Hiring to Firing Podcast – How to Combat Corporate Theft: _Office Space_
Hosts: Tracey Diamond and Evan Gibbs
Guest: Chris Willis

Tracey Diamond:

Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, labor and employment attorney at Troutman Pepper, and I'm here with my co-host, Evan Gibbs. Together, we tackle all employment and HR issues from hiring to firing, and we are excited today to collaborate for the first time with our partner Chris Willis, who is co-leader of the Consumer Financial Services Regulatory Practice Group at our firm and host of Troutman Pepper's popular Consumer Finance podcast. Chris, why don't you tell us a bit about your practice and particularly how it dovetails with issues facing the workplace?

Chris Willis:

Thanks, Tracey, and thanks to both you and Evan for having me on the podcast today. I really appreciate the opportunity to do this with you. Just to give the listeners a little bit of background, as you said, I co-lead our Consumer Financial Services Regulatory Practice, and what that means is representing industry participants who are involved in consumer finance, so making loans or collecting loans or doing consumer reporting or money transmission for consumers, things like that. And those companies are subject to a very, very large array of federal and state consumer protection laws, which are enforced by a series of federal and state regulators. So we assist clients in giving them advice about how to comply with those laws and still stay in business, but also represent them when they have encounters, let's say, on varying degrees of friendliness with the regulators that enforce those laws.

You asked, what does it have to do with workplace issues? And the answer is a lot, because consumer financial services companies are interacting with consumers literally constantly. They're having millions of customer service and collection phone calls and other communications a day and interacting with consumers in a variety of other ways, both online, on the phone, et cetera. And so, a lot of the laws that govern the industry dictate what can and cannot, what must and must not be communicated in these interactions with customers. We have to give them truthful and accurate information, make required disclosures, get required consents for various transactions, and things like that. And so, the behavior and performance of individual employees in interacting with consumers, either directly or making decisions that affect consumers, is of paramount importance to the financial services industry. That's why workplace issues are so important to our clients.

Tracey Diamond:

It's very interesting, because I represent a number of clients that have call centers. And historically, those type of positions tend to be staffed with hourly employees, not always at the highest wage rate, and yet, there's so many rules that they need to be aware of and make sure they're in compliance with.

Chris Willis:

That's right. And when you see call centers, at least in the financial services industry, you see significant monitoring to make sure that they're following policy. So you'll have a combination of managers on the floor, who are listening to them, frequent coaching sessions and huddles, to make sure everybody's on the right page. You'll see listening to sample calls to make sure that they're following the right scripts and policies, and you'll even see the use of speech analytics technology to flag potential calls where something bad might have happened and correct it, if necessary.

Tracey Diamond:

I think that the idea of AI in this arena is probably worth an entire podcast all of its own, but let's talk a little bit today about the movie that we're going to talk about, which we always do in this podcast. Evan, you want to kick us off?

Evan Gibbs:

Yeah, that's right. Today, we're going to talk about corporate theft, an issue that faces both consumer finance and labor employment attorneys. And if you've listened to our podcast before, you know that we always use a popular TV show or a movie to kick off our discussion. And so, today, we've chosen a real cult classic, and I think everybody on this podcast, it's one of our favorite movies, and that's a movie from 1999, Office Space. Just in case you aren't familiar with it or you hadn't seen it in a while, in that movie, Peter Gibbons, the main character, he's frustrated, and he's unmotivated. He's a programmer that works at a software company called Initech, and in our first clip, we hear a pair of business consultants that are brought in to help the company downsize. Both of their names are Bob, the consultants, the Bobs, of course, they [inaudible 00:04:16] interview to keep their job. When they interview Peter, they get a, I think, a rather frank analysis of Peter's performance and his level of motivation in the workplace. So let's take a listen to our first clip.

> **Bob Porter:**
>
> Next batter looks like a Peter Gibbons.
>
> **Bob Slydell:**
>
> Oh, there you are. We're just talking about you. You must be Peter Gibbons. Terrific. I'm Bob Slydell. This is my associate, Bob Porter.
>
> **Peter Gibbons:**
>
> Oh, hi Bob. Bob.
>
> **Bob Slydell:**
>
> Peter, why don't you go ahead and grab a seat and join us for a minute or two? You see, what we're actually trying to do here is we're trying to get a feel for how people spend their day at work. So if you would, would you walk us through a typical day for you?
>
> **Peter Gibbons:**
>
> Yeah.
>
> **Bob Slydell:**
>
> Great.

Peter Gibbons:

Well, I generally come in at least 15 minutes late. I use the side door, that way lumber can't see me, and after that, I just sort of space out for about an hour until...

Bob Porter:

Space out?

Peter Gibbons:

Yeah, I just stare at my desk, but it looks like I'm working. I do that for probably another hour after lunch too. I'd say, in a given week, I probably only do about 15 minutes of real actual work.

Bob Slydell:

Peter, would you be a good sport and indulge us and just tell us a little more?

Peter Gibbons:

Oh yeah. Let me tell you something about TPS reports. The thing is, Bob, it's not that I'm lazy. It's that I just don't care.

Bob Porter:

Don't care?

Peter Gibbons:

It's a problem of motivation. All right? Now, if I work my off and Initech ships a few extra units, I don't see another dime. So where's the motivation? Now, here's something else, Bob, I have eight different bosses right now.

Bob Slydell:

I beg your pardon?

Peter Gibbons:

Eight bosses.

Bob Slydell:

Eight?

Peter Gibbons:

Eight, Bob. So that means that, when I make a mistake, I have eight different people coming by to tell me about it. That's my only real motivation is not to be hassled. That and the fear of losing my job, but you know, Bob? That'll only make someone work just hard enough not to get fired.

Bob Slydell:

Would you bear with me for just a second, please?

Peter Gibbons:

Okay.

Bob Slydell:

What if, and believe me, this is a hypothetical, but what if you were offered some kind of a stock option equity sharing program? Would that do anything for you?

Peter Gibbons:

I don't know, I guess. Listen, I'm going to go. It's been really nice talking to both of you guys.

Bob Slydell:

Absolutely. The pleasure's all on this side of the table, trust me.

Peter Gibbons:

Good luck with your layoffs. All right? I hope your firings go really well.

Bob Slydell:

Okay, excellent. Great. Wow.

Tracey Diamond:

Way back when we first started this podcast, we did an episode on the movie Up in the Air, where George Clooney's character would go from company to company downsizing people. And I thought about that a lot when I was watching our first clip, because this idea of bringing in consultants and forcing employees to interview for their job. But turning to the idea of motivation, what is the connection here? It may be kind of obvious, but what is the connection here between poorly motivated employees and corporate theft or fraud?

Evan Gibbs:

I think it's when employees are less, I guess, invested in their jobs or in the companies that they work for, they really don't care about conserving the company's resources and may actually, I think, take sort of a hostile view towards the employer and may think "I've been treated so poorly that I'm going to treat the company really poorly, and I'm going to do everything that I can to take something from the company." They may feel they're underpaid and overworked, and so, therefore, they're going to start stealing something from the company. I think it's a very real connection there.

Chris Willis:

And in the consumer financial services world, one of the places that we see this theme of corporate theft and fraud manifested a lot is in litigation, where deposit account holders will notice that there's money missing from their accounts, and an investigation is performed. And it turns out to be an employee of the bank who's engaged in self-dealing to essentially embezzle money out of depositors' accounts and siphon it to themselves. Now, sometimes it's the depositor's employee that does it too, but sometimes it's the bank's employee, the dishonest bank employee that does it. And when that happens, it invariably leads to litigation against the bank for obvious reasons. And so, that's a whole sort of genre of litigation that we experience in our industry.

Tracey Diamond:

Well, that's really scary, and it makes me want to go check my accounts right after we get off this podcast.

Evan Gibbs:

Yeah.

Tracey Diamond:

I agree. I think that the worst case scenario obviously is poorly motivated employees engaging in theft, but even the best case scenario, you have a poorly motivated employee, they're going to maybe engage in some time theft, if you want to call it that, by coming into work late and leaving work early or sitting around and not getting anything done while they are at work, taking long breaks. Poor motivation certainly doesn't make for an efficient workforce. So what are ways that companies can motivate their employees, get them to buy into the company's mission?

Evan Gibbs:

Just from my experience, it's a really difficult problem, and I think I would say that probably most companies deal with this issue. What I've heard from consultants who specialize in this and what I've learned from you at different trainings and the results that I've seen from certain clients and other companies that I've worked with, it seems like companies that have a clearly defined mission that is communicated to the employees and that the company works really hard to sell to the employees and get the employees to engage in that, whatever the mission statement is, I think that is what's really important. Because a lot of companies, their business is, "Well, we make widgets, and that's the business." There's really no more thought given to it.

There's not a lot of corporate culture around it, so there's not really a lot to buy into. If it's just "We make widgets and you come here and collect a check," then there's not a lot to really buy into on, I guess, an emotional level. It's very transactional. It's very "I put in eight hours and I get paid this and I move on with my life." And I think it's really interesting for Chris' industry, employees in that space, at least some employees having direct access to customer funds, clients' lines, things like that, I think, is somewhat unique. And I think that not having this type of defined mission statement and really working to get the employees engaged, I think, could really cause some problems. But I think it's really tough, and I think it has to be intentional and thoughtful.

Chris Willis:

And one of the other things that you'll see a lot in the financial services industry to try to keep employees motivated and directing their energy in the right direction, at least as far as the employer thinks, is the use of incentive compensation. That is, regardless of your job, you have an incentive to do behaviors X, Y, and Z, that are viewed as positive from the employer standpoint. And even though it's very common in the industry, it also can give rise to some regulatory problems that we've seen. So there have been regulatory enforcement actions in the past where, for example, a product was being sold to customers by telemarketing, by reps over the phone, and the employees were incentivized to make the sale, or if someone called in to cancel it, to save the product and keep the cancellation from occurring.

Well, the regulator that we deal with all the time, the CFPB essentially alleged that those incentives incentivize the employees to make misrepresentations and use strong arm tactics on customers in order to sell the product or retain the product. And so, that series of consent orders, involving credit card add-on products, resulted in about a billion and a half dollars changing hands between basically every large bank in the country and the CFPB. When financial services companies design incentive compensation, it's really critical to put modifiers or checks in to make sure that compliance is also a priority. In other words, "I may pay you for each sale of a product that you make, but if I detect a pattern of you misrepresenting or strong-arming customers, then you lose your entire incentive," something like that.

Tracey Diamond:

And your job, right?

Chris Willis:

Correct. You can do that too, but the design of those incentive programs becomes really sensitive to those compliance considerations, when you think about it from the regulator's standpoint of, what did you just motivate the employee to do that might be wrongful towards the consumer?

Evan Gibbs:

Yeah, that's right. And I think too, on the issue of incentive compensation or other incentives, I think, at least in my experience, it seems like there may be sometimes at least a difference between incentivizing someone to perform a task well versus having someone really engaged and bought into the company's mission. So if, in your example, the employees are motivated to upsell the credit card, but they weren't necessarily that interested in, I guess, pushing forward whatever the company's mission statement is, being perceived as a good lender or a good financial institution. And so, I wonder if there are sometimes some breakdowns between the incentive programs versus the internal corporate engagement strategy.

Tracey Diamond:

I think an analogy is the analogy of just never thinking you're going to get caught, or even better than that, never really seeing how anybody's getting hurt by what you're doing. So if employees are being incentivized to be aggressive in their selling tactics and they're also not buying in or being clearly informed of the company's mission, which is you can't cross over that line into overly aggressive selling, because it creates a regulatory compliance concern or it's going to hurt customers by being overly aggressive in your tactics, then there really is no reason why an employee would stop short of toeing that line. I think that, to your point, Evan, there needs to be both. There needs to be both the incentivization, but also the buying into the bigger mission of you don't want to hurt the company by breaking the law.

Evan Gibbs:

Yeah, that's right.

Tracey Diamond:

I think that brings us really to our second clip, because this whole idea of, who's really being hurt here? In the second clip, Peter and his coworkers retaliate against the corporate downsize that's happening and also the fact that they have terrible bosses by introducing a computer virus into the company's banking system to embezzle small sums of money, what they call fractions of a penny. Let's hear how Peter justifies this scheme to his girlfriend.

Peter Gibbons:

All right, so when the sub routine compounds the interest, it uses all these extra decimal places that just get rounded off. So we simplified the whole thing, and we round them all down and just drop the remainder into an account that we opened.

Joanna:

So you're stealing?

Peter Gibbons:

No, no. You don't understand. It's very complicated. It's aggregate, so I'm talking about fractions of a penny here. And over time, they add up to a lot.

Joanna:

Oh, okay, so you're going to make a lot of money, right?

Peter Gibbons:

Yeah.

Joanna:

That's not yours?

Peter Gibbons:

Well, it becomes ours.

Joanna:

How is that not stealing?

Peter Gibbons:

I don't think that I'm explaining this very well.

Joanna:

Okay.

Peter Gibbons:

The 7-Eleven, right? You'd take a penny from the tray?

Joanna:

From the crippled children?

Peter Gibbons:

No, that's the jar. I'm talking about the tray, the pennies for everybody.

Joanna:

Oh, for everybody. Okay.

Peter Gibbons:

Yeah. Well, those are whole pennies.

Joanna:

Right.

Peter Gibbons:

All right? I'm just talking about fractions of a penny here, but we do it from a much bigger tray, and we do it a couple million times. So what's wrong with that?

Tracey Diamond:

In real life, a software engineer was recently indicted for stealing from his employer. The employee's job involved writing code for the customer checkout process, and he created three types of malicious code to siphon off about $300,000 in shipping fees to his personal account. What makes this so apropos to our podcast today is that he also stole, in addition to stealing $50,000 in company merchandise, he actually named his scheme Office Space Project in a document found on his work laptop. What can a company do to protect against this type of corporate fraud, where employees are just not seeing where anybody's being hurt here?

Chris Willis:

From my standpoint, this is another area where one of the key tenets of financial services employment law is monitoring of employees and doing all kinds of checks and reconciliations and audits, in order to detect behavior like this, if it occurs. And in fact, most large financial services companies, like large banks, will have what they call three lines of defense. They have controls and monitoring at the business unit level. They'll have a compliance group that engages in independent testing and monitoring, and then, on top of that, they have internal audit, that's looking at things to try to detect behavior like this, if it were to occur, or other violations of law or policy. That complexity of the internal monitoring environment has been driven by demands of the federal regulators primarily, and it is very much a part of the workplace in a large financial services company today. I'd love to think that it would be difficult or impossible to get away with that in a sophisticated financial services company, and I'm glad that this one didn't involve a bank or something like that.

Tracey Diamond:

I know we don't want to get too much into the AI space, because it's such a big topic, but I'm just curious, Chris, from your perspective, have you seen AI to be helpful in being able to detect that type of fraud more quickly? Or is it actually a hindrance, because maybe employees can use AI to commit the fraud in the first place?

Chris Willis:

Interestingly, we have not seen AI in that use case within financial services companies, but we just recorded recently an episode of the Consumer Finance Podcast, where we had someone on to talk about the use of AI for call monitoring. That is for monitoring the telephone conversations between customer service or collection representatives and customers. And the idea is that it could monitor those conversations in a much more accurate and effective way than the old way of speech analytics, which just transcribes the call and looks for certain keywords, and they're either used or they're not, or the even older way of just randomly listening to five calls a month from each representative, which five out of a thousand isn't really going to tell you very much. So we do see AI peeking its head into that type of employee monitoring, but with regard to things like financial reconciliations or things like that, no, I have not seen that yet.

Tracey Diamond:

It'd be interesting to see what happens as AI continues to sort of take everybody by storm.

Chris Willis:

Yeah, exactly. And a lot of the large financial institutions have made public announcements that they're exploring the use of that technology throughout their operations.

Tracey Diamond:

So all these levels of regulation are sticks. Employees better be careful, because there's all these different layers of potential ways to get cut. But how do you get employees to be ethical in the first place and not commit the fraud, because they think it's a wrong thing to do?

Chris Willis:

Part of that involves background screening and monitoring and also incentive compensation to incentivize them to do what's the correct ethical thing.

Tracey Diamond:

And training, right?

Chris Willis:

Right.

Tracey Diamond:

Making sure that employees are properly trained on the do's and don'ts of their jobs, as well as, to what we talked about before, about buying into the company's mission in the first place.

Chris Willis:

Yeah. And a lot of the rules may seem kind of pedantic at times, and employees may have a hard time relating to "Why do I have to do this? Why is it important?" And you see that in Office Space too, so you remember one of the major complaints of the employees is they have a new cover page for the TPS reports, and it seems totally arbitrary and meaningless to them that they have to do this. But yet, they're forced to do it. Whereas I think, for the regulatory requirements that we deal with in the financial services industry, there's always an explanation behind why we have to do what we're supposed to do, not just, "Well, we have to," but "We have to because this protects consumers in this way" or "It does what the regulators think is important." So providing that explanation, I think, and that context is an important part of compliance training within the industry.

Tracey Diamond:

I think the why is critical to get employees to buy into the mission, so not just "Do it, because we told you to do it," but "This is why we need you to do it, why it's so important." I want to turn back to this concept of corporate downsizing, that whole idea of consultants coming in and having employees interview for their jobs. In real life, Evan, maybe you can weigh in here, what are the do's and don'ts with regard to corporate downsizing to keep those who do remain with the company after the layoffs are over motivated and bought into the mission of the company?

Evan Gibbs:

I think that's really difficult. If you've had one round of corporate downsizing, maybe it's a situation where, it's kind of like in the legal industry, there was a real overhiring some firms overhire, and there's been some course corrections. You kind of wonder, "Is everybody now afraid of losing their job?" And we saw this so much back in 2008, 2010, and the answer is, I don't know how you keep employees motivated when you're going through riffs. I don't know how you keep people not afraid of losing their job.

And you can give different assurances, but I think it just really depends on the specific situation. And if the company, I think, maybe feels like they're going to do only one realm of layoffs and they feel really certain about that, I think they could assure employees or the remaining employees, "Hey, look, this was truly a one-time thing. We're not doing it anymore. It was only because of X, Y, and Z." Clearly communicating the reasons for the layoff and the reason that no more are going to occur, if that's the case, that is really critical, and I think that would likely help keep people at least a little bit less fearful maybe.

Tracey Diamond:

You hit on a couple of really important points there. One is, to the extent it's possible from a business perspective, to have the layoff all happen at once, so it's one and done or just a few and done, rather than death by a thousand cuts, will keep those who are still with the company more secure in their jobs. And then, again, going to that idea of the why, that seems to be our theme here, to be as transparent as possible with the employees that are remaining as to the reason why the downsizing had to happen and what the company's plans are going forward, so that employees feel that they understand, even though it was bad news. They understand, and that they can move forward and put this behind them. In the film, one of the issues that seemed to be central to the employees' frustration was the fact that the reason for the riff was to raise the company's stock a fraction of a point. Lots of fractions going on in that movie. Should employees be told the reason for a company riff? And what's the best way to convey this message?

Evan Gibbs:

I can tell you. I don't think I'd recommend having the Bobs coming out and interview every single employee. You're just watching that in the movie. It's so demoralizing.

Tracey Diamond:

Terrible.

Evan Gibbs:

I've never heard of a company doing that before. I hope they don't. I think there are much better ways to handle that, just in my opinion, but that was pretty bad. And yeah, look, it's hard. If the reason really is something that's very cut and dry, "We're laying off people just to raise the stock price" or prepare for an acquisition or something like that, you can tell employees that, and I think that's going to be a real demotivator in those cases. But ultimately, again, if the company's goal is to try and retain the people who are staying, then it's probably, even if it's for a reason they're not going to agree with, it's probably better to just be upfront with them, so they at least know that, "Hey, you're at least being honest with me, and here's the reason that other people are being laid off." So they can at least understand. Because I think, if you give them some flimsy excuse, maybe, that would to me do more harm than just being upfront with them.

Tracey Diamond:

Yeah. Yeah. I think that's true for the employees that are being let go too. If they're at least given an understanding of why, it may be less likely that they're going to sue and more likely that they'll accept whatever package is given to them, because they understand that this was a business reason and it had nothing to do with them. If you can get those employees to buy into the mission of why they're losing their jobs, you certainly are better off, although that may be a difficult task to do.

Chris Willis:

It also seems to me there could be significant danger if the company is making cuts at the staff level, and there's a perception among those who remain that the pain isn't being shared among the executives, in terms of like, "Oh, we just laid off 5% of our workforce, but management got a giant raise." That's the kind of scenario that I think probably is likely to maximize the kind of resentment that we're talking about trying to avoid.

Tracey Diamond:

Absolutely. And unfortunately, something we see time and again. What did you both notice about the workplace in Office Space that never should be emulated? And what can companies learn from this iconic movie?

Evan Gibbs:

Well, don't be a Lumbergh, for sure. Just watch the movie, pay attention to him and do the opposite of him, I think, is a good start.

Chris Willis:

There's so many things. There's the arbitrary rules, like the cover pages on the TPS reports. There's the sort of last-minute disruptive requests from Lumbergh of like, "Oh, I'm going to go ahead and need you to come in and work this whole weekend. Okay?" That failure to set expectations with employees and then, springing unpleasant things on them at the last second is sort of a basic violation of principles of human psychology and motivation. Those were a couple of things I noticed.

Tracey Diamond:

Even his tone, if you have to convey information about how "You know what? I need you to work this weekend," the tone in which he did it was very arrogant and very unempathetic to the employees as individuals and not just part of the machinery.

Chris Willis:

And notice, of course, he was driving a Porsche as well in the movie, if I recall correctly.

Evan Gibbs:

Yeah, that's right.

Tracey Diamond:

Consistent, consistent behavior here. So in terms of what makes a good manager, I think that's what it comes down to. Obviously not him, but some thoughts I had was not micromanaging, giving employees the autonomy to get the job done without constantly looking over their shoulder, the way Lumbergh did. Communicating a clear vision, building on a good company culture, encouraging your employees to take risks, within bounds, but giving employees the ability to fail without, again, sort of within a rubric of, "We're going to try new things, and you shouldn't be afraid to try those new things." But when there are problems, addressing them quickly and directly, and ultimately, it really comes down to dignity. If you treat your employees with dignity and you give them clear communication as to what you're trying to accomplish, you're going to have employees that are much more motivated and willing to do the work that needs to be done.

Evan Gibbs:

Chris, I'm curious, in your space in the financial services industry, are there any traits or anything like that that you've seen that in particular that make successful leaders?

Chris Willis:

I would say the traits that make successful leaders are probably not unique to the financial services industry in large part, because it's really the basic human psychology of understanding how the workers who are underneath them feel and what will motivate them, what will hit them wrong versus hit them right. And that's just human psychology. But I think the other thing is, for operational leaders in the financial services industry, they have to possess a very high degree of knowledge of the regulatory environment that the company works in, so that they know not to stray into certain areas. They know, from experience, "If we do this, we may get in trouble." And so, they have to be, I would say, more aware of the regulatory constraints facing the company and more cautious about pushing the envelope there than might be the case for successful leaders in companies in a less regulated area.

Tracey Diamond:

These are all really great tips, and Chris, thank you so much for joining us on our *Hiring to Firing* Podcast today. It was great collaborating with you. For our listeners, please don't forget to subscribe, so you can get all of our episodes. Check out our blog hiringtofiring.law and thanks again for listening.