

DEAR READERS: Do you have a legal question that has been burning in your mind (but are afraid to ask an attorney...ka-ching)? If so, please send your questions to Debra A. Newby via email (contact information below). Your name will remain confidential. Although every inquiry may not be published, we will publish as many as possible. Finally, this Q & A Legal Column is intended as a community service to discuss general legal principles and does not create an attorney-client relationship.

Q: My 20- year old daughter has been working for one of the “coffee houses” inside a major grocery store. She often would “jumpstart” her day by pouring herself a cup of java, sometimes in front of her manager. A few days ago she was called into the office by the “loss prevention” squad, who made her sign a paper that she would pay the employer \$635 in lost funds for the 3 large coffees they estimated she drank during her employment. She was then suspended from her job. She later found out that the same thing happened to three other fellow employees. What can we do?

Signed: “Jazzed Mother” in Occidental

Dear “Jazzed Mother”: Your question perks my interest, but I must disclaim that California labor law is not my area of practice, so I am a bit out of my realm. I’ll try my best, though, to address your question, and hope my guidance is helpful---and good to the last drop.

It seems that the employer should have shed some light on their policies relating to employee usage of their product before sending in the “loss prevention” squad, especially if their true motive was to prevent loss. Believe it or not, though, California law does not require that an employer adopt and distribute such policies. Good business sense dictates it, though!

California law does address business losses incurred by the employer. For example, if your daughter was to accidentally break a mug or spill some coffee, then that loss would be covered under the “breakage/loss” sections of the Labor Code, and your daughter **cannot** be held responsible for the loss—it is considered an expense incurred by the business.

The employer might allege that your daughter’s actions are akin to “theft”, but most employers tread carefully here. For a theft to occur, there must be a willful and malicious act. It seems that your daughter’s innocent action of refreshing her energies, do not rise to this level, especially with your comment that her actions were often taken in the open presence of her manager—who said or did nothing.

It would be interesting to read the paper that she signed to determine how the allegations were cast. Under some state laws, an improper allegation of theft, followed by an improper theft investigation, may give rise to actions against the employer for defamation, false imprisonment, and intentional infliction of emotional distress. At the minimum, a theft allegation can sometimes result in the employee’s need to be represented by a union representative.

What happened to the manager? Was he billed for the losses or fired? If not, consistency is a problem—for the employer, not your daughter.

Bottom line: My gut reaction to this scenario is that the employer is relying on trite methods (sending in the “loss squad”) instead of relying on true-ried measures of employee training and orientation. The matter could have been easily addressed on the “front end” through education and communication, instead of on the “back end” by Draconian and punitive measures. As for the \$635 coffee bill, is that being deducted from her last paycheck? If so, it is illegal for an employer to make such a deduction **without the employee’s consent**, so again, that piece of paper is vital. She should have been given a copy; I would insist on a copy. Also, you should know that you are not **legally** liable for the alleged debt of your daughter, as she is over 18-years old.

Check out the Labor Commissioner’s website (www.dir.ca.gov/dlse/faq_deductions.htm) which does a good job of outlining some of the key employment issues in California. You can also call a “help-line” at the Labor Commissioner’s office (916-263-1811), but you may need to leave a message to talk to a deputy labor commissioner, who will call you back a day or two later.

If it is any comfort, she is probably better off without the java-job and will be able to share what she learned from this experience by being empowered in her next job to inquire, and perhaps even help shape, internal policies. As Grace Williams quipped, “We learn from experience--A man never wakes up his second baby just to see him/her smile”.

Debra A. Newby is a resident of Monte Rio and has practiced law for 25 years. She is a member of the California, Texas and Sonoma County Bar Associations and currently maintains an active law office in historic Railroad Square in Santa Rosa. Her law practice emphasizes personal injury law (bicycle/motorcycle/motor vehicle accidents, dog bites, trip and falls, etc.) and expungements (clearing criminal records). Debra can be reached via email (debra@newbylawoffice.com), phone (707-526-7200), fax (526-7202) or pony express (10 Fourth Street, Ste 212, Santa Rosa, 95401).