

Be Prepared for a Government Inspector

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Your worst nightmare comes true: You are going about your business when you suddenly get a phone call – or, worse yet, a knock on your door. The person you are unexpectedly dealing with is a government inspector from Cal/OSHA, the California Labor Commissioner's office, the U.S. Department of Labor (DOL), Immigration and Customs Enforcement (ICE), or some other government agency. As you have all probably heard, this is currently occurring throughout most agricultural regions.

Your first reaction might be to panic and to give the person anything that is requested, in the hope you will soon be left alone or that the investigator will go easier on you. But that initial reaction is not a good one.

An employer's response should be to volunteer nothing, while asking the inspector as many questions as possible. It is OK to ask for copies of credentials and to learn why the person is there. These government agencies are complaint-driven, so they are usually there due to some complaint by a present or former employee, but they also can be there doing a blanket sweep, which appears to be the case now.

Here are suggestions for actions you should consider taking (preferably before an inspector shows up on your doorstep):

- Establish who the investigator is and which agency he or she is with. Examine their credentials, and get the person's full name, title, address, and telephone number, and the name of the investigating agency.
- Call the investigator's supervisor to verify the inspector's identity. If contacted by telephone, call the person back to ensure his or her authenticity.
- Find out the purpose of the investigation. Ask if it is the result of a complaint, and if so, inquire about the substance of the complaint. Ask which statutes or regulations are involved.
- Initially, do not offer explanations or give information to the investigator.
- Be sure you know what the investigator is empowered to see and do and what information you may be legally required to make available. If you are uncertain, contact an attorney specialized in handling government investigations.
- Try to delay the investigation as long as possible to give yourself more time to prepare. Restrict the inspector to only what he or she is entitled to see by law and to what is relevant to the subject matter of the investigation.
- If the inspector wants to interview employees, make sure he or she is legally entitled to do so. If so, try to find out the purpose and forewarn your employees. Management can be present during interviews of supervisors, but not non-supervisory employees.
- After the interviews are over, "debrief" employees who were interviewed. Be careful, though, not to coerce or retaliate against them for participating in the investigation.
- Put the investigator in a private office or similar area reasonably separated from other employees when he or she is conducting employee interviews or examining records.
- Assign one person as the "contact" for the investigator. Be sure the contact is courteous, but that he or she never volunteers information about your operation. Instruct the contact to keep good records of everything that is said and done.
- Restrict any tour of your premises as much as possible. Do not allow the inspector to disrupt or interview employees while they are working.
- Never agree to a finding of a violation or to any other obligation until you have had

a chance to consider it carefully and discuss it with specialized counsel.

More on Your Rights

Here are tips on your rights during a government investigation:

- If a government inspector appears without a subpoena or search warrant, you might not have to immediately let the person review your records or begin the investigation. You can often put off an investigation, but make sure the investigator does not feel he or she is being ignored or stonewalled.
- You have the right to contact your attorney and even designate your attorney as your company spokesperson.
- Ensure the inspector has complied with all prerequisites required by law before you let an investigation begin.
- Do not necessarily accept the first settlement offer made by a government investigator.

Conclusion

This information is intended to help you be prepared when an inspector shows up. With some preparation, it does not have to be as troublesome as it sounds.

Of course, with inspectors on the prowl, now is the time to make sure all of your records and posters are in proper order. Reports are that they are particularly interested in posters, payroll issues and they are even asking employees about heat-illness prevention training. Don't wait. Get in compliance now.