

WHEN THE FEDS COME KNOCKING:

RESPONDING TO
FEDERAL AGENCY
INVESTIGATIONS



EIS EXPERT
INVESTIGATION
SOLUTIONS

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WHAT'S THIS ABOUT?

Defining the Scope of the Investigation

- Opening meeting
- Review credentials
- Identify who they may need to interview
- Ask what documents need to be available
- Beware of interagency cooperation

AGENCY PRACTICES

- OSHA
- ICE
- EEOC
- DOL
- NLRB

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WHO IS THE TARGET?

Three key ways the government may initiate contact:

- Civil Investigative Demand (CID)
- Grand Jury Subpoena
- Search warrant

WHO IS THE TARGET?

The CID May Involve:

- Racketeer Influenced Corrupt Practices Act (RICO) Investigation
- Civil Antitrust Investigation
- Consumer Financial Protection Bureau (CFPB) Investigation
- Qui Tam Case

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FIRST STEPS

Litigation Hold/Document Retention

“Documents”: hand-written versions, audio or video tapes, e-mail, text messages, voice mail and computer data, DVDs, CD-ROMs, iPhones, smart phones, blackberries, PDAs, or any other type of electronic or magnetic media

FIRST STEPS

Litigation Hold/Document Retention

Do not forget personal computers, telephones, personal accounts with AOL, Yahoo Mail, Gmail, etc.

SHOULD YOU CONDUCT A PARALLEL INVESTIGATION?

Identify and end any wrongful or illegal conduct

Prevent recurrence of wrongful or illegal conduct

Remediate potential fines

Protect officers and directors from breach of
fiduciary claims





WHO'S ON THE TEAM? WHO'S IN CHARGE?

In-house counsel

Outside counsel

Subject matter experts?
(e.g., safety, financial, HR)

STRATEGY ISSUES



How much to cooperate?

Nothing to hide vs. limiting scope

How much to prepare witnesses?

Attorney-Client Privilege Considerations

Risk of Scripted Responses

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UPJOHN WARNING

Employees are told whom the attorney represents (the corporation and not the employee individually), that the attorney-client privilege belongs to the corporation, and that the corporation may waive the privilege and disclose the substance of the interview to third parties.

UPJOHN WARNING - *EXAMPLE*

We represent the company, not you.

As part of our investigation, we need to gather information. We do so by speaking with employees. We gather this information for the purpose of providing legal advice to our client, the company. As such, this means that our conversation with you is protected by the attorney-client privilege.

However, the privilege is between the lawyers and the company, not you. The privilege is controlled by the company, and the company may decide to share any information it learns through this interview with third parties, including the government, without your permission or notice.

Finally, as an employee, we ask that you keep everything discussed here confidential. Please do not share this conversation with anyone, including other employees. This is what keeps the conversation privileged. The company will not tolerate any retaliation or reprisals against you for cooperating with our investigation and telling the truth. On the other hand, failure by the employees to cooperate with the investigation may result in company discipline, including possible termination of employment. Do you understand? Do you agree to keep this interview confidential? Do you have any questions before we begin?

THANK YOU

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No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

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