



# Fine Print

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## Fraud: Easier to Identify and Reduce Risk than Recoup Losses

by Jeffrey R. Roberts, BKD, LLP

When employees decide to commit fraud, they act on a decision to misappropriate their employer's assets. When it comes to fraud prevention, changing the attitudes and actions of owners and managers may be more important than knowing what a dishonest employee is about to do.

As an owner or manager, you may unknowingly create situations that not only invite embezzlement but help perpetrators get away with it. The more you know about your risks, the better you can help your organization save thousands of dol-

lars by sealing opportunities employees can use to commit fraud.

### Basics

First, to reduce the risk of embezzlement, you must accept that it can and does happen. We all like to think we're good judges of character, but the most common words a fraud investigator hears are, "I didn't think he/she was that type of person." When we place great trust in another human being, we fail to take basic precautions and put perpetrators in a position where they can inflict damage.

Second, if something doesn't seem quite right, pay attention to your "gut feelings." Does an employee's lifestyle match his or her income? Does an employee frequently work after hours? Does someone with many responsibilities skip vacations? If an activity seems wrong, investigate it immediately.

### Internal Controls

Implement internal controls to reduce your risk of fraud. Divide key responsibilities between employees and check your employees' work unannounced. It may be worth the expense to have an experienced professional periodically investigate your internal controls for improper structuring or questionable transactions.

### Discovering Fraud

If you discover you are a fraud victim, stay calm, but act quickly and correctly to avoid further loss.

If you have a fidelity bond, contact your insurer and also speak with an attorney. A mishandled confrontation and/or investigation can result in further losses if the suspect sues your organization because it can't prove its case. Carry out the interview and investigation professionally.

Suspects often try to minimize the damage they've caused by

## Complying With Ohio's Smoking Ban

by Justin D. Flamm

Ohio's voters passed the statewide Smoke Free Workplace Act in November 2006. Although legal challenges to the new statute remain unresolved, the Ohio Department of Health began enforcement efforts in May 2007. As the mandatory "No Smoking" signs continue to appear all across Ohio, employers must make sure they are complying with the law.

Some have referred to the law as an "indoor smoking ban" because it restricts smoking only in enclosed areas. However, outdoor



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seeking sympathy, offering apologies or promising to make restitution, which you may never receive. How you document what is said or done during a confession can affect the way a suspect's statement can be used in court.

**Prosecuting Fraud**

Remember, not everyone speaks your organization's language. A major challenge in investigating white-

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collar crime is to translate a complex set of facts and supporting documents. If a jury loses interest, the purpose is defeated. Working successfully with the legal system takes experience and skill. That's what certified fraud examiners (CFEs)

bring to the process. CFEs, skilled in gathering and analyzing evidence, can help you assess risk, which can help reduce your chances of becoming a fraud victim.

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*Jeffrey R. Roberts is a certified fraud examiner and senior managing consultant and member of the Forensics & Dispute Consulting division of BKD, LLP, a CPA firm based in Springfield, Missouri.*

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areas like decks and patios fall under the ban if they are covered overhead and on more than two sides. For example, a partially enclosed deck or patio that has a roof, awning, or even umbrellas may be a mandatory non-smoking area.

As the name suggests, the Smoke Free Workplace Act is directed primarily at places of employment. Yet anyone who performs services for an organization (with or without compensation) is considered an "employee" under this law, so independent contractors and volunteers are likely covered. If those individuals use an enclosed area for work or any other purpose, the smoking ban applies there at all times of day and night. This broad definition of "employee" makes the law applicable to most organizations, and it also applies to enclosed areas into which the public is invited. Business owners still have the option of designating their entire facilities as non-smoking areas, both indoors and out.

Exceptions are narrow and specific to places like nursing homes, hotel rooms, and retail tobacco stores. An exception for private clubs has generated controversy, but as a practical matter few organizations are eligible for that exception. In addition to other conditions, the

club must be a not-for-profit entity, must be the only occupant of a free-standing structure, and must employ only members of the club.

Employers are responsible for enforcing the law in areas that are directly or indirectly under their control. In addition to removing ashtrays and posting specified signs that include the toll-free reporting hotline, business proprietors cannot allow employees or customers to smoke in prohibited areas. The first violation of the smoking ban is punishable by a warning letter, and subsequent violations may result in fines between \$100 and \$2,500. Retaliation—which includes terminating or refusing to hire someone who exercises a right under the new

law—is also prohibited. Individuals who refuse to stop smoking upon request by a proprietor are subject to fines as well, even in outdoor areas that a business voluntarily declares to be non-smoking.

Because the financial consequences of noncompliance can be serious, businesses are well-advised to comply with the Smoke Free Workplace Act. Enforcement activity has been brisk and will likely continue to be while businesses across Ohio adapt to the new law.

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*Justin D. Flamm is an attorney in the Cincinnati office of Taft, Stettinius & Hollister LLP.*

**In the Hopper...**

*State legislation that could affect small business*

House Bill 134, which becomes effective on January 1, 2008, will make Ohio more competitive as a home for public companies and will encourage businesses of all sizes to continue to incorporate in Ohio. The legislation, introduced by House Majority Whip Bill Seitz (R- Cincinnati), was initiated by the Ohio State Bar Association's Corporation Law Committee and will allow corporations to amend their articles of incorporation to permit majority voting for directors as an alternative to the current plurality voting provision.

*From the OSBA Office of Government Relations.*