

Bring them on: Working effectively during investigations

 compliancecosmos.org/bring-them-working-effectively-during-investigations

By Mónica Ramírez Chimal, MBA

Mónica Ramírez Chimal (mramirez@asserto.com.mx) is Partner and Founder of her own consulting firm, Asserto RSC, in Mexico City, Mexico.

Let's be honest. Every company is at risk of facing an investigation. Investigations can be triggered by an internal complaint, a report, a problem, a suspicion, or even at the request of an authority. And it is highly probable that the compliance team will participate. The reason: They need to know what is going on in order to protect the company from any potential damage to its reputation.

Therefore, conducting an investigation is a must for any compliance team. It is also important that they know how they can work effectively with other departments. In some companies, depending on size, there is a person dedicated to investigations while in other companies, compliance conducts investigations on its own or with support from human resources or the legal area. But one thing is for sure: Compliance always needs to work with other departments in order to get what is needed. So, how can they do it? Keep in mind that every investigation is unique. Even if there are two investigations for the same issue, the circumstances and people involved will differ. Therefore, this article will tell you what to do, in general terms.

The purpose of an investigation

Let's start from scratch. In general terms, the purpose of an investigation is to find out the truth of something, gathering the facts and evidence as to what really happened. Therefore, the first thing to think about is whether or not that complaint, report, problem, or suspicion warrants an investigation. To reach a conclusion, evaluate whether the issue is delicate, if it has been reported before, or if there have been similar cases, and finally, ask whether or not the complaint maker is anonymous. In my experience, most people are afraid to reveal their names when submitting a report or complaint, especially in cases of fraud, money laundering, harassment, discrimination, and/or retaliation. But when someone is really fed up with a situation, they usually are no longer afraid to reveal their name. The situation is so unbearable that it gives them the courage to report it. In this case an investigation should be carried out immediately without hesitation.

Keep in mind that time is key when there are delicate issues involved. Why? The complaint maker might think that the company won't do anything, the subject of the investigation could erase information (evidence), or the witnesses could forget details. Sometimes people overreact, or are prejudiced, and jump to conclusions immediately. Don't allow this to happen. Without proper analysis of the situation and decision-making, these premature conclusions can harm the company rather than solve the issue.

It can also help to consider any potential legal breaches. Could the company be damaged or sanctioned? Ask yourself, if the media finds out about this case, what could the consequences be?

One thing is for sure: Whatever the decision is, document it. Even if you do not conduct an investigation, document the report or complaint. It is prudent to keep a file with the reasons for not conducting an investigation; just make sure the reasons are valid and defensible. In case another similar issue is raised, you already have a precedent.

When an investigation is needed

If you decide that an investigation is necessary, start by asking, what are we going to investigate? Or what do we need to know in order to determine what really happened? Something that can help you is to try to answer, with the existing information, the following questions: who, what, where, when, why, and how. The absence of answers will give you an idea of what you need to know, and you will be able to plan the investigation accordingly.

This will also help you decide who should be part of the investigation team. Human resources or legal don't necessarily have to be involved in every case. It is better to have fewer people involved. But if it's necessary that other departments are involved, make sure that compliance is the one in charge and the only one with access to all the evidence. The reason? Other areas may be privy to some information, but compliance has the knowledge of the whole company, such as policies, procedures, which laws the company must abide by, which areas have greater risk, company history, observations of third parties, observations from their own reviews, etc. All these make the compliance professional the expert to figure out how much an issue can affect the company's reputation.

But here is an important note: If within the compliance team there is no one with investigation skills, the company should hire an external investigator. And compliance should participate in the investigation just as any other area involved. This article will continue assuming compliance has an expert investigator on its team.

Also, make sure the people involved in the investigation are aware of the confidentiality they must maintain. Every aspect of the investigation should be managed as privileged information and treated as such. Information leaks could cause a lot of problems with respect to the investigation, company, and the reputation of those involved. Most importantly, everyone on the investigation team should have mental and appearance independence^[1] and should be objective, impartial, and discreet. It is important that the investigations team is perceived as impartial by the employees involved (the complaint maker and the subject of the investigation). There is no room for conflict of interests or any other issue that could make the investigation appear subjective.

Make sure the team members also know what the purpose of the investigation is: Get the truth by uncovering facts and don't judge. The decision of what to do with the findings is another

process that involves other people, not them. Clarify this and what the team's tasks are. Do they have information that could help the investigation (e.g., the employee's file in human resources)? Or are they going to help you by providing documents?

The interviews

Planning what interviews to conduct can be risky. You have to plan who is going to be there (as an interviewer) and who you are going to get the information from (interviewee). If the compliance department has interview expertise, the interview should be carried out by compliance, and if other departments participate, their role should be to observe and write notes.

To interview, include witnesses, the complaint maker, and the subject of the investigation. You should only include those people who have actual knowledge of the situation; narrow the number of interviews to only include people who have been mentioned or know something about it. That's it.

Keep in mind that interviewing is the mechanism for you to get the information you need or want, so pay close attention to what each person is telling you. Each interview should be a continuous conversation using open-ended questions, such as, Do you know if someone else knows about this? Who might have the information you are talking about?

You should do everything possible to help the interviewee to feel comfortable and not distracted or intimidated. Remember, when people are comfortable, they are more likely to tell you what you want to know. Avoid common mistakes in interviews. Do not tell the interviewee what you know or what others have said, and instruct the other interview team members involved to do the same.

The ones taking notes should be the ones writing the final interview transcript or report. Always keep an objective vocabulary and stick to the factual account of what happened. It is important that the write-up is done immediately after the interview ends, so the note taker can remember all the details. This documentation will form part of the file, so it is prudent to have everything captured.

Keeping documentation and tying up loose ends

Now that you've started to gather information, make sure to keep it in a safe place where only compliance has access to it. Better yet, ensure that only the compliance members who are involved in the investigation have access to it. Include where the information comes from (source of information) and if someone else has a copy of it. Avoid writing notes on or marking the documentation. In this way, you will minimize the risk of evidence tampering.

After you finish the interviews and with the reports completed, analyze the relevant facts with your compliance team. Depending on the circumstances, you may ask the other people involved

from other departments to be there. Relate the concepts. Do they make sense? Are you lacking certain information, or do you have blank spaces? Is there anything else that has not been covered? Have you covered all people involved? And most importantly, do you have the supporting evidence for everything that has been said (e.g., security videos, invoices, receipts, emails, correspondence, inventory records, news, employee or supplier files)? Have you even checked Google for information? Do other departments (besides those that form part of the investigation team) have any other information you need?

If the answer is yes, ask for the information, but be careful about it. Don't ask directly for that particular information. Cover it with another request. For example, ask for the log entrances report for two months when you are in fact looking for one week. As a compliance professional, you should have the right to ask for anything you need without justifying it, but be cautious. Cover your requests by saying you are carrying out a review (not an investigation) and ask for more information (e.g., of other people, more days, more clients or suppliers) so the other department doesn't know what you are really looking for. Again, the fewer people who know about the case, the more the information is secured.

When you have all the facts, the decision as to what to do will rely on the top management. Compliance may explain the case, but depending on the circumstances, external lawyers or even consultants may be involved. This is the reason that the file should be completely documented: It is going to be subject to scrutiny. What the issue is, what you did, when you did it, which people you talked to, what the evidence is, and why the resolution was taken—these are all essential parts. Document in a way that even if you are not there, the papers speak for themselves, so the decision-making can be done properly.

The company's responsibility

At this point, many people could think that because the investigation has been completed, everyone can forget about it. Wrong! This is the beginning of a critical process for the company. What is the company going to do to solve those weaknesses or failures? Regardless of the outcome of the investigation, the company should take advantage of what has been found, and use it to improve and to minimize the risk that another similar situation could arise. The company should divide the action tasks among various departments, as they would with a report from one of their consultants or an external audit. Follow-up is a must, with clear deadlines delineated to ensure it is completed in a timely manner. Remember that the investigation is still confidential. Just because it has been finalized does not mean you can talk openly about it.

In this way, all the work that has been done is used for the good of the company and for everyone who work for or with the company. If done correctly, bringing team members in on an investigation can foster company integration, unity, and team work.

Takeaways

-
- Documentation in an investigation is essential. Focus on answering: who, what, where, when, why, and how. Document completely so it speaks for itself.
 - Confidentiality is essential in every investigation. Information leaks can cause many problems for the investigation, the company, and the reputations of those involved.
 - Compliance should be the one leading the investigation. Other departments should only be involved if they are essential; it's better to have fewer people involved.
 - Evidence should be safely kept with limited access. Record the information source and if someone else has a copy of it.
 - Regardless of the investigation outcome, the company should take advantage of what's been found in order to improve itself. If not, how is it going to solve its failures?

1 Mónica Ramírez Chimal, "So different and so alike: Internal audit and compliance," *CEP Magazine*, February 2019, <http://bit.ly/2Jkolkf>

Copyright © 2019 Health Care Compliance Association. All rights reserved. This newsletter or articles therein may not be reproduced in any form without the express written permission of the publisher.