

Safeguarding Trust: Preventing Theft in Assisted Living Facilities

By Luke P. Breslin & Raha Assadi

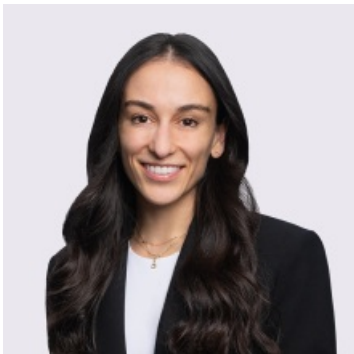
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Transcript

INTRO

Ensuring the safety and security of residents in assisted living facilities (ALFs) is a top priority for many healthcare employers. Unfortunately, the theft of residents' valuable possessions remains a troubling issue that may undermine trust and well-being of essential healthcare workers.

On this episode of We get work®, we discuss theft in senior care facilities and the practical steps employers can take to mitigate risks proactively.

Our hosts today are Luke Breslin, principal in the Berkeley Heights office, and Raha Assadi, associate in the Los Angeles office of Jackson Lewis, and members of the firm's Healthcare Group.

Luke and Raha, the question on everyone's mind today is: What can healthcare employers do to prevent theft in assisted living facilities, and how does that impact my business?

CONTENT

Raha Assadi

Associate, Los Angeles

My name is Raha Assadi, and I am an associate at Jackson Lewis in our Los Angeles office. I practice employment litigation and provide advice and counsel to our clients on all workplace-related matters. I'm here with my colleague, Luke Breslin, who will introduce himself.

Luke P. Breslin

Principal, Berkeley Heights

Thanks Raha. My name is Luke Breslin, and I am a principal in the Berkeley Heights office for Jackson Lewis. My practice primarily consists of litigation as well as advice and counsel. I work with a number of clients in the assisted living space. So, I'm really excited about our conversation today.

Assadi

Thanks, Luke. So, today, we are going to be discussing the very specific topic of employment-related issues that come up in assisted living facilities or ALFs--- when there's been a theft of resident belongings.

So, in this space, theft of resident belongings requires a little bit more attention and care, particularly because this is a much more vulnerable population that we're dealing with here. That's for a few reasons. One is that they're generally of older age. Two, they often have acute medical issues that require consistent medical care. A lot of the time, they may have memory or mental incapacities. So, thinking about that, and of course, this is where they live. They often have valuable items, family heirlooms, jewelry and even large amounts of cash. So, thinking about those potential vulnerabilities will play a big role here.

Let's jump right into the discussion. Luke, how do these incidents of theft of resident belongings arise in this industry?

Breslin

It's interesting. Because we are dealing with such a vulnerable population in this context, these situations of theft are not unique, unfortunately. As you mentioned, these residents live in these facilities. This is their home. With that, they're going to be bringing personal belongings of perhaps significant value, including jewelry, other personal mementos and oftentimes cash. These items are oftentimes in the room; whether they're properly secured or not is often a big issue in the context in which they come up. We oftentimes will have employees of the facility regularly in and out of the rooms. Whether that be housekeeping, nursing or other support staff, who regularly go in and out of the rooms and perhaps are exposed to these residents' personal belongings.

Each case is going to be presented on a different case-by-case basis and with different scenarios. However, the fact that these individuals, these residents, are living in the facility and bringing their personal items presents challenges for employers in the context of potential theft situations.

Assadi

So, let's dig a little deeper here. Let's say we have a resident who's reported an alleged theft to a manager, supervisor or someone in HR. How does the investigation start, and what steps does the employer need to take?

Breslin

The first step would be for the employer to review their policies. Oftentimes, there may be a policy in place that lays out a foundation or a framework for conducting these investigations. So, step one would certainly be looking at those policies as well as

looking at potential admission agreements with the residents. Perhaps there's some discussion about investigations relating to the theft of belongings in those admission agreements with the residents and their families.

More generally, our recommendation typically is to, number one, understand what the complaint is. Where did it come from? Did it come from a resident? Did it come from a third party? Was it anonymous? So, the employer needs to really understand the nature of the complaint and where it came from. With that, they'll understand a bit more of the context in which the complaint was made or the issue was raised.

Step two is it is important to understand who may have been present. Are there any witnesses to this incident? Perhaps there were multiple individuals in the room when the alleged item was taken, or perhaps there weren't. Oftentimes, there won't be witnesses in these situations. It's not uncommon, obviously, for housekeepers to be in a resident's room on their own. That is oftentimes the context in which these situations do arise. Identifying potential witnesses is critical to this process.

Next would be identifying a lead investigator. It's important to have a third party, removed and independent judgment or voice to conduct the investigation. We typically want to avoid having direct managers or supervisors conduct these investigations. So, it's typically recommended that someone in HR or another third-party independent person initiate and complete the investigation. Obviously, with that, we'll want to have conversations with each of the witnesses to the extent there are third-party witnesses. That's going to be important to understanding whether or not anybody witnessed what happened. Obviously, the most important conversation will be the person who reported the incident, coupled with any alleged person who stole the item. So, identifying the potential witnesses and having those conversations is critical. Doing that expeditiously is really important to avoid any potential lapse in memory, et cetera.

Other pieces of the investigation that are really important for employers to consider include looking at security surveillance. Oftentimes there are going to be video cameras or surveillance cameras throughout the facility. Unfortunately, they're typically not going to be in a resident's room, which is the common place where these thefts occur. But they oftentimes will be in the hallways. So, it's important for employers to look at those surveillance tapes to see if they can find any information to further their investigation. It's also important for employers to look at them quickly because surveillance tape is often overwritten over a certain period of time. So, it's important for employers to identify any potentially relevant tape to ensure that it is not overwritten.

In terms of an investigation, just to recap---it's identifying witnesses, having those conversations with the witnesses and looking at surveillance tape. Coupled with a review of employer procedures and potential admission agreements to help guide the process to ensure that the investigation is completed thoroughly and to avoid any open questions at the completion of the investigation.

Assadi

Absolutely. Just to add to that, as a practice tip and a lesson learned the hard way for me, it is really important that you mentioned expeditious witness interviews,

especially in this space. It's a really transient employee population. There's a lot of turnovers. It happens very fast. Employees are very in and out, given that it's just a tougher workplace environment. Getting those witness interviews really quickly, soon after they happen--- it's a lot easier to get those and potentially even written statements from those employees while they're still employees versus after they've already departed. So, timing and efficiency are everything.

What about contacting authorities? I mean, we're talking about theft here. So, I would imagine criminal implications here. What do you suggest about contacting authorities, and what's required?

Breslin

The contacting authorities piece is unique in this setting because we, number one, have law enforcement. We have the local police or whoever the local law enforcement agency is. However, we also have potential regulatory agencies that we need to contact. So, with respect to law enforcement, if we have a situation where we've confirmed that it is not simply a resident misplacing an item and it's truly an employee theft scenario, it's recommended and sometimes required in a particular state that authorities are contacted. For example, there are certain states that might require employers to contact legal authorities in the event an item that exceeds a certain monetary value is stolen. So, certainly, consideration of contacting local law enforcement is critical. To the extent they do become involved, cooperating with them, allowing the agency or the authorities to conduct their investigation and assisting them throughout that process.

Secondly, contacting local or state agencies. The assisted living industry is a patchwork of regulations and rules. There's no real federal oversight and it's guided by state regulations. So, certainly, look at your state regulatory structure and requirements to understand what needs to be Reported and whether it is a reportable event. If so, certainly follow the processes laid out in your state to report the event and, again, assist with that investigation. We want to certainly allow a third party to come in and conduct their own independent investigation to allow us to come to the clearest conclusion as to what happened and then ultimately take the appropriate action, as necessary.

Assadi

Thank you. Let's switch gears and close out our discussion with some best practices. Let's talk about what we need to think about. What are some real-life practice pointers? What are some helpful tips for employers in this space, particularly to mitigate the potential risks around this type of incident taking place and how to address them?

We can start with policies and auditing. What do we think about here?

Breslin

Yeah, that's exactly where I was going. First, employers should certainly look at their policies, both on the employee-facing side and the resident-facing side.

With respect to employees, employers will have numerous policies with respect to

appropriate behavior, conduct, et cetera. It's important for employers in this context, given this specific issue, to have specific policies with respect to resident thefts. These policies should obviously warn and notify employees that theft of resident belongings is not acceptable and likely unlawful, but they should also guide employers as to how we should address the situation. It should provide a framework for conducting the investigation. It should lay out who the appropriate person is to conduct the investigation. It should recommend certain steps to take as part of the investigation, and then it should provide some guidance with respect to disciplinary action. So, in these situations, in many cases, there will be an alleged wrongdoer. It's the employer's obligation to determine whether or not they believe that individual actually engaged in the conduct. To the extent we confirm conclusively that the person did engage in the theft, whether by their own admission or some other objective evidence, disciplinary action will need to be taken. So, it's important for employers to have information and a policy laying out what that potential disciplinary action will be up to and including termination.

With respect to discipline, it's important for employers to be consistent with their practices and follow what they've done in the past to the extent that makes the most sense. Step one would be looking at policies with respect to employees.

Also looking at admission agreements, like I mentioned earlier, and notifying residents that they should ensure that all their belongings are locked up to avoid these situations. So, it's important to look at policies, procedures and agreements with residents to ensure that these situations don't come up, and if they do, they're addressed appropriately.

Assadi

Policies and agreements, which I'll add to that training. Those are the three big things you always want to think about, regardless of the industry or context---policies, agreements and training.

I'll touch on training. Of course, regular training, not just when an employee is hired, is super important. That's something that is consistently coming up in cases, at least in my experience, is this argument that training is only happening one time and that's upon hire or upon orientation. They could be employed there for several years and not have this re-up training. So, consistent training is needed on the appropriate steps in the event of theft of resident property. Also, within that training, very clear and unambiguous steps and a very specific outline of what steps need to be taken by the employee so that there's no ambiguity as to who they need to report it to, what they need to do and how they need to document it. Having something that's very clear and leaves really nothing to the imagination.

In addition to having regular training on this, it's great obviously to do that, but it's even better to make sure that the training is documented and that we know who actually attended. There have been cases that I've seen where an employee has been accused, and they swear up and down that they were at that latest training, but they didn't sign the sign-in sheet. It could be something as simple as that. It could be something as simple as a sign-in sheet or a check-in sheet, anything like that, just confirming that that person was in attendance.

Breslin

If I may, Raha, on the training point. I mentioned policies and procedures, but in my experience, training is more important than that. Training really is a direct communication to the staff. Employees can acknowledge receipt of policies, but they may not have actually read the policies. But training, we know that they were there. We verbally communicated. Ideally, that's in person. So, having regular training, whether that be semi-annually or annually at a minimum, is critical.

Where you were going was that training is really important for potential claims and defensive litigations. So, it's important for employers to have those acknowledgements that individuals attended the training and what was discussed during the training because that will really help the employer in the event there are claims on the backend with respect to this employee theft situation.

Assadi

At the end of the day, employers are hiring people, and they're doing the best that they can by hiring the most qualified and honest candidates they can. But at the end of the day, it does come down to who you hire and how much trust you're able to put in them. So, a really important point before any of this takes place is the appropriate screening of candidates, specifically conducting background checks. Oftentimes, we're seeing clients in this industry and outside of this industry that also have a similar higher sensitivity environment that they're conducting these background checks, but they're extending offer letters and actually allowing them to start while that background check is still pending. So, it is really important to either make sure that background checks have come back and have cleared before they actually start entering into the workplace and start performing their job duties, or you make that offer letter contingent on the return of a clear background check. So, have it be pending or contingent and qualify that offer letter. It's really important to follow up on that and make sure that that background check is cleared instead of just forgetting about it.

Breslin

That's really important, especially at the state level of this highly regulated industry. Employers should certainly review the regulatory requirements with respect to background checks and make sure that they're conducting them in accordance with those requirements. Certainly, not having individuals begin working prior to clearance of those background checks.

Assadi

Luke touched on this, but the last piece of advice we can both confidently give is just to really take all complaints seriously. Treat every situation impartially and document everything, even the complaint coming in itself. Oftentimes, it's a verbal complaint. It's someone going up to their supervisor, manager or someone in HR. I'm just following up on that with an email; hey, this is what we talked about, just so that it's documented.

Breslin

It's really critical for employers not to rush to judgment and not to assume something happened before conducting their investigation and getting a thorough understanding of what happened. Conducting a thorough investigation and keeping an open mind are critical to mitigate any potential risks in these situations.

Assadi

Absolutely. Well, thank you all so much for listening. If you have any questions on this topic or any others, feel free to reach out to Luke or myself. You can find our information on the Jackson Lewis website. Otherwise, we appreciate you listening, and we'll see you on the next podcast.

Breslin

Thank you.

OUTRO

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