

# Sample<sup>1</sup> Upjohn Warning

During witness interviews as part of an internal corporate investigation, attorneys and investigators working at their direction usually give an “Upjohn warning.” See *Upjohn v. United States*, 449 U.S. 383 (1981). Employees are told whom the attorney represents (the corporation, and not the employee individually), that the attorney-privilege belongs to the corporation, and that the corporation may waive the privilege and disclose the substance of the interview to third parties. If such a warning is not given, the employee may believe the attorneys represent him or her, and that they will not reveal anything the employee says. This can result in litigation if the company later decides to disclose the employee’s testimony. Interview notes should reflect that the warning was given, and that the employee agreed to keep the interview confidential.

Sample Upjohn warning:

## [Greeting / Introductions]

The company has retained our law firm to investigate **[the matter]**. We are meeting with you to learn more of the facts about **[the matter]** so we can give legal advice to the company, and to prepare for potential litigation.

In our role as attorneys, we represent the company only. We do not represent you or any other employees personally. If you want a lawyer, you will need to hire your own.

Our interview is confidential and subject to the “attorney client privilege.” This generally means that no one can force you or me to disclose in court what we tell each other today. Understand, however, that the privilege belongs to the company, not to you personally. In the future, the company may decide to waive the privilege and disclose the information we learn in the investigation. If the company chooses to waive the privilege, it can do so without your consent and without telling you.

For the company to maintain its attorney client privilege over the information from this interview, it is important that you not share the substance of our interview with anyone. Keeping this interview confidential also will protect you if **[the government / litigation opponent]** ever decides to interview you again about what happened.

The company will not tolerate any retaliation or reprisals against you for cooperating with our investigation and telling the truth. On the other hand, failure by employees to cooperate with the investigation may result in company discipline, including possible termination of employment.

Do you understand? Do you agree to keep this interview confidential? Do you have any questions before we begin?

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<sup>1</sup> This “Sample” is not intended to be legal advice for any specific situation, nor does use of this form in any way create any attorney-client relationship.