

CEP Magazine – April 2020 Key elements of an investigations manual

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In establishing an internal investigation regime to address compliance and ethics violations, a private sector entity need not meet full constitutional due process standards. But there are still many reasons to implement an investigations manual, including assuring that investigations are thorough, fair, confidential, legally sound, well documented, and otherwise fit for purpose.

What specifically should be included in such a document? Among other things, it should set forth or otherwise discuss:

- The standards and procedures for determining when the receipt of a compliance and ethics concern should trigger an investigation.
 - The criteria that should be used in determining which functions (e.g., law, human resources, compliance, security) should conduct or lead the investigation.
 - That investigations should be conducted in compliance with applicable law and company policy, including nondiscrimination.
 - Strong confidentiality mandates regarding information gathered in the course of investigations, including immediate notification in case of any breaches of such mandates.
 - The importance of objectivity and professionalism in conducting investigations.
 - How to use the case management system.
 - Detailed provisions regarding investigation planning, including determining whether assembling an investigative team is warranted.
 - Expectations regarding the time to complete investigations.
 - Investigative oversight by management and the board of directors.
 - Appropriate ways to communicate regarding the investigation to those at the company with a genuine need to know.
 - Who should be interviewed and in what order.
 - Considerations in interviewing the reporter of a concern.
 - Considerations in interviewing the subject of a concern.
 - Considerations in interviewing witnesses generally.
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- What type of documents and other materials should generally be reviewed in an investigation.
- Procedures for dealing with privileged investigations.
- Procedures for dealing with concurrent government investigations.
- Referrals to and requests for information from law enforcement.
- When to consider temporary suspensions or reassignment of employees pending the outcome of an investigation.
- Document creation requirements, including the importance of stating facts in a neutral manner and not opinions or speculation in investigative reports, interview memoranda, etc.
- How to draft interview summaries.
- Dealing with sensitive evidence (such as emails and personnel records).
- Issues under foreign law, including those concerning privacy and labor law.
- Escalation procedures.
- How to draft a final report.
- How to communicate the results of an investigation within the company.
- Document retention requirements, including when to maintain hard copies of relevant investigative materials.
- How to close out an investigation.

Finally, companies should train and audit on their investigative procedures.

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