

CONDUCTING COMPLIANCE INVESTIGATIONS

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**INVESTIGATIONS ARE A
FACT OF LIFE:
BE PREPARED!**



Investigations

- **Includes investigations you conduct in your compliance role.**
- **Investigations that government entities or their agents conduct.**

Investigations

- **Our focus today will be on investigations that you conduct yourself or investigations that you oversee.**

INVESTIGATIONS

- 1. An important component of an “effective compliance program”**
- 2. Demonstrates intent to uncover and resolve issues**
- 3. Serious business - MUST be handled correctly**

Investigations

- **The word “Investigation” is fear inducing to team members in ways that may impede the actual progress of an investigation.**
- **There should be a sequence from inquiry, to review to investigation only in cases in which an inquiry or review does not suffice.**

Investigations

- **Investigations are often disruptive of the work place if only because of natural curiosity.**
- **Inquiries and reviews are less disruptive and also encourage cooperation.**

Investigations

- **Remember an inquiry or review can always be elevated to an investigation at a later time.**

Preliminaries

- **WHAT ALL COMPLIANCE PROGRAMS SHOULD HAVE IN PLACE NOW:**
 - **Routine audit program (with reporting to CCO for compliance-related issues)**
 - **Safe, confidential reporting mechanism (coordinated by compliance function).**

Preliminaries

- **Procedures in place to assure management is informed of:**
 - **1) inquiries from attorneys, agencies, investigators**
 - **2) receipt of summons and complaints, citations, formal legal notices**

Preliminaries

- **You would be surprised how often such notices go unreported.**
- **Any of these notices can precipitate an investigation.**

Preliminaries

- **Certain key polices and procedure must be in place prior to undertaking an investigation.**

Preliminaries

- **You need a written policy requiring employees to cooperate with investigations in a truthful and forthright manner.**
- **Even though employees are normally required to cooperate, a formal policy reinforces this requirement.**

Preliminaries

- **You need to have a policy in place that makes it a requirement, not an option, that perceived wrong-doing be reported.**

Preliminaries

- **A policy on cooperating with government investigations.**
- **This policy must include no lying, no conspiring with others to hide the truth, and no destruction of evidence.**

Preliminaries

- **The risk of obstructing justice is often greater than the risk from what the government is investigating.**

Preliminaries

- **The policy on cooperating with government investigations can *remind* employees to have an organizational attorney present.**
- **But there is a risk of appearing uncooperative in *requiring* that an organizational attorney be present.**

Preliminaries

- **Risk: If the employee goes ahead and talks to the agent without an organizational attorney present, they may be afraid to tell you they talked to the agent.**

Preliminaries

- **You need a policy on expectations of employees with respect to private litigation.**
- **You are on more solid grounds requiring the presence of an organizational attorney here.**

Preliminaries

- **You need a no-expectation-of-privacy policy governing email, voice mail, computer searches, company correspondence, work areas, hard drives, storage devices, and images obtained from monitoring cameras.**

Preliminaries

- **This policy becomes critical when you are further along in the process of investigation.**

Preliminaries

- **You need a written document retention policy**
 - **including destruction dates, a document destruction suspension protocol, and retention/destruction procedures.**

Preliminaries

- **The way to suspend the document destruction policy is often the most important part of the document retention and destruction policy.**

Preliminaries

- **This is what sunk Enron – destroying documents critical to the government's investigation.**

Preliminaries

- **You should have had meetings with IA, HR, Security, IT, and other functions likely to be part of your investigations to discuss protocols for cooperating on investigations**

Preliminaries

- **It helps if the multi-disciplinary group undergoes investigations training together.**
- **The group must understand that investigations launched through compliance follow different rules even when this makes it harder to investigate.**

Preliminaries

- **The guarantees of anonymity and confidentiality are *organizational* promises and NOT compliance function promises.**

TRIGGERS OF INVESTIGATIONS

- **REPORT TO COMPLIANCE FUNCTION**
 - **report of possible compliance issue**
 - **need for more information to resolve issue or respond to the reporter**
- **ANONYMOUS CALL/LETTER**
 - **allegation of a problem**



Triggers of Investigations

- **UNUSUAL OCCURRENCE**
 - **potential litigation**
 - **claim involving a compliance related policies or procedures**
 - **An audit result that is not explained by the available data.**

Triggers of Investigations

- **GOVERNMENT INQUIRY**
 - **if the government is investigating, you should too**
 - **But special rules apply!**

- **If the government is investigating, the risk of an obstruction of justice issue is high.**
- **Your investigation must not obstruct the governments investigation.**

- **Your employees must not obstruct a government investigation – remind them of the rules.**

- **Remember that what you find may through investigation may become part of what the government finds.**
- **You may actually turn your investigation results over to the government or the results may be otherwise discovered.**

- **Very few investigations can be fully protected if the government is investigating – privilege is not a guarantee.**
- **At some point in the process, the company may waive privilege.**

A Few Words About Legal Privilege

- **There is often a question as to whether an investigation ought to be covered under privilege.**

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- **An investigation need not be carried out by legal counsel to be privileged.**
- **The investigation need only be on behalf of an attorney charged with providing legal advice to the organization.**

- **We discuss privilege more later, but it is important not to tell employees that they can speak freely because your investigation is under legal privilege.**

Other Triggers

- **AUDIT**
 - **results of routine internal audit or review with possible compliance-related implications**
- **HUMAN RESOURCE ISSUE**
 - **related to a compliance concern**
 - **e.g. allegation of harassment, retaliation, etc.**

Triggers

- **REPORT FROM “OUTSIDE” SOURCE (e.g., Vendor, Customer, Competitor, Payor)**
 - **“rumors” of a problem**
 - **alleged anti-competitive behavior**
 - **possible bribe, kickback, etc.**
- **LITIGATION OR OTHER PROCEEDING**

Triggers

- **Government investigations often follow patterns so if it is being investigated elsewhere....**
- **Stark/AKS investigations are an example.**
- **Proper use of Cares Act funding is another example.**

Triggers

- **You may want to conduct a preemptive investigation of your own.**

Triggers

- **CRIMINAL INQUIRY ABOUT EMPLOYEE**
 - **possible relationship to job?**
 - **allegation of abuse?**
- **BAD PUBLICITY/NEWS EVENT**
 - **front page story alleging problems, etc.**

Triggers

- **Beware that sometimes one person or entity may try to provoke an investigation of another.**
- **You should establish standards for when you will investigate as investigations use resources and the resources of those subject to the investigation.**

Triggers

- **What other investigation triggers can you think of?**

Case Study #1: The Phone Rings....

- **You receive a call from an employee who tells you she believes she's being sexually harassed. When questioning her you learn the following:**
 - **She's been employed in the same department for 15 years**
 - **Only female in a department with 7 males**
 - **Recently had her first ever negative evaluation**

- **What do you do?**
- **What kind of issue is this?**
- **Who should handle it?**

You Keep Asking Questions..

- **You find out she works in a contracting area**
 - **They handle the competitive bidding process**
- **She's had knowledge about questionable practices in the bidding process for years.**
 - **She has processed questionable bids/applications for her boss without comment.**

- **What do you do NOW?**
- **What kind of an issue is this?**
- **Who should handle it?**

Quiz

- **Employees are required to cooperate with investigations even if you do not have a policy requiring cooperation.**
 - **True**
 - **False**

Quiz

- **Having a lawyer as part of the investigative team extends legal privilege to the investigation.**
 - **True**
 - **False**