



32. Disciplinary action

Challenge

If there has been an incident, a root cause analysis must be carried out, possibly followed by preventive and corrective measures. See tool 29: "Ensure proper handling of incident reports".

There is a reasonable chance that a number of employees have taken note of the incident. It is also possible that this knowledge spreads further, after which the story may 'sing around'. There is also a possibility the incident will leak to the outside world.

It damages the credibility and integrity of an organization if the policy states that, for example, there is a "zero tolerance" policy regarding bribery, while no (visible) measures follow after an incident. Employees will then draw the conclusion that "zero tolerance" has no meaning and it is apparently not important to adhere to the policy.

The challenge is that on the one hand visible measures must be taken, but on the other hand it is not always possible to give full transparency about this. Another challenge is that the measures are taken without regard for the parties involved.

Solution

An essential part of an effective integrity & compliance program is that good behavior is rewarded (see tool 26. "Reward exemplary behavior and give compliments" and tool 28. "Reward good behavior") and that bad behavior has consequences. This tool elaborates on the latter.

As stated above, it is important that the compliance and integrity policy is visibly enforced. This also includes taking visible measures if something has gone wrong; if an incident has occurred.

Disciplinary action

There is a wide range of possible disciplinary measures to be taken. This ranges from a norm-transferring conversation and giving an additional compliance training, or a verbal or written warning, to limiting promotional opportunities, demotion, reclaiming bonuses or even dismissal.



Advice from Compliance Professional

When all facts are known as much as possible, as a compliance Professional you can be asked to advise on the measures to be taken, including the disciplinary measures. A challenge is to arrive at a balanced advice, which remains confidential. If the advice does not remain confidential, there is a risk employees will no longer see you as the 'trusted advisor' but as an ogre and this results in fear of approaching you.

In addition to the advice of Compliance, management often receives advice from Legal Affairs and Human Resources. These departments must consult with each other about this, for example in an Ethics Committee. Ultimately, management decides on the disciplinary measures to be taken. It is important that the main lines of the decision are ultimately communicated and how that happens. For example, if management indicates that they simply followed the advice of compliance when dismissing certain employees, this can still have consequences for your internal reputation.

Compliance Professional is not involved

It also happens that the compliance professional is not involved in the situation. In that case, it is important to remain involved in this process and to insist that visible measures be taken. It is recommended that Compliance, Legal Affairs and Human Resources are always consulted before disciplinary action is taken.

Disciplinary measures without regard to the person

It is important that the disciplinary measures are taken without regard to the person or status. If a junior employee is dismissed if they take office materials home for private use, this should also happen if a senior manager does the same thing. If a junior employee is dismissed for trying to bribe a customer, this should also happen if the salesperson who has acquired half of the company's revenue, has done so, even if there is a danger that he will then take the business to the competitor.

Declaration

In principle, serious violations must be reported to the authorities. It is good to mention this in a code of conduct or policy, so that it is absolutely clear in advance.



Incident disclosure

It is important that visible measures are taken. But sometimes it is not possible to make the details of an incident fully public. It is usually not in the interest of the parties involved. It is almost always possible to communicate that an incident has occurred in a particular country or department, that the case has been investigated and that disciplinary action has been taken. In the context of transparency and enforcement, it is desirable that as much as possible is made public. It should be taken into account that it is increasingly difficult to keep something secret and the consequences may be much greater if society finds out later. In the context of enforcement, it is especially important that the measures are taken, that they are communicated and that the measures taken are well defensible.

Actors

- Management
- Personnel
- Legal Affairs
- Compliance

Techniques

When taking disciplinary action, it is crucial to apply the adversarial principle. Employees will sometimes disagree with the measures taken. It is important to listen carefully why they do not agree with it. In a few cases, new facts emerge that may give rise to reopening the investigation and/or revising the judgment.

Role Compliance Professional

Advisor