

Joint Investigative Protocol: Criminal Prosecution Under Attorney General's Office and Industrial Commission of Arizona

**Is this status quo or a
new investigative procedure?**

presented by

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AG-ICA Joint Investigative Protocol

- Two types of cases
 - OSHA Reportable Accidents
 - Specifically fatalities
 - Willful violations that involve
 - Death
 - Serious injury
 - Exposure to serious health hazards
- Small portion of ADOSH's annual inspections

Background

- Previous Investigative Method
 - CO Investigation On-Site
 - ADOSH Internal Review
 - Presentation of File to ICA
 - ICA Approval – Referral to AG's Office
 - AG Review
- Few cases were investigated or prosecuted by AG's Office

Present Investigation Methodology

■ OSHA Reportable (Fatality)

→ § 1904.8

- Report incident within 8 hours
- ADOSH will notify AG's Office – Christina Fitzpatrick

→ AG's Office has option of sending their investigator immediately to site

- Andy Rubalcava (bilingual)

→ During on-site investigation CO keeps ADOSH informed

Present Investigation Methodology *cont'd*

- AG's Office has option of becoming involved at any stage of the ADOSH investigation
- Example of Cooperation
 - CO and Mr. Rubalcava arrive at employee's home at 4:45 p.m. and take statement
- Advantage of OSHA reportable case is you know ADOSH will make referral
- Active investigations are on-going

Present Investigation Methodology *cont'd*

■ Willful Citation

- ADOSH conducts inspection
- ADOSH inspection does not have to be result of any accident
- As a result, CO recommends willful
- Area Director review file (Phoenix)
- ADOSH legal counsel reviews file (Tucson)

Present Investigation Methodology *cont'd*

- File is presented to ICA
- Somewhere between steps No. 2 and No. 3, ADOSH refers case to AG
 - ADOSH will not notify you
 - AG has no legal obligation to notify you that you are a target
- Problem: Never know, if or when, criminal investigation has begun

Precautions When Faced with Parallel Investigations

- Control the work site
 - Limit access to job site
 - Document who enters site and when
 - Establish point person
 - Maintain lines of communication

Precautions When Faced with Parallel Investigations *cont'd*

- Keep control of your witnesses
 - Multi-agencies will desire interviews
 - Fire Department
 - Police Department
 - ADOSH Inspectors
 - Sheriff's Department
 - AG's Investigator
 - Insurance Claims Representatives
 - Media

Precautions When Faced with Parallel Investigations *cont'd*

- Any statement made to any Agency representative can and will be used by AG for criminal prosecutions
 - No Miranda warnings are required.
 - Not in custody
 - OSHA matter is civil, not criminal
 - Witnesses should know that a statement is a voluntary act.

Precautions When Faced with Parallel Investigations *cont'd*

- Do not permit any employees to submit to an interview until the employer has had reasonable opportunity to assess facts
 - Management v. Laborers
- Do not produce documentation or other information to ADOSH or others until Employer has assessed facts
- Know that anything produced to ADOSH will go to AG's office
 - Voluntarily request it
 - Obtain through FOIA request
 - Issue subpoena

Precautions When Faced with Parallel Investigations *cont'd*

- Determine corporate/employee criminal culpability
 - Done through prompt, thorough privileged investigation
 - If no culpability, cooperate with investigation agencies as normal
 - If potential culpability, corporation and/or individuals may be advised to seek criminal counsel prior to speaking with any investigator