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Don't Let Down Your Guard: An Object Lesson In Dealing With Government Investigators

December 17, 2018 | [Employment Lessons, Labor And Employment](#)



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Every time we turn on the news recently, it seems there is a new government investigation being taken up. Putting aside any political angles, these investigations and the way they unfold highlight a very important life lesson for employers.

Employers frequently are visited by government agents of varying stripes. While these visits typically do not involve the FBI or something as serious as a criminal investigation, most employers can expect site visits at some point by agents of the Department of Labor, the EEOC, OSHA, ICE or a myriad of other federal, state and local agencies.

The government employees behind those visits can be friendly, cordial and in some cases may be people the employer knows personally. While employers have every reason (and in fact are legally required) to cooperate with government agents, it is vital that employers remember not to lower their guard. An off-hand comment – even one the employer may regard as innocent – potentially could be turned against the employer.

As with anything in life, the key in dealing with any government investigation is preparation. Preparation helps employers avoid getting caught flat-footed when agents show up at their doorstep. The single most critical component of that preparation should be to engage counsel as soon as possible.

Getting counsel involved not only brings in an ally and resource to coordinate

the defense (and hopefully provide some much needed reassurance), but also should help employers dodge landmines along the way.

For instance, if an investigator comes on site, the company may want to talk to employees about what is going on. While that sounds reasonable at first glance, consider that, if viewed in the wrong light, such discussions could be seen as retaliatory or interfering with the investigation. It would be best to confer with counsel first and work out a strategy to deal with questions about whether employees should be notified and, if so, how that will go down, what message will be communicated, and when it will be delivered.

In the same light, if an employer talks to the government without the benefit of counsel, then there is no one who can interject that topics are outside of the scope of the investigation, or who can spot potential problems and work out a strategy for dealing with them ahead of time.

Another point to consider is that government investigations can be very stressful for an employer – which raises the possibility that the employer may say something out of context or which could be taken the wrong way. All in all, this is not the best time for an employer to represent themselves. To paraphrase Abraham Lincoln, an employer that represents itself has a fool for a client.

If the government comes calling, it is best to lawyer up. And anytime a government agent says that you don't need to have a lawyer present, it would be a good idea to treat that as a red flag.