



ADVICE TO EMPLOYEES **REGARDING GOVERNMENT INTERVIEWS**

The material contained herein is a summary that O'Melveny & Myers LLP has provided to clients in the past. It is not meant as advice, legal or otherwise, to the reader or as a substitute for legal consultation in any particular case.

Being asked to answer questions by law enforcement agents in a criminal investigation can be a stressful and intimidating experience. This is especially true if the agents approach an employee outside the workplace. In order to protect the legitimate interests of both the employees and the company, it is very important for employees to understand their rights with respect to being questioned by government agents. It is not uncommon that employees who answer questions without the advice of an attorney end up getting themselves into trouble that could have been avoided with sound legal advice.

There are three important general principles regarding employee interviews by law enforcement agents. First, the company may not instruct or influence employees to refuse to answer questions. Such an instruction could be construed as obstruction of justice. Second, employees have a right not to answer questions if they so wish. Third, employees are entitled to have the advice of a lawyer before they answer any questions.

If an employee is contacted by a government agent who requests an interview, the employee should be aware of the following:

- The employee has the right to speak to the agent or decline to be interviewed.
- The employee has the right to speak to counsel before deciding whether to be interviewed.
- The agent does not have the right to compel an employee to be interviewed or make statements to the agent; cooperation is entirely voluntary on the part of the employee.
- The agent may suggest that if the employee does not agree to an interview, the employee can be subpoenaed to testify before a grand jury. By agreeing to an interview, however, the employee may not prevent the issuance of a grand jury subpoena.
- If an employee decides to submit to an interview with the agent, the employee can insist on having counsel present.
- If the employee decides to be interviewed, the employee should answer all questions completely, accurately and truthfully.
- The employee is entitled to terminate an interview whenever he or she wishes and may refuse to answer specific questions.
- If the employee decides not to be interviewed, the employee should politely but firmly state that fact to the agent.

Finally, employees should be advised that if they are contacted by investigators or prosecutors, they may notify the company's general counsel before deciding whether to be interviewed. The company should provide telephone or help-line numbers.

If the employee decides to be interviewed but desires the presence of an attorney, the general counsel can assist in finding an attorney to represent the employee at the interview. But employees should be advised that the decision whether to be interviewed, when to have an interview and who should be present are the employee's personal decisions, not the decisions of the investigating agency or the company.