Proskauer

From Best Practice to Exhibit A: The Hidden Risk of Workplace Investigations

California Employment Law Update on **April 24, 2026**

Employers love a good investigation story—prompt response, outside counsel, thorough interviews, the whole compliance greatest-hits album. But the California Court of Appeal's recent decision in *Paknad v. Superior Court* is a sharp reminder that if you plan to rely on your investigation in litigation, you may end up handing over the director's cut.

In *Paknad*, the employer did what many would consider best practice: retained outside counsel to investigate discrimination and harassment complaints, generated detailed reports, and later relied on those investigations to support its defenses in the lawsuit that followed, specifically citing the investigations' thoroughness in support of its avoidable-consequences defense (*i.e.*, its defense that it took reasonable steps to prevent and correct workplace harassment).

That's where things got rocky. The *Paknad* court found that, by touting the investigations in support of its affirmative defenses, the employer had placed the independence and adequacy of those investigations squarely at issue and therefore waived attorney-client privilege and the work-product doctrine over relevant portions of the investigations—including the investigations' factual findings and information related to the investigations' scope or adequacy.

The court reaffirmed a principle that should make management-side lawyers sit up straighter: Privilege and work-product protections can be waived when a party affirmatively relies on an investigation to defend itself. In other words, employers cannot use an investigation as both sword and shield.

More pointedly, the court rejected the employer's attempt to redact the investigator's factual findings wholesale. Those findings—including credibility determinations and conclusions about whether the plaintiff's allegations could be substantiated—were deemed relevant to assessing the adequacy and independence of the investigation and therefore discoverable.

To be clear, the takeaway from *Paknad* is not to avoid investigating misconduct allegations. Instead, it's to be strategic about how you use the investigation later. An employer's assertion that an investigation was thorough, independent, and forms the basis of a defense likely opens the door to disclosure of the underlying materials. So, before reflexively pleading an "avoidable consequences" defense or extolling investigative rigor in discovery responses, pause and ask whether you're prepared to produce the receipts. We will continue to monitor this case for any important updates.

Related Professionals

- **Dixie M. Morrison**
  Associate
- **Gregory W. Knopp**
  Partner