A Good Investigator Knows. . .

- Your ultimate goal is to learn the truth.
- You are not the company’s morality police.
- Your investigation can be undermined if your actions can be undermined.
- You are accountable to the company for every part of your investigation.
- Your investigation may affect someone’s career, their reputation and even their freedom.
- If you conduct a poor investigation, you may create legal liability for your organization, hurt its reputation, and undermine a “speak up” culture.
Elements of a Workplace Investigation

- A collegial fact-finding that arrives at a rational conclusion.
- Thorough interviewing of the Reporter, the Subject, and fact witnesses with relevant information.
- Gathering and analysis of relevant evidence.
- Comparing the evidence to the applicable standard.
- Assessing the credibility of each investigation participant and the strength of his / her evidence.
- Reaching a legally defensible determination of whether the improper conduct actually occurred.

The Duty to Act Reasonably

When disciplining an employee for misconduct, the employer must show:

- The employer believes that the employee committed the misconduct;
- The employer’s belief was based on reasonable grounds; and
- The employer conducted a reasonable investigation.

The reasonable investigation standard is the collection of investigation activities that a reasonably prudent employer would perform for a given allegation.
The Duty to Follow a Fair Procedure

- The employee has a right to a hearing
  - Understanding the allegation and the evidence proving misconduct
  - Having an opportunity to respond to the allegation
  - Having an opportunity to offer exculpatory and mitigating evidence
- The investigator and decision-makers cannot be biased or have a conflict of interest
- The disciplinary decision must be based on the evidence
  - Gossip, speculation and suspicions may not factor into the determination
  - The investigator must be able to show the evidence upon which the decision is based
  - The employee must learn of the evidence gathered

Investigator Bias

- Independence and integrity is not the same thing.
- Personal integrity relates to your personal bias.
- Do you consider your professional biases?
  - Expectation bias: is my investigation influenced by what the leaders want to hear?
  - Workload bias: are you choosing what is right or what is easy?
  - KPI bias: are you rushing through cases to make your metrics look good?
Confidentiality in the Investigation

- You may promise confidentiality but not secrecy.
- You may use gathered information only for investigation purposes.
- You must keep the existence of the investigation confidential.
- You may not guarantee anonymity to Reporters and interviewees.
- You must keep the identity of the Reporter, Subject and interviewees confidential.
- You must protect the confidentiality of any documents you created during the investigation.

Legal Standards in Investigations

- There is a qualified privilege to disclose matters relating to the investigation
- The investigation process must be consistent and programmatic
- An investigation cannot begin without a factual basis
- A finding must be based on a preponderance of the evidence
- An employee is not entitled to review the investigation report
- The attorney-client privilege does not generally apply
Legal Standards in Interviews

• Employees may not refuse to cooperate and be interviewed
• Do employees have *Miranda* rights?
• Employees have a process-fairness right to due process
• The right to be confronted with the proof and the opportunity to respond
• The prohibition against whistleblower retaliation
• Confidentiality in the interview
• The right to counsel
• The right to discuss the interview

Legal Claims When Things Go Wrong

• Defamation of an employee
• Retaliation for cooperating with an investigation
• False imprisonment in interviews
• Intentional infliction of emotional distress
• Assault and battery
• Invasion of privacy
• Malicious prosecution
Victims of Employee Misconduct

- Failure to maintain a safe workplace
- Retaliation for cooperating with an investigation
- Negligent hiring and/or supervision
- Negligent infliction of emotional distress

And they will use the investigation report as Exhibit A.
Planning the Investigation

Meric Bloch & Al Gagne

Agenda

- Investigation Policy & Procedures
- General intake guidance
- Assessing the Initial Report
- Interviewing the reporter and making credibility assumptions
- Determining the need for an investigation
- Developing an investigation strategy and plan
Key Components of a Good Investigations Policy

- Mission Statement
- Statements of Responsibility
  - Chief Ethics & Compliance Officer
  - Management
  - Employees
  - Investigators
- Identification of reporting mechanisms
  - Helplines
  - Reports to Management
  - Reports to Ethics & Compliance
- Statement on Non-Retaliation
- Statement of Authority

General Intake Guidance

Sources of the initial report
- Anonymous hotline or helpline reports
- Known employee reporters
- Customers
- Suppliers
- Competitors
- Regulators and law enforcement
- Other
General Intake Guidance

- The clock starts ticking upon receipt of report
  - Whistleblower concerns
- Assure professionalism of report takers
  - In-house versus third party providers
  - Periodically test helpline
- Anonymous hotline reports
  - Keep an open mind
  - Respect reporters’ wish to remain anonymous
  - Treat report as made in “good faith”
  - Focus on the allegations or concerns

Establish a process to maintain a dialogue with the reporter
- Call back provision
- Code name
- On-line two-way communication
- Make reasonable effort to gain trust of reporter
- Assure confidentiality to extent practical should reporter disclose their identity
- Discuss company policy prohibiting retaliation
General Intake Guidance

Who
• was involved?
• was present?
• may have knowledge?
• may have had a similar experience?
• did you talk to about the incident?

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

What (continued)
• 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 others about it?

Where
• did the incident occur?
General Intake Guidance

Why

- are you reporting this misconduct or concern?

Finally, feel free to ask the reporter the following questions

- How did you feel when you witnessed or learned of the misconduct?
- Is there anything else you would like to share with me at this time?
- Is there a way for me to contact you if I need additional information or will you call me in a few days at the following number --- --- ---- to see if I have some follow-up questions for you?

Intake Report – Sample Template

Matter # _____________ Date: _________________
Received by: ____________________ Time: _______________
Business Name /Location: __________________________________________
Reporter's Name (or Nickname): _____________________________________
Document in as much detail as possible the Allegation or Concern raised by the reporter: (Specifically obtain information as to what occurred, who was involved, who else has knowledge of the situation, when did it occur and how often, was the situation or concern reported to anyone prior to calling the helpline)

____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
___________________________________________________________________________________________________________________________

Does the situation reported present any health or safety risks to persons or risk of damage to property?

________________________________________________________________________
________________________________________________________________________

What outcome does the reporter expect in response to the report made?

________________________________________________________________________
________________________________________________________________________

Is there a number the reporter can be reached at if additional information is required?

________________________________________________________________________
(If reporter does not wish to provide a number, ask the reporter to call back in one week and reference the following Matter # ________________.

Matter Assigned to:

Date Assigned: ________________
Interviewing the Reporter

• Interview the reporter in person, if possible
• Assure confidentiality when appropriate
  • Implied versus expressed confidentiality
• Address concerns of retaliation with reporter
• Determine motivation and expectations of reporter
• Will there be a need to follow-up?
• Allow for follow-up to gather additional information
  • Establish a mechanism to follow-up with anonymous reporters

Determining the Need for an Investigation

• Is there enough credible information to investigate the alleged misconduct?
• What company policy and procedures may have been violated?
• What is the possible root cause of the alleged misconduct?
• Is the misconduct ongoing and how quickly can it be stopped?
• Are competent investigative resources available?
• Consider the need for Attorney-Client Privilege.
• Start thinking about the investigation plan.
Developing an Investigation Strategy and Plan

• Is there enough credible information to investigate the alleged misconduct?
• What company policy and procedures may have been violated?
• What is the possible root cause of the alleged misconduct?
• Is the misconduct ongoing and how quickly can it be stopped?
• Are competent investigative resources available?
• Consider the need for Attorney-Client Privilege.
• Start thinking about the investigation plan.

Determining the Need for an Investigation

“Those who pursue the stream of Truth to its sources have much climbing to do, much fatigue to encounter, but they see great sights.”

Eliza Cook
Deciding on a Course of Action

• Step 1: Understanding the Report – Done

• Step 2: Preliminary Analysis of the Report

• Step 3: Tasking the Report
  • Referring the report to another department
  • Assisting the reporter directly with the concern
  • Dismissing the report
  • Investigating the report

Benefits of Proper Analysis and Tasking

• Keeps the report in the most appropriate resolution channel

• Creates realistic expectations for everyone involved

• Investigates only those reports that warrant an investigation

• Protects the credibility of your ethics and compliance program

• Determines the specific remedy for the report

• Avoids escalation of the report or referral to external agency

• Remember: “justice” and a “formal investigation” are not appropriate remedies. The former is a value, and the latter is a process.
Preliminary Analysis – What Are the Issues?

- You determine the issues / allegations, not the reporter.
- Look for larger issues that will drive your resolution strategy
  - Possible legal violations
  - High-level people involved
  - Whistleblower retaliation
  - Material impact on business or special sensitivity
- Look for implied allegations
  - Helps answer the intent of the report
  - If the reporter does not articulate it, you still need to account for it

Preliminary Analysis – What Is the Standard?

- Look for systemic problems
  - Issues affecting the organization, a division or a department (rather than just those people affected by the specific report)
  - Possible root causes can steer you to the places to look
- What was the role of management in the substance of the report?
- Identify the company policies regarding the issue you are dealing with.
Tasking – Conduct an Investigation?

- The preliminary analysis results in selecting a course of action.
- Is the matter appropriate for another department?
  - Assisting the reporter with the concern
  - Referring the report to another department
  - Dismissing the report
  - Investigating the report
- Is the matter appropriate for an investigation?
  - No, if there is a misunderstanding of company policy
  - No, if the report is a request for assistance
  - No, if the report concerns a management business decision with no allegation of misconduct
  - No, if it is a lack of communication between an employee and others
  - No, if the facts aren’t in dispute / the report gives sufficient facts
  - No, if someone feels “wronged” by the “system”
  - No, if the issue can be resolved informally

Preliminary Analysis – What Is the Standard?

- Essential elements of an allegation
  - **Who**: the subject must always be identified in the allegation
  - **Did what**: the subject improperly did something
  - **In violation of what**: what law, procedure, rule or policy was violated
  - **When and where**: time(s) and places

- You need separate allegations for each subject and allegation.
- Use neutral, non-emotional wording.
- Draft the allegation so that substantiation = impropriety.
A Quick Fact Pattern

• Larry Green works for your company as the Vice President of Procurement. You receive a hotline call from Steve, an employee in the department. Steve tells you that a large vendor for your company has just engaged Larry as a consultant so they can better serve your company’s needs. Steve thinks this is unethical.

• Your company has this Conflict of Interest Policy:

   All company employees are prohibited from engaging in any business transaction on behalf of the company with any entity in which the employee or an immediate family member has a personal interest, unless the employee first obtains the approval of the CEO.

Framing Your Investigation Allegation

Don't Say This

• Did Larry Green violate the company’s conflict of interest policy when became a consultant to a company vendor?

Say This

The investigation will seek to determine if:

• Larry Green is a company employee;
• Larry engaged in a business transaction on the company’s behalf;
• The business transaction was with another entity;
• Larry or an immediate family member has a personal interest in that entity; and
• Larry failed to obtain the approval of the CEO before engaging in the transaction.
Planning the Investigation

• Your plan is the key to a proper investigation
• Your plan is your roadmap of how you will conduct the investigation
• Your plan ensures you will cover all necessary points
• Your plan is tailored to the particulars of the case and the shareholder concerns
• Your plan can be formal or informal

Planning the Investigation

• Who do you interview?
  • How many people do you interview?
  • What interview order do you follow?
  • Where should you conduct the interview?
  • What topics should you cover with that witness?
  • What assistance from colleagues or outside resources do you need?
  • What specific evidence do you need?
Closing Thoughts

• A poor analysis of the report results in overwork and hurts your credibility.

• A good analysis of the report leads to a timely, focused response that enhances your credibility.

• Analyzing a report is an art. Practice the skill to develop it.

• The end product of a good analysis is a clearly articulated investigation / resolution strategy.

Questions?
A Good Investigator Knows. . .

- Your ultimate goal is to learn the truth.

- You are not the company’s morality police.

- Your investigation can be undermined if your actions can be undermined.

- You are accountable to the company for every part of your investigation.

- Your investigation may affect someone’s career, their reputation and even their freedom.

- If you conduct a poor investigation, you may create legal liability for your organization, hurt its reputation, and undermine a “speak up” culture.
Agenda

- Getting your paper (e-document) and record trail in order
- Utilizing documents for intelligence
- Managing the relevant documents
- Developing and using standard policies, procedures and forms for investigations
- External considerations

Getting Your Paper Trail in Order

- Allow adequate time to gather documents
- Investigator should have unfettered access to documents
- Consider need to preserve documents (legal hold)
- Identify all the applicable documents needed:
  - Code of Business Conduct
  - Company Policy, Procedures, Work Instructions
  - Employee records
  - Workplace forms and documents (timecards, expense reports,
  - Electronic records and logs
  - E-Mails
  - Internal Memos – formal and informal
  - Voice mail
- Take care not to overdo it, focus on the relevant documents
Preserving Documents

- General Counsel should issue a “Document Legal Hold” memorandum given reasonable anticipation of litigation (Zubulake v. UBS Warburg 2003).
  - Temporarily suspend document retention and destruction policies and procedures
  - Preserve all documents relevant to the investigation.
- Sarbanes-Oxley makes it a federal crime to knowingly destroy or withhold documents that could interfere with or obstruct an investigation.
- DoJ could argue that the internal investigation is being conducted in contemplation of a subsequent voluntary disclosure to a Government agency.

VW agrees to plead guilty to obstruction of justice charges and pay $2.8 billion penalty for mishandling a legal hold (1/11/2017)

Preserving Documents

- Conduct a comprehensive search to locate and gather documents related to the matter under investigation
  - Policies, procedures and work instructions
  - Emails and electronic records
  - Personnel files of subjects or implicated employees
  - Minutes of key management or BoD Meetings
  - Other privileged documents not subject to production
- A thorough collection and preservation of relevant documents can help assure that cooperation will be favorably recognized by government law enforcement officials down the road
Gathering E-Documents Can Be Challenging

- Review company electronic media use policy, if applicable
- Will special approvals be required to access E-documents?
- Obtain support from savvy IT professionals and forensic experts
- Consider the need for confidentiality agreements
- Specify the information you seek in support of the investigation
- Use care to protect the privacy of individuals
- Identify all sources of the information obtained in the search
  - Computers and IP addresses
  - Operating systems and applications
  - Catalog all documents retained by the investigation

Know Your Documents

- Review relevant documents in light of the alleged misconduct
  - Company rules, processes, procedures, forms
  - Good sources of credible evidence
  - Document process for collecting and reviewing documents
- Documents are often the “smoking gun” when investigating allegations of fraud
- Documents support witness and subject interviews
- Take time to understand the documents retained
  - Seek help from subject matter experts
- Factor documents into any timelines you may develop
  - Many documents, such as forms and e-documents are the validation of company processes and work instructions – “procedures in motion”
Utilizing Documents for Intelligence

- The Investigator becomes the subject matter expert
  - Determines what documents support or disprove the alleged misconduct
- Identify documents needed to support interviews
  - Help interviewees with memory of events and facts
- Documents don’t lie; they are what they are…. even if they have been falsified or prepared to mislead

“If you want to see the truth, you must be brave enough to look.”
Rune Lazuli, Pinterest

Managing the Relevant Documents

- Retain authentic documents pertinent to the investigation
  - Avoid marking up original documents
  - Make copies if you need to mark up or highlight relevant information
  - Note location of original document if given a copy for the investigation file
- Consider the need for confidentiality over certain documents
  - Privacy and security concerns
- E-Documents may present challenges as to ownership
  - Could you, the investigator, become a witness at some point?
When the Government Comes Knocking

- Establish policy guidelines and action plan
- Identify who will be the contact point for the company
- Educate key employees on established protocols
- Cooperate carefully with regulators and law enforcement
  - Legal should take the lead to protect the company
  - Non-disclosure agreements
  - Proprietary information concerns
  - Waiver of Attorney-Client Privilege

Other External Considerations

During the conduct of your internal investigation consider the following:

- Who is likely to review your investigation files
- Confidentiality and privacy concerns
- Responding to Law Enforcement or Regulator Inquiries
- Responding to inquiries from the Press
Session Take-Aways

- Documentation is a key element of a good investigation
- Documentary evidence can fine tune the interview process
- Avoid documentation overload
- Catalog and index all documents retained by the investigation
- Provide support to external investigators and law enforcement
- Take care sharing information with others during the investigation

Questions?
Conducting Interviews

Meric Bloch, JD, CCEP-F

Elements of a Workplace Investigation

- A collegial fact-finding that arrives at a rational conclusion.
- Thorough interviewing of the Reporter, the Subject, and fact witnesses with relevant information.
- Gathering and analysis of relevant evidence.
- Comparing the evidence to the applicable standard.
- Assessing the credibility of each investigation participant and the strength of his / her evidence.
- Reaching a legally defensible determination of whether the improper conduct actually occurred.
• You must be able to influence the behavior of the interviewee towards responding and telling you the truth.
• You need a defined strategy to achieve your goal.
• You need to control the interview as it proceeds.
• You must be alert to when the witness may be attempting to deceive you.
• You must be able to collect quality information from the witness.
• When appropriate, you must be able to solicit admissions of key points.

• You are the choreographer of the interview.
• What information do you need from this interviewee?
• There is no substitute for your preparation.
• Review your hypothesis to keep your goal in mind.
• Is there anything management needs you to learn?
• Think about post-investigation steps and factor those into your interview planning.
• Consider your appearance and demeanor.
Conducting Interviews

- Prepare an outline of questions to ask.
- Remain open-minded. Do not argue or express opinions.
- Identify any motives which show a bias.
- Ask for supporting information and the basis of their knowledge (i.e. “how do you know this?”)
- Interviews are generally not recorded.
- Phone interviews have limited value to the investigation.

Conducting Interviews

- The types of interview questions you may ask:
  - Open-ended questions encourage a narrative answer.
  - Expansion questions build from an open-ended question.
  - Close-ended questions identify specific facts.
  - Leading questions proceed from your ulterior motive.
  - The final question pushes the interview to the witness.

  The type of question you ask usually determines the substance of the answer you receive.
Initial Steps in an Interview

• Give a standard set of instructions to the witness.

• Explain why you are there, why the witness is there, the investigation’s objective, your approach, etc.

• Extend basic courtesy. A collegial, business-like approach is best.

• Be alert to signs of hostility, such as the refusal to engage in the basics of social acts.

• Start “norming” the witness. Keep the first questions simple.

• Consider your professional and personal safety when planning and taking an interview.

Anticipating Some Interview Challenges

• I don’t have to cooperate with you.

• Should I get a lawyer?

• I won’t speak to you without my lawyer present.

• I will only speak to you if . . . .

• I’m done talking. I am leaving now.

• Am I in trouble?
Assessing Credibility

- Is the explanation you are given inherently plausible?
- Does the explanation follow the known timeline of events?
- Is there corroborating evidence to support the explanation?
- Does the person have actual knowledge of that information, or is it hearsay?
- Are there other objective factors that give it credibility?
- Avoid personal interpretations of the other person’s credibility.

Interviewing the Subject

- There is a difference between an interview and an interrogation. The Subject is interrogated.
- You seek information but mostly admissions of key details.
- The Subject should be confronted with the information and given an opportunity to respond.
- The Subject is entitled to offer exculpatory information and mitigating circumstances.
- Remind the Subject that you are a fact-finder, and the investigation should not be deprived of the Subject’s facts.
- You seek to explain the “why” more than the “what.”
Interviewing the Subject

- Do not anticipate the outcome of the investigation or speculate about what is likely to happen after the investigation is complete.
- Don’t argue with the Subject.
- Ask the Subject open-ended questions and then follow with more-specific questions intended to solicit admissions.
- If the Subject attempts to undermine other witnesses, explore the basis of the attempt.
- Allow the Subject to suggest other witnesses who might corroborate his defenses.

Interrogation Do’s and Don’ts

- Use silence as a weapon.
- Keep questions short.
- Ask one question at a time.
- Question the answers you get.
- Don’t make promises or threats.
- Don’t show surprise at any answer you get.
- Don’t use profanity even if they do.
- Don’t lie or bluff.
Methods of Interrogation

- The factual interrogation
- The classic emotional interrogation
- The “theme development” interrogation
  - It’s non-confrontational
  - Convince the witness you know he committed the misconduct
  - Use factual information and offer rationalization
  - Build from a small admission

Documenting the Interview

- If you don’t document it, it didn’t happen.
- Take detailed notes during the interview.
- Accept a written statement but not as a substitute for an interactive interview.
- Read your notes back to the witness to confirm they are accurate.
- Note the facts of the interview without speculation, opinion or subjective comments.
Documenting the Interview

- Quotes are effective, but make sure jargon is explained so you and the witness have the same understanding.
- Date all documents and notes you prepare.
- Assess credibility in a separate document, if needed.
- The memo must be written timely.
- Consider destroying your notes after the memo is written.

Closing Thoughts

- Interview the Subject at the end of your fact-finding.
- Consider exculpatory and mitigating information.
- Think procedural fairness.
- Reinforce the goals of your compliance program.
- Look for admissions rather than confessions.
- People talk. Use that to your advantage.
- Remember your personal and professional safety.
Reporting Results

Al Gagne

Agenda

- Key elements of a good report
- Tailoring the report to the specific audience
- Practical tips for report writing
- Reporting to management, the board, and third parties
Key Elements of a Good Report

- Good documentation is key to preparing a sound report
  - A clear summary of the information provided by the reporter
  - The specific issues or alleged misconduct investigated
  - The reporter’s motivations/expectations for reporting
  - The scope of the investigation
  - The person(s) assigned to investigate the issue (confirming the person(s) impartiality and fairness)
  - Identification of relevant documents
    - List/catalog all pertinent documents
      - Policies, procedures, work instructions
      - Transactional documents
      - Employee records
      - Electronic media

- Identify key meetings, interviews, phone conversations, e-mails
- Connect documentation to interviews, when possible
- Refer to investigation notes that:
  - Include only the relevant facts
  - Are succinct and objective
  - Consist of factual witness accounts
- Include your observations of witness and subject behavior
Key Elements of a Good Report

• Document the analysis in the report
  • Stick to the facts and avoid assumptions of intent
  • Describe how the facts collected were analyzed
  • Do consider relevant circumstances
  • Use timelines when appropriate
  • Reference applicable company documents, (e.g., Code of Conduct, Policies and Procedures, etc.)
    • Avoid referencing laws or regulations
• Provide a root cause analysis of any systemic weaknesses or internal control failures
• Identify specific corrective or disciplinary actions taken to date or actions to be taken in response to the investigation

Sample Investigation Report Template

Draft or Final Report Date: _________
Matter #: __________ Category: __________
Business Unit/Location: ____________
Investigator(s): ______________
Attorney(s): ______________
Was the allegation or concern Substantiated? Y/N
Significant: (If yes, have the following been notified?)
  ___ Chief Legal Officer  ___ Chief Financial Officer  ___ CECO
  ___ Audit Committee  ___ Board of Directors  ___ Others
Describe any disciplinary actions taken:
  ___ None  ___ Verbal Warning
  ___ Written Warning (1st, 2nd, 3rd)  ___ Demotion
  ___ Suspension without pay  ___ Deduction of Bonus
  ___ Termination  ___ Other (describe)
Sample Investigation Report Template

Describe any corrective actions taken:

___ None
___ Policy/Procedure Revision
___ Education /Training
___ Other (Briefly Describe)

Other Actions Taken by Reporter or Complainant:

___ Lawsuit
___ Union Action (Briefly Explain)
___ Other (Briefly Describe)
___ Government Agency Notice (e.g. EEOC, Dept of Labor, State HR Commissions, Call to a Government Hot Line)

Investigation Summary:
(Briefly describe the actions taking in conducting the investigation.)
(Please list the name(s) of the individual(s) who were involved in the investigation. If an outside source was involved, please note. List all the relevant documents acquired to support the investigation findings)

Conclusion:

Key Elements of the Final Report

• Final report for investigation file should include:
  • Detailed summary of the initial report
  • Copies of relevant documents obtained during the investigation
  • Investigator notes or summaries from all witness interviews
  • Timelines
  • Summary of corrective and disciplinary actions taken
  • Record retention requirements per company policy
Reporting to the Board, management and employees

• Develop a reporting strategy for the following stakeholders
  • Management
  • Board of Directors
  • Reporters/Whistleblowers
  • Law Enforcement & Regulatory Agencies
  • Other Stakeholders (Employees, Customers, Business Partners)
  • The General Public

Tailoring the Report to a Specific Audience

• Reports to management and BOD
  • Summarize results from ongoing and completed investigations
  • Provide verbal reports that specifically address
    • The allegation or concerns of the reporter
    • Status of investigation
    • Ability to substantiate the reporter’s allegations
    • Results of any root cause analysis
    • Corrective and disciplinary actions taken
    • Trends or risks identified during the investigation
**Helpline / Investigations Summary- Template**

<table>
<thead>
<tr>
<th>Incident Report Control No.</th>
<th>Location</th>
<th>Category</th>
<th>Brief Description of Allegation or Concern Raised by the Reporter</th>
<th>Investigator</th>
<th>Status</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL-01-02-2020-001</td>
<td>Dallas</td>
<td>COI</td>
<td>Allegation of Improper use of company property by an employee</td>
<td>A. George</td>
<td>Investigation completed 2-15-2020 – Matter substantiated</td>
<td>Employee counseled and eliminated COI with Management</td>
</tr>
<tr>
<td>HL-01-05-2020-002</td>
<td>Chicago</td>
<td>Time Theft</td>
<td>Allegation that an employee falsified timecard</td>
<td>J. Caruso</td>
<td>Investigation completed 1-10-2020 – Matter substantiated</td>
<td>Employee terminated</td>
</tr>
<tr>
<td>MR-01-07-2020-003</td>
<td>San Diego</td>
<td>Harassment</td>
<td>Allegation of harassment by employee to a supervisor in another department</td>
<td>E. Murphy</td>
<td>Investigation completed by HR – Matter substantiated.</td>
<td>Employee counseled by HR and given Harassment Training</td>
</tr>
<tr>
<td>OL-01-15-2020-004</td>
<td>Dallas</td>
<td>Quality Fraud</td>
<td>Allegation of falsification of quality test procedures by an employee the inspector</td>
<td>A. George</td>
<td>Investigation in process – additional training provided in meantime related to systemic issues – lack of clear procedures</td>
<td>Training of quality personnel ongoing</td>
</tr>
<tr>
<td>HL-01-16-2020-005</td>
<td>Dallas</td>
<td>Theft of Personal Property</td>
<td>Allegation of theft of employee’s personal items from office</td>
<td>A. George</td>
<td>Investigation completed – reporter called back to say items returned with a note apologizing for borrowing items without permission.</td>
<td>Matter closed at request of reporter</td>
</tr>
<tr>
<td>OL-01-18-2020-006</td>
<td>Boston</td>
<td>Travel &amp; Entertainment Guidance</td>
<td>Employee requested advice regarding upcoming Foreign Business Trip</td>
<td>A. George</td>
<td>Provided policy and procedure information to employee with explanation of in-country anti-bribery regulations.</td>
<td>Employee has a better understanding of P&amp;Ps</td>
</tr>
</tbody>
</table>

**Reporting to Regulators and Law Enforcement**

Some Legal and regulatory requirements to report misconduct

- False Claims Act Violations to respective Inspector Generals’ Office, when credible evidence exists
  - Qui Tam whistleblower reports
- Theft of Government Property to FBI, Department of Justice
- Sexual Harassment to State Offices of Employment Discrimination
- "Self-reporting" of potential criminal misconduct by employees
- Sarbanes-Oxley
- Dodd-Frank [https://www.sec.gov/about/offices/owb/dodd-frank-sec-922.pdf](https://www.sec.gov/about/offices/owb/dodd-frank-sec-922.pdf)
- Federal Sentencing Guidelines for Organizations
- Health Care Reporting
Reporting to Regulators and Law Enforcement

- Detailed summary of the initial report
- Identification of relevant documents obtained during the investigation
- Brief summaries from key witness interviews
- Timelines
- Summary of corrective and disciplinary actions taken
- Identification of implicated persons who may be subjected to criminal prosecution or civil litigation

Reporting to employees

- Employee Communications
  - Opportunity to share “teachable moments” with targeted groups or all employees through carefully crafted communications
    - Share communications through stories focusing on the “what” and “how” and not the “who” and “where”
    - Reinforce company values, policies and procedures
    - Doing the right things have value
    - Doing the wrong things have consequences
  - “Lessons Learned” scenarios for management and supervisors
  - Demonstrates company commitment to good behavior
  - Build trust by employees towards management and the Ethics & Compliance Organization
Closing the Loop with the Reporter

- Things you can share with the reporter
  - The matter was investigated and closed
  - A report was provided to Management
  - Thank you for reporting your concerns
- Things you should not share with the reporter
  - Details of the investigation
  - Identity of people interviewed or documents obtained in the course of the investigation
  - Corrective and disciplinary actions

Session Takeaways

- Clearly state the allegation, scope, identification of relevant facts, documentation and witness accounts.
- Summarize how the facts were analyzed
- Share results of root cause analyses
- Identify opportunities to strengthen internal controls and address legal and compliance risks
Questions?
After the Investigation

Meric Bloch, Al Gagne

Agenda

- Internal Communications – What do you tell employees?
- Self-disclosure to regulators
- Public Relations
- Remediation Plans and Implementation
- Policy Implications
- Could what we found be indicative of a bigger or broader issue?
Internal Communications with Employees

- Things you can share with employees
  - A compliance matter was investigated and closed
  - Management was informed
  - Corrective actions were taken
    - Documentation updated
    - Process improvements made
    - Education and training implemented
  - Disciplinary actions were taken

- Things you should not share with employees
  - Details of the investigation
  - Identity of people involved in the misconduct or investigation

Disclosures to Regulators and Law Enforcement

Things you should disclose:
- A violation that could result in criminal or civil liability to the organization
- Violations that are required to be disclosed by statute or contractual requirements (Mandatory Disclosure Rules)
- Criminal or civil misconduct by an individual that the organization would like to have prosecuted in a court of law
- Matters involving potential public health and safety risks

Things you probably don’t need to disclose:
- Minor violations of policy and procedures
Public Relations

Dealing with the Press

• Avoid discussing internal investigations with the press
  • Do not confirm or deny but instead;
  • Refer all inquiries from the Press to the organization’s Public Relations Department

Remediation Plans and Implementation

Opportunities to Add Value to the Organization

• Monitor all corrective and disciplinary actions resulting from an internal investigation
• Perform Root Cause Analysis to help mitigate and prevent similar misconduct in the future
• Turn lessons learned into teachable moments
Policy Implications

Could the investigated misconduct result in new policies or revisions to existing ones?

- Was the misconduct an isolated incident or pervasive throughout the organization?
- Consider the risk to the organization from similar misconduct occurring in the future
- Is management doing enough to avoid and prevent similar misconduct?

Could what we found be indicative of an even bigger problem?

- The Root Cause Analysis will shed light on underlying issues that need to be addressed by management.

Stay focused on the Mission:
To Prevent, Detect and Correct Misconduct!