

## When the Friendly Government Inspector Arrives

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When I used to work in the Office of Chief Counsel for the Commonwealth of Pennsylvania, I would see it all the time. A government agency institutes an investigation. An investigator may have been provided information by a former employee, competitor, or other administrative agency. The information provided to the investigator may be flawed and incomplete. In some cases, such as a former disgruntled employee, the information may consist of fabrications or purposeful half-truths.

Nevertheless, the agency feels compelled to open an investigation to separate any ill-will from substantiated allegations. In the course of the investigation, the agency offers to have a seemingly friendly sit down with the company to go over some of the issues that have turned up and the complaints that were received. Many companies fail to realize that at this point in the investigation, the agency is an adverse entity. The agency's purpose is not to "work with" businesses to aid them in following the rules, but rather often an agency's sole purpose may be to achieve compliance with a complex regulatory schema through penalties and fines. In extreme cases, the penalties can be criminal in nature.

However, it never failed to amaze me that the companies who we investigated never, and I mean never, initially sought to retain counsel. This was often the case even when an attorney from the government agency became involved. This amazed me because the many investigative guidelines and administrative procedure rules, often vaguely outlined in hard to find unpublished handbooks and age-old circulars, are fantastic pitfalls that could end up entrapping even the most dutifully compliant company.

To exhibit this, take the recent case of a mid-size trucking company who had done more than due diligence in requiring their employees to keep shop-logs for purposes of the possibility of an investigation for labor law violations. Sure enough, an unhappy employee who had been stealing from the company and was fired, subsequently tipped off an investigator at the Department of Labor, claiming all sorts of wage and hour violations. The company was smart enough to retain counsel early on, and it mattered. Although the labor law investigator was initially uncooperative when dealing with company representatives, when counsel got involved, a level playing field was quickly established, where the investigation shifted away the confusing ticky-tack regulatory equivalent of "gotcha" toward the real meat and potatoes claims of current and former trucking related employees.

Counsel was able to convince the investigator that many of the so-called violations were really a matter of administrative failures on the part of the employees claiming back wages. These administrative failures, due to no acts or omissions by the company, did not show up in the records. It required an attorney familiar with the language of the regulatory environment in which the investigator conducted business to present this information in a manner that was agreeable to the investigator and favorable to our case. In the end counsel was able to reduce what the company would have had to pay by over 50%, and knocked out any fees or penalties,

This reduction in fines, penalties, and back wages, and the negation of any potential for a class action law suit, was consistent with the experience of our attorneys who have worked on the "investigating" side of these cases. Involving an attorney who is capable of playing the role of intermediary between the investigating agency and your company, while an initial cost, will pay back many times over in the cost if counsel is not involved.

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