

19 Compliance Investigation Guiding Principles

Richard P. Kusserow | May 2023

Proper Prior Planning Prevents Poor Performance

Both the OIG and DOJ stress the importance of Compliance Officers being able to [investigate](#) potential violations of law and other wrongdoing competently. However, the infrequency of conducting full investigations often leads to mistakes when a matter requires proper attention resulting in compromised results or, worse, aggravating matters. The following are some guiding principles for those that do not have a strong investigation background:

1. **Be Prepared.** Have the staff and processes prepared to conduct investigations on short notice. Consider having those who might be called upon to investigate enroll in a [training program](#) on conducting compliance investigations.
2. **Investigation Policy.** Implement written guidance that sets forth the processes for conducting investigations, including defining roles of the Compliance Office and others with overlapping responsibilities (e.g., Legal Counsel, Human Resources). This will help ensure allegations are acted upon without confusion of roles.
3. **Analyze Issues.** It is important to analyze complaints and allegations to identify all the issues that need to be addressed and by whom. This includes assessing any potential violations of laws or regulations and any other matters impacting the organization.
4. **Act Promptly.** Many serious issues are mishandled by hesitating to respond promptly to complaints and allegations. Identified complainants should be fully debriefed immediately about their allegations, concerns, and complaints, along with supporting evidence of the allegations. Witnesses must be quickly interviewed before memories fade, become distorted, or are influenced by subsequent events or discussions with others.
5. **Deciding Official.** Those matters which have serious implications should be discussed in advance with the party who would be responsible for acting upon the results of the investigation. This would allow them to communicate what they need to take appropriate action. It will also avoid providing a report where that party complains it wasn't adequate. Reopening an investigation to address perceived gaps can create many additional problems.

6. **Investigation Plan.** Before rushing ahead with an investigation, take time to establish a plan of action. This includes determining the scope of the investigation, issues to be resolved, what is known, what information and records are needed, who is to be interviewed and in what order, and who will be conducting the investigation.
7. **Interview Plan.** Interview planning steps should include reviewing in advance any known relevant information, including the review and understanding of employee rights, especially if they are part of a union bargaining unit. Determine the order of those to be interviewed so that each interview builds on the previous ones and sets the stage to the next. In short, each planned interview should incorporate what was learned from the previous ones. A key decision for all interviews is determining location and scheduling to avoid any distractions. Prepare an outline of the planned interview with sufficient detail to obtain the desired information as quickly and efficiently as possible, but still allow for original and spontaneous questioning. It should be flexible and permit development of additional lines of inquiry that may arise from the interview. For witness interviews, it is best to have open-ended questions to permit the individual to present what they know, rather than responding to a set of questions.
8. **Need to Know.** All communication regarding an investigation should be restricted to a “need to know.” There should be no sharing of information regarding the predication, direction, or findings of the process with any unauthorized parties. This is very important to ensure meeting commitments to confidentiality, as well as avoiding rumors and partial information being circulated that impact the investigation.
9. **Professional Image.** Investigations are serious, and the results can significantly impact individuals and the organization. The success of investigations often relies upon how the persons conducting the investigation present themselves. As such, the investigator must project a professional image of being knowledgeable, objective, and respectful to everyone.
10. **Discretion.** The investigator must be discreet in gathering pertinent facts and evidence. The workplace “rumor mill” can sometimes move faster than the investigation in a way that can easily undermine the effort and affect the interviews of individuals. Discretion is needed when selecting sites and conducting interviews to avoid overhearing or conjecturing as to what is happening.
11. **Objectivity.** The investigation process must be viewed as independent and objective, being conducted in a fair and impartial manner that avoids any appearance of bias. Failure to meet this standard can have negative consequences.

12. **Maintain Focus.** Investigators must never lose sight of the purpose and objective of the investigation. This means staying focused on obtaining facts and evidence about the complaint without being distracted by extraneous information.
13. **Flexibility.** Under certain circumstances, it may be necessary to adjust to changing fact patterns or conditions. Remaining too narrowly focused may result in missing even more significant issues than those predating the original investigation.
14. **Keep an Open Mind.** As facts unfold during an investigation, the original predating information may prove inaccurate, or the named subject of the investigation may be free of any wrongdoing. As such, let the facts dictate the results, not preconceived notions.
15. **Comprehensive.** For most investigations, there is one chance. As such, everything must be done right the first time. The investigation must be comprehensive enough to answer all the questions raised in the predication and sufficient to identify any pervasive or systemic issues that may have caused the problem.
16. **Document Control.** All investigation records should be kept under lock and key control in a limited access area. Having information about an active or past investigation going astray can create a huge problem and potential liability.
17. **Chain of Custody.** All evidence obtained during an investigation must be tracked so that it is never outside the investigators' control. This is referred to as maintaining a "chain of custody," and failure to do this may result in the evidence being questioned or disallowed in a formal adjudicative process.
18. **Prevent Retaliation.** One of the worst outcomes of an investigation is retaliation or retribution against the original complainant or witnesses. This issue is specifically addressed in the OIG Compliance Guidance. It is also something that can create serious legal liability.
19. **Investigation Report.** The investigation result needs to be presented clearly, concisely, and supported by full documentation. It should address all issues in the predating complaint. It must evidence objectivity without any opinion. All findings must be supported by facts and evidence. It should be written assuming that outside parties may gain access to it.

For more on this topic, see "[The Eight "Ps" for Effective Compliance Investigations](#)".

For information on Compliance Investigation Training programs, contact Richard Kusserow (rkusserow@strategicm.com).



About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.