

Thinking of stealing stationery from your employer? You may want to think again.

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The Daily Express reported in March of this year that a recent survey showed more than half of Britain's employees have admitted to stealing from their employer. It was also reported that nearly one in twenty confessed to taking valuable items such as mobile phones or computer hardware.

If you steal from your employer, the starting point is quite simple – this can, and often does, amount to gross misconduct. This means that you can be dismissed immediately and without notice. This will not be beneficial to you when it comes to convincing a future employer to take you on. You may be able to bluff the reason why you left at interview stage, but all will come out in the wash when it comes to an application for your job reference.

Let us now go back a stage. Say your theft from work amounts to little more than a few envelopes or a stapler, or perhaps some stamps or stationery- in other words a mini raid on the stationery cupboard. Whilst this is capable of amounting to gross misconduct, an employment tribunal would consider wider factors such as:

- was the offence serious enough to destroy the contractual relationship between you and the employer?
- whether correct procedures were used, taking into consideration the law and the resources and size of your employer;
- whether the employer's response was within a band of responses that a reasonable employer would take;
- whether the employer considered alternative sanctions e.g. a transfer, demotion or suspension;

- whether mitigating factors were taken into account, such as your past history, age, position, length of service and previous warnings.

To put some of the above factors into context, while it might be reasonable instantly to dismiss a relatively new employee who is helping himself to the employers stationery, it might not be as reasonable to instantly dismiss a long-standing employee with a good track record.

You may have mitigating evidence (assuming you are guilty of the offence), such as health or domestic problems or possibly ignorance.

The severity of the offence should also be considered; if you have only taken a few envelopes, for example, it is unlikely that this would (or should) be viewed in the same way as taking some electronic or other similar high value items.

But what if there is no evidence of your stealing, but only belief? It is important to be aware that the test for the employer is not the same as a court of law. The employer only needs to have a 'reasonable belief' that the act took place. The employer must nevertheless carry out a proper investigation of the alleged offence and provide you with all relevant information gathered as part of that investigation. Such information should be provided to you before any disciplinary hearing. You must be given an opportunity to state your case, and you are entitled to be accompanied by a work colleague or trade union representative at the hearing.

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You must also be notified of your right to appeal.

I have seen many gross misconduct cases at tribunal overturned by a failure by the employer to follow a fair procedure, notwithstanding their reasonable belief in the offence that might otherwise have won the day.

What about where your employer does not apply consistency to previous similar cases? For example, they may have let off a colleague a few months back who had carried out a similar offence. Whilst it is important for your employer to show consistency where they can, it is not a necessarily a winning point for you if they do not. An employer could seek to justify why an offence by one employee merited only a written or verbal warning say, whereas a similar offence by the other justified dismissal. If no justification can be shown, you may be able to show unfairness or discrimination by the employer.

It should be remembered that "theft" does not just amount to petty withdrawing of stationery items. If you over exaggerate your expenses claims for example, this is also theft and I have dealt with many such cases where the inevitable outcome will be a justifiable dismissal. If you are caught stealing outside of work, this could also be a reason for your employer to justify a charge of gross misconduct against you if it can be shown that such act has affected the trust and confidence of your employment position.

Whilst the statistics of theft at work are shockingly high, we know that half of the British population have not been dismissed; this means that employers are either turning a blind eye, or simply do not consider the acts are serious enough to warrant a draconian response. As always, you should play it on the safe side if you want to keep your job. If you need some envelopes or other stationery for your personal use, there are plenty of outlets on the High Street where you can buy these. Or if there is an urgent need, why not simply ask your employer?

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