before installing same.

If you tell staff that the purpose of CCTV is for the purpose of preventing or detecting or investigating offences or apprehending or prosecuting offenders who steal from your premises then you cannot use it for any other purpose such as to discipline an individual for leaving early or for arriving late or for some other reason.



There have been cases where hidden cameras have been put in place to monitor an employee and have been held by the Data Protection Commissioner to have been inappropriate.

Getting your Procedures Right

All well drafted Staff Handbooks will provide for an investigation procedure with suspension (on full pay) and this should be considered as a first step in any investigation involving theft from you.

You must make sure that you have your facts right before taking any action. You must have a reasonable suspicion or believe that there is a matter that needs to be investigated. Once an investigation has been completed there should be a disciplinary hearing. All evidence obtained should be provided in advance to the employee. The employee must be given an opportunity to have an independent investigation and to put their side of the story before any decision is made. Fair procedures must apply. There must be an opportunity to review the evidence and to allow the employee to make his or her case.

In smaller organisations it is necessary sometimes to consider appointing an external independent investigator to keep your procedures correct.

Even where an employee admits and offence, you must allow the employee to make submissions on what happened and why. They should not be dismissed before they can set out mitigating circumstances.

The importance of procedures cannot be stressed too much.

What should you do

1. You should review your disciplinary procedures.
2. You should make sure that your procedures set out that theft will be deemed to be gross misconduct.
3. If you are using CCTV cameras then you must tell the employees what the CCTV cameras are there for and what they are recording.
4. You must make sure that the data recorded on CCTV is stored properly and in accordance with the Data Protection Legislation.
5. You may need to put in place a policy on having searches.



6. You must always follow fair procedures
7. You must communicate your policies to all staff
8. You should get independent legal advice from a specialist employment law firm to ensure that your policies and procedures are in line with the law and to advise you on how the policies and procedures should be communicated and acted upon.

Conclusion

The firm of Richard Grogan & Associates is a specialist employment law firm. We will be pleased to advise you on any issues relating to theft from the workplace.

We can be contacted on 01 6177856 or info@grogansolicitors.ie to make an appointment or to get further information.

This is a Guide only. It does not purport to be legal advice. Before acting or refraining from acting on anything contained in this publication appropriate professional legal advice from a Solicitor should always be obtained.