

At-will employee's options few in termination threat

There was a theft at the company I work for. Later, I was called into HR and told I am believed to be responsible. They said a co-worker saw me in "the vicinity" of the missing equipment, and a hallway camera shows me walking by the room a couple of hours before the equipment was reported missing. This is the "proof" they have but they say I need to resign or they'll fire me and press charges. I am innocent and don't understand how they can do this. Do I have any options?

Jill Chasson
Coppersmith, Shermer, Brockelman

It sounds like you are an at-will employee of a private sector company, in which case your options are likely pretty limited. At-will employment means that the employer and employee each have the right to terminate

the relationship at any time, with or without notice and for any lawful reason.

Suspicion that you were involved in a theft is a lawful reason to terminate your employment, or ask you to resign in lieu of termination. Unlike a prosecutor, your employer does not need to prove beyond a reasonable doubt that you were responsible for the theft before it can act. In general, a good faith belief formed after gathering and evaluating relevant information will be enough to support the company's action and defeat any legal claim, even if it later turns out that the company was mistaken.

You should meet with your employer to present any information you have in support of your innocence and any reasons why you believe the company's evidence is flawed. If you have done that and the company still



Jill Chasson



Don Johnsen

believes you are responsible, then your best option may be to resign and move on.

In light of your stated innocence, you should ask about the reference policy to find out whether the company plans to provide anything other than your position title and dates of employment.

If you have reason to believe that the company is discriminating against you unlawfully in taking this action, you should consult a knowledgeable attorney about other options that may be available to you.

Don Johnsen
Gallagher & Kennedy

Unfortunately, you don't have too many viable options in this situation. Under Arizona law, anyone without a written contract is employed "at will," which means that either the worker or employer may terminate at any time, for any business reason or even no reason.

An employer's suspicion that a worker is guilty of theft is a business reason to terminate the worker. State law does not create any formal protocol for investigations of this kind. Employers have discretion to investigate in their own way, to draw their own conclusions about guilt and to act on the basis of those conclusions. So the employer can indeed terminate, even if it is acting only on the basis of suspicion. On the other hand, the employer's mere suspicion of guilt probably would

not be enough to disqualify the worker from receiving unemployment benefits.

One thing that the employer cannot do is require or request that you take a polygraph test. Federal law strictly regulates the use of polygraphs in the workplace and generally prohibits most polygraph testing. The law also strictly prohibits terminating an employee on the basis of his or her refusal to take a polygraph.

It can be important to distinguish between what might seem fair and what is legal. Some people might think it's not fair to terminate a worker without a confession or without some other objective evidence that the worker is guilty of theft. But in Arizona, it would not be illegal.

— Compiled by Georgann Yara

Send your questions to asktheexperts1@gmail.com.

NEWS AND NOTES

Johnson Bank names wealth fiduciary services manager VP

John McLean
Arizona Business Gazette | azcentral.com

Tracy Dalton joined Johnson Bank as senior vice president, wealth fiduciary services manager. Her responsibilities encompass estate planning, trustee and financial planning services. She has over 23 years of legal and financial services experience, most recently as vice president and U.S. fiduciary manager of personal trust services with BMO Harris Bank in Chicago. Dalton will focus on growing the fiduciary business including assets under management, estate planning and post-death administration. She will also lead the bank's financial planning initiative. Dalton is a CPA who received her law degree and MBA from DePaul University, and her master of



Tracy Dalton

laws degree from John Marshall Law School.

Promotions and hires

» C. Cole Crabtree and Erick Durlach joined Jaburg & Wilk in Phoenix as partners. Crabtree practices in construction defect, products liability, professional liability, personal injury and general insurance defense litigation. He received his law degree from Oklahoma City University College of Law in 2002. Durlach is a business litigation attorney practicing in contracts law, restrictive covenants, construction law, professional liability, wrongful death and catastrophic injury and insurance defense. He received his law degree from Fordham University School of Law in 2001.

» Mackenzie Woods joined the Carter Law Group in Phoenix as an associate. His practice is focused in charter school formation and compliance, charter management organization structuring and tax regulation,

corporate law, and education law and policy. He received his law degree from Arizona State University Sandra Day O'Connor College of Law in 2014.

» Laura E. Antonuccio, an associate with Gallagher & Kennedy in Phoenix, has been elected to the board of directors for Phoenix Day, a childhood education and youth development center in Phoenix. Her practice is in commercial litigation, public bidding and procurement and employment and labor law. Antonuccio received her law degree with distinction from the University of Nebraska in 2009.

» Jay M. Mann and Andy J. Chambers, both members at Jennings, Strauss & Salmon in Phoenix, have been appointed vice-chairs of the American Bar Association Tort Trial and Insurance Practice Section Fidelity and Surety Law Committee. Mann is chair of the firm's construction, fidelity and surety department. He focuses in construction, surety and fidelity

law. He received his law degree with honors Loyola University Chicago School of Law in 1975. Chambers focuses on fidelity law, commercial litigation, surety and construction law, and cyber security law. He received his degree cum laude from the Washington College of Law at American University in 2004.

Awards and honors

» Laura Carpenter, founder of Carpenter Law Firm, has been honored with inclusion in Best Lawyers in America 2015 edition in the category of health care. Both an attorney and licensed pharmacist, she advises clients on pharmacy and drug distribution matters, compliance with healthcare law, contract negotiations, risk management, health-care business planning, electronic health information privacy regulations, third-party plans and corporate best practices.

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Former Surprise official fined

Philip Haldiman
Arizona Business Gazette | azcentral.com

Former Surprise Assistant Public Works Director Michael Mecham has been fined \$1,145 for working without a required professional engineering license during his time of employment.

On Sept. 22, the Arizona Board of Technical Registration approved the fine to resolve a complaint against Mecham for the 10 months he oversaw infrastructure development.

The maximum fine is \$2,000.

Enforcement Manager Douglas Parlin said Mecham, who has more than 10 years of experience working as an engineer for municipalities and is licensed in at least one other state, "should have known better."

Mecham resigned Sept. 15 because he did not get certified. He had an annual salary of just less than \$116,000.