

Representing Federal Employees in Misconduct Investigations

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At [Berry & Berry, PLLC](#), our attorneys represent federal employees in various types of federal agency investigations. Generally, most federal employment misconduct cases begin as a result of a complaint by other federal employees and/or supervisors in connection with alleged misconduct. When a federal employee is notified that they are under investigation or suspects that they may be investigated in regards to misconduct, whether on or off duty, it is very important to have a federal employment attorney represent and/or advise them through the investigative process.

Typical Types of Federal Employee Investigations

While it is very difficult to cover each and every type of potential misconduct that a federal agency might investigate, some of the most commonplace types of investigations involve:

1. Insubordination
2. Lack of Candor / Honesty
3. Misuse of Government Computer;
4. Misuse of Government Credit Card, Vehicle or Travel Card;
5. Discrimination or Harassment;
6. Time Card/Attendance Issues;
7. Theft in the Workplace;
8. Off-Duty Criminal, Alcohol or Traffic Conduct; and
9. Disrespectful Conduct in the Workplace.

The Nature of the Typical Federal Employee Investigation

The usual process for a federal employee investigation begins when the federal employee is notified (usually with very short notice or even the same day) that an investigator or supervisor needs to speak with them about an issue. Investigators do not usually provide information about the nature of the complaint or investigative issues until the federal employee arrives. The investigator can be a supervisor, someone from human resources, an agency investigator, an Office of Inspector General (OIG) or Internal Affairs agent, or even a contract investigator. Generally, a misconduct investigation starts with very little advice or information about what to expect or what rights are available (usually, the interview just starts).

How the Interview Starts

In many cases the federal employee simply arrives for a scheduled meeting and the investigator just starts asking questions about an incident. This can be problematic for the federal employee. In other cases, the interviewer may start by asking the federal employee to sign a [Garrity](#) statement agreeing to be voluntarily interviewed. This is the most usual course taken with unrepresented employees and offers little protection, waiving all federal employee rights in doing so. In other cases, a federal employee may be asked to sign a [Kalkines](#) warning, understanding that they are being ordered to speak to investigators under penalty of disciplinary action.

In most cases, it is better to be offered a [Kalkines](#) warning, where the federal employee is ordered to provide information because it provides more rights to the employee versus a voluntary interview due to potential criminal concerns that may still be at issue. The reason for this preference is that in cases where a federal employee is not ordered to provide a statement but voluntarily provides one no protections usually apply. Each case can vary, so obtaining legal advice is important. As a result, it is important to have a federal employment lawyer advise and represent a federal employee when they are subject to investigation.

Common Formats for Federal Employee Interviews/Investigations

Usually, the most common scenario for a federal employee investigation involves the federal employee being interviewed by 1 or 2 designated investigators. These investigators, depending on their investigative background, can use varying investigative tactics. Depending on the nature and number of complaints at issue, an interview can last an hour to an entire day. The federal employee at issue may also be recalled for additional testimony later. The interviews are usually conducted at the work site or at the offices of the investigator (e.g. at the OIG's office).

Following an interview or interviews, many investigators summarize the statements made by the federal employee and attempt to have them sign an official statement (or sworn declaration) about the information that they have provided. It is very important for a federal employee to ensure that investigators do not insert their own versions or characterizations of the statements made into a final written statement signed or sworn by them.

It is very common for an unrepresented employee to want to leave the interview room as soon as possible, but it is critical to ensure that a complete and accurate statement is provided. Adverse or disciplinary actions can depend on the accuracy of the wording used. Also, it is important not to agree to a statement just to finish the interview process. This happens on occasion as well, only for the federal employee to later argue that they were tired and wanted to leave, coerced or were told that if they agreed to a particular statement that the interview would end and the case would be over.

Retain a Federal Employment Attorney

Having a federal employment lawyer represent and/or advise a federal employee during the investigation process is important. An attorney can advise and/or represent you before, after and often during the investigative interview. It is important to have such counsel early because doing so can help prevent or mitigate potential disciplinary action later. Furthermore, it can often help when an investigator knows that you are represented by counsel because they tend to follow more strict rules or are monitored by their supervisors during the interview. In our experience, investigators tend to follow their own rules regarding the investigations process more closely when an individual is represented by a federal employment attorney. Additionally, should the issues involved turn potentially criminal in nature it is important to be represented before the federal employee makes statements about his or her conduct.

Conclusion

It is important for a federal employee to be represented by a federal employment attorney during investigative interviews and misconduct investigations. Berry & Berry, PLLC represents federal employees in these types of federal employment investigations and can be contacted at (703) 668-0070 or www.berrylegal.com to arrange for an initial consultation regarding Douglas factor and other federal employment issues.

Attorneys

John V. Berry

Practice Areas

Federal Adverse and Disciplinary Actions