HCCA Regional Conference

Recipe and Necessary Ingredients for an Effective Investigation Process

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Agenda

- Identify key elements for determining whether to perform an investigation

- Individualize the decision tree for triaging investigations for your organization

- Identify key priorities in conducting successful investigations

Investigation Partners

- Human Resources
- Health Information Management
- Internal Audit
- Risk Management
- Security/Police
- Legal Counsel

What Types of Investigations?

- Employee complaints, including
  - Discrimination
  - Sexual Harassment
  - Retaliation
- Suspected Violations
  - Policy/Law Health or safety threats
  - Employee misconduct
- Fraud, waste and abuse

Standard Practice for a Good Faith Workplace Investigation*

1. Determine if an investigation is necessary
2. Use a qualified and impartial investigator
3. Initiate and complete the investigation in a timely manner
4. Properly plan and prepare the investigation
5. Conduct a thorough investigation
6. Prepare and maintain an adequate record
7. Reach a conclusion supported by the evidence
8. Take appropriate follow-up action

*Sue Ann Van Dermyden, Esq

Purpose of An Investigation

To advise the decision-maker of the following:

1. Did the alleged conduct, more likely than not, occur?
2. If so, was it a violation of organization's policy?
3. Other?

To allow the decision-maker to determine:

1. What is the appropriate response?
   a) Exonerate
   b) Disciplinary action
   c) Self Disclosure
   d) Other?

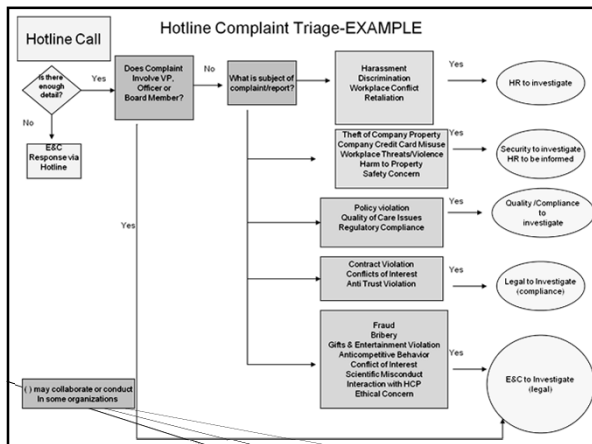## Differentiating Complexity of Potential Issues

Is an investigation needed?

➢ Screen the issue – what other disciplines need to be involved in looking at this potential issue to determine whether an investigation is needed?

➢ Is there someone in your organization already working on the potential issue that you should be aware of and coordinating with?

Differentiating Complexity of Potential Issues (cont)

Is an investigation needed (cont)?

➢ Does this require an *"investigation"*, *"management action"* or the *"resolution is obvious"* to prevent the problem from reoccurring, ie: sidewalk unsafe (resolution "fix sidewalk")

➢ Is there a need for immediate action, ie: real/potential safety issues with environment or work setting

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Hotline Complaint Triage-EXAMPLE

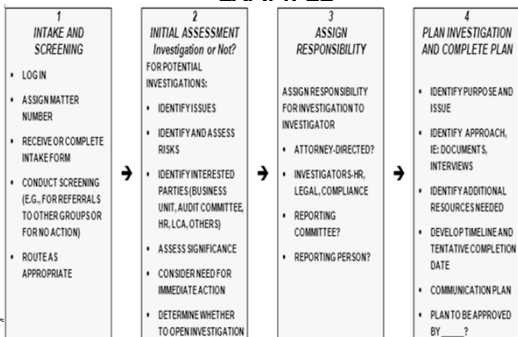### Determining if an Investigation is Needed

Elements:
- Usually two types of investigations:
  - Misconduct involving people
  - Misconduct involving process
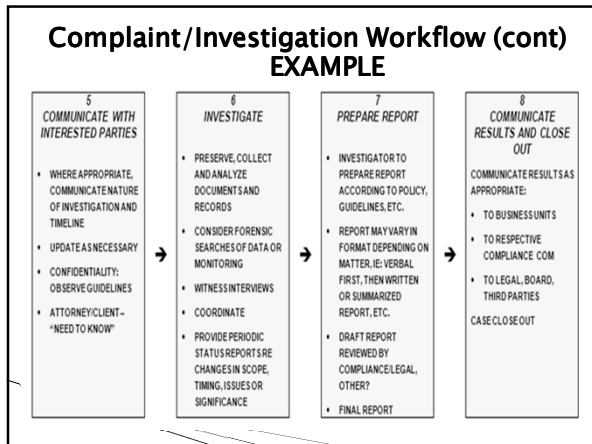- Receive a complaint or observed the behavior

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Determining if an Investigation is Needed (cont)

Elements (cont):
- Necessary when there are:
  - Statutory obligations (ie: Sarbanes Oxley, Labor codes, etc.)
  - Organizational obligations (ie: policy, contested facts, serious allegations, high level employee implicated, politically sensitive cases, litigation is likely, self disclosure is likely, external activity
  - Effective Compliance Program Element

Complaint/Investigation Workflow EXAMPLE

1 INTAKE AND SCREENING	2 INITIAL ASSESSMENT Investigation or Not?	3 ASSIGN RESPONSIBILITY	4 PLAN INVESTIGATION AND COMPLETE PLAN
• LOG IN	FOR POTENTIAL INVESTIGATIONS:	ASSIGN RESPONSIBILITY FOR INVESTIGATION TO INVESTIGATOR	• IDENTIFY PURPOSE AND ISSUE
• ASSIGN MATTER NUMBER	• IDENTIFY ISSUES		• IDENTIFY APPROACH, IE: DOCUMENTS, INTERVIEWS
• RECEIVE OR COMPLETE INTAKE FORM	• IDENTIFY AND ASSESS RISKS	• ATTORNEY-DIRECTED?	
• CONDUCT SCREENING (E.G., FOR REFERRALS TO OTHER GROUPS OR FOR NO ACTION)	• IDENTIFY INTERESTED PARTIES (BUSINESS UNIT, AUDIT COMMITTEE, HR, LCA, OTHERS)	• INVESTIGATORS-HR, LEGAL, COMPLIANCE	• IDENTIFY ADDITIONAL RESOURCES NEEDED
• ROUTE AS APPROPRIATE	• ASSESS SIGNIFICANCE	• REPORTING COMMITTEE?	• DEVELOP TIMELINE AND TENTATIVE COMPLETION DATE
	• CONSIDER NEED FOR IMMEDIATE ACTION	• REPORTING PERSON?	• COMMUNICATION PLAN
	• DETERMINE WHETHER TO OPEN INVESTIGATION		• PLAN TO BE APPROVED BY ___ ?

Complaint/Investigation Workflow (cont) EXAMPLE

5 COMMUNICATE WITH INTERESTED PARTIES	6 INVESTIGATE	7 PREPARE REPORT	8 COMMUNICATE RESULTS AND CLOSE OUT
• WHERE APPROPRIATE, COMMUNICATE NATURE OF INVESTIGATION AND TIMELINE • UPDATE AS NECESSARY • CONFIDENTIALITY: OBSERVE GUIDELINES • ATTORNEY/CLIENT – "NEED TO KNOW"	• PRESERVE, COLLECT AND ANALYZE DOCUMENTS AND RECORDS • CONSIDER FORENSIC SEARCHES OF DATA OR MONITORING • WITNESS INTERVIEWS • COORDINATE • PROVIDE PERIODIC STATUS REPORTS RE CHANGES IN SCOPE, TIMING, ISSUES OR SIGNIFICANCE	• INVESTIGATOR TO PREPARE REPORT ACCORDING TO POLICY, GUIDELINES, ETC. • REPORT MAY VARY IN FORMAT DEPENDING ON MATTER, IE: VERBAL FIRST, THEN WRITTEN OR SUMMARIZED REPORT, ETC. • DRAFT REPORT REVIEWED BY COMPLIANCE/LEGAL, OTHER? • FINAL REPORT	COMMUNICATE RESULTS AS APPROPRIATE: • TO BUSINESS UNITS • TO RESPECTIVE COMPLIANCE COM • TO LEGAL, BOARD, THIRD PARTIES CASE CLOSE OUT

Exercise
(do this at your organization)

‣ Determine your Hotline/complaint triage process

‣ Create a work flow document of your investigation process
  ◦ Include links to policies, procedures, rules, etc. or provide manually for ready reference
  ◦ Share process with those that assist with investigations

Key Priorities to Successful Investigations

‣ Develop and document your workflow for investigations
  ◦ Develop tools for consistency
  ◦ Develop approach consistently for same types of investigations

‣ Understand what warrants an investigation vs. a management action

Key Priorities to Successful Investigations (cont)

- Clearly state goals of investigation
  - Also consider your disadvantages of doing an investigation

- Make sure your investigators are credible and qualified, ie: right personality, right skill sets

- AVOID scope clearly – have practices in place to keep "scope creep" from occuring

Types of Conclusions

- Sustained:

an allegation is sustained when an investigation reveals that the evidence satisfies the burden of proof in support of the allegation.

Types of Conclusions (cont)

- Not Sustained:

an allegation is not sustained when an investigation reveals that the evidence does not satisfy the required burden of proof.

- Avoid:

"Inconclusive," "Insufficient evidence to determine."

Key Priorities to Successful Investigations (cont)

‣ Investigator should be trained to identify whether the complaint is "tip of the iceberg" of bigger issues

‣ Know what you are going to document and how

‣ Know if documents should be protected

Key Priorities to Successful Investigations (cont)

‣ Reports need to be consistent, articulate, concise – know where opinions are to be stated for your organization (report, verbally)

Some Writing Pitfalls to Avoid

‣ Consider your audience

‣ Don't write a "screenplay"

‣ Don't use verbs disguised as nouns

‣ Make findings that relate to the relevant policy

‣ Do not purport to draw conclusions of law

Key Priorities to Successful Investigations (cont)

- Management needs to ACT on findings

- Management needs to RESOLVE ISSUES TIMELY

Summary

- Effectiveness in the investigation process requires an understanding of when to investigate

- Hotline/complaints should have a defined triage process. Everything does not have to be investigated.

- Investigation workflow processes should be clearly stated, consistent and mapped

Summary (cont)

- Effectiveness will be measured:
  - Factual basis for outcomes of the investigation

  - Investigation was conducted and documented according to procedures

Summary (cont)

- Effectiveness will be measured (cont):
  - Timely response by management to issues raised:
    - management resolved the issues
    - issues do not reoccur (because they were resolved appropriately)

QUESTIONS??

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