

DEPOSITIONS 101: SIX THINGS YOU NEED TO KNOW ABOUT DEPOSITIONS

Publication
Sep 3, 2012

(Labor Letter, September 2012)

If you are a manager or in Human Resources (or both!) long enough, it's almost inevitable that you will need to appear for a deposition. Although your attorney will meet with you to prepare for the deposition – more on that below – it can be helpful to have an idea of what to expect even before that meeting. This article gives you six key pieces of information about being deposed.

1. YOU'RE IN FOR A LONG DAY

Your deposition will last longer than you think it will – and quite possibly much longer than you think it could or should. By the time your deposition is scheduled, you may have had one or more meetings with your attorney to discuss the facts of the case. Your deposition is likely to be longer, and more detailed, than any of those meetings. Federal law limits depositions to 7 hours, and some states set limits as well – those limits were not set in a vacuum. It is not unusual for depositions of (some) company witnesses to last a full day.

2. THAT'S WHY YOUR ATTORNEY NEEDS TO MEET WITH YOU

Your attorney will meet with you in advance to prepare for your deposition – typically a few days or a week before your deposition. Depending on your attorney, your involvement in the case, and the facts of the case – among other factors – your attorney will ask you to set aside anywhere between one and four hours, or possibly longer, to prepare for your deposition. Your attorney knows this is an imposition, and understands that you have many other things to do. However, your attorney also knows that it's important that you are prepared for your deposition. (Your attorney

may also believe, as I do, that it's better to have a meeting end early than to have it run late.) Remember that unless you are an experienced expert witness or in-house counsel, your attorney has attended many more depositions than you have, and is asking you to set aside time so you can be fully prepared.

3. YOU WILL BE OUT OF YOUR ELEMENT

When you're in a deposition, you're out of your element. You will be on the opposing attorney's turf – probably both literally and figuratively – in his or her office and in an unfamiliar situation. No matter how strongly you believe in your case – and no matter how strongly you believe that your opponent and his or her attorney are wrong – you need to take your deposition seriously. Resist the urge to try to prove that you're the smartest person in the room – even if you are! Try to accept that your day of deposition will not be fun, and that you may not have a chance to tell the other attorney everything you want to share.

4. YOUR ATTORNEY IS NOT JUST TAKING NOTES

On the day of your deposition, your attorney is not just taking notes. Although you are the "star" of your deposition, your attorney is working as well. Your attorney will – to the extent permitted by your particular jurisdiction – act as your coach, cheerleader, and, potentially, your nagging parent. Your attorney may encourage you, advise you, or remind you of the rules of a deposition. Don't ignore your attorney.

5. YOUR JOB DOESN'T END AFTER THE DEPOSITION

Although you are allowed (and even encouraged) to breathe a sigh of relief when your deposition is over – your job is not done. Your attorney will send you a copy of the transcript of your deposition a few weeks after your deposition. Although it can be tedious to read over testimony, it is a very good idea to do so. Later, you may be asked for additional documents or information, you may be asked to provide a declaration, and you may be asked to testify at trial or arbitration.

6. THE TRUTH WILL SET YOU FREE (OR AT LEAST ALLOW YOU TO SLEEP AT NIGHT)

As your attorney will tell you – probably more than once – the most important rule for a deposition is to tell the truth. Please take this to heart, and please don't be insulted when your attorney tells you this. While most witnesses understand the need to tell the truth, it is impossible to overstate the importance of being truthful.

Your attorney will have many more tips and information for you before your deposition. These six tips will point you in the right direction, and help you go into that meeting with a better idea of what to expect from your deposition.

For more information contact the author at JAchtert@laborlawyers.com or (415) 490-9000.