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Interacting with State and Local Law Enforcement During the COVID-19 Crisis

With each passing day of the pandemic, state, county, and municipal authorities are entering unprecedented orders restricting the legal rights of organizations and their employees. As of April 3, 2020, more than 150 jurisdictions have entered “stay at home” or “safer at home” orders. And nationally, the debate continues as to whether more government mandated restrictions on movement and economic activities will be necessary to stop the spread of the virus or whether an overarching federal order will be entered by the Trump Administration. While state and local officials certainly hope their constituencies voluntarily comply with such limitations, ultimately law enforcement agencies across the country will have an overwhelming enforcement obligation. The penalties for failing to comply with the quarantine restrictions range from civil ordinance infractions to criminal violations with maximum penalties up to 18 months of incarceration and substantial monetary fines. In addition to such sanctions, no organization wants to endure the adverse media publicity for “failing to do its part” in the fight against the virus by being accused of violating these types of orders.

As such, three general scenarios have started to arise in the context of these unprecedented restrictions. First, it can be expected that state and local police officers will be coming into contact with an organization’s employees as those employees travel to and from places of work or participate in other activities allowed under these orders. Secondly, as the debates between “essential” and “non-essential” business continue to evolve, whistleblowers (e.g. disgruntled employees, competitors, vendors) may call state or local law enforcement in an effort to curtail the activities of a business viewed as “non-essential.” Thirdly, state or local law enforcement may proactively engage at an organization’s manufacturing facility, warehouse, or other place of business seeking to determine whether or not compliance with mandatory orders is being followed.

Related Practices

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During lawful government investigations, government agents may execute search warrants, serve subpoenas, or make requests for interviews. Search warrants are orders allowing various government agents to search a specified premise and seize property. Subpoenas are formal orders commanding an individual to appear and testify, to produce certain documents, or to do both; the failure to comply with a subpoena may be punishable. Government investigations, regardless of the government agency or department conducting the investigation, should be taken seriously.

In the current heightened state of potential government intervention with an organization or its employees, leaders need to be fully prepared to provide guidance to their employees when faced with such interactions with law enforcement and have sound guidelines for responding to search warrants, subpoenas, or requests for interviews in connection with lawful government investigations.

Michael Best's Government Investigations and White Collar Defense team is seasoned in all aspects of criminal and regulatory enforcement matters and can assist your organization with tailoring the appropriate compliance guidelines for dealing with law enforcement under these types of circumstances.

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