

CEP Magazine – May 2019

Three avenues of multiparty investigations

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Investigations produce a number of challenges, which become more numerous and difficult when two parties need to investigate the same or closely related allegations. When the need for an investigation arises that requires the participation of an outside entity (or a separate internal entity), your mutual investigations can be conducted through three fundamentally separate manners.

The first way is running “concurrent and mutual” investigations, where the interviews and process of investigation is done together. The two investigating parties work together, interview together, look at the same documentation, share their internal leads, etc. They typically produce separate reports, but they share the same goals and same concerns and often the same recommendations.

The second way is running “separately simultaneous” investigations where the two parties run separate investigations, including separate interviews, and write their separate reports. They may meet to share and discuss their reports, but their goals and focuses typically result in different recommendations.

The third and final way is “separately spaced” investigations. In these investigations, the compliance investigator is required to wait until the third party completes their investigation, and only once the third party produces their report may compliance proceed with an internal investigation.

Concurrent and mutual investigations

When having to run co-investigations, performing the entire investigation together has its benefits and drawbacks. Having the ability to discuss an interview or documentation review in real time keeps the investigation moving along at a decent pace and allows for consideration of different viewpoints. When compliance performs an investigation with another internal department—IT for example— it is usually because the allegation involves the expertise of the other department, or the other department needs to address noncompliance-related concerns.

An example of this type of investigation would result from an allegation of retaliation for reporting on Family and Medical Leave Act (FMLA) discrimination. In this example, the compliance professional may work with human resources, because they are likely to have a comprehensive understanding of the complexities surrounding FMLA.

However, it is plausible that the valuable internal resource could cause the interviewees to be uncomfortable. This could happen through their inexperience with interviewing for allegations; through the interviewee having had negative, unrelated interactions with the internal resource; or through the interviewee being uncomfortable simply because they don’t know the internal resource. Whatever the reason, this situation is plausible, and it’s best to be generally prepared for this possibility.

If your relationship with the interviewee has historically been supportive, use that prior relationship to give them the confidence to truthfully engage as the interviewee. This can be a common concern for interviewees where the non-compliance interviewer is an external third party, such as an oversight licensing agency.

If you and the other interviewer are both new to the interviewee, they may be concerned about who will be informed of what they say in response to the questions asked. Or they may be concerned that they will get themselves in trouble or that they will be retaliated against for participating in the investigation. This is the time to be honest, beginning with a reminder of the organization's policies, the first one being retaliation and confidentiality. Then tell them (or remind them) of the annual training where the investigation process was discussed, what to expect from the interview, and give a general description of the investigative process overall.

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