DISCIPLINE, FOLLOW-UP and CLOSING the LOOP

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PARTICIPANT EXPECTATIONS

What do you expect from this session?

Should the Investigator Participate in the Determination of Corrective Action?

- Goal of an Investigation
  - Identify what happened – finding the truth
    - Who did what to whom and when?
    - What was the cause of the infraction?
      - Opportunity and a bad actor
      - Systemic deficiencies
    - What was the damage?
    - What was the value/cost of that damage?

Should the Investigator Participate in the Determination of Corrective Action?

- Determine what needs to be done
  - What preventive measures need to be developed?
  - Follow up to see that the processes have been approved
  - Ensure consistency of discipline – a system of checks and balances
  - Should the matter be reported to law enforcement?
  - Should a civil action be brought against the wrongdoer?

And Other Goals

- Goal of Discipline & Corrective Actions
  - Set an example for others
  - Teach the wrongdoer and others how not to engage in wrongdoing
  - Show consequences for inappropriate behavior
  - Deterrence
    - For wrongdoer
    - For others

And Other Goals

- Punishment - Cause pain to the wrongdoer
  - Financial
    - Time off without pay
    - Reduction in salary, no bonus, no raise
  - Embarrassment
    - What will colleagues, family, and friends think?
  - Career –
    - May not get that promotion
    - Or worse, lose job with a good company

So, Who Should Decide Discipline or Corrective Action?

- The choices
  - The employee's manager
  - HR
  - A committee
    - If by committee, who sits on the committee
  - The investigator (Security, Internal Audit, E&C)
  - Legal
  - Some combination

So, Who Should Decide Discipline or Corrective Action?

- How is discipline determined?
  - Proscribed guidelines based on severity of infraction
  - Labor contract
  - Institutional history
  - Consideration of the infraction, the employee and any relevant circumstances/conditions

Considerations

How do you ensure that the corrective action or discipline is fair?

Can discipline be predetermined?

Should there be a policy or should discipline be discretionary?

What are the risks?

Role of the Investigation in Determining Discipline

- Investigative Report
  - Written or oral
  - Distributed to whom
  - Does the wrongdoer get to see the report?
  - Record keeper
    - Types of infractions
    - Discipline
    - Process improvements
  - Thorough follow up
  - What is contained in the report?

Summarize Findings

- Document conclusions in a concise, objective, and neutral style
  - Findings, observations, corrective actions
- Do not include the content of conversations or written communications with legal counsel
- Do not include personal opinions
- Do not draw legal conclusions
- Present what happened

Continuous Improvements to the E&C Program

- Process improvements
  - Company systems that failed
  - Loop holes that were exploited
  - Where there is a will there is a way
  - Improvements to the Compliance and Ethics Program/Culture
- Ownership of the improvements to the compliance and ethics program and the violated processes:
  - Design
  - Training
  - Implementation
  - Verification

Record Keeping

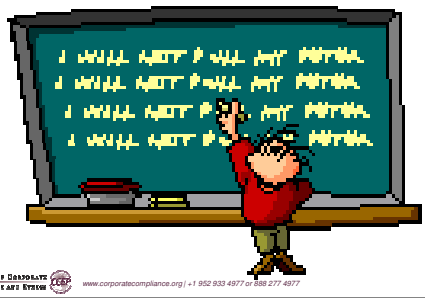
- Institutional knowledge versus personal knowledge
- What happens if you win lotto?
- How will those who come after you know about previous investigations and their outcomes?
- Importance of secure data base and physical files
- What else do you need to do?

Resolution

- Document the specific action(s) to be taken
- Document/prepare action plan for any corrective action
- Report status of all corrective and disciplinary actions stemming from employee misconduct.
- Track alleged misconduct for trends and high risk areas to be targeted for compliance training and awareness
- Share "lessons learned"

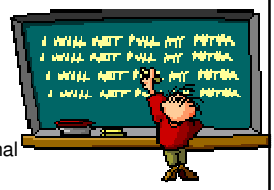
Close the Loop with Stakeholders

- Were the allegations substantiated?
- Was corrective and or disciplinary action taken?



Close the Loop with Stakeholders

- Validate remedial actions
  - Disciplinary Actions
  - Training and Education
  - Changes in Policy & Procedures
  - Other communications
- Prevent further misconduct
- Voluntary Disclosure to external sources
- Share "lessons learned"
  - Communications to Management and employees
    - It Happened Here! Or Sad but True!



Some Likely Scenarios You May Encounter

YOU MAKE THE CALL!

You Make the Call!

Alco has a zero tolerance policy against the use of alcohol and non-prescribed drugs in the workplace. By policy, employees are randomly tested for alcohol and drug use. Employees who test positive are terminated, unless they admit before testing that they are using alcohol or a non-prescribed drug and wish to enroll in a 3rd Party monitored alcohol and drug rehabilitation program. Bill Bates tested positive during one such random test and admitted to using marijuana to help manage the pain from his terminal liver cancer. He said doctors told him he had about six months to live. The use of marijuana for pain management is illegal in Bill's State making it impossible for Bill to get a prescription from his oncologist. Bill found a source for his marijuana on the "street".

What should the company do in Bill's situation?

You Make the Call!

Joe, who is Carrie's supervisor, is a tough but fair leader who expects employees to be productive at work. Carrie has been complaining about Joe for week's to Tyler, a coworker who reports to another supervisor. Carrie told Tyler she can no longer tolerate Joe's assertive behavior and would like to shoot him. One day, during lunchtime, Carrie took Tyler out to her car in the company parking lot and showed Tyler the handgun she keeps in her glove compartment for self-defense. Tyler immediately reported to Security the previous conversation he had with Carrie and the "show and tell" by Carrie in the company parking lot.

What should the company do with regard to Joe, Carrie and Tyler?

You Make the Call!

Prime Co. has a policy stating that employees who falsify company records will be subject to disciplinary action, up to and including termination. The company's practice is to terminate employees who have committed a fraud in the submission of a company document (e.g. time sheet, quality test, expense report, financial record, etc.)

Larry Jones, with his supervisor's permission, worked an adjusted shift to allow him to care for his mother who was at home recovering from a stroke. One day Larry entered more hours than he actually worked. A comparison to the company's electronic time and attendance and security video tape systems showed Larry leaving the workplace well in advance of the time recorded on his signed timesheet. When confronted by Human Resources, Larry admitted to the error, stating he thought he had worked the hours he put on his time sheet, but has been under a lot of stress caring for his mother. He apologized for the error and asked if he could use some vacation time to make up the difference.

What should the company do with regard to Larry?

You Make the Call!

Rose, a Business Development Program Manager, while attending a recent Trade Show in Europe was alleged to have had too much to drink and was reported to have made sexually explicit advances towards Jim, a newly hired Business Development Analyst. Most of the alleged misbehavior by Rose had taken place in the Host Meeting Room adjacent to the Company Booth at the Trade Show. Other company attendees who were interviewed stated they believed Rose had a little to much to drink one evening and was observed slurring her speech and "hanging over" visitors and potential customers who visited the booth. When one of her co-workers suggested she go back to her hotel, she became indignant and raised her voice in protest. "She was an embarrassment to the company", cited one of her co-workers. The company has a no-alcohol policy in the workplace, but it's not clear if it extends to company-sponsored activities beyond the workplace. When interviewed by Human Resources, Rose admitted she may have had one glass of wine to many that may have interacted with a prescription drug she had taken. She vehemently denied making any sexual overtures towards Jim.

What should the company do with regard to Rose?