

INVESTIGATIONS WORKSHOP: Part 1

BEGINNING THE INVESTIGATION & INTERVIEWING THE REPORTER

Al Gagne, CCEP

SCCE Institute Pre-Conference Workshop – October 6, 2013

Society of Corporate Compliance and Ethics
6500 Barrie Road, Suite 250, Minneapolis, MN 55435, United States
www.corporatecompliance.org | +1 952 933 4977 or 888 277 4977



**SOCIETY OF CORPORATE
COMPLIANCE AND ETHICS**



SESSION AGENDA

Workshop Part 1 (9:00 – 10:00)

- Risk Considerations
- Document your Investigations Program
- Establish an Investigation Plan for Specific Reports of Misconduct
- Getting as Much Information as Possible from the Reporter

Is there a need for an Investigation Policy?

Consider the following:

- **All organizations experience fraud and misconduct.**
- **Increased responsibility on Management to prevent, detect and correct unacceptable behaviors.**
- **Legal requirements to disclose fraud and certain misconduct.**
- **Risk mitigation.**
- **Key element of a sound E&C Culture.**
- **Makes good sense.**

3

Does your E&C Program Risk Assessment Address the Investigation 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 (FSGs)
- Reputational damage risk

CECO Risks:

- Credibility & Integrity risks

4

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 now or what will you 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 (Audits and Self-Assessments) address the efficacy of your Internal Investigations Process?

5

SAMPLE INVESTIGATION POLICY STATEMENT

All allegations of suspected or known violations of law and company policy and misconduct will be reviewed in a timely manner and, if necessary, investigated at the direction of the Chief Ethics & Compliance Officer to determine the relevant facts and circumstances of the alleged violation or misconduct. Investigation reports will be submitted to Management who is responsible for determining the appropriate corrective and disciplinary actions.

6

PROVISIONS IDENTIFYING EMPLOYEE RESPONSIBILITY

Every employee has a duty to report known or alleged violations of company policy, even when personally involved in the violation.

Employees are expected to cooperate with internal auditors and investigations by providing truthful accounts and relevant documentation in response to questions and information requests.

Employees who fail to cooperate, or otherwise impede an internal audit or investigation, will be subject to disciplinary action in accordance with the company's disciplinary action policy.

7

PROVISIONS FOR INTAKE

Reports of known or alleged misconduct should be reported to an immediate supervisor or others in Management.

Help lines will be established to provide for and, if requested, anonymous reporting of know or suspected violations of the law or company policy and procedures. (List Help Line number and Web address of any On-Line reporting tools)

Management personnel are responsible for notifying Ethics & Compliance, Legal, or Human Resources upon receipt of a report of alleged misconduct.

8

PROVISIONS FOR INTAKE

- There will be no reprisals or retaliation against any employee for reporting in good faith a suspected or known violation.
- We will strive to maintain the confidentiality of the source. Additionally, reports can be made on an anonymous basis, where local law permits.
- Concerns about accounting, internal accounting controls, auditing matters or other concerns can also be reported by mailing the concern to the Board of Directors or the Audit Committee at the address listed below.

9

Investigation Scenario #1 – Allegation of Inspection Fraud

An anonymous reporter stated that a coworker, Greg Doe, regularly falsifies 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 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 potentially defective parts incorporated into the medical test equipment could provide a false reading, which could result in costly and unnecessary medical procedures or even worse fail to accurately identify a patient's medical condition.

10

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

11

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



12

Create an 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**

13

Investigation Scenario #2 – Allegation of Unfair Treatment

An anonymous reporter stated Jessica Smith who works in Contracts is receiving preferential treatment from her supervisor Dan Jones. Mr. Jones allows Ms. Smith to arrive late for work and never disciplines her while others in the department are disciplined for arriving only 2 minutes late. One employee was even written up for arriving late one day after a major traffic accident. Many employees had trouble getting to work that day. "It is unfair and someone needs to look into this and stop it" demanded the reporter. The reporter also stated that Ms. Smith received a merit pay increase that was twice the percentage received by others in the department because Ms. Smith is having an affair with Mr. Jones. Ms. Smith is lazy and does not work at the same level as others in the department. Others feel required to pick up her slack. The reporter is "sick and tired of the way things are being done in this department" and threatened to call the State Department of Employment Discrimination if this unfair treatment is not stopped.

14

Report Intake – The Five W's*

Who

- was involved?
- was present?
- else has knowledge?
- may have had a similar experience?
- did you talk to about the incident?

What

- happened exactly?
- was said by those involved or witnesses?
- actions did people take?
- was the reaction of witnesses?



* The Complete Compliance & Ethics Manual, 2nd Edition, Copyright 2010.

15

Report Intake – The Five W's (continued)

What

- did you do?
- do you want to see happen?
- else should the investigator know?

When

- did the incident occur(day and time)?
- did you talk to other about it?

Where

- did the incident occur?

Why

- are you reporting?



16

Create 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**

17

DETERMINE WHO SHOULD LEAD THE INVESTIGATION



Take care when investigating “up the food chain”.

Creating an Investigation Plan

What should be investigated?

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

19

Creating an Investigation Plan

When should the investigation commence?

- **Timing may be critical**
- **Is there rampant misconduct?**
- **Collaboration among offenders**
- **Send the right message to all stakeholders**
- **Keep the momentum going**

20

Creating an Investigation Plan

How should the investigation be conducted?

- **Effective communications**
- **Cooperation from all parties**
- **Legal representation for some**
- **Confidentiality**
- **Attorney-Client Privilege**
- **Penalties for failure to cooperate or obstruction**

21

Investigation Scenario #3 – Allegation of Conflict of Interest

An anonymous reporter stated that a co-worker, Sue Trader, is constantly accessing the Internet during work to post personal items for sale on E-Bay. Ms. Trader has even bragged to some co-workers that she is making a small fortune buying and selling goods on the Internet from her work computer. The reporter also stated the matter was brought to the attention of Mary Kerry the Dept. Supervisor, who said, "I can't be looking over everybody's shoulders all day –how do you expect me get my work done?" The reporter ended by stating, "Mary is always rude to us and we can never run anything by her. This is not fair and needs to be looked into by someone."

22

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
- Make eye contact throughout process
 - Observe and note any changes in behavior/body language
 - Warning signs an employee is not being truthful

23

Investigation Scenario #4 – Allegation of Supplier Corruption

A reporter who stated she was a purchasing department employee believes that 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 shared with 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 they were treated to a 1st Rate Broadway Show that I can't even get tickets to go see", she stated. She also stated that Mr. Themm has received mail from NeverFail that has "Personal and Confidential" markings on the envelope.

24

Is there another Root Cause



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

25

WORKSHOP WRAP-UP

Questions?

26