

## SCCE Internal Investigations Workshop June 17 - 19, 2019 Orlando, FL



### Reporting Your Findings

Al Gagne, MBA, CCEP

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



1

### Agenda



- Reporting to the Board, management and employees
- Communications with stakeholders
- Reporting to law enforcement and other agencies
- Closing the loop with the reporter

2

2

## 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

3

3

## Reporting to the Board, management and employees

- Board of Directors
  - Early notification of serious allegations of misconduct to gain support for the investigation and deployment of resources
  - Periodic follow to keep apprised of significant changes or outcomes
  - Assure access to documents and potential witnesses
  - Support for quickly eliminating any rampant misconduct uncovered by investigation
  - Critical to corrective and disciplinary actions
  - Build trust going forward

4

4

Reporting to the Board, management and employees

- Management
  - Early notification on need to know basis to gain support for investigation
  - Assure access to documents and potential witnesses
  - Support for quickly eliminating any rampant misconduct uncovered by investigation
  - Critical to implementing corrective and disciplinary actions
  - Build trust going forward

5

5

Helpline / Investigations Summary- Template

Incident Report Control #/ Date Reported-	Location	Category	Brief Description of Allegation or Concern Raised by the Reporter	Investigator	Status	Disposition
HL-01-02-2018-001	Dallas	COI	Allegation of Improper use of company property by an employee	A. George	Investigation completed 2-15-2017 – Matter substantiated	Employee counseled and eliminated COI with Mgmt
HL-01-05-2018-002	Chicago	Time theft	Allegation that an employee falsified timecard	J. Caruso	Investigation completed 1-10-2017 – Matter substantiated.	Employee terminated.
MR-01-07-2018-003	San Diego	Harassment	Allegation of harassment by employee to a supervisor in another department	E. Murphy	Investigation completed by HR – Matter substantiated.	Employee counseled by HR and given Harassment Training.
OL-01-15-2018-004	Dallas	Quality Fraud	Allegation of falsification of quality test procedures by an employee line inspector	A. George	Investigation in process – additional training provided in meantime related to systemic issues – lack of clear procedures	Training of quality personnel ongoing.
HL-01-16-2018-005	Dallas	Theft of Personal Property	Allegation of theft of employee's personal items from office	A. George	Investigation completed – reporter called back to say items returned with a note apologizing for borrowing items without permission.	Matter closed at request of reporter.

6

6

## 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

7

7

## Reporting to Regulators and Law Enforcement

- 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>
    - Federal Sentencing Guidelines for Organizations
    - Health Care Reporting
    - Sally Yates Memorandum  
<https://www.justice.gov/dag/file/769036/download>
    - DOJ Evaluation of Corporate Compliance Programs

8

8

## Reporting to Regulators and Law Enforcement

- FAR Mandatory Disclosure Rule (52.203-13)
  - Requires contractors to make timely disclosures to the Agency, Office of Inspector General when it obtains credible evidence that a *principal*, employee, agent, or subcontractor of the Contractor has committed—
    - A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
    - A violation of the civil False Claims Act (31 U.S.C. § 3729-3733)
- Dodd-Frank Act
  - Increases monetary awards to whistleblowers who successfully file qui-tam lawsuits on behalf of the US Government
  - Penalizes companies who retaliate against employee whistleblowers

9

9

## Closing the Loop with the Reporter

- Things you can tell the reporter
  - The allegations were investigated
  - The findings were shared with appropriate management personnel
  - Appropriate corrective actions were taken
  - Thank you for bringing this matter to my attention
- Things you should not tell the reporter
  - Details of the investigation (company private)
  - Identity of any witnesses or documentary evidence obtained in the course of the investigation
  - Disciplinary action taken by management

10

10

## Disposition of Final Report and Work Papers

- Retain and destroy final investigation report along with relevant documentary evidence in accordance with your company's record retention policy or guidelines
  - Recommendation: 5-10 Years
- Destroy any hand written notes from interviews, telephone conversations, or analyses that have been incorporated into the final report
- Keep investigation documents in locked confidential files with controlled access on a need to know basis

11

11

## Session Takeaways

- Develop an overall reporting strategy to communicate with key stakeholders
- Maintain confidentiality to the very end of the process
- Turn lessons learned into teachable moments
- Adhere to company record retention guidelines
- Demonstrate commitment to ethical behavior

12

12

# Questions?