Employee Theft & Dishonesty: What Recourse Do Employers Have?

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Agenda

- General Concerns
  - Strike first or you might regret it!
  - Are you clean?
- Claims Employers Can Bring
  - Civil
  - Criminal
- Protection Mechanisms
  - Policies
  - Audits
  - Restrictive Covenants
Why Do I Care?

- Usually your friendly employee-plaintiff brings a host of claims against the employer. The employer will have to defend these claims even if they are meritless.

- Ask yourself:
  - Do you want your company to be sued?
  - Do you want to be sued personally?
  - Do you want to spend time with attorneys?
  - Do you want to be charged with a crime?
Sciotti’s Golden Rule

The keys to effectively preventing administrative claims, administrative investigations, civil suits and criminal prosecution are:

- Enforcing policies on a consistent basis;
- Training owners, management and non-management employees; and
- A properly drafted employee manual/handbook, which is distributed and followed.
Proactive v. Reactive

- You want to implement policies and training before you have a problem. If you implement them after you have been sued or indicted, it’s too late!!!

- Spend time and money up front or you will spend more time and money at the back end.
Claims By Employers Against Employees
Types of Claims

- Fraud
- Breach of Fiduciary Duty
- Breach of Duty of Loyalty
- Civil Racketeering
- Unfair Competition
- Tortious Interference with Contractual Relations
- Economic Espionage Act
- Computer Fraud & Abuse Act
- Enforcement of Restrictive Covenants
Main Areas

- What is the claim about?
- What are the elements of the claim?
- Statute of Limitations
- Damages which can be recovered
- Discussion of actual cases
Fraud

- Fraud is generally found where there is a false representation of a fact, whether by conduct, false or misleading words, or by concealment of something that should have been disclosed. Then, there must be intent to deceive another so that he or she acts or fails to act, and a party is injured because of that deception.
Fraud

**Elements:**
1. Defendant made a misrepresentation or material omission;
2. The misrepresentation was known to be false by defendant;
3. The statement was made for the purpose of inducing plaintiff to rely;
4. Plaintiff relied on the misrepresentation; and
5. As a result of the reliance on the misrepresentation, plaintiff was injured.

- **Wright v. Selle,** 27 A.D.3d 1065, 1067 (4th Dep’t 2006).
Fraud

- **Statute of Limitations**: Six years
- An action for fraud must be commence within, the greater of either:
  - Six years from the date the fraud occurred; or,
  - Two years from the time the plaintiff could have discovered the fraud with reasonable diligence.
- C.P.L.R §213(8); Gelmac Quality Feeds, Inc. v. Ronning, 23 A.D.3d 1019 (4th Dep’t 2005)
Fraud

- Damages recoverable for fraud are generally measured by the plaintiff’s “out-of-pocket” expenses, meaning the amount necessary to restore the plaintiff to the position he or she occupied prior to the fraud. _Clearview Concrete Prods. Corp. v. S. Charles Gherardi, Inc._, 88 A.D.2d 461 (2d Dep’t 1982).
Recovery will include all “consequential damages naturally flowing from a fraud” to the extent required “to restore a party to the position occupied before commission of the fraud.” *Alpert v. Shea Gould Climenko & Casey*, 160 A.D.2d 67 (1st Dep’t 1990).
Fraud

- Punitive damages will not be allowed in “ordinary” fraud cases, but are allowed only “where the fraud, aimed at the public generally, is gross and involves high moral culpability.” Franco v. English, 620 N.Y.S.2d 156 (3rd Dep’t 1994).
Breach of Fiduciary Duty & Duty of Loyalty

- A fiduciary relationship exists between an agent and principal, signifying a relationship of trust and confidence, whereby the agent is bound to exercise the utmost good faith and undivided loyalty toward the principal throughout the relationship.
Breach of Fiduciary Duty & Duty of Loyalty

- An agent’s duty of loyalty to its principal is breached where the agent enters into an agreement with a third party that adversely affects the principal’s interest.
- Whether or not there has been a breach of fiduciary duty is generally a question of fact. Zimmerman v. Pokart, 242 A.D.2d 202 (1st Dep’t 1997).
Breach of Fiduciary Duty & Duty of Loyalty

- Two common examples of where there is a fiduciary duty and a duty of loyalty are: (1) the employee-employer relationship; and (2) corporate officers and directors.
Breach of Fiduciary Duty & Duty of Loyalty

- Employees owe their employer a fiduciary duty and a duty of loyalty—the employee is prohibited from acting in any manner inconsistent with his agency or trust and must exercise the utmost good faith and loyalty in the performance of his duties at all times.
Breach of Fiduciary Duty & Duty of Loyalty

- For example: An employee who secretly forms a company for purposes of competing with his employer’s company, then solicits the employer’s customer, and diverts business from the employer, has breached his fiduciary duty. *A & L Scientific Corp. v. Latmore*, 265 A.D.2d 355 (2d Dep’t 1999).
Breach of Fiduciary Duty & Duty of Loyalty

- However, there is no breach of fiduciary duty when an employee forms a competing business prior to his departure from his employment absent evidence that in setting up the new business he used his former employer’s time, facilities or proprietary secrets. *Fredric M. Reed & Co., Inc. v. Irvine Realty Group, Inc.*, 281 A.D.2d 352 (1st Dep’t 2001).

- Nor is there a breach when, post-employment, absent a non-compete clause, to solicit clients whose identities were easily ascertainable.
Breach of Fiduciary Duty & Duty of Loyalty

- Corporate Officers and Directors stand in a fiduciary relationship to the corporation and owe their undivided and unqualified loyalty to the corporation.
Breach of Fiduciary Duty & Duty of Loyalty

- For example: Directors and majority shareholders have an obligation to all shareholders to adhere to fiduciary standards of conduct and to exercise their responsibilities in good faith when undertaking any corporate action, including a merger. Alpert v. 28 Williams St. Corp., 63 N.Y.2d 557 (1984).
Breach of Fiduciary Duty & Duty of Loyalty

- Plaintiff can get the amount of the loss sustained, including lost opportunities for profit by reason of the defendant’s conduct.
- Plaintiff can also get back any compensation and expenses paid to the defendant during the disloyalty and breach, as well as profits that defendant obtained.
Breach of Fiduciary Duty & Duty of Loyalty

- Plaintiff can get punitive damages if the wrongdoing was intentional, deliberate, aggravating or outrageous, or defendant had a fraudulent or evil motive.
- Plaintiff has the burden of proving damages, but in breach of fiduciary duty cases, courts have significant leeway in ascertaining a fair approximation of the loss.
Breach of Fiduciary Duty & Duty of Loyalty

- The plaintiff must, at a minimum, establish that the defendant’s actions were a substantial factor in causing an identifiable loss.
Breach of Fiduciary Duty & Duty of Loyalty

- When plaintiff has breached his own fiduciary duty, the doctrine of unclean hands bars such plaintiff from seeking relief on equitable claims.  *Ross v. Moyer*, 286 A.D.2d 610 (1st Dep’t 2001).
Breach of Fiduciary Duty & Duty of Loyalty

- In *Ross*, the defendant employee had allegedly diverted company assets.
- The defendant claimed that the plaintiff, an officer and director of the employer, had diverted corporate monies, excluded the defendant from directorial and strategic management decisions, and abrogated defendant’s fiduciary duties to plaintiff and to the corporation.
Breach of Fiduciary Duty & Duty of Loyalty

- The court found that the plaintiff had in fact taken commissions in an amount larger than his determined share.
- Therefore, the plaintiff had committed a breach of fiduciary duties owed to the defendant, and the doctrine of unclean hands applied to bar the plaintiff from seeking relief.
Breach of Fiduciary Duty & Duty of Loyalty

- The statute of limitations for a breach of fiduciary duty depends on the substantive remedy that plaintiff seeks.
  - Six years: if the claim seeks equitable relief.
  - Three years: if the claim seeks legal relief.
- The claim will accrue when the fiduciary has openly abandoned his obligations.
The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961 et seq., provides for a civil action for treble damages for injuries sustained by any person in his business or property by reason of the defendant’s use of racketeering-derived income to invest in, acquire, or control an enterprise engaged in or affecting foreign or interstate commerce.
Civil RICO

**Elements of RICO §1962(c):**

1. Defendants engaged in a pattern of racketeering (either open or closed ended);

2. Defendants maintained an interest or participated, directly or indirectly, in an enterprise;

3. Defendants engaged in activities that effected all interstate or foreign commerce;
Civil RICO

**Elements of RICO §1962(c):**

4. Defendants fraudulently used or caused the fraudulent use of the wires and mails as part of the racketeering enterprise;

5. Plaintiff relied on defendants fraudulent wires and mails; and

6. Plaintiff was damaged.

Civil RICO

**Elements of RICO §1962(d):**

1. Defendants associated themselves with a RICO enterprise;
2. Defendants further a pattern of racketeering activity in connection with the enterprise; and
3. As a result of the conspiracy, plaintiffs were injured.

Civil RICO

- Under RICO an enterprise is defined as a group of persons associated together for a common purpose of engaging in a course of conduct, the existence of which is proven by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.

Civil RICO

- The enterprise must be separate from the pattern of racketeering activity, and distinct from the person conducting the affairs of the enterprise. *Id.*
Civil RICO

Statute of Limitations

- The statute of limitations for a RICO claim is four years, and it does not accrue until a plaintiff knows, or should have known, of the injury to business or property, and that the act causing injury is part of a pattern of racketeering activity. Niagara Mohawk Power Corp. v. Freed, 265 A.D.2d 938, 940 (4th Dep’t 1999).
Civil RICO - Damages

- A court can:
  - Order any person to divest himself of any interest, direct or indirect, in any enterprise
  - Place reasonable restrictions on the future activities or investments of any person; and/or
  - Order dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.
In addition to getting actual or compensatory damages, a plaintiff can also ask for:

- Treble damages: this means that the RICO statute permits a court to triple the amount of the actual or compensatory damages to be awarded to a prevailing plaintiff. This is allowed because courts expect that tripling the damages will further suppress racketeering activity;
- Punitive damages; and
- Attorneys’ fees.

Under this cause of action, a person may not, through unfairness, misrepresentation, or fraud, injure the business of another or induce the public to believe that his or her product is the product of the other party.
Unfair Competition

- This cause of action may be based on, unfair business practices by a competitor, which are intended to confuse the public.
- The misappropriation of confidential information by a person in a relationship of trust with the plaintiff.
Unfair Competition

- For example, if former employee misappropriates and exploits confidential information belonging to the former employer, the employer will have an unfair competition cause of action.
Unfair Competition

- Under New York, the essence of the tort of unfair competition is that “the defendant must have misappropriated the labors and expenditures of another.”

To prove misappropriation, the plaintiff must show:

1. That the defendant obtained access to the idea through an abuse of a fiduciary or confidential relationship with the plaintiff or via some sort of fraud or deception; and

2. That the defendants use of the idea deprived the plaintiff of the opportunity to reap its due profits on the idea.
Unfair Competition

- For unfair competition, the applicable statute of limitations will depend on the underlying action.
- Courts conclude that since the doctrine of unfair competition encompasses a broad range of unlawful or immoral business practices, the requisite statutory period is equally flexible and will depend on the underlying alleged actions giving rise to the claim.
Unfair Competition

- For example:
  - A six year statute of limitations will apply for an unfair competition action based on fraud; but
  - A three year statute of limitations will apply for an action based on damage to property and actions which impose liability based on statute.

- Trustforte Corp. v. Eisen, 10 Misc.3d 1064(A) (N.Y. County Ct., Nov. 15, 2005).
Unfair Competition - Damages

- Any monetary damages suffered by the plaintiff due to defendant’s unfair competition; or
- An injunction; or
- Accounting of profits; or
- All three.
Unclean Hands - Defense

- A defendant may use this defense by asserting that the plaintiff must be denied relief because he is in equity with unclean hands. Downes v. Culbertson, 153 Misc. 14 (1934).
Unfair Competition

**Laches Defense**

- Laches means that a plaintiff cannot delay in bringing an action to enforce a right.


- However, the delay must be prolonged and inexcusable and therefore amounts to a virtual abandonment by the plaintiff of its rights. *Tiffany & Co. v. L’Argene Products Co.*, 67 Misc. 2d 384 (1st Dep’t 1971).
Unfair Competition

The defendant in an unfair competition action accused of using plaintiff’s trade secrets obtained through a breach of faith cannot excuse his conduct by the assertion that the secret could have been discovered by diligent research or could have been ascertained by resorting to sources which the defendant never explored.
Tortious Interference with Contract Relations

- Tortious interference, under the common law, occurs when a person intentionally damages a plaintiff’s contractual or other business relationship.
- Tortious interference with contract rights can occur when a third party convinces a party to a contract to breach against the plaintiff, or the third party disrupts the ability of one party to perform his obligations under a contract.
Tortious Interference with Contract Relations

**Elements**

1. The existence of a contractual relationship or beneficial business relationship between two parties;
2. Knowledge of that relationship by a third party;
3. The third parties intentional and improper procuring of a breach; and
4. Damage to the party against whom the breach occurs.

- *N.Y. Merchants Protective Co., Inc. v. Rodriguez*, 41 A.D.3d 565 (1st Dep’t 2007)
Tortious Interference with Contract Relations

- Generally, there is a three years for tortious interference that causes injury to property. CPLR §214(4); Shared Communications Services of ESR, Inc. v. Goldman Sachs & Co., 38 A.D.3d 325 (1st Dep’t 2007).

- The three years will begin to run on the date plaintiff suffered injury. Kronos, Inc. v. AVX Corp., 81 N.Y.2d 90, 92 (1993).
Tortious Interference with Contract Relations

- Damages must be alleged to bring an action for tortious interference with contractual relations, and nominal damages are insufficient to sustain a claim.
- The damages are not affected by the breach of contract action the plaintiff may have against the person induced to breach.
- Damages will be the full pecuniary loss of the benefits of the contract interfered with.
Tortious Interference with Contract Relations

- A plaintiff can also get consequential damages and interest on plaintiff’s loss from the date the total damage was sustained.

- Punitive damages are only available “where the conduct of the party being held liable evidences a high degree of moral culpability, or where the conduct is so flagrant as to transcend mere carelessness, or where the conduct constitutes willful or wanton negligence or recklessness.” Hale v. Odd Fellow & Rebekah Health Care Facility, 302 A.D.2d 948 (4th Dep’t 2003) (citations omitted); Bixler v. Buckeye Pipe Line Co., 765 N.Y.S.2d 396 (4th Dep’t 2003).
There is the defense of “economic interest”—meaning a defendant may raise the economic interest defense by stating that it acted to protect its own preexisting legal or financial stake in the breaching party’s business.

White Plains Coat & Apron Co., Inc., 8 N.Y.3d at 425. A defendant cannot use this defense if there is a showing of malice or illegality. Foster v. Churchill, 87 N.Y.2d 744, 750 (1996)
Tortious Interference with Contract Relations

However, there is no generalized economic interest defense in soliciting business for profit, for tortious interference with an existing contract, when the alleged tortfeasor has no previous economic relationship with the breaching party.

Economic Espionage Act
18 U.S.C. §1831 and §1832

- The Economic Espionage Act (EEA) was enacted in 1996.
- Through this Act the Federal Government began protecting private property rights in trade secrets.
Under §1831, a person is criminally liable if he or she knowingly benefits any foreign government, foreign instrumentality, or foreign agent by:

- Stealing a trade secret;
- Coping a trade secret;
- Receiving a trade secret, knowing it was stolen or converted without authorization;
- Attempts to commit any of the above; or
- Conspires with one or more persons to commit any of the offenses above, and takes a substantial step towards the commission of the conspiracy.
Economic Espionage Act
18 U.S.C. §1831 and §1832

Under §1832, the domestic Economic Espionage Act, a person is criminally liable if they knowingly convert a trade secret for the economic benefit of someone other then the owner knowing that it will injure the owner by doing (1) through (5) from above.
Economic Espionage Act
18 U.S.C. §1831 and §1832

- Trade secret under the EEA has been held to mean that the information must have actual or potential independent economic value from not being generally known to or readily ascertainable through proper means by the public. Further the owner of the trade secret must have taken reasonable measures to keep the information secret.
Economic Espionage Act
18 U.S.C. §1831 and §1832

- The EEA does not have its own statute of limitations.
- The general limitations period, found in 18 U.S.C. §3282, will apply. Therefore, the action must be brought within five years from commission of the offense.
Economic Espionage Act
18 U.S.C. §1831 and §1832

The EEA is a criminal statute, and therefore there is no civil cause of action. However, the Federal Government, through the Attorney General, may bring a civil action for injunctive relief to enjoin violation of the EEA. 18 U.S.C. §1836(a) (further stating that such civil action must be brought in a U.S. district court).
Under §1831, Economic Espionage Benefiting a Foreign Country:

- Any individual who violates this Act can be:
  - Fined up to $500,000; or
  - Imprisoned for up to 15 years; or
  - Both.

- Any organization that violates this Act can be fined up to $10,000,000.
Economic Espionage Act
18 U.S.C. §1831 and §1832

- Under §1832, Domestic Economic Espionage:
  - An individual can be
    - Fined up to $250,000; or
    - Imprisoned for up to 10 years; or
    - Both.
  - Any organization that violates this Act can be fined up to $5,000,000.
Economic Espionage Act
18 U.S.C. §1831 and §1832

The defense of legal impossibility is unavailable when you are accused of violating the EEA. **U.S. v. Hsu**, 982 F.Supp.2d 1022, remanded on other issue, 155 F.3d 189 (3d Cir. 1998).
Computer Fraud & Abuse Act

- The Computer Fraud & Abuse Act was passed by Congress in 1986 as a way to reduce hacking of computer systems.
- This Act has been amended in 1994, 1996, and in 2001 by the U.S. Patriot Act.
Computer Fraud & Abuse Act

- A person violates this statute if they,
  1. Intentionally access a protected computer without authorization;
  2. Thereby obtain information from the protected computer; and
  3. The conduct involved an interstate or foreign communication.
Protected Computer means either:

- The computer is used exclusively by or for a financial institution or the United States Government; or
- A computer used in interstate or foreign commerce or communication, which includes computers located outside the United States that may be used to affect interstate or foreign commerce or communication.
“Intentionally” does not require proof of intent to defraud nor proof that defendant knew the value of the information obtained, only that there is proof of intentional acts of unauthorized access, the statute is not meant to reach “mistaken, inadvertent, or careless’ acts of unauthorized access.” Letscher v. Swiss Bank Corp., 1997 U.S. Dist. LEXIS 7909 (S.D.N.Y. 1997); U.S. v. Willis, 476 F.3d 1121 (10th Cir. 2007).
A claim under the Computer Fraud & Abuse Act must be filed with two years of the date of the act complained of or the date of the discovery of the damage.

Any person who suffers damage caused by a violation of the Computer Fraud & Abuse Act may maintain a civil action against the violator to obtain compensatory damages, injunctive relief, and other equitable relief if they suffered a loss during any one year period with an aggregate amount of at least $5,000. 18 U.S.C. §1030(g), (e)(8)(A).
Employee Handbook, Policies, & Training
The At-Will Employment Relationship

- The key to not creating problems with the at-will employment relationship is a properly drafted employee handbook.
Basic Handbook Issues

- Number the sections of the handbook.
  - Nothing magical – just come up with a number mechanism for the handbook and stick with it.
- Number the pages of the handbook.
- Insert effective date, and if applicable a recession date of policies.
- Insert a footer on each page.
- Distribution memo for handbook and new policies.
- Acknowledgement page.
Basic Handbook Issues

- Post the handbook, or at the minimum key sections, with your employment posters.
- Retain old copies of handbook. You should be able to identify what policies were in effect on any given date.
- Retain acknowledgement page in employee personal folder and make a another copy and keep in file entitled “Copies of Employee Acknowledgement Forms.”
Basic Handbook Issues

- Put the handbook book in “pdf” format on your Intranet. Have your IT people see if you can monitor who accessed the handbook.
- Distribute with paychecks.
- Redistribute entire handbook once a year with new acknowledgement form.
- Distribute new policies via memo as needed.
- Have a Table of Contents.
Employee Relations Philosophy

- **Optional:**
  - Encourage employees to communicate with management.
  - Management should be trained on how to handle input from employees.
  - For example: “Most important, we have a workplace where communication is open and problems can be discussed and resolved in a mutually respectful atmosphere. We take into account individual circumstances and the individual employee. Company X firmly believes that with direct communication, we can continue to resolve any difficulties that may arise and develop a mutually beneficial relationship.”
Employee Relations Philosophy

- Other items which you may want to consider to address in this policy include:
  - After hours contact information for key management employees.
  - Allow employees to email suggestions, complaints, etc.
  - 24 Hour Employee Line.
- All these items will help in the defense of a lawsuit.
Employee Relations Philosophy

Get a suggestion box!!!!!!
Compliance with Governmental Laws and Regulations

**Optional:**
- Sort of like a “get out of jail card.”
- It covers you in the event the law is different than what you state in your handbook.
- For example: “Company X has made every effort to ensure the policies in this Handbook are in compliance with all federal, state, and local employment laws and regulations. In the event that a provision in this Handbook is in conflict with a federal, state, or local law or regulation, the appropriate law or regulation will prevail, and the provision in this Handbook shall be deemed amended to the extent necessary to comply with such law or regulation.”
Employment At-Will

- Technically optional, but if you have a handbook you must of this policy.
- Warning to employees that the handbook is not a contract. Employees can quit at any time and employer reserves the right to terminate at anytime.
- Bold and underline key provisions.
- Place on employment applications.
Employment At-Will

- **For example:**
  - “Company X follows the practice of “employment-at-will.” This Handbook is not a contract and is not to be construed to form a contract or a warranty of benefits. The Handbook merely describes the Company’s general philosophy concerning policies and procedures. Your employment with Company X is voluntarily entered into and you are free to resign at any time. Similarly, Company X is free to conclude its employment relationship with you at any time, with or without notice, for cause or for no reason at all. Although we hope that our relationship will be long and mutually beneficial, it should be recognized that no employee, absent a written contract executed by the President, has a contractual right, express or implied, to remain in Company X employ. Our relationship is and will always be one of voluntary employment-at-will.”
Cell & Business Phone Policy

- Optional:
  - Policy must address use of phones while driving – employees must be told only use hands free devices.
  - Policy should address use of phones while working and the calls are personal.
  - Policy should address whether you want employees bringing picture and/or video phones into work.
    - Remember to protect confidential information.
  - Also address use of business phones for personal calls.
Anti-Harassment

- Mandatory:
  - No just dealing with sexual harassment.
  - The policy must address all forms of harassment.
  - Encourage complaints.
Performance Review Policy

- **Optional:**
  - **DO THEM!**
  - Policy should address frequency.
  - Develop standardized form.
  - Manager and Employee signatures.
  - Employee Comments.
  - Address the good, bad and the ugly.
  - Do not sugar coat!
  - If your employee is a bad employee I do not want to see a great performance review!
A sample policy could state: “Your job performance is important to Company X. Once every twelve (12) months, your supervisor will review your job performance and progress within our Company and work with you to set new job performance goals. Our performance review program is designed to provide a basis for better understanding between you, your supervisor and Company X with respect to your job performance, potential and professional development.”
Ethics Policy

- Generally optional:
  - Mandatory if covered by the Sarbanes-Oxley Act.
  - Usually deals with limitations on interactions with vendors.
  - No self-dealing.
  - If discover how to turn lead into gold while working that discovery belongs to the employer.
Optional:
- Who can authorize overtime?
- Form of authorization?

- Sample Policy: “Every attempt is made to schedule the workload so that the need for overtime is kept to a minimum. However, situations may arise – for example, staff illness, special projects, emergencies, etc. – which make overtime unavoidable. If such situations do arise, your supervisor may schedule you to work overtime. **Overtime must be approved in advance by the appropriate supervisor in order for you to be paid for it.** Employees who are eligible for overtime under the Fair Labor Standards Act and/or the New York State Labor Law will be paid one and one-half (1½) times their regular rate for time worked in excess of forty (40) hours, i.e., their normal full-time workweek. Only hours actually worked will be counted as overtime. Any other paid time off (vacation time, sick time, holiday pay, etc.) as well as other payments which can be excluded, as authorized by federal law, will not count toward overtime calculations.”
Recording Your Time Policy

- **Optional:**
  - How do you want employees to track their time?
  - Non-exempt employees must track their time.
  - Exempt employees can track their time.
Recording Your Time Policy

- **Sample Policy**: “All employees must record their hours worked on a time sheet. Your time sheet should be marked both at the beginning and end of your shift and should also be marked for each required meal break during your shift. Under no circumstances should you mark the time sheet of another employee or have another employee mark your time sheet for you. All employees subject to this policy are required to accurately record all time worked and all required meal periods and, in the event of noncompliance with this policy, may be subject to disciplinary action up to and including discharge from employment.”
Payroll Advance Policy

- **Optional:**
  - Do not do!
  - Do not loan $$ to employees.
  - Self-help is not as easy as you may think.
Code of Conduct Policy

- **Optional:**
  - Tell employees what is expected of them.
  - No fighting
  - No arriving late for work
  - Work while at work
  - No harassment
  - No stealing
  - What else can get them disciplined?
Violence in the Workplace Policy

- Optional:
  - Thou shall not be a jerk and hit someone!
Drug and Alcohol Use/Testing Policy

- May be mandatory depending on your business.
- Statement against and/or testing policy.
- Require with applicable law and regulations.
Outside Employment Policy

- Sample Policy: “We sincerely hope that you will not find it necessary to seek additional outside employment. However, if you are planning to accept, or currently have, an outside position, you must notify your supervisor in writing. Outside employment must not conflict in any way with your responsibilities within our Company. You may not work for competitors nor may you take an ownership position with a competitor. In addition, employees may not conduct outside work or use Company property, equipment or facilities in connection with outside work while on Company time. If you are working a second job at the time you are hired, you must notify Company X of same in writing.”
Electronic Communications Policy

- **Optional:**
  - All depends on your systems.
  - Should apply to voice mail, e-mail, internet and all others electronic devices.
  - No unauthorized use.
  - Right to inspect incoming and outgoing email.
  - Warn employees they have no right to privacy and that everything will be monitored.
  - Insert filters on internet system.
Electronic Communications Policy

- Address personal usage.
- What do you do if receive harassing materials? Tie back into anti-harassment policy.
- Key stroke software.
- Daily Warning: “WARNING – BY HITTING RETURN YOU ARE CONSENTING TO COMPANY X REVIEWING ALL INCOMING AND OUTGOING EMAILS, COMPUTER FILES, INTERNET SITES AND CHAT ROOMS.”
- Should be concerned about the border line stuff.
Employers must properly train owners, managers and employees.
- Document Training
- Reduce Damages

Employers must adopt a written record retention policy.

Employers must actually follow their employee handbooks. Don’t say one thing and do another.
Employee Training

- If the employer has one or more unions in the workplace it must understand and follow the collective bargaining agreements.
- In addition, management must be trained, and the training must include the CBA.
Disclaimer

This presentation is for informational purposes and is not intended as legal advice.