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Supreme Court narrows definition of 'autodialer'

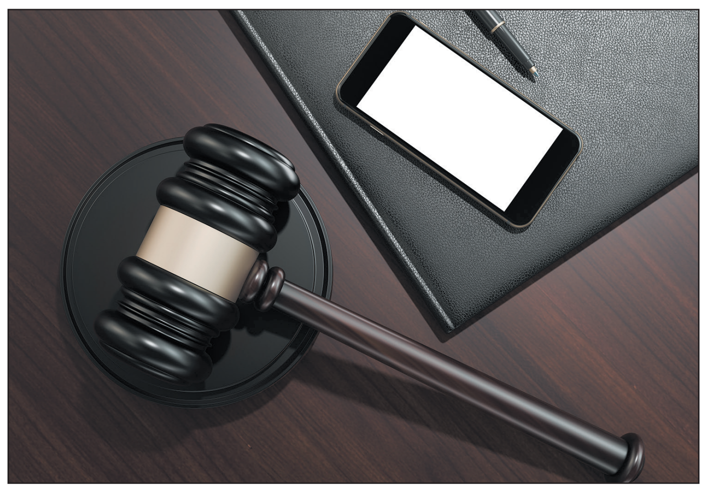
Many companies use automated dialers to help their sales teams drive revenue or improve customer service. Companies use automated dialers to eliminate the need for manual dialing when making cold calls or checking in with existing clients.

The Telephone Consumer Protection Act (TCPA), which Congress passed back in 1991, imposes restrictions on calls and texts placed with automatic dialer systems. The TCPA was the law that established the national "do not call list."

Recently the U.S. Supreme Court answered a lingering question about the TCPA — what exactly is an autodialer? In *Facebook v. Duguid*, the court unanimously held that in order to qualify as an autodialer under the TCPA a dialer must not only store numbers using a random or sequential number generator, it also must have generated those number in the first place using a random or sequential process.

Previously, lower courts had interpreted "autodialer" to be equipment capable of storing numbers and dialing those numbers at random. That led to a rush of litigation against companies who used phone numbers they'd obtained through some other (non-random) way, on the basis that those numbers were dialed at random.

The takeaway is that fewer calling systems will qualify as an "autodialer." If your telephone system cannot generate random or sequential numbers, it is not an autodialer under the TCPA.



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The decision should simplify compliance and reduce TCPA cases. Note, however, that the Supreme Court's decision does not eliminate potential liability for using "artificial or prerecorded voice" calls. If your system uses machine/recorded voices, you may still be subject to TCPA liability.

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Hiring your child to work in the business

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Being a business owner can be tough, especially if you're up against a tight labor market. If your kids are old enough and want to participate, should you hire them as employees? The good news is that there may be significant tax advantages to hiring your child to work in your business.

When you hire your child, you get a business tax deduction for the employee wage expense. That allows you to reduce your tax bill for money you might have given your kid anyway.

Tax-free income

If your business is a sole proprietorship, a single-member LLC that pays taxes like a sole proprietorship, or a husband and wife partnership/LLC, you can hire your under-18 child and their wages will be exempt from certain taxes.

If your business operates as a corporation, your child's wages are still subject to all the standard taxes, just like any other employee.

Like any other worker, your child can take advantage of the standard federal income tax deduction, so the first $12,550 of their earnings will be tax free. Plus, employing your child in the business creates earned income that can qualify the child to make a Roth IRA contribution.

Wages must be reasonable

There are two rules you need to follow in order to avoid having deductions denied by the IRS. First, the child must do bona fide work in the business. That means their work must be beneficial and they must actually work in exchange for their wages.

In other words, you can't use the business to pay them for doing chores around the house, but cleaning the office, business landscaping, answering phones, or helping with your social media are all qualifying services.

Second, the child's compensation must be reasonable, meaning no more than what you'd pay someone else for the same work. Have them track hours, just as any other employee, and pay them out of your business account (by check or transfer, not cash) on a regular payment schedule.

Follow employment laws

When your child is old enough to work in the business, you must adhere to applicable laws. Know how many hours they can work, time of day limitations, and any other restrictions.

If you have questions about what's allowed and how to maintain proper documentation, consult a business lawyer who can keep you up to date on current laws in your state.

Second state passes consumer privacy law

In March 2021, the Consumer Data Protection Act (CDPA) was signed into law in Virginia. Virginia and California now have comprehensive data privacy laws that could impact businesses that interact with citizens of those states.

A number of similar bills are proceeding through state legislatures around the country, including Florida, Oklahoma, New York and Washington. As laws are enacted, planning is essential to achieve compliance. Furthermore, as multiple state laws are passed, calls for a federal privacy law may accelerate.

Effective date

Virginia's law is scheduled to become effective on January 1, 2023. That's the same effective date as the California Privacy Rights Act, an update of their existing law dubbed "CCPA 2.0."

Does the CDPA apply to my business?

Virginia's CDPA will apply to businesses that control/process personal information for at least 100,000 Virginia residents and businesses that process data for at least 25,000 residents and make 50% or more of their revenue from selling that data.

Under the new state law, consumers should have the ability to access, correct and delete their personal data. Businesses will be required to perform assessments to ensure that they have appropriate security controls in place and are not infringing on a consumer's privacy rights with their activities.

Unlike the California law, Virginia's law does not include a revenue threshold. That means large businesses that do not hold significant quantities of consumer data will not be subject to the new requirements. California's privacy laws are applicable to businesses with $25 million in annual gross revenue as well as (like Virginia) those that collect information for 100,000 residents.

If you would like more information on how US or international (e.g., General Data Protection Regulation (GDPR)) data privacy laws affect your business, consult your attorney.

When you suspect fraud by a worker

No one likes to think someone who works for them could also be stealing from them. But employees count on that trust to get away with theft.

A study conducted by Hiscox Insurance revealed that 70 percent of embezzlement schemes were long-time endeavors, conducted over a year or more by people who had been working for the business for an average of eight years, and 79 percent of embezzlements involved two or more people.

If you believe a worker may be stealing or embezzling from your business, get qualified help right away. Do not confront the worker until you've consulted your attorney. You need to respond carefully to protect your business from exposure to liability.

Your first step will be to conduct an investigation. Consider whether you can do so fairly and whether you have the necessary technical and financial expertise.

An outside investigator can help collect and preserve evidence before the employee has an opportunity to alter your records. Your insurance carrier may help cover investigation costs.

Charges of theft are serious and not to be taken lightly. As part of the investigation, you or your outside consultant may have to show chain of custody on evidence, proving no one had the opportunity to manipulate it.

Disciplinary action

If your investigation uncovers misconduct, you'll have to decide how to respond. Be sure any disciplinary action is consistent with discipline imposed against other workers in the past.

Watch your language. Discharging an employee for theft, without sufficient evidence, could lead to a defamation lawsuit. Consider whether it would be better to discipline the employee for violating company policy or "cash mishandling" instead.

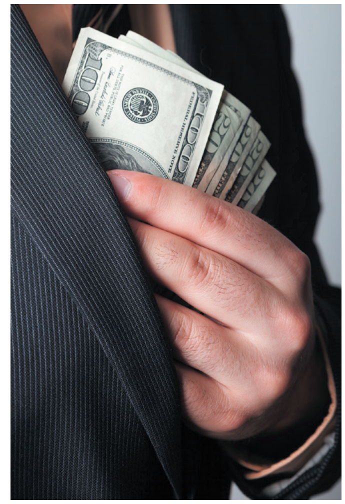
If the losses are significant, you'll have to consider whether to pursue criminal action. If your insurance company has been engaged, they may require police involvement.

Catching a thief

Spotting employee theft isn't easy. To protect your business, assign financial responsibilities to more than one employee and train people to spot signs of malfeasance. Pay extra attention if an employee suddenly changes their spending patterns.

Here are some ways employees can steal from a business they work for:

- Billing fraud
- Check tampering
- Payroll schemes
- Fake deposit slips used to skim cash deposits
- Taking cash from a customer and then voiding the sale
- Dummy vendor accounts to conceal personal purchases
- Stealing tools, materials, or product



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Protecting business interests with noncompetes

You might think noncompete agreements are only for employees. But noncompete clauses in vendor agreements and service contracts can also help protect your business.

A noncompete clause is a binding agreement to keep business partners, service providers, suppliers, or vendors from engaging in business activity that could harm your interests. Unlike an employee noncompete, which puts restrictions on an employee going to work for a competitor, when noncompetes are used in service contracts they compel contractors to adhere to certain terms and conditions.

Noncompetes are also common in business transitions. Typically, a seller agrees not to engage in a similar business, within a specific territory, for a set amount of time. Such agreements may also stipulate the seller can no longer use customer lists or other propriety business information.

Consult with an attorney before drafting a noncompete. Enforcement can be difficult if the agreement is considered too restrictive in nature. Your agreement may need clear limitations in terms of timeframe, geographic territory, or line of business in order to be considered enforceable.

While courts tend to disfavor noncompete agreements seen as unfair to employees, those concerns are lessened when two businesses are concerned. Therefore, courts are more likely to uphold noncompetes in business-to-business relationships than in employment agreements.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

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Returning to work post-COVID: A Q&A for businesses

With COVID-19 vaccinations widely available, many people have returned to the workplace. As pandemic safety guidelines remain in a state of flux, businesses may have questions about vaccination mandates and other workplace practices.

Can we require people to return to work in person?

Generally yes. Be aware of any employees with a protected leave situation as well as anyone with a disability who requests continued remote work as a reasonable accommodation.

Can we incentivize employees to get vaccinated?

Yes, businesses can encourage employees to get a COVID-19 vaccine by providing monetary incentives, gift cards, time off, or other perks. However, consider how you will handle employees who are unable to get the vaccine because of a disability or religious belief.

Can we require employees get vaccinated?

Yes, unless your state has passed a law prohibiting vaccine mandates. Check with legal counsel before implementing such a requirement.

Can I ask employees about their vaccination status?

Yes, but proceed carefully. Employers can request proof of vaccination. However, if an employee refuses the vaccine, you need to determine if they're refusing for a legally protected reason that requires reasonable accommodations.

Are COVID-19 mitigation activities still required?

In May, the Department of Labor issued emergency rules designed to protect workers from COVID-19. Barring any dramatic developments in the pandemic, it is anticipated those rules will remain in effect through October.

It's expected that OSHA will play a more active role in addressing COVID-19 under the Biden administration, and failure to adhere to emergency protocols could expose your business to OSHA complaints.