

P9 - INVESTIGATIONS WORKSHOP: Part 1

BEGINNING THE INVESTIGATION & INTERVIEWING THE REPORTER

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SESSION AGENDA

Workshop Part 1 (9:00 – 10:00)

- Risk Considerations
- Documenting your Investigations Program
- Getting as Much Information as Possible from the Reporter
- Establishing an Investigation Plan

Is there a need for an Internal Investigation Policy?

Consider the following:

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

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Does your E&C Program Risk Assessment Address the Internal 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**

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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 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?

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SAMPLE INVESTIGATION POLICY STATEMENT

All allegations of suspected or known violations of the 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.

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PROVISIONS IDENTIFYING EMPLOYEE RESPONSIBILITY

Every employee has a duty to report known or suspected 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, may be subject to disciplinary action in accordance with the company's disciplinary action policy.

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PROVISIONS FOR INTAKE

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

A Helpline exists 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.

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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.

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Investigation Scenario #1 – Discussion



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Effective Internal Investigations

➤ Effective internal investigations are essential to a sound 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
- Guard against employee retaliation
- Respect confidentiality
- Consistent, uniform, thorough process
- Independent and objective investigators
- Do no harm



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Investigation Scenario #2 – Discussion



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Report Intake – The Five W's*

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 witnesses?
- actions did people take?
- was the reaction of witnesses?



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

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Report Intake – The Five W's (continued)

What (cont')

- 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?

Why

- are you reporting?



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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: _____

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Create an Investigation Plan

Prepare a Thorough Investigation Plan:

- List all documents you believe need to reviewed
- List all potential witnesses to be interviewed
- Create an interview schedule
- Prepare a questionnaire (subjective open-ended questions are ideal)
- Identify internal and external resources that may be needed to facilitate the investigation

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DETERMINE WHO SHOULD LEAD THE INVESTIGATION



Take care when investigating “up the food chain”.

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Finally, Consider a Root Cause Analysis



Will you need to look beyond the existing investigation to determine if there are other concerns that may require further review?