

# INVESTIGATIONS WORKSHOP Part 1: Beginning the Investigation & Interviewing the Reporter

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## Does your E&C Risk Assessment Program Address your Internal Investigations Process?

### Risks associated with a weak Investigation Process

#### E&C Program/Culture Risks:

- Integrity risk
- Compliance risk (ability to comply with mandatory disclosure laws and regulations)
  - Federal Sentencing Guidelines
  - Frank-Dodd "Whistleblower" Act
  - Mandatory Disclosure Rules
  - Other Customer and Government Agency Requirements

#### Company Risks:

- Potential Civil & Criminal Liability Risk
- Reputational damage risk

#### CECO Risks:

- Credibility & Integrity risks



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### INVESTIGATION RISKS (A Useful Checklist to Consider)

1. Does your company have a Policy/Procedure to address Internal Investigations?
2. What is your worst case scenario – “what could go terribly wrong”?
3. Identify your Legal and Compliance risks.
  - Program Risks
  - Organizational Risks
  - Cultural Risks
  - Business Risks
4. What are you doing or will do to mitigate those risks?
5. Estimate the cost of a worst case scenario.
  - Consider labor of internal and external resources to investigate, report, implement corrective actions and cost of potential fines and penalties.

**Does your E&C Program Self-Assessments address the efficacy of your Internal Investigations Process?**



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### INVESTIGATIONS POLICY (Key Provisions)

1. General Policy Statement
2. Employee responsibility to report misconduct.
3. Protection from retaliation.
4. Employee responsibility to cooperate with investigators.
5. Confidentiality throughout process.
6. Management responsibility.
7. Organizational responsibility and authority for investigation.
8. Penalties for violations.



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## Effective Internal Investigations

➤ **Effective internal investigations are essential to a successful Ethics and Compliance Culture**



- Conducting internal investigations is an acquired skill
- Planning the essential steps
- Asking the right questions and eliciting responses
- Sorting relevant from irrelevant details
- Making credibility determinations
- Identifying others needed to support the investigation
- Documenting your actions
- Closing the loop with stakeholders



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## Fundamental Propositions

- Fair treatment of all employees
- Earn and maintain trust
- Protect employees from retaliation
- Respect for confidentiality
- Consistent, uniform, thorough process
- Independent and objective investigators
- Do no harm



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### Investigation Scenario #1 – Allegation of Inspection Fraud

An anonymous reporter stated that a coworker, Greg Doe, is regularly falsifying inspection and test reports. The reporter said the employee leaves the work area for long periods of time and can't possibly be meeting the standard number of part inspections documented in the department's test and acceptance procedure. The reporter is really concerned because the parts being tested go into highly sensitive medical test equipment. The reporter noted that a defective part incorporated into the medical test equipment could provide a false reading, which could result in costly and unnecessary medical procedures or even worse the failure to accurately identify a patient's medical condition. The reporter was asked to call back in 3 days to answer additional questions.



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### Interviewing the Reporter

#### First Steps to an Effective Investigation

- **Be cool, calm and collective!**
- **Make the reporter feel comfortable.**
- **Be appreciative and understanding.**
- **Gather as much information as possible.**
- **Take time to ask questions.**
- **Who did what, when, and where?**
- **Is the reporter an actual witness of the alleged misconduct?**
- **Did others see the misconduct?**



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## Interviewing the Reporter

### First Steps to an Effective Investigation

- Get names of potential witnesses.
- How long has the misconduct occurred?
- Are more than one person involved?
- Get names of potential offenders.
- Get name of reporter (if possible)?
- Discuss confidentiality and protection from retaliation if reporter feels threatened.
- Reassure reporter is doing the right thing.



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## Interviewing the Reporter

### First Steps to an Effective Investigation

- Provide for future contact with reporter
- Presume reporter is acting in "good faith"
- Establish reporter's motivations and expectations, if possible
- Commit to follow-up



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## Creating an Investigation Plan

**The Who,  
What,  
When &  
How of an  
Investigation**



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## Investigation Scenario #2 – Allegation of Supplier Corruption

A purchasing department employee reported she suspects one of the company's suppliers, NeverFail, may be providing kickbacks to her supervisor, Bill Themm. She thinks this is true because her supervisor just returned from a business trip to the supplier's site and told her the details of an extravagant dinner meeting that included expensive wine, caviar, lobsters and Kobe beef. "He even took his wife on the business trip and was treated to a 1<sup>st</sup> Rate Broadway Show, that I can't even get tickets to go see", she stated. She also stated that Mr. Themm has also received mail from NeverFail that has "Personal and Confidential" markings on the envelope. Discuss next steps.



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## Creating an Investigation Plan

### Who is going to lead the investigation?

- Ethics & Compliance
- Legal
- Human Resources
- Internal Audit
- Special Committee or Task Force
- Other Internal Resources (Security, Quality)
- External Resources



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## Creating an Investigation Plan

### What should be investigated?

- Identify and understand the allegation
- Is the allegation true?
- Stop and correct misconduct
- Issue specific
- Tip of the Iceberg
- Need to expand investigation
- Regroup, if necessary



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## Creating the Investigation Plan

### ➤ Prepare a Thorough Investigation Plan:

- List all documents you will need to review
- List all potential witnesses to be interviewed
  - Create an interview schedule
  - Prepare a questionnaire
- Identify internal and external resources that may be needed to facilitate the investigation
- Consider a checklist



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## Creating an Investigation Plan

### When should the investigation commence?

- Timing may be critical
- Is there rampant misconduct?
- Prevent or minimize collaboration
- Send the right message to all stakeholders
- Keep the momentum going
- The more serious the allegation; the greater the need to be expedient.



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## Conducting Interviews

- Prepare a detailed list of questions
- Start with some basic questions you know the employee will respond to truthfully
  - What is your full name?
  - In which department do you work?
  - Who is your immediate supervisor?
  - How long have you been employed by our company?
  - Please describe your job responsibilities.
  - Are you aware of our Company's Code of Conduct?
- Easy questions set the tone for the interview
  - Helps employee feel more relaxed
- Ask the tough questions
- Make eye contact throughout process
  - Observe and note any changes in behavior/body language



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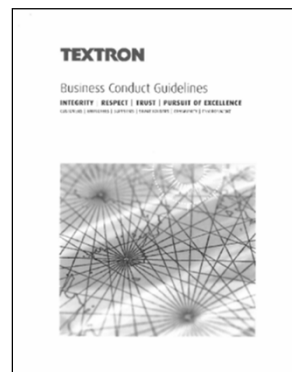


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## Conducting Interviews

- Have a copy of your company's Code and Policy for conducting investigations handy to share with employees.
- Remind employee that any retaliation is a violation of company policy and the law, and will subject violators to disciplinary actions, up to and including termination
- Consider having the employee review and sign your answer sheet (if you are conducting the interview alone).
- The Interview Team (Best Practice)
  - Lead interviewer asks the questions and observes behavior
  - Scribe interviewer takes notes and asks clarifying questions
  - Review notes following each interview



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## Creating an Investigation Plan

### How should the investigation be conducted?

- Be an effective communicator
- Earn trust to obtain full cooperation from the reporter
- Will Legal representation be needed
- Confidentiality
- Attorney-Client Privilege
- Penalties for failing to cooperate or obstructing an investigation



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## Investigation Phase

### ➤ Notes:

- Take notes of meetings, interviews, phone conversations, etc.
- **Audio or video recording devices should not be used. If used obtain written permission of interviewees!**

### ➤ Notes should:

- Include only the relevant facts
- Be succinct and objective
- Consist of factual accounts of interactions
- May include your observations of behavior



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## Is there a Root Cause of the Misconduct?



**Do you need to look beyond the existing allegations to determine if there is other misconduct that needs to be investigated?**



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## Investigation Scenario #3 – Allegations of Time Theft

An hourly employee, whose identity he wishes be kept confidential, reported that two co-workers are allowed to come to work late, leave early, and sometimes do not show up at all. The supervisor must approve all timesheets weekly. These employees have even bragged about getting paid for working a full week. The reporter stated he expressed his concerns to his immediate supervisor who told him it was not his problem and not to worry about it. The reporter also stated that the same coworkers regularly go out to lunch with the supervisor and sometimes come back to work smelling of alcohol. He said other employees are aware of this behavior but are afraid to speak up because they fear retaliation from the supervisor and the coworkers. The reporter also stated the same employees are often seen playing games on the company computer or accessing websites during normal work hours. The company does not have a zero tolerance policy on computer use, but does have a conflict of interest policy prohibiting employee activities that conflict with their job responsibilities to the company.



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## Close the Loop with Stakeholders

- Were the allegations substantiated?
- Was corrective and or disciplinary action taken?



## Questions, Comments, Concerns?

