

Involving the Police

Sometimes an employee is suspected of misconduct at work which could also be a crime. When should an employer involve the police?

Suspicion is not enough. For example where the allegation is theft, an employer needs to have both:

- Evidence that money or goods have gone missing; and
- Evidence that a particular employee is to blame for that.

Reasonable evidence that money or goods have gone missing would normally require an employer to have good procedures for money handling, stock handling (including staff purchases), and asset management.

One possible way of identifying who may be responsible for missing money or goods can be to install a security camera. In that situation it is not necessary to tell staff about the camera, because telling them would defeat the purpose of installing the camera, but other Privacy Act considerations still apply, for example affecting what you do with the camera footage.

Be very careful of complaints that are anonymous or where the complainant refuses to let his or her identity be disclosed. In a case last year, *Rota-Tawha v Radius Residential Care Limited*, one employee accused three others of theft of the employer's property, after getting an assurance from the employer that his/her identity would not be disclosed. The Employment Relations Authority said these are "very nebulous allegations from a possibly unreliable informant who, presumably, was not prepared to make any real commitment to giving tangible evidence". This information was useless by itself.

The property that was allegedly stolen from Radius Residential Care was pots and pans and chairs. The manager realised there was no way of identifying the employer's pots and pans from any others. There was no evidence that any pots and pans or any chairs had gone missing.

At least the employer recognised there was insufficient evidence to accuse the named employees but unfortunately the matter was discussed with the police. The police visited Ms Rota-Tawha at home and let her know that it had been alleged that she had taken items from the workplace. Ms Rota-Tawha was understandably shocked, and resigned her employment.

The Authority formed the view that "by involving the Police in the manner that occurred, without any material evidence of any wrongdoing" Radius Residential Care conveyed to Ms Rota-Tawha that it did not have trust and confidence in her as an employee. This breach of duty was so serious that it was not surprising Ms Rota-Tawha resigned. Her resignation amounted to a constructive dismissal for which the employer was liable.

An employer must also be careful not to threaten to involve the police, as this may in some circumstances amount to the crime of extortion. Once an employer does have evidence of a crime, there are advantages and disadvantages in involving the police before speaking to the employee or before completing a disciplinary investigation. The best course of action will depend on the circumstances.

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