

Additional Offices:
Salinas, California

BARSAMIAN & MOODY
A Professional Corporation
Attorneys at Law
1141 W. Shaw Avenue, Suite 104
Fresno, California 93711-3704
E-Mail: laborlaw@theemployerslawfirm.com

Tel: (559) 248-2360
Fax: (559) 248-2370
Toll Free: (888) 322-2573

MEMORANDUM

TO: Agricultural Personnel Management Association

FROM: Patrick S. Moody

DATE: February 11, 2010

RE: **Be Prepared for a Government Inspector**

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 OSHA, the California Labor Commissioner, the Department of Labor (DOL), the Immigration and Customs Enforcement (ICE), or one of a myriad of other government agencies. As you have all probably heard, this is currently going on throughout most agricultural regions.

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

The employer response should be to volunteer nothing, yet at the same time, ask the inspector as many questions as you can. It is OK to ask for copies of credentials, and to find out why the person is there. These government agencies are complaint driven, so they are usually there because of some complaint by a present or former employee, but they also can be there doing blanket sweeps, which appears to be the case currently.

The following is a checklist of issues for you to think about, hopefully before an inspector shows up on your doorstep.

Government Investigation Checklist

1. 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, telephone number, and the name of the investigating agency.

2. 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.
3. 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.
4. Initially, do not offer explanations or give information to the investigator.
5. 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.
6. Try to delay the investigation as long as possible to give yourself more time to prepare.
7. 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.
8. 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.
9. Debrief any employees that are interviewed after the interviews are over. Be careful, though, not to coerce or retaliate against them for participating in the investigation.
10. 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.
11. 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.
12. Restrict any tour of your premises as much as possible. Do not allow the inspector to disrupt and/or interview employees while they are working.
13. 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

The following are additional tips concerning your rights during a government investigation:

- Know that if a government inspector appears without a subpoena or search warrant, you may 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.

- Be sure the inspector has complied with all of the prerequisites required by law before you allow an investigation to begin.
- Do not necessarily accept the first settlement offer made by a government investigator.

Conclusion

Hopefully this information will help you be prepared when an inspector shows up. With a little preparation, it does not have to be as troublesome as it sounds. Of course, knowing that investigators are out there looking, 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 stress training. Do not wait, get in compliance now.

The goal of this Memorandum is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 or toll-free at (888) 322-2573, for individual responses to questions or concerns regarding any given situation.