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What Is Cuomo's Next Move Amid Investigation? Employment Lawyers Weigh In

With state Attorney General Letitia James overseeing an independent investigation into the claims, employment lawyers say the best move for Cuomo is to simply comply with the inquiry and let the investigation run its course.

By **Ryan Tarinelli** | March 16, 2021 at 04:27 PM

As he faced mounting calls for an independent investigation at the end of last month, Gov. Andrew Cuomo plunged into a power struggle over who would look into the sexual harassment claims against him.

At first, the governor's team announced their own selectee to conduct a review. The next day, they pivoted and suggested having New York's top judge, an appointee of the governor, help pick a lawyer to do a review.

By the end of the day, the plan would be abandoned. Rejecting the political maneuvering, the governor's critics argued that an investigation needed to be removed from Cuomo's influence.

Now, with state Attorney General Letitia James overseeing an independent investigation into the claims, employment lawyers say the best move for Cuomo is to simply comply with the inquiry and let the investigation run its course.

Any attempts to curtail the investigation's scope or push back against subpoenas would not only raise suspicions with investigators, but could further tarnish his reputation in the public eye, some said.

For their part, the Cuomo administration says they are committed to working with investigators.

"All New York state employees have been directed to cooperate fully with this review," wrote Beth Garvey, a senior adviser to the governor, in a March 1 letter granting the state attorney general's request for an independent investigation.

The third-term governor has pledged to cooperate as he faces accusations of sexual harassment from former aides, along with an allegation of groping from a separate female aide. Other women have accused Cuomo of inappropriate behavior as well.

Former federal prosecutor Joan H. Kim and employment discrimination attorney Anne L. Clark are leading the investigation overseen by the state attorney general's office.

The team is tasked with investigating the sexual harassment allegations against Cuomo and how his administration handled those claims.

Kathryn Barcroft, an employment lawyer who focuses on sexual harassment cases, said the investigation should also look into Cuomo's broader office behavior and whether there was a toxic workplace environment.

Cuomo should want the investigation to be independent so the findings will appear valid to the public if he's cleared of wrongdoing, she said.

But Cuomo could be in for an uphill battle considering the multiple allegations against him, she said.

If a broader investigation does take shape, investigators could look to interview people who might not be tied to any specific harassment complaint, but can speak to the nature of the governor's workplace behavior, said Jessica Taub Rosenberg, an employment attorney who primarily represents employers.

"You want to appear cooperative with the investigator" as the target of an inquiry, she said. But, Rosenberg said she thinks there will be room for negotiation over certain details, such as the manner in which documents are produced and how far back they search for documents.

Employment lawyers say investigators will hone in on any emails, texts or other electronic records tied to the accusers' sexual harassment claims, particularly those created around the time an incident occurred.

Overall, investigators will try to reach a conclusion on the evidence and on the credibility of the witnesses, said Shery Galler, an employment lawyer based in New York City.

It remains unclear how far back the inquiry will go into Cuomo's tenure as governor. Either way, investigators appear to be moving quickly.

One of the governor's accusers, former aide Charlotte Bennett, met with the investigators for more than four hours Monday and has given them more than 120 pages of "contemporaneous records" to support her claims against Cuomo and his staff, said attorney Debra Katz, who is representing her.

Bennett gave information on the "sexually hostile work environment" that Cuomo fostered and his "deliberate effort to create rivalries and tension among female staffers," Katz reported.

"One piece of new information that came to light today was the governor's preoccupation with his hand size and what the large size of his hands indicated to Charlotte and other members of his staff," Katz said in a statement.

The investigation, Katz argued, should focus on Cuomo's behavior and a culture of "fear, abuse and secrecy that he and his most senior staff cultivated."

"We have full confidence in the investigation and the investigators," she said in the statement.