

## When Employees Go Bad – Dealing with Employee Criminal Behavior

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## Employee Serious Misconduct

- Theft in the form of time, embezzlement, materials, cash, trade secrets
- Personal Identifiable Information/Data Breaches
- Threats of violence, stalking and assault

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## Civil Action vs. Criminal Action

- Civil Action
  - Money judgment
  - Order to recover property
  - Plaintiff (victim) generally controls the litigation process
- Criminal Action
  - Similar to civil action PLUS possible incarceration
  - Victim does not have as much control, particularly with respect to the timeline/progression of the action

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### Civil Action – Freeze Assets

- Temporary restraining order/temporary injunction
- “Freeze” assets
- May obtain order (at least initially) without giving notice to the defendant

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### Civil Action – Recover Assets

- Replevin lawsuit
- Obtain court order determining plaintiff's right to possess property
- Sheriff enforces order
- Expedited process – initial order within 10-20 days after filing lawsuit

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### GLBA – Reasonable Investigation

- When a financial institution becomes aware of an incident of unauthorized access to sensitive customer information, the institution should conduct a reasonable investigation to promptly determine the likelihood that the information has been or will be misused.

Supplement A to Appendix B to Part 364 Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.

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## GLBA – Reasonable Investigation

- 1) Assessing the nature and scope of an incident, and identifying what customer information systems and types of customer information have been accessed or misused;
- 2) Notifying its primary federal regulator as soon as possible when the institution becomes aware of an incident involving unauthorized access to or use of sensitive customer information, as defined later in the final guidance;

Federal Register, Vol. 70, No. 59, Tuesday, March 29, 2005, Rules and Regulations, page 15741.

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## GLBA – Reasonable Investigation

- 3) Immediately notifying law enforcement in situations involving federal criminal violations requiring immediate attention;
- 4) Taking appropriate steps to contain and control the incident to prevent further unauthorized access to or use of customer information, such as by monitoring, freezing, or closing affected accounts, while preserving records and other evidence; and
- 5) Notifying customers when warranted.

Federal Register, Vol. 70, No. 59, Tuesday, March 29, 2005, Rules and Regulations, page 15741.

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## Threatening Employee Strategies

- Call law enforcement when legally permitted
- Bar and Ban letters
- Individual protection orders/restraining orders
- Security
- Involuntary committals

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## Threatening Employee Strategies

- Unemployment compensation
- Assist affected employees
- Facebook and social media issues

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## Restraining Orders and Injunctions

- Injunctive Relief
- The right to relief is clear
- The damage threatened is irreparable
- The remedy at law is inadequate

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## Restraining Orders and Injunctions

- "Equity is determined on a case-by-case basis when justice and fairness so requires"
- Nature and frequency of trespasses
- Prevent or threaten substantial enjoyment of property

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## Money Bags

- Money Bags is responsible for the administrative services for Naïve LLP, a tech firm. Naïve LLP partners don't want to worry about the details like payroll and keeping the books, they want to create software. They leave all of that to Ms. Bags. It is brought to the partners attention that the payment of PTO for 2021 was three times the amount in 2020. Reason for concern?

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## Competitive Sales

- Eager Sales is a mortgage loan officer with GoGetter Bank. Sales is courted by a competing bank and Sales determines that if she can move her current mortgage book over to New Bank, she can double her pay. Sales loads all the mortgage loan data to her laptop and a cloud storage service. She then accesses that information to send out notices to GoGetter's customers of her arrival at New Bank. Problems?

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## Off the Rails

- Sly Scary was an employee who you had to terminate for failure to show up to work. In the termination meeting, Sly says "he will get back at you and he knows where he can find you." On social media that night he posts, "Some people just don't know that you don't mess with me" and he put up a graphic of an automatic weapon. Employees are coming in saying he is "strange" and talked about guns "all the time." What can be done?

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## Questions?

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