

What duties do employers have when recovering funds misappropriated by employees?

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When employees are found guilty of misappropriating funds in the workplace, employers are tasked with questions concerning the recovery of the lost funds. However, an issue which is often overlooked, is the employer's responsibilities in terms of Prevention and Combating of Corrupt Activities Act 12 of 2004 (Precca).



Image source: Alexander Raths – [123RF.com](#)

Reports in terms of Precca

Section 34(1) of Precca places a duty on persons of authority to report certain offences where the quantum of the corruption, theft, fraud, extortion, forgery or uttering of a forged document is more than R100,000. The section provides that any person in a position of authority who has knowledge or suspicion of such an offence has a duty to report the matter to the South African Police Services.

The South African Police Service Amendment Act 10 of 2012 (SAPS Act), provides that such a report should be made to a police official in the Directorate for Priority Crime Investigation (DPCI). Thereafter, the National Prosecuting Authority (NPA) will consider the findings of the DPCI and exercise its discretion as to whether charges should be laid.

Persons in a position of Authority

Section 34(2) of Precca provides that any person in a position of authority who fails to report such corrupt activities is guilty of an offence. The following persons hold positions of authority in terms of Precca:

1. The Director-General or head, or equivalent officer, of a national or provincial department;
2. In the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act 117 of 1998;

3. Any public officer in the Senior Management Service of a public body;
4. Any head, rector, or principal of a tertiary institution;
5. The manager, secretary or a director of a company as defined in the Companies Act 61 of 1973 and includes a member of a close corporation as defined in the Close Corporations Act 69 of 1984;
6. The executive manager of any bank or other financial institution;
7. Any partner in a partnership;
8. Any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract, or any other legal means;
9. Any other person who is responsible for the overall management and control of the business of an employer; or
10. Any person contemplated in paragraphs listed above who has been appointed in an acting or temporary capacity.

Employers seeking to recover funds misappropriated through the unlawful conduct of their employees, are reminded to reflect on whether they are required to report such conduct to the appropriate authorities.

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