

Commandment #4: Don't Delay Employee Interviews- and Memorialize the Statements

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Over the last several weeks, I've been providing some practical advice on what to do and what not to do during federal, state or local investigations. Those Top Ten Commandments are:

1. Don't wait - corporate internal investigations
2. Don't panic - be calm... and don't self medicate
3. Don't delete - collect data
4. Don't delay employee interviews - and memorialize the statements
5. Don't be too nonchalant - take it seriously
6. Don't talk to law enforcement - maybe, maybe not
7. Don't talk to the media - maybe, maybe not
8. Don't lie - tell the truth
9. Don't expect immediate results - investigations may last for years
10. Don't hesitate to call an attorney - and choose one with experience

I've previously covered the first three of my Top Ten Commandments on what NOT to do during a regulatory, criminal or civil investigation. Here's Commandment number #4:

Don't Delay Employee Interviews

Much akin to a corporate internal investigation, even if it's too late to do a full blown corporate internal investigation or if the facts do not merit one, a company should, at the very least, conduct employee interviews. The company needs to know who the key witnesses are and be aware of what, if any comments they make. The company must also keep in mind that there are certain restrictions on employee interviews. These include warning the employee of the role of the attorney or investigator and that

the attorney or investigator is representing the company, not the individual employee, especially if there is a chance the individual employee has done something wrong or participated in some illegal activity. These “Upjohn” warnings are extremely important and have been heavily litigated over the years. Nonetheless, the employee interview can be an invaluable tool to get to the bottom of the investigation so the company or company officials know what actions, if any need to be taken. Additionally, the employee interview may reveal something unknown to the government investigator that could persuade the agency or law enforcement officials to look at the matter from a different perspective.

Knowledge is power and the power of knowing all the facts may make all the difference in the world. So, even if a full blown corporate internal investigation was not conducted at the outset, it is never too late to start. And starting should always include taking statements from key employees who might have some knowledge or information about the subject matter of the investigation.

Next Week: Commandment #5: Don't be too Nonchalant - Take it Seriously

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