

# News You Can Use

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## RISK MANAGEMENT

# Employee Theft on Rise – Are You Protected?

**T**HERE'S BEEN a spike in employee embezzlement since the recession, two recent studies have shown.

A study released by the Association of Certified Fraud Examiners found that the typical organization will lose an estimated 5% of its revenues every year due to fraud. The median loss among organizations both large and small was \$140,000 per occurrence, and more than 20% of embezzlement losses were more than \$1 million.

With those staggering numbers in mind, if you have not already done so, you need to take steps to reduce the possibility of employee theft – and also make sure you are adequately covered if they do steal from you.

Small organizations are especially susceptible to losses from employee embezzlement. These problems are often seen in cash-heavy businesses, or those with large inventories, but employee embezzlement is most frequently experienced in organizations lacking owner oversight of financial processes, usually due to placing far too much trust in employees and having no internal controls.

The new study by the fraud examiners association was released as another study, this one by professional security firm Marquet International, found that arrests and indictments for embezzlements had reached a five-year high in 2012.

Embezzlers are most likely to be a

company bookkeeper, accountant or treasurer, who is female, in her 40s, and without a criminal record. The reason it's more often than not a woman is that they are typically in the three aforementioned jobs. The US Bureau of Labor Statistics reports that 90% of bookkeepers in the country are women.

### How do they do it?

The most common ways of embezzling, according to Marquet, are:

- Bogus loan schemes, which include cases in which fraudulent loans are created or authorized by the perpetrator from which funds are taken for their own benefit.
- Credit card/account fraud cases, which involve the fraudulent or unauthorized creation and/or use of company credit card or credit accounts.
- Forged and unauthorized check cases, which are those in which

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## Consider Securing a Crime Insurance Policy

company checks are forged or issued without authorization for the benefit of the perpetrator.

- Fraudulent reimbursement schemes, which include expense report fraud and other cases in which a bogus submission for reimbursement is made by the perpetrator.
- Inventory/equipment theft schemes, including those cases in which physical corporate assets were stolen and sold or used for the benefit of the employee.
- Payroll shenanigan cases, including all forms of manipulation of the payroll systems in order for the perpetrator to draw additional income.
- Theft/conversion of cash receipt cases, which involve the simple taking of cash or checks meant for company receipts and pocketing or converting them for one's own benefit.
- Unauthorized electronic funds transfers, including those cases in which wire transfers and other similar transfers of funds are the primary mode of theft.
- Vendor fraud cases, which include those where either a bogus vendor is created by the perpetrator to misappropriate monies or a real vendor colludes with the perpetrator to siphon funds from the company.

### Thwarting embezzlers

Liability insurer CAMICO suggests that educating employees on the detrimental effects of employee fraud on the organization can reduce the likelihood of embezzlement.

Also, if you implement a regular review of bank and credit card statements, you'll have a better chance of catching a

thief. Company owners should look at the cleared transactions to determine the legitimacy of payees, including examining actual cancelled checks.

Also, it's easy for transactions to be changed in the accounting system after the fact.

An ill-intentioned bookkeeper could use this tactic to cover up their tracks. If you feel you do not have the time or expertise to oversee your finance department, you should contract with a qualified CPA to perform these checks and balances.

There are also inexpensive physical barriers that should be used to deter criminal activity. To protect cash, you can buy a \$200 drop-slot safe to securely keep the night's deposit until it is taken to the bank.

Similarly, security cameras deter misbehavior and can be the source of valuable evidence in case an incident occurs. Some companies will install both a drop-slot safe and a hidden camera.

Finally, you should consider securing a crime insurance policy.

Most business insurance policies either exclude or provide only nominal amounts of coverage for loss of money and securities as well as employee dishonesty exposures.

But a crime insurance policy protects against loss of money, securities or inventory resulting from crime.

The most commonly filed crime insurance claims include employee dishonesty, embezzlement, forgery, robbery, safe burglary, computer fraud, wire transfer fraud, and counterfeiting. ❖

## Dual Wage Classes Subject to Annual Audits

EMPLOYERS WITH workers in dual-wage construction classifications should be aware of new audit requirements that have taken effect.

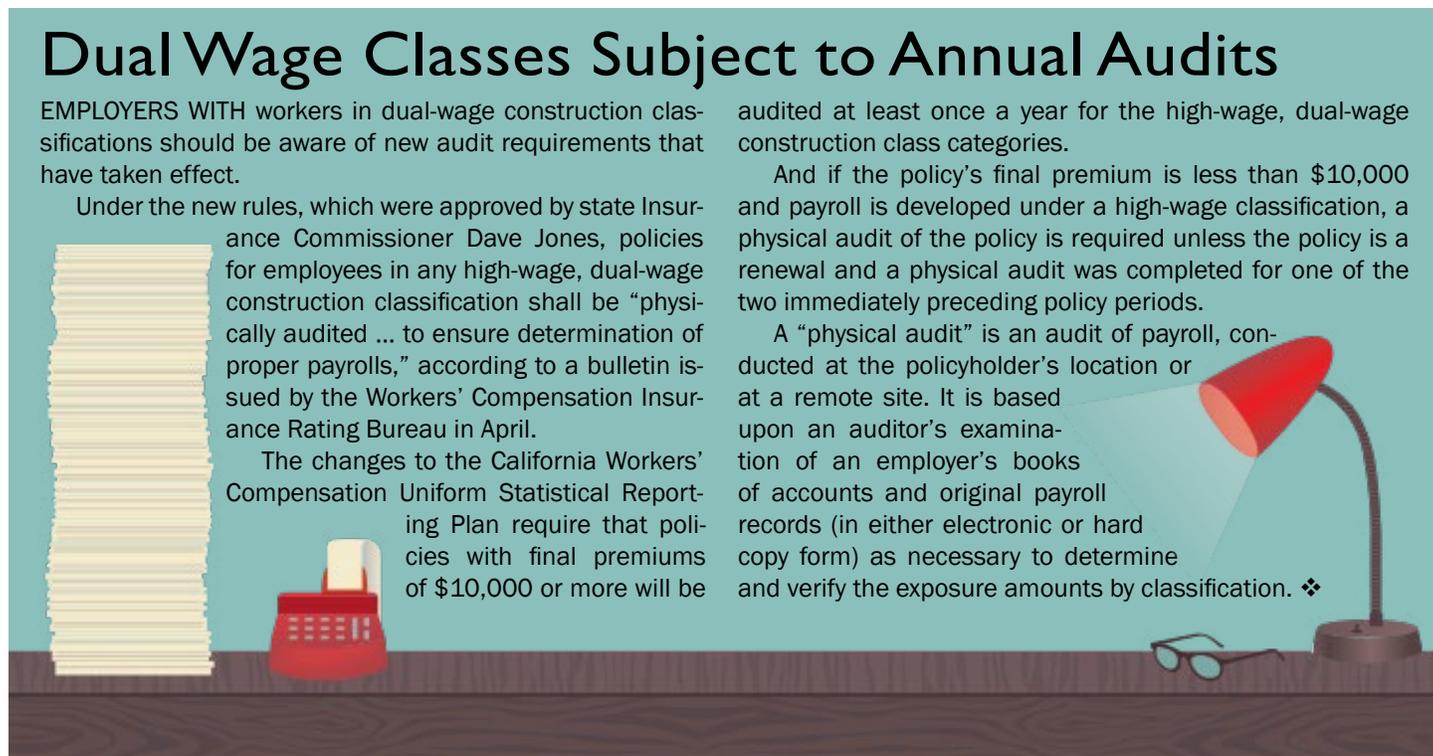
Under the new rules, which were approved by state Insurance Commissioner Dave Jones, policies for employees in any high-wage, dual-wage construction classification shall be "physically audited ... to ensure determination of proper payrolls," according to a bulletin issued by the Workers' Compensation Insurance Rating Bureau in April.

The changes to the California Workers' Compensation Uniform Statistical Reporting Plan require that policies with final premiums of \$10,000 or more will be

audited at least once a year for the high-wage, dual-wage construction class categories.

And if the policy's final premium is less than \$10,000 and payroll is developed under a high-wage classification, a physical audit of the policy is required unless the policy is a renewal and a physical audit was completed for one of the two immediately preceding policy periods.

A "physical audit" is an audit of payroll, conducted at the policyholder's location or at a remote site. It is based upon an auditor's examination of an employer's books of accounts and original payroll records (in either electronic or hard copy form) as necessary to determine and verify the exposure amounts by classification. ❖



## SUMMER HIRING

## Taking on Interns? Be Mindful of Wage/Hour Laws

**A**S SUMMER draws near, many organizations may be pondering taking on interns for a number of months. Internships are a great way for college students to gain experience and for the companies taking them on to benefit from their assistance.

But, there is a fine line between having an intern and an employee and, if you cross that line, you could end up breaching the Fair Labor Standards Act (FLSA) or similar legislation in California. The main question is whether your intern is entitled to minimum wage as well as overtime compensation.

The problem is that the FLSA, which governs overtime and minimum wages, applies only to “employees” and does not mention interns. An employee under those laws is “any individual employed by an employer.”

There are some circumstances under which individuals who participate in internships or training programs may do so without compensation. The determination of whether an internship or training program meets this exclusion depends upon all of the facts and circumstances of each such program.

Fortunately, the U.S. Department of Labor has interpreted the FLSA and introduced a test for determining when interns must be paid federal minimum wage and overtime.

All six of the following factors must be met for the intern to be exempt from the FLSA’s requirements:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and, on occasion, its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of these factors are met, an employment relationship does not exist under the FLSA and the act’s minimum wage and overtime provisions do not apply to the intern. This exclusion from the definition of employment is necessarily quite narrow because the FLSA’s definition of “employ” is very broad. Some of the most commonly discussed factors for “for-profit” private sector internship programs are considered below.

**Academic focus**

In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer’s actual operations, the more likely the internship will be viewed as an extension of the individual’s educational experience (this often occurs where a college or university exercises oversight of the internship program and provides educational credit).

Also, the more the internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer’s operation, the more likely the intern would be viewed as receiving training. Under these circumstances, the intern does not perform the routine work of the business on a regular and recurring basis, and the business is not dependent upon the intern’s work.

On the other hand, if the interns are engaged in the operations of the employer or are performing productive work (for example, filing, performing other clerical work, or assisting customers), then the fact that they may be receiving some benefits in the form of a new skill or improved work habits will not exclude them from the FLSA’s minimum wage and overtime requirements, because the employer benefits from the interns’ work. ❖



## WORKPLACE SAFETY

## Verbal Abuse Can Cost You with OSHA – It's True!

**I**N A FIRST of its kind, OSHA has filed suit against an employer for terminating an employee who reported a workplace safety hazard: alleged abuse and threats.

OSHA's action came after it received an employee's complaint accusing the owner of the company of retaliating after she told him that he had been creating a hostile work environment by behaving abusively, shouting, making threatening gestures, and more. Shortly after learning of the complaint and the ensuing OSHA investigation, the owner fired the woman – and OSHA filed suit.

The clincher is that the suit filed by OSHA seeks back wages, interest, and compensatory and punitive damages, as well as front pay in lieu of reinstatement. Additionally, it seeks to bar the employer against future violations of the Occupational Safety and Health Act.

As you pick your jaw up from the floor, you should note that the case illustrates two points for employers:

- 1) that OSHA may consider verbal abuse and other hostile work environments as a safety hazard ripe for citation, and
- 2) that you should be aware of the continuing growth in all types of whistleblower and retaliation complaints nationwide.

**The background**

The U.S. Department of Labor filed a lawsuit in the U.S. District Court for the Middle District of Florida, Fort Myers Division, against Duane Thomas Marine Construction LLC and owner Duane Thomas for terminating an employee who reported workplace violence under the Occupational Safety and Health Act.

The employee alleged that, on numerous occasions between Dec. 9, 2009 and Feb. 25, 2011, Thomas had committed workplace violence and created hostile working conditions. He allegedly behaved abusively, made inappropriate sexual

comments and advances, yelled, screamed and made physically threatening gestures, in addition to withholding the employee's paycheck.

The employee, who worked directly for Thomas, reported to him that he was creating hostile conditions. On Feb. 25, 2011, the employee filed a whistleblower complaint with OSHA alleging discrimination by Thomas for having reported the conditions to him. On March 18 that year, Thomas received notification of the complaint filing. Five days later, he fired the employee.

The subsequent investigation found merit in the employee's complaint, according to OSHA.

"Employees have the right to raise workplace violence concerns without fear of retaliation," said Teresa Harrison, the agency's acting regional administrator in Atlanta. "OSHA will continue to enforce the whistleblower provisions of the OSH Act to protect employees who report violations."

Besides reinstatement, OSHA is seeking back wages, interest, and compensatory and punitive damages, as well as front pay in lieu of reinstatement. Additionally, it seeks to have the employee's personnel records expunged with respect to the matters at issue in this case and to bar the employer against future violations of the OSH Act.

These are all the facts that OSHA has put forth, so we don't know if the employer behaved badly and gave the complainant the ability to make out a viable claim. But obviously OSHA found enough merit in the complaint to file suit.

OSHA enforces the whistleblower provisions of the OSH Act and 21 other statutes protecting employees who report violations of various commercial motor vehicles, environmental, public transportation, consumer product, health care reform, securities, food safety, motor vehicle safety and consumer financial reform regulations.

Employees who believe that they have been retaliated against for engaging in protected conduct can file a complaint with the secretary of labor for an investigation by OSHA's Whistleblower Protection Program, and the agency has plenty of information on its website about how to go about filing a complaint.

Under the law, a violation is the act of terminating an employee for complaining about a safety concern. Please note that the concern does not have to be valid. However, there are different standards if an employee refuses to work because of an unfounded and unreasonable concern.

**So what can you do?**

First of all, bear in mind that this case can easily spill over into other areas of the law, including sexual harassment, and open the employer up for related litigation.

Train your supervisors to behave professionally regardless of the setting, and remind them of all the many behaviors that are protected as whistleblowing.

And, if someone complains about a hostile work environment or abuse by a supervisor or another employee, take it seriously, investigate the matter thoroughly and take appropriate disciplinary action when needed. ❖

