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Keeping Government Investigations From Rattling Employees

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Trouman Pepper Partners Evan Gibbs and Abigail Hazlett were quoted in the October 30, 2023 *Legal Dive* article, [“Keeping Government Investigations From Rattling Employees.”](#)

Agency investigations often take companies by surprise, putting frontline employees at risk of making a mistake that can hurt them and the organization, so it can help to normalize a process for responding ahead of time, says Abigail Hazlett, a partner at Troutman Pepper.

“The FBI loves to show up when people are having their morning coffee,” Hazlett [said in a podcast](#) hosted by the law firm. “They try to talk to an employee or two. That’s how the company learns they’re under investigation.”

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“It is very, very frightening,” said Hazlett. “People lose sight of what they should and shouldn’t do. So, having a plan is important; any interactions with law enforcement are risky.”

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“No receptionist wants to be hung out to dry dealing with the FBI,” she said. “[The FBI] doesn’t want that, either.”

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“What you can say is, ‘Do you have documentation?’” said Hazlett. “‘What are you here for? Can I see that documentation?’ If they don’t have a search warrant, if they don’t have a subpoena, then the line that we tell people is, ‘Thank you for stopping by. Can I have your business card? I’m going to contact my lawyer, and he or she will be in touch.’ That should suffice.”

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“It’s crazy,” said Hazlett. “A lot of people think that the agents are always going to be truthful and forthcoming and say what they’re there for. I have heard from many clients that agents show up and they say, ‘We just want to talk. Nobody’s in trouble here. We just want to talk,’ [but] the FBI doesn’t just want to have coffee with anybody. That is just not what happens.”

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"I had a client where a senior executive thought it would be a good idea to take certain employees for long walks during a search warrant," she said. "That was not viewed favorably by the government and there was a concern that perhaps that executive was obstructing justice. Don't do that. It might be best to send people home until that process is finished unless the agents need, or say that they need, everybody there."

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"You can tell them [employees] what their constitutional rights are, which is talking to the government at a time and place that they want and with a lawyer," she said.

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"If the government agents want to talk to an employee about something that relates to their employment, we often ... get them individual counsel," she said.

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"If they've got [paid time off] stored up or whatever, let's put them on a paid administrative leave for the time being until we understand exactly what's going on and then liaise with the U.S. attorney's office or whoever's conducting the investigation to see what information we can find out and then make a determination from there," Evan Gibbs, a partner at Troutman Pepper, said in the podcast.

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"We see situations where ... it's serious conduct, even if it's totally unrelated to work," said Gibbs. "You can absolutely let somebody go. Pretty much every state is a right-to-work state. Pretty much everybody's employment is at will, so you could fire them for conduct that's even unrelated to their job. And if you've got an executive who's got an employment agreement, pretty much every executive agreement I've ever drafted, and I've ever seen drafted, includes a for-cause termination that includes criminal conduct."

The legal issues of bringing someone back, if that person was released while charges were pending, have to be weighed carefully, Gibbs said.

"Just because someone is ultimately acquitted, it's not going to give them, for example, a wrongful discharge type of claim against the company," he said. "You have to be careful, and if it's an executive, you've got to look at that for-cause language in the agreement."

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