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by Roy Snell, CHC, CCEP-F

Should you show the Yates Memo to your leadership?

Please don't hesitate to call me about anything any time.

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Regardless of what anyone thinks about the Yates Memo, if your company gets investigated, the memo is likely to come up. If you don't show it to leadership now, they could later ask, "How could you have decided not to make leadership aware of this memo when it came out?"

So, the short answer is, "Yes, you should show it to leadership." The next question is, "How?"

Every organization is different—and you have to determine what's right for you and yours—but when I was a compliance officer, I felt it was my duty to keep leadership informed and out of trouble. So I would have discussed the Yates Memo with them; I would have considered doing anything less to be irresponsible. I would have shown it to the CEO and to the Audit Committee Chair and would have let them decide who else should see it.

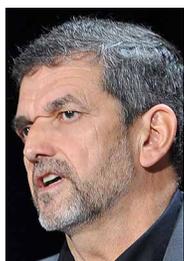
But if you do share it with leadership, then what do you share? I have asked many experts—including compliance officers, outside counsel, and former DOJ personnel—and they were all over the map on the issue. However, after much discussion, here is my advice:

Summarize the memo in four or five bullet items. Highlight that the memo's general purpose is to formally announce that the DOJ will be going after individuals. Mention that

companies under investigation will be asked to share internal information about those who may be involved in the wrongdoing. And—because there will be no credit given for compliance efforts unless the investigations on individuals are turned over—you could suggest that getting "credit" might mean millions of dollars in reduced penalties, which could create divisiveness in the company during an investigation. You might suggest that this memo could pit the Board against leadership. And you could also share that many experts believe the Yates Memo will have a limited effect.

...for each person who suggests the memo is meaningless, there is someone else who says it's meaningful.

People have strong opinions about what effect the Yates Memo will have, and those opinions are often extreme—for each person who suggests the memo is meaningless, there is someone else who says it's meaningful. I prefer the matter-of-fact, "no drama" approach: Write up a summary that shares the facts outlined in the memo, but also the fact that experts don't agree on the memo's potential impact. Attach your summary to the memo, ask someone in leadership what to do with it, and don't stop until at least one board member and the CEO have had a chance to review the documents and decide what else should be done. 📧



Snell