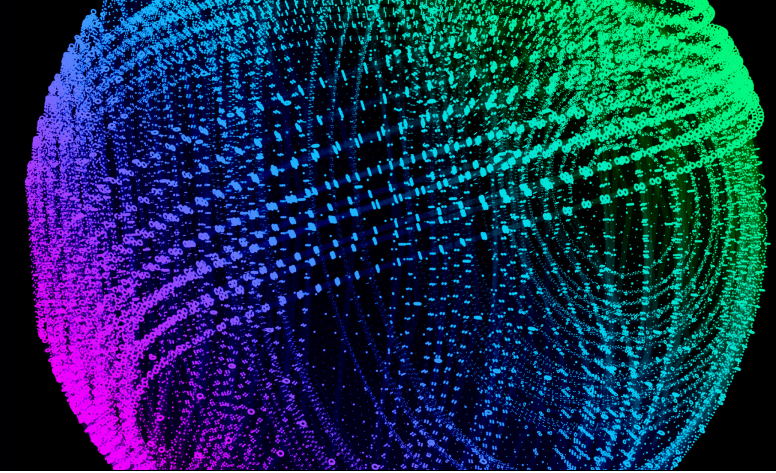




COVID-19 5x5 series: Insights and actions

Preparing for investigations in the new whistleblower environment



The COVID-19 pandemic is changing the whistleblower environment and creating potentially significant new risks and opportunities for compliance programs. This 5x5 looks at specific insights and actions that compliance executives should consider in 2021 as the need arises for an anticipated uptick in whistleblower activity and internal investigations. A companion 5x5 offers an overview of the factors contributing to the changing environment and strategic considerations for compliance executives.

5 insights you should know

With heightened workplace exposure, existing corporate policies and procedures may not be adequate. While many companies have a general ethics and personal conduct policy in place, recent developments provide an impetus to revisit its provisions and make updates as needed, especially policies governing the reporting of known or suspected policy violations, data privacy and security, confidentiality, and use of unauthorized software.

Establishing or reaffirming roles, authorities, and accountability for employment-related complaints is critical. Many companies direct employment-related complaints to the corporate human resources (HR) function as the default lead for investigation, fact-finding, and resolution. This is likely to remain the preferred approach in most workplace matters, but it will need to be modified to account for the most serious allegations.

Consistency and quality of investigations should be a major focus. Many factors—for example, training, experience, and the COVID-19-driven need for **remote investigations** capabilities—can influence how investigators operate. Even with well-defined roles, authorities, and responsibilities, different investigators may handle their duties quite differently, including those from the same functional organization.

The data deluge is a growing challenge. The exponential expansion of data volumes in internal investigations continually increases the time and expense required to capture, process, organize, and analyze the data. As a result, a growing number of companies are using advanced analytics, machine-learning, and other technology-assisted review (TAR) techniques to triage investigations, and deploying new remote collection techniques, especially for mobile devices.

The importance of documentation cannot be overstated. The inherent risk and increased scrutiny and second-guessing of whistleblower investigations create the need for careful documentation of procedures, observations, findings, and case dispositions. Everyone connected to an investigation can be compelled to provide information, even years later, about the allegations, investigation process, and ultimate disposition of the matter.



5 actions to take now

Expand communications, reporting channels, and use of external resources. Broaden communications campaigns to reinforce company commitment to a safe and healthy work environment and provide guidance if violations occur. Augment internal hotlines and helplines with a range of other reporting channels. Increase involvement of external resources (forensic accountants and legal counsel) to handle surges.

Strengthen your oversight of investigations. Key stakeholders should evaluate and agree on updates to case-handling protocols. Detailed taxonomies for roles, authorities, and accountability are vital to avoid reactive, ad-hoc handling and disposition of issues, as well as lapses and potential heightened liability exposure in matters warranting referral to law enforcement.

Presumptive investigation playbooks can help. Complete process standardization is neither possible nor desirable. Instead, define an orderly series of upfront procedures for data collection and preservation, background checks, interviews and interview summaries, and documentation of observations and findings. Give special attention to document retention periods for the results of investigative procedures.

Advanced analytics and technology-assisted review provide critical data-handling capabilities. Along with investigation playbooks, consider presumptive procedures and checklists for unstructured and structured data. External forensic professionals can also be a cost-effective way to shift fixed-cost resources to variable cost and provide leading-edge strategies and methodologies.

Specificity strengthens document procedures, observations, and dispositions. While companies may never escape hindsight criticism, a defensible record can dramatically improve your company's position. Case documents should reflect overall fairness to subjects of the case; thoroughness in case process, analysis, and conclusions; and detailed documentation of the outcome.

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Connect with us

Robert T. Biskup
Managing Director
Deloitte Risk & Financial Advisory
Deloitte Financial Advisory Services LLP
rbiskup@deloitte.com
+1 313 212 2058

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