

# CLIENT ALERTS

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## What do you do when agents show up with a search warrant?

4.14.2020

In today's environment, it is less likely – though not impossible – that federal agents will show up at your company's door tomorrow. That said, law enforcement investigations are continuing and when the COVID-19 pandemic breaks (or at least loosens), if your company is in the unfortunate position of being on the receiving end of a criminal investigation, it is imperative that you are prepared to handle it.

Search warrants authorize governmental agencies to enter a company's premises in order to review, seize and/or copy its records and computer files. A search warrant is one of several ways the government gathers information in connection with an investigation. The recipient of the warrant may simply be a witness to the investigation and not necessarily the focus of the government's inquiry. In other words, being served with a search warrant does not mean that the company or any of its employees is the focus of the investigation or has violated the law. The most prudent course of action, however is for a company that is the subject of a search warrant to presume that it is the target of the government's investigation, at least at the initial stages, and treat the situation very seriously.

These search warrants are often referred to as "Dawn Raids" because they often occur early in the morning. However, government agents generally execute warrants in large teams, without any prior warning, and may take place at any time of day. The government's primary goal is to obtain the evidence specifically identified in the search warrant (of course, the warrant may be quite broad in terms of what can be seized). Typically the government's secondary goal is to catch the Company, and its employees, off guard in the hopes of furthering its own investigation. The principal way the government accomplishes this secondary objective is through interviews. More on this topic below.

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It is important that Companies establish procedures to be followed in order to minimize any confusion and disruption in the workplace should this unfortunate event occur. While every company's policy should be to cooperate with all government investigations, it is important in responding to a search warrant that company employees do not relinquish any legal rights that may protect the company as well as the legal rights of individual employees, directors, officers, or agents. Those employees who are tasked with implementing a company's crisis management plan should be reminded to be respectful – remember that a judicial officer made a finding that there was probable cause to believe that evidence is located on the premises and gave the agents the right to be there to conduct the search.

All companies should have a crisis management plan in place to protect the company's interests. Below is a recommended 6 step plan:

- Step 1: Obtain a copy of the search warrant and ask for the accompanying affidavit (also review the lead agent's credentials and copy that information down for counsel)
- Step 2: Immediately notify in-house and/or outside counsel of the search and send copies of the materials provided by the agents
- Step 3: Dismiss non-essential personnel for the duration of the search, subject to safety needs
- Step 4: Review the warrant for 4 W's
  - Where (limits on areas);
  - What (can be seized);
  - Who (authorized the search); and
  - When (any time restrictions)
- Step 5: Monitor, but do not interfere with, the search
- Step 6: Obtain a signed inventory of everything seized before agents leave

### Employee Interviews

As mentioned previously, often times the government has a secondary objective of interviewing company employees in order to further support its own investigation. This is a tricky situation because of two realities: (1) the government is free to interview people (though it should be noted that the search warrant itself says nothing about such interviews); and (2) employees are free to answer agents' questions if they choose to do so. However, there is nothing wrong with a company advising its employees of their legal rights and that they are also free not to answer the agents' questions without having first had the ability to consult with an attorney and to also have that attorney present at any subsequent interview that might occur. They can also be told that they have the ability to stop the interview at any time in order to seek the advice of counsel prior to completing the interview. Above all else, the most important instruction to be provided to employees is that if they agree to be interviewed, they must tell the truth.

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Below is a perfectly reasonable sample notice to employees in connection with a company's crisis management plan:

During the course of a search warrant executed by law enforcement personnel on company premises, you may be approached and asked to agree to be interviewed. You should know that you have the right not to be interviewed, although you should provide your name and any other personal identification requested. You also have the right to agree to an interview if you so choose. The choice is yours. The purpose of this information is not to ask that you agree or not agree to such an interview, but rather simply to be sure that you know your rights. If you choose to be interviewed, many people feel that it is in their best interest to have an attorney present during the interview. Accordingly, for any employee wishing to discuss this matter with an attorney or to have an attorney present with them at an interview with investigators, the company will provide one at no cost to the employee.

Following the search, those company employees that were involved with executing the company's crisis management plan must immediately de-brief with company counsel (note: ideally, company counsel will be able to arrive on the scene as the search warrant is being executed). If there were any employees who were interviewed by investigators, those individuals must immediately be re-interviewed by company counsel and/or individual counsel should be retained for those individuals. Employees should be instructed not to discuss the search with anyone other than counsel. Finally, normal document retention policies should be suspended and preservation notices should be delivered to relevant employees (because even though the government has disrupted the company's operations by executing the search warrant, they almost always serve the company with a subpoena so as to ensure that if they missed anything, the company still has an obligation to produce it).

The Butzel Long Government Investigations and Compliance Group has vast experience in counseling and defending companies who are faced with the unenviable task of having to confront a search warrant being executed on its premises. Our sincere hope is to be able to counsel our clients long before such an event actually occurs – so that they are ready. Of course, our true hope is that they never have to confront one. But if they do ever have to weather such a storm, we will be right by their side every step of the way so as to ensure the most favorable result possible under the circumstances.

If we can ever be of any assistance to your company, please feel free to contact any of the Butzel Long attorneys identified below.

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