

Commandment #1: Don't Wait: Corporate Internal Investigations

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Previously, I provided a list of Ten Commandments on what NOT to do before and during a federal, state or local law enforcement investigation with a promise to drill down on each of the Commandments. These are general rules that may vary on a case by case basis, but based on 35 years on both sides of civil, regulatory and criminal investigations and prosecutions, I firmly believe they are issues that should at least be considered in EVERY case. So here we go with Commandment Number 1:

Commandment #1: Don't Wait: Corporate Internal Investigations

Oftentimes, company officials or executives do not realize the magnitude of the problem or that there is even a problem. I've heard comments like, "I don't want to make a mountain out of a mole hill;" "I'm not going to waste time and money on this;" and "This can wait, I have more important things to do." Wrong, wrong and wrong. A corporate executive or in house counsel should not bury his/her head in the sand. The old saying "ignorance is bliss" is not a good way to start when a company identifies a potential problem. Knowledge is power- even if it's the power of knowing what the problem is and how big the problem might become. A well-orchestrated corporate internal investigation can help identify the cause and magnitude of a problem.

But the key is: thoughtfulness and structure. Basic questions that should be considered include:

1. Should the corporate internal investigation be conducted by in house counsel or should the company seek outside assistance?
2. How much information should be shared in the C-suite? With the Board of Directors? With Key employees? With the entire staff? In other words, who is to be brought into the "circle of trust"?
3. Should the company have a person within the company or someone outside the company conduct interviews of employees and/or outside witnesses; and should the company memorialize the statements by

affidavits or memoranda of interviews?

4. What documents, communications (emails, text messages or recorded phone calls messages) should be collected analyzed and stored?

These are only a few of the questions that should be asked at the very beginning. A quick analysis of an internal problem may provide a path toward resolving the problem before it becomes worse. There are may be later benefits in showing the governmental agency conducting the investigation that a problem was identified, investigated and fixed before the investigating agent even knocks on the door. There are certain benefits especially in the realm of Federal Grand Jury Investigations if a company identifies a problem and immediately steps forth to rectify what may be viewed as illegal activity. Although there may be some effort and expense on the front end, an appropriately designed process for a corporate internal investigation can end up saving hundreds of thousands, if not millions of dollars, and perhaps even the life of the company.

Next Week: Commandment #2: Don't panic- be calm...and don't self medicate!

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